



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क ::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001



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क अपील / फाइल संख्या / मूल आदेश सं / दिनांक / Date
Appeal / File No. O.I.O. No. 22-03-2022
V2/87/BVR/2022 BHV-EXCUS-000-ADC-VM-023-2021-22

अपील आदेश संख्या (Order-In-Appeal No.):
BHV-EXCUS-000-APP-045-2023

आदेश का दिनांक / जारी करने की तारीख /
Date of Order: 13.02.2023 Date of issue: 16.02.2023

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क / सेवाकर / वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्त आदेश से उत्पन्न /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :
घ अपीलकर्ता/प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

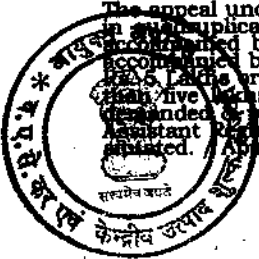
M/s. Makson Pharmaceuticals (India) Pvt Ltd, No. 195, Rajkot- Surendranagar Highway, Surendranagar-363020

इस आदेश (अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। /
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (ii) वर्गीकरण मुद्दाओं से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जाननी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को जाननी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /
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.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- Rs.5000/-, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five Lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9 (2) एवं 9 (2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होती चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान नहीं एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
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
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिका पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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 O.I.O 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.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पत्रों कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्वयं आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: अपील आदेश ::

:: ORDER-IN-APPEAL ::

M/s. Makson Pharmaceuticals (India) Pvt Ltd., Rajkot Highway, Kherali, Surendranagar, Gujarat-363020 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original No. BHV-EXCUS-000-ADC-VM-023-2021-22 dated 22.03.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that an audit of the records of the appellant for the period from April 2016 to March 2017, was conducted by the officers of CGST & Central Excise Audit Commissionerate Rajkot. Accordingly, observations made during the said audit regarding non-payment/short payment of Service Tax, Wrong availment of Cenvat credit and non-compliance with statutory procedures by the appellant. Appellant was functioning as 'Contract/ Outsourced Manufacturer' for various Units namely M/s. Mondelez Foods India Foods Pvt Ltd. (hereinafter referred to as M/s Mondelez), M/s. Sun Pharma, M/s. Cipla, M/s. Parle Products Pvt. Ltd. etc. The appellant was availing Cenvat credit of the input services on the strength of the invoices issued by such units as Input Service Distributors (hereinafter referred to as 'the ISD').

3. Audit party, on scrutiny of documents during audit, observed that the invoices issued by the ISDs did not contain all the mandatory details as prescribed under the law. The invoices issued by M/s. Mondelez India Food Pvt. Ltd., M/s. Sun Pharmaceutics India Ltd., M/ Parle and M/s. Cipla did not contain all the stipulated details. Hence the invoices issued by the said ISDs were incomplete with respect to the provisions of Rule 4A(2) of the Service Tax Rules 1994 (hereinafter referred as Rule 4(A)2), and were not valid documents for availing Cenvat credit. Thus, the appellant contravened the provisions of Rule 4A(2)(i) of Service Tax Rules, 1994 (which provides for the details to be contained in the bill, invoice or challan issued by an ISD to the service recipient towards distribution of credit) read with Rule 9(1) of Cenvat Credit Rules, 2004 by not providing requisite details in the invoices for passing on credit and thereby rendering Cenvat credit inadmissible in terms of provisions of Rule 9(2) of Cenvat Credit Rules, 2004. Accordingly, Show Cause Notice dated 23.12.2021 was issued proposing to recover Cenvat credit amounting to Rs. 1,53,40,608/-, including all cesses under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (4) of the Central Excise Act, 1994 (hereinafter referred to as 'the Act') with interest



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under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 and proposing to impose penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,48,38,361/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (4) of the Central Excise Act, 1994 and dropped the remaining demand of Rs. 5,02,247/-, interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944 and imposed penalty of Rs. 1,48,38,361/- under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

5. Details of major issues involved in demand of Rs. 1,48,38,361/- are as follows:

Table - A

Sr. No.	Particulars	Amount involved (Rs.)
1	Cenvat Credit availed on the strength of invoices as mentioned at Sr. No. 2, 3, 12 & 13 issued by Mondelez Kolkata being inadmissible as these invoices do not contain details of the Service providers as per Rule 4A(2)	77169
2	Cenvat Credit availed on the strength of 15 invoices issued by Mondelez Mumbai amounting to Rs. 1,34,54,695/- being inadmissible as these invoices do not contain details of the Service providers as per Rule 4A(2)	13454695
3	Cenvat Credit availed on the strength of 3 invoices issued by Sun Pharma Mohali amounting to Rs. 48,938/- as detailed in Annex B being inadmissible as these invoices does not contain details of the Service providers as per Rule 4A(2)	48938
4	Cenvat Credit availed on the strength of challan No. 2017180203 dated 30.06.2017 by Cipla Mumbai amounting to Rs. 12,57,559/-, being credit wrongly availed in contravention of Rule 7(f) of CCR, 2004	1257559
	Total	14838361

6. The Appellant has preferred the present appeal on 27.05.2022 on various grounds mainly as stated below:

- (i) For taking Cenvat Credit on the basis of invoices not containing necessary details as per Rule 4A(2), appellant has claimed that details were mentioned on the challans issued by Principal manufacturer such as Mondelez East and Mondelez West, on M/s Makson (appellant). Appellant's contention is that the ISD conditions mentioned in clauses (ii), (iii) and (iv) of Rule 4A(2) of Service Tax Rules, 1994 have been fulfilled.



