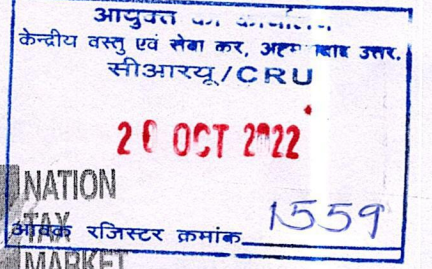




आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलिफैक्स 07926305136



DIN: 20220964SW000042474A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/667/2021-APPEAL /3465
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-36/2022-23**
 दिनांक Date : **19-09-2022** जारी करने की तारीख Date of Issue 21.09.2022
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **08/AC/Dem/2021-22/NBS** दिनांक: **29.07.2021**,
 issued by Assistant Commissioner, CGST, Division-V, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Stallion laboratories Pvt. Ltd.
C 1B, 305/2,3 &4, GIDC,
Derala Bavla, Ahmedabad – 382220

2. Respondent

The Assistant Commissioner, CGST, Division-V, Ahmedabad North
2nd Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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 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.



(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 मामले 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 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 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 यथारिथति 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 Appellate 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 यथारिथति 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 हैं।

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

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिरटेट), 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 आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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. Stallion Laboratories Pvt. Ltd., C1 B, 305/2, 3 & 4, GIDC, Kerala, Bavla, Ahmedabad-382220 (hereinafter referred to as '*the appellant*') against the OIO No.08/AC/Dem/2021-22/NBS dated 29.07.2021 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad North (in short '*the adjudicating authority*').

2. The appellant is engaged in manufacture and export of medicaments falling under Chapter 30 of the CETA, 1985, which attracts 6.18% duty advalorem (including cess). They filed 15 rebate claims in total amounting to Rs.12,03,675/- under Rule 18 of the CER, 2002, alongwith relevant documents prescribed under Notification No.19/2004-CE(NT) dated 06.09.2004, as amended. The said rebate claims were sanctioned vide OIO No.3013 to 3027/Rebate/2013 dated 12.06.2013.

2.1 Aggrieved by the said OIO dated 12.06.2013, department filed an appeal before the Commissioner (A) on the grounds that the appellant had wrongly paid central excise duty on goods '*Oral re-hydration salts*' which attracts Nil rate of central excise duty. Therefore, the rebate of duty paid to the tune of Rs.8,54,521/- sanctioned vide above OIO, under Rule 18 of the CER, 2002, is erroneous. The Commissioner(A) vide OIA No.208/2013(Ahd-II)CE/AK/Commr(A)/Ahd dated 01.11.2013, rejected the appeal as time barred on the grounds that the order has been passed on 12.06.2013 and was reviewed on 03.10.2013, i.e. beyond the time limit prescribed under Section 35E(3) of the CEA, 1994.

2.2 Aggrieved by the said OIA, the department filed an appeal before the Hon'ble CESTAT, Ahmedabad. Meanwhile, a protective demand was issued to the appellant on 09.06.2014 vide F.No.V.30/15-60/OA/2014, proposing recovery of erroneously sanctioned rebate amount of Rs.8,54,521/- alongwith interest u/s 11A & 11AA respectively. It appeared that as per Sl.No.123 of Notification No.12/2012-CE dated 17.03.2012, the goods '*Oral re-hydration salts*' attracts Nil rate of Central Excise duty and therefore the appellant had wrongly paid central excise duty with intent to en-cash Cenvat credit lying unutilized in their Cenvat Credit account. This SCN was kept pending as the departmental appeal before Hon'ble CESTAT, Ahmedabad was yet to be decided. The appeal was subsequently disposed of by the Hon'ble CESTAT, Ahmedabad, as withdrawn. Consequently, the aforesaid SCN was also adjudicated, wherein the recovery of rebate of Rs.8,54,521/- alongwith interest was confirmed vide the impugned order.

3. Aggrieved by the impugned order, the appellant is in appeal contesting the impugned order on following grounds;

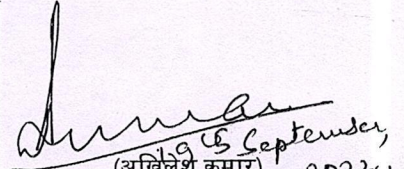
- In terms of Para 1.2 of Chapter-8 of CBEC Central Excise Manual, 'export goods' has been defined which includes dutiable or exempted as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not. The adjudicating authority, while granting rebate, had examined this aspect but the reviewing authorities left out this aspect while reviewing the OIO before Commissioner (A).
- As the OIO No.3013 to 3027/Rebate/2013 dated 12.06.2013 was set-aside by Commissioner(A) not on merits and subsequent appeal before Hon'ble CESTAT was also dismissed as withdrawn. Therefore, the rebate sanctioned vide OIO dated 12.06.2013 has to be treated as legal & proper and the impugned order confirming the demand proposed in the SCN cannot be entertained.

➤ The impugned order was passed ex-parte without considering the submissions made vide letter dated 05.04.2021.



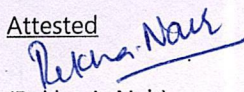
- The SCN was adjudicated after 6yrs and 10 months i.e. beyond the time limit prescribed u/s 11A (11)(a) of the CEA, hence deserved to be set-aside. They placed reliance on citation 2017(352) ELT 455(Guj) & 2018(362) ELT 388 (P&H).
 - If the rebate of duty paid is considered erroneous then the amount paid as duty should be considered as deposit and should be allowed as re-credit in Cenvat account. Interest is not liable to be paid as it is not the case of non-payment of duty.
4. Personal hearing in the matter was held on 01.09.2022, through virtual mode. Shri R.R.Dave, Authorized Representative, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and requested to remand the matter as the impugned order was passed without hearing them.
5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue to be decided under the present appeal is whether the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legally sustainable or not?
6. On going through the facts of the case, it is noticed that the SCN in the instant case has been issued as a protective demand, as the rebate sanctioned vide OIO No.3013 to 3027/Rebate/2013 dated 12.06.2013 was considered erroneous by the department and, therefore, was challenged before the Commissioner(A). The departmental appeal was, however, dismissed as time barred vide OIA No.208/2013(Ahd-II)CE/AK/Commr(A)/Ahd dated 01.11.2013, passed by the Commissioner(A). The subsequent appeal filed against the said OIA also stands dismissed by Hon'ble CESTAT, Ahmedabad, as withdrawn. In the given scenario, where both the departmental appeals filed against rebate sanctioning OIO No.3013 to 3027/Rebate/2013 was decided against the revenue, they have attained finality. I, therefore, find that the protective demand issued in consequence to the above appeals shall be considered as non-est in the eyes of law and is not sustainable legally.
7. In view of the above discussions and findings, I set-aside the impugned order and the recovery of Rs.8,54,521/- alongwith interest. Accordingly, the appeal filed by the appellant is allowed.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(अखिलेश कुमार) 05 September 2022
भायुक्त(अपील्स)

Date: 9.2022

Attested



(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Stallion Laboratories Pvt. Ltd.,
C1 B, 305/2, 3 & 4,
GIDC, Kerala, Bavla,

Appellant



Ahmedabad-382220

The Assistant Commissioner
CGST, Ahmedabad North, Division-V
Ahmedabad.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.

