



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065

- टेलिफैक्स 07926305136



DIN : 20221064SW000000E4A5

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/748/2021 / 3284-88
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-059/2022-23**
दिनांक Date : **30-09-2022** जारी करने की तारीख Date of Issue 06.10.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. **24/CGST/Ahmd-South/JC/RK/2021** दिनांक: **07.07.2021** passed by Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s FMC India Pvt Ltd**
Block No. 2030, C/o. N.G. Warehousing
Jetalpur-Naz Road, Opp. Gokulesh Estate,
Jetalpur, Ahmedabad, Gujarat-382427

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) केंद्रीय 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 हानिकार खाने 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.



(क) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

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

(B) 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 हो।

(c) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष 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 होतो 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 सेवा कर 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

- (34) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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:

- (lxxxv) amount determined under Section 11 D;
- (lxxxvi) amount of erroneous Cenvat Credit taken;
- (lxxxvii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

The present appeal has been filed by M/s. FMC India Pvt. Ltd., Block No.2030, C/o. N.G. Warehousing, Jetalpur-Naz Road, Opposite Gokulesh Estate, Jetalpur, Ahmedabad – 382 427 [previously at Godown No.3, Laxminarayan Esate, NH No.8, Aslali Bypass, Near Alfa Hotel, Jetalpur, Ahmedabad – 382 427] (hereinafter referred to as the appellant) against Order in Original No. 24/CGST/Ahmd-South/JC/RK/2021 dated 07.07.2021 [hereinafter referred to as “*impugned order*”] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were granted Central Excise Registration No. AAACF4579NEM025 on 15.06.2017. The appellant had filed their ER-1 returns for the month of June, 2017 on 2.09.2017 instead of the due date of 10.07.2017. During scrutiny of the returns filed by them, it was found that they had shown opening balance of cenvat credit amounting to Rs.58,73,324/-. Clarification was sought from the appellant vide letters dated 18.04.2019 and 14.06.2019. The appellant vide letter dated 24.07.2019 submitted that the opening balance of cenvat credit comprised of cenvat credit available on their stock as on 17.06.2017 and that they had submitted the stock statement to the department at the time of registration. However, it appeared that no stock statement was submitted by the appellant at the time of registration. Therefore, the appellant was called upon vide letter dated 07.08.2019 to submit the acknowledgment of receipt of the stock statement by the department or to submit date relating to the stock in balance and the relevant purchase invoices. However, the appellant did not respond to the communication from the department. It, therefore, appeared that the appellant had availed cenvat credit without possession of proper duty paying documents.

3. The appellant was, therefore, issued a Show Cause Notice bearing No. STC.04-39/FMC/O&A/2019-20 dated 17.09.2019 wherein it was proposed to



- a) Disallow and recover the cenvat credit amounting to Rs.58,73,324/- under Section 11A of the Central Excise Act, 1944 read with Rule 14 of the Central Excise Rules, 2004.
- b) Recover Interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Central Excise Rules, 2004.
- c) Impose penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of the Central Excise Rules, 2004.
- d) Late fees should not be charged and recovered from them in terms of Rule 12(6) of the Central Excise Rules, 2002.

4. The SCN was adjudicated vide the impugned order wherein the cenvat credit was disallowed and demand for cenvat credit amounting to Rs.58,73,324/- was confirmed along with interest. Penalty equivalent to the cenvat credit confirmed was imposed. Late fee of Rs.7,800/- for delay in filing of returns was also ordered to be recovered under Rule 12(6) of the Central Excise Rules, 2002.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

- i. The adjudicating authority has erred in passing the impugned order and ordering recovery of the cenvat credit along with interest and penalty. The adjudicating authority has not considered their submission of details and invoice copies.
- ii. The impugned order is against the principles of natural justice, principles of right of equality and principle of evidence of records.
- iii. The adjudicating authority erred by not giving proper opportunities to be heard and submit the details in the difficult times of COVID pandemic.
- iv. Late fee of Rs.7,800/- has been imposed without considering the natural calamity incident of flood.



6. The appellant, through their Chartered Accountant Jayesh Rambhiya & Co., filed additional written submissions on 29.08.2022, wherein, it was inter alia submitted that :

- The cenvat credit was pertaining to the stock lying on the eve of their getting Excise registration. They are doing business as a dealer and decided to get registration with the intention that their buyers will get excise paid invoices enabling them to claim cenvat on transition to GST through TRAN1. All the stock was coming from their own factory with valid invoices and the excise duty was eligible as cenvat credit.
- They had submitted the details on time and the delays were explained properly. Their company was merged with Cheminova India Limited due to which there were many changes and movement of records from one depot to another. Also due to software changes/team members, it was difficult to retrieve the old invoice copies and details.
- Due to heavy rains in July, 2017, the godown was flooded resulting in loss of stock as well as several records including invoices/excise gate passes. Therefore, they were not able to submit copies of few invoices and the same also caused delay in submitting their returns.
- They had submitted purchase invoice copies for cenvat credit of Rs.28,24,975/- during September, 2019. They had also submitted invoices for cenvat credit amounting to Rs.14,13,300/- and Rs.16,35,049/-.
- They should have entered the details of the cenvat credit on the opening stock, in their returns, under the head of credit of excise duty taken on inputs on invoices issued by manufacturer rather than under the head of opening balance.
- GST was a new law and they were not very clear about the various transitional provisions and therefore, made certain errors by filing ER-1 return and taking Tran-1 credit. The error is only procedural and has caused no revenue loss.
- The adjudicating authority has erred in considering their depot as manufacturing plant rather than accepting that the depot is the manufacturer's depot and carrying out limited operations. All



movement of stock are system driven and entries are made in SAP based system.

- The details provided by them should not be suspected and mis-understood as suppression of any material fact from the department. They disagree that any ingredients of suppression are present in the case. Hence, invoking of penalty is not applicable. They have not done any mala fide activity or hidden any fact nor mis-represented any details causing loss to the revenue.
- They had correctly claimed cenvat credit which is legal and supported by all documents and evidences. There is no reason for disallowance of cenvat credit, interest and penalty.

7. Personal Hearing in the case was held on 29.08.2022. Shri Jayesh Rambhiya, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum and in additional written submissions.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to denial of cenvat credit amounting to Rs.58,73,324/- to the appellant which was shown as opening balance in the first returns filed after obtaining Central Excise Registration. The demand pertains to June, 2017.

9. I find that the adjudicating authority has recorded at Para 12 of the impugned order that the matter is being adjudicated based on the documents available on record as the appellant had, despite being given time and opportunity, failed to provide the invoice wise and batch wise production details.

9.1 It is further observed that the adjudicating authority has at Para 19 of the impugned order recorded that "*From the above tables, it is clear that the total quantities received by the assessee against each of the batches from the 2 suppliers are more than the balance quantity shown in their stock summary*". It is not clear what inference is sought to be drawn from



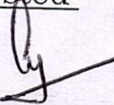
this observation by the adjudicating authority. The adjudicating authority has further recorded that "*I find that without the documents evidencing the consumption/usage of inputs, it would not be proper to assume and accept that the remaining quantities shown in their stock statement summary was available stock as on 17.6.2017.*" It appears that the appellant have apparently not submitted the requisite documents before the adjudicating authority to substantiate their claim of cenvat credit in respect of the goods in stock as on 17.06.2017. The appellant have submitted copies of certain invoices as well as a stock report in the additional written submission. However, these documents need to be verified by the adjudicating authority before the claim of the appellant for cenvat credit is decided.

10. In view of the facts discussed herein above, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for adjudication afresh after considering the documents submitted by the appellant. The appellant are directed to produce before the adjudicating authority all the necessary documents in support of their claim for cenvat credit within 15 days of the receipt of this order. Accordingly, the impugned order is set aside and remanded back to the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

11. 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.

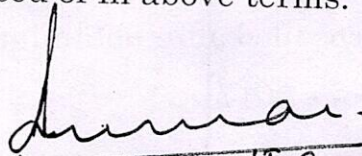
Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. FMC India Pvt. Ltd.,
Block No.2030,


(Akhilesh Kumar)
Commissioner (Appeals)
Date:30.09.2022.



Appellant

C/o. N.G. Warehousing,
Jetalpur-Naz Road,
Opposite Gokulesh Estate,
Jetalpur,
Ahmedabad – 382 427

The Joint Commissioner,
CGST,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.