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(ii) For contravention of the provisions of Rule 4A(2)(i) of Service Tax Rules, 1994 read with Rule 9(1) of Cenvat Credit Rules, 2004 by not providing requisite details in Invoices for passing on credit and thereby rendering Cenvat credit inadmissible in terms of provisions of Rule 9(2) of Cenvat Credit Rules, 2004, appellant has contended that bare perusal of the provision of Rule 9 of Cenvat Credit Rules, 2004 indicates that sub-rule (1) of Rule 9 specifies a list of documents on the basis of credit can be availed by the service recipient. Appellant submitted that the ISD challans issued by Mondelez West and Mondelez East are the specified documents in terms of the said provision. Thus, the said requirement is satisfied in their case.

(iii) Further appellant submitted that though Sub-rule (2) of Rule 9 states that no credit shall be taken unless all the particulars as prescribed under the Excise Rules or the ST Rules are contained in the specified document, there is an exception to the said provision as per the proviso to Rule 9(2), which states that credit is admissible even if the specified document does not contain all the particulars but contains the following details and the Central Excise officer is satisfied that the services covered by the said document have been received and accounted for in the books of the account of the receiver. The said details are in conformity with the details mentioned under Rule 4A(2).

(iv) The appellant has further stated that since the details to be mentioned in invoice, bill or challan issued by Mondelez West and Mondelez East were voluminous, ISDs have provided the details in soft copy. Appellant has given an example of one challan which is accompanied with the requisite details of name, address and Service tax registration number of the service providers along with Invoice No. and date issued by the ISD and claimed that similar details are there in respect of the remaining ISD challans. Appellant has submitted that thus the condition mentioned in clause (i) of Rule 4A(2) has been fulfilled in their case.

(v) As per para 19.5 of the Impugned Order which states that Annexures (the excel sheet in tabular form attached / provided with ISD invoices) forming part of ISD Invoices are not in specific format and not having the details, not serially numbered, not signed, will not qualify to be having sufficient documentation to prove that the Annexure are a part and parcel of the ISD invoices. Appellant in this context has contended that non-compliance with the aforesaid aspects is a procedural lapse and substantial benefit arising out of availment of Cenvat Credit should not be denied on account of such procedural lapses in documentation of invoices.

(vi) Appellant has contended that since they are not in contravention of the Act or the Credit Rules, the demand for interest for non-payment of tax and any imposition of penalty cannot sustain.

Personal hearing in the matter held on 30.11.2022 was attended by

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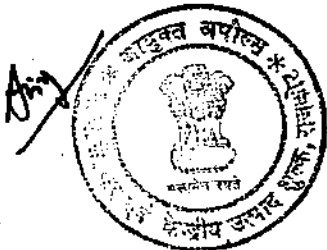
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Shri Sanket Gupta, CA, wherein he reiterated the submissions made in the appeal. He submitted that lower authority has allowed CENVAT credit in some cases and disallowed the same in other cases stating documents / invoices being not proper/ absent. In this regard he claimed that all the invoices, with details of it enlisted in Annexure, were submitted before lower authority. A copy of which, marked as Annexure '7', is enclosed with the appeal. He submitted that the observation of the lower authority that invoices do not contain required details is not correct. He submitted that the required details are available in the invoices enclosed. In some cases invoices were not issued and challans were issued where all the required details are shown. Therefore, rejection of CENVAT credit by the lower authority on grounds of documents not being proper is not correct. He requested to set aside the impugned order and to allow the appeal.

8. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum and oral as well as written submissions made by the Appellant.

9. I find that appellant being contract manufacturer has availed CENVAT credit on the basis of ISD invoices issued by the principal manufacturer namely M/s Mondelez India Foods Pvt Ltd., M/s Sun Pharmaceuticals (I) Ltd., M/s Parle Biscuits Pvt Ltd. & M/s Cipla Health Ltd. Adjudication authority in the impugned order dated 22.03.2022 has disallowed CENVAT credit amounting to Rs. 1,48,38,361/- and dropped the proceeding for remaining amount of Rs. 5,02,247/-. Detail of demand amounting to Rs. 1,48,38,361/- is furnished in Table-A at Para 5 above. Amount of CENVAT credit is disallowed in impugned order for the reason that invoices of ISD did not contain all the stipulated details with respect to the provisions of Rule 4A(2) of the Service Tax Rules 1994, and were not valid documents for availing Cenvat credit. Therefore, the appellant contravened the provisions of Rule 4A(2)(i) of Service Tax Rules, 1994 read with Rule 9(1) of Cenvat Credit Rules, 2004 by not providing requisite details in Invoices for passing on credit and thereby rendering Cenvat credit inadmissible in terms of provisions of Rule 9(2) of Cenvat Credit Rules, 2004.

