



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(30)102/Ahd-South/2018-19 | 10644 to 10649

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-04-2019-20
दिनांक Date : 18-04-2019 जारी करने की तारीख Date of Issue _____ 21/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/Ref-63/Stardom/18-19 दिनांक: 27.06.2018 issued
by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Stardom Pharmaceuticals Pvt Ltd
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हैं।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

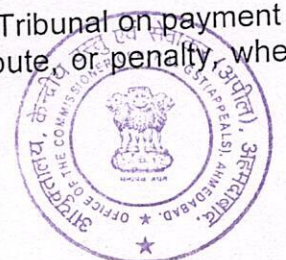
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Stardom Pharmaceuticals Pvt Ltd, FF-Rudra Plaza, Judges Bungalow Road, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-original No.CGST-VI/REF-63/Stardom/18-19 dated 27.06.2018 (henceforth, "impugned order") issued by the Assistant Commissioner, CGST division-VI,Ahmedabad-South (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant, a merchant exporter, filed a rebate claim dated 16.02.2018 of Rs.1,53,832/- under rule 18 of Central Excise Rules,2002 readwith Notification no.19/2004-CE(NT) dated 06.09.2004 in respect of duty paid on goods purchased from M/s manufacturer M/s. Landmark Health Care Pvt Ltd, Matoda and exported by them which was rejected under Order-In-Original dated 24.11.2015 on the ground that the claimant had not submitted copy of ARE1. Appeal against said Order-In-Original dated 24.11.2015 was decided by the undersigned authority remanding the case back to the adjudicating authority for following principle of natural justice. Acting on the same, the impugned order is passed wherein rebate claim is rejected again holding that ARE1 which is not submitted by the appellant is mandatory for claiming rebate and that without ARE1 payment of excise duty of the consignment cannot be established.

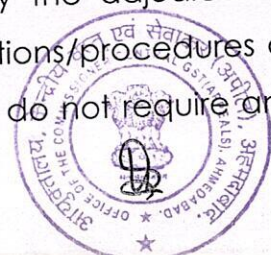
3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia* that in the instant case neither manufacturer nor the appellant (merchant Exporter) intended sealing & examination of the goods at factory premises, it was to be examined/sealed at the port of export; that as per Notification No.19/2004-CE(NT) dated 06.09.2004,ARE1 is required to in case of sealing of goods at the place of dispatch; that preparation of ARE1 is not mandatory but procedural requirement which requires to be condoned; that substantial benefit of rebate cannot be denied to the exporter as held by Hon'ble High Court of Gujarat in the matter of Raj Petro Specilities v/s UOI reported in 2017(345) ELT496, M/s tablets India Ltd v/s Jt. Secretary, New Delhi reported in 2010-TIOL-652-HC-CX. They further contested that upon correlating the documents i.e. shipping bill, excise invoice, BRC, commercial invoice, packing list,duty payment certificate of Range Superintendent etc it could be easily seen that very same goods are exported against which rebate is claimed. Etc.



4. In the Personal hearing held on 02.04.2019 Shri Mukesh Mehta, Consultant, reiterated the grounds of appeal and stated that copies of ARE1 not available.

5. I find that the only issue requiring determination is whether rebate under rule 18 of Central Excise Rules,2002 readwith Notification no.19/2004-CE(NT) dated 06.09.2004 can be granted to the appellant/merchant exporter in absence of copy of ARE1. I find that Rule 18 of Central excise Rules,2002 deals with rebate of duty paid on goods exported and notification. No.19/2004-CE(NT) dated 06.09.2004 issued under said rule prescribes the conditions, limitations, procedures in this regard. Further Rule 19 of Central Excise Rules,2002 deals with export of goods without payment of duty and governed by notification. No.42/2001-CE(NT)dated 26.06.2001. Opting of either of said two procedure/rules in case of export of goods is purely a privilege available to the exporter and there is no role of the excise department in which one to choose by the exporter. Looking to domestic as well as export clearance and other factors, the manufacturer/merchant exporter decides which one is viable for them. Once, it has been decided by the exporter to export the goods on payment of duty and to claim rebate of duty suffered therein, it becomes liability of the exporter to maintain and furnish documents as prescribed under rule18 Central excise Rules,2002 and notification.No.19/2004-CE(NT) dated 06.09.2004 for claiming rebate. The intention of the conditions, limitations, procedures laid down under the notifications/rules is to protect the interest of the exporter earning foreign exchange and also to streamline and adopt a universal procedure by the rebate sanctioning authority across the country. I observe that Justice and impartiality on such revenue sensitive issue can only be given to all exporters equally by strictly adhering to the conditions, limitations, procedures meant for it and no authority can be allowed to overlook such mandatory requirement in favor of one who failed to comply with it.

6. It is observed by the adjudicating authority that submission of ARE1 is mandatory for claiming rebate and also that without ARE1 payment of excise duty of the consignment could not be established. In absence of ARE1, the rebate claim is considered incomplete by the adjudicating authority and also rejected for non following of conditions/procedures of notification supra which I found is a valid ground and do not require any



interference. The decision of Hon'ble High Court of Gujarat in the matter of Raj Petro Specilities v/s UOI reported in 2017(345) ELT496 is on different background in as much as it relates to non submission of original/duplicate copy whereas in the case on hand, neither original/ duplicate nor even photocopy of the same is provided by the claimant. In none of the other case law cited, issue of non submission of ARE1 is involved hence cannot be applied.

7. In view of the above observations I reject the appeal filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date:

Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. Stardom Pharmaceuticals Pvt Ltd,
FF-10,Rudra Plaza,Judges Bungalow Road, Ahmedabad-380054.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner,SGST,Government of Gujarat,Rajya Kar Bhavan,Ashram Road,Ahmedabad.
3. The Commissioner of Central Tax,Ahmedabad-South.
4. The Additional Commissioner, Central Tax (System), Ahmedabad-South.
5. The Asstt./Deputy Commissioner, Central Tax, Division-VI, Ahd- South.
6. Guard File
7. P.A.