केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

केंद्रीय कर भवन,
सातवीं मंज़िल, 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(ST)186/Ahd-South/2018-19 / 10666 to 10670

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-08-2019-20**
दिनाँक Date : **20-05-2019** जारी करने की तारीख Date of Issue 22/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

ग Arising out of Order-in-Original No. **CGST-VI/Ref-116/SKC/Veeda/18-19** दिनाँक: **30.11.2018** issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Veeda Clinical Research 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 पूवोक्त 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 प्रकिया 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।

(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 मामलें 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 डयूटी केडिट 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 हो।

(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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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.

आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवाकर, अहमदाबाद। OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD.

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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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

This appeal has been filed by M/s Veeda Clinical Research Pvt. Ltd., Shivalik Plaza-A, Near IIM, Ambawadi, Ahmedabad-380015 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST-VI/Ref-116/SKC/Veeda/18-19 dtd. 30.11.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of CGST, Division-VI (Vastrapur), Ahmedabad-South (hereinafter referred to as "the adjudicating authority").

2. The facts of the case in brief are that the appellant had filed refund application for Rs. 1,65,265/- of pre-deposit made at the time of filing appeals before the Commissioner (Appeals) and CESTAT, Ahmedabad in terms of the Order No. A/10924/2018 dtd. 27.03.2018 passed by the CESTAT, Ahmedabad. The Tribunal vide its order dtd. 27.03.2018 has allowed the appeal of the appellant with consequential relief. On scrutity of the refund claim, a query memo dtd. 18.10.2018 was issued to the appellant asking them to submit the copy of relevant OIO and OIA and the details of pre-deposits. The adjudicating authority, vide the impugned order, rejected the refund claim under Section 35FF of the Central Excise Act, 1944 (for brevity "the Act") made applicable to the Service Tax under Section 83 of the Finance Act, 1994 on the ground that the order of the tribunal was not fully in their favour. It was noted in the impugned order that the tribunal had disallowed the cenvat credit on one item and had allowed rest of the appeal. Further the appellant had not submitted the status of the Tribunal's order whether it was appealed or accepted.

3. Being aggrieved by the impugned order, the appellant has filed the instant appeal on the ground that they have already made payment for reversal of cenvat credit which was not allowed to them by the order of the Tribunal and non-submission of the copy of challan was only a procedural lapse.

4. Personal Hearing in the matter was held on 02.05.2019. Shri Vipul Khandhar, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He requested to remand the case to submit challan.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The issue to be decided in the matter is relating to rejection of refund claim under Section 35FF of the Act.

6. I find that as held in para 11 of the impugned order, the adjudicating authority has rejected the refund claim on the ground that the order of the tribunal was not fully in the appellant's favour. It was noted in the impugned order that the tribunal had disallowed the cenvat credit on one item and had allowed rest of the appeal. Further the appellant had not submitted the status of the Tribunal's order whether it was appealed or accepted. Now it is important to note that it is evident from para 11 of the impugned order that the adjudicating authority talks about giving query memo only about non-submission of the copies of the OIO and OIA and does not talk anything about the reason on which the refund claim has been rejected. Further I find that the appellant could have been asked to submit the status of the order of the Tribunal and this alone cannot be a reason to reject the refund claim as held in catena of judgments and circulars of the Central Board of Excise and Customs

7. I further find that in case of order being partly in favour of the appellant where a portion of the duty is confirmed, it must have been ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest and refund of pre-deposit made is not withheld on the ground that the appellant is proposing to file an appeal or has filed an appeal against that part of the order which is against them. Further I find that as noted in para 5 of the impugned order, the Tribunal's order gave consequential relief whereas the adjudicating authority has denied the consequential relief on a ground which could have been set right by asking the appellant.

8. Here it is very important to take note of the Circular No. Circular No. 802/35/2004-CX., dated 8-12-2004 issued from F.No. 387/5/2001-JC in which it has been made clear that:

> *"4. Accordingly, the contents of the Circular No. 275/37/2000-CX. 8A dated 2-1-2002 [2002 (139) E.L.T. T38], as to the modalities for return of the pre-deposits are reiterated. It is again reiterated that in terms of Hon'ble Supreme Court's order such pre-deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal/Court or other Final Authority* ***unless there is a stay on the order*** *of the Final Authority/CESTAT/Court by a superior Court." (emphasis applied)*

From the above clarification, it is clear that the re-deposit has to be returned within 3 months unless there is a stay on the order and from facts narrated in the impugned order, I find that there is no stay against the Tribunal's order. I therefore find it just that the impugned order be set aside and the matter be remanded to the adjudicating authority to ascertain the facts of any appeal against the Tribunal's order by the department or the appellant and return the amount of pre-deposit immediately which is not in dispute now.

9. In view of above discussion, I allow the appeal and the impugned order is set aside by way of remand.

10. The appeal filed by the appellant stand disposed off in above terms.

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

3/12/19

(उमा शंकर)
प्रधान आयुक्त (अपील्स)
केंद्रीय कर, अहमदाबाद
दिनांक: . .2019

सत्यापित

(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By RPAD.

To,
M/s Veeda Clinical Research Pvt. Ltd.,
2nd floor, Shivalik Plaza,
IIM Road,
Ambawadi,
Ahmedabad-380015

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad-South,
3. The Asstt. Commissioner, System, Central Tax, Ahmedabad-South
4. The Asstt. Commissioner, CGST, Division-VI, Ahmedabad-South
5. Guard File.
6. P.A.