10. The appellant in the present appeal has contended that the ISD conditions mentioned in clauses (ii), (iii) and (iv) of Rule 4A(2) have been fulfilled and further stated that since the details to be mentioned in invoice, bill or challan issued by Mondelez West and Mondelez East were voluminous, ISDs have provided the details in soft copy. Appellant has contended that the invoices are accompanied with annexures containing the required details



and thus the condition mentioned in clause (i) of Rule 4A(2) has been fulfilled in their case.

11. I have carefully examined the impugned order, appeal memorandum and written as well as oral submissions of the Appellant. The issue to be decided in the present appeal is whether the CENVAT credit service provided by the ISDs M/s Mondelez East and M/s Mondelez West is eligible or otherwise. The Appellant has filed appeal requesting to set aside the impugned Order-In-Original, confirming the demand of Service Tax amounting to Rs. 1,48,38,361/- with Interest and various penalties under the Act.

12. To appreciate this issue, it would be appropriate to reproduce rule 4A(2) of the 1994 Rules and relevant portion is as follows:

Rule 4A(2) of the Service Tax Rules, 1994, which reads as follows :-

"RULE 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. -

.....

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the Case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and registration. number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under subrule (1);*
- (ii) the name, [and address] of the said input services distributor;*
- (iii) the name and address of the recipient of the credit distributed;*
- (iv) the amount of the credit distributed.'*

[Provided that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company providing service to any person an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule:]

[Provided also that in case of online information and database access or retrieval services provided or agreed to be provided in taxable territory by a person located in the nontaxable territory, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called,



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whether or not serially numbered but containing name and address of the person receiving taxable service to the extent available and other information in such documents as required under this sub-rule.]"

13. The relevant portion of the rule 9 of the 2004 Rules is as follow:

" Documents and accounts.

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-

(a) an invoice issued by-

(i) a manufacturer for clearance of-

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii)

(iii)

(iv)

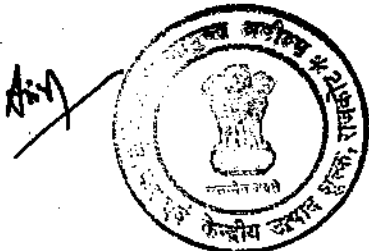
the relevant abstract of Sub Rule (2) of Rule 9, which reads as under:-

"Rule 9(2) No CENVAT Credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit."

14. Now I proceed to examine contentions raised by the Appellant in the grounds of appeal that CENVAT credit availed by them through invoices issued by ISDs namely M/s Mondelez East and M/s Mondelez West is as per provision of relevant Rules or otherwise.

15. As per provision contained in Rule 4A(2) of the Service Tax Rules, 1994, for taking Cenvat Credit from ISD, an Invoice/ challan should be issued signed by ISD or person authorized by him, for each of the recipient of the credit distributed, and such invoice/ bill shall be serially numbered



and shall contain the details viz. (a) the name, address and registration number of the person providing input services and the serial number and date of invoice/ bill issued under relevant rules (b) the name & address of the said input services distributor (c) the name and address of the recipient of the credit distributed (d) the amount of the credit distributed.

16. I find that Invoices / challans on the basis of which Cenvat Credit is availed by the appellant do not carry details of the Input service provider. Further, annexure attached with the invoices are not authenticated and are not serially numbered. Annexure does not carry the detail of the Invoices/ challans and thus failed to fulfil its reason meant to be appended with invoices/challans. Excel sheet attached with the Annexure also is not carrying the required details as discussed above and tabulated extract of Cenvat Credit register is without any serial number and required details. Thus, resulting into insufficient documents to prove that the ISD invoices are eligible documents as per provision contained in Rule 4A(2) of the Service Tax Rules, 1994.

17. There might be a chance of misusing of such incomplete/ un-authenticated documents at any point of time. Invoices issued/ provided by the ISD on which the Noticee had availed credit are without any authenticated and serially numbered Annexure. Some Annexures said to be attached with ISD invoices do not contain required details/ full details. I also find that it was mandatory to incorporate the details required under the Rules in the invoices issued by the ISD and the absence of the same, renders the documents, invalid of availing Cenvat credit. Thus, the Credit availed on ineligible documents is required to be disallowed and recovered from the Noticee.

18. With reference to procedure and compliance of the various provisions of relevant Act and Rules frame thereunder; I find that the appellant has failed to submit proper/ authenticated documents to prove eligibility of Invoices/ Challans on the basis of which they had availed Cenvