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आवक रजिस्टर क्रमांक



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केन्द्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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DIN:- 20240364SW000000D594

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/262/2023 / 1825
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-249/23-24 and 22.02.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.03.2024
(ङ)	Arising out of Order-In-Original No. 48/AC/REFUND/2022-23/AM dated 23.2.2023 passed by The Assistant Commissioner, CGST Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Dishman Carbogen Amcis Ltd. (earlier known as M/s. Dishman Pharmaceuticals & Chemicals Ltd.) S. No. 47/1, Village: Lodariyaling Tal: Sanand, Dist: Ahmedabad - 382220

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) 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 प्रकिया के दौरान हुई हो।

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.



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

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।

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

(घ) 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।

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.

(2) 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 इ का 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 CIO 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 पढ़ी 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 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) एके प्रति अपील 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)।

- (25) खंड (Section) 11D के तहत निर्धारित राशि;
- (26) लिया गलत सेनवैट क्रेडिट की राशि;
- (27) 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:

- (xxv) amount determined under Section 11 D;
- (xxvi) amount of erroneous Cenvat Credit taken;
- (xxvii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) 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. Dishman Carbogen Amcis Ltd.,(earlier known as Dishman Pharmaceuticals & Chemicals Ltd.(100% EOU)S. No 47/1, Village:Lodariyal, Tal: Sanand, Dist:Ahmedabad-382220, (hereinafter referred to as "the appellant") against Order-in-Original No. 48/AC/Refund/22-23 dated 23.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division IV, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding STC Reg. No. AAACD4164DST001 during pre-GST regime and now holding GSTN 24AADCC1254E1Z9. They filed refund of Rs.1,42,165/-, on the ground that they had paid the amount vide GAR-7 Challan No 560 dated 06.03.2012 as pre-deposit for filing an appeal before Hon'ble CESTAT. The amount was being paid against service tax demand of Rs.1,04,895/- along with interest when the matter was pending before the Commr.(Appeals) for disposal. Ultimately the matter was decided in favour of the appellant vide CESTAT, Ahmedabad Final Order No A/12243/2022 dated 22.12.2022. On the basis of above, the appellant filed refund claim of Rs. 1,42,165/- along with interest .

2.2 The appellant was sanctioned refund of Rs.1,42,165/- deposited by them and the interest on the same was denied on the ground that the deposit was made prior to amendment provision of Section 35FF of the Central Excise Act,1944 and interest is not payable when the refund is sanctioned within three months.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- The appellant submitted that the authorized person of the appellant belongs to kerala and was on visit to his native place, therefore the appeal got delayed. They requested to condone their delay.
- The appellant submitted that they have paid Rs. 1,42,165/- against their confirmed demand of service tax Rs. 1,04,895/- along with interest Rs. 37,270/-.Subsequently, they filed appeal before Commr.(Appeal) and the same was rejected. Finally the Hon'ble CESTAT, Ahmedabad vide Final Order No A/12243/2022 dated 22.12.2022 decided the matter in favour of the appellant and dropped the demand. On this ground, they filed refund claim of Rs. 1,42,165/- along with interest but the interest was not sanctioned by the adjudicating authority for which they were eligible in terms of para 26 of the CBEC Circular no 1053/2/2017-CX dated 10.03.2017. Therefore the impugned order is not legal.



- The appellant submitted that they are eligible for interest on the pre-deposit amount right from the date of payment till date of refund. They stated that it is settled law that once the assessee is eligible for refund of pre-deposit, then for the period of delay, is also eligible for interest @ 6%.
- The appellant placed reliance on the following case laws wherein it is held that the interest shall be payable after three month from the date of filing of the refund claim:
 - (i) M/s. Ranbaxy Laboratory Ltd. - 2011 (273) ELT 3 (S.C.)
 - (ii) (2) Manish Pharmo Plast Pvt. Ltd. - 2020 (3,74) ELT 145 (S.C.)
 - (iii) (3) Harmdard (WAQF) Laboratories- 2013 (333) ELT 193 (S.C.)
 - (iv) (4) Tata Chemicals Ltd. - 2016 (334) ELT A53 (Gui.)
- The appellant requested to allow their appeal.

4. Personal hearing in the case was held on 06.02.2024. Shri R Subramanya, Advocate, appeared online for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow the appeal.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 23.02.2023 and delivered on dated 28.02.2023 to appellant. The present appeal, in terms of Section 85 of the Finance Act, 1994 was filed on 01.05.2023, i.e. after a delay of 03 days from the last date of filing of appeal. The appellant have along with appeal memorandum also filed an Application seeking condonation of delay stating that the authorized person was not available due to his visit to native place Kerala and thereby was a delay of 03 days in filing appeal which was required to be filed on or before 28.04.2023.

6. Before taking up the issue on merits, I proceed to decide the Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Finance Act, 1994, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay given in application as genuine, I condone the delay of 03 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, denying the



interest on the amount Rs. 1,42,165/- which was paid against their confirmed demand of service tax Rs. 1,04,895/- along with interest Rs. 37,270/-, in the facts and circumstance of the case, is legal and proper or otherwise.

8. AS per submission before me, It is observed that the appellant filed a refund claim of Rs. 1,42,165/- . This was paid at the time of proceeding before Commr.(Appeals) against their whole confirmed demand of service tax Rs. 1,04,895/- along with interest Rs. 37,270/- on dated 06.03.2012. However, the Commr.(Appeals) rejected the appeal. Further, the appellant preferred appeal before CESTAT, Ahmedabad wherein they also prayed for waiver of pre-deposit on the ground that they have already paid the entire demand along with interest.

8.1 I find that appellant was required to make pre-deposit @7.5% of total duty in terms of Section 35F(i) and @10% of total duty in terms of Section 35F(iii) only. However the appellant has paid the whole of the demand along with the interest. It appears that the appellant himself was not sure about their service tax liability. In view of the above the whole amount can't considered as pre-deposit as per Section 35F.

8.2 Further, even if it is considered as deposited under Section 35F, the same is paid on dated 06.03.2012 and interest on the same is governed under Section 35FF. As per 35FF, the interest on the amount deposited under section 35F prior to 06.08.2014, will be given after the expiry of three months from the date of the order of the appellate authority, till the date of refund of such amount. In the instant case, the appellant has been granted the refund on dated 23.02.2023 against the CESTAT order dated 22.12.2022 which is well before the expiry of three month.

8.3 Further, as contended that the appellant is eligible for refund of pre-deposit as per Para No 26 of the CBEC Circular no 1053/2/2017-CX dated 10.03.2017, it is seen that the above para covers the refund of pre-deposits only and the entire amount paid on dated 06.03.2012 can't be considered as pre-deposit.

8.4 The appellant himself in their "Statement of Facts and Grounds of Appeal" in Para No 6.6 &7.0 placed reliance on various case laws wherein it is held that interest shall be payable after three months from date of filing refund claim/application. The adjudicating authority in the instant case had also the same view while denying the interest to the appellant. As the refund claim was filed with the department on 09.02.2023 and the same was sanctioned vide order dated 23.02.2023(within the period of 15 days).


9. In view of the above, I am of the considered view that the refund is sanctioned within time by the adjudicating authority and the appellant's contentions are self-contrary and they are not eligible for any interest.



10. In view of above, I up hold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

11. अपील कर्ता 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


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Dishman Carbogen Amcis Ltd.,
(earlier known as Dishman Pharmaceuticals & Chemicals Ltd.),
S. No 47/1; Village:Lodariyal, Tal: Sanand,
Dist:Ahmedabad-382220

The Assistant Commissioner,
CGST, Division-IV,
Ahmedabad North

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division IV, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- 6) PA file



(जानचंद जैन)

आयुक्त (अपील्स)

Date : 22.02.24



Appellant

Respondent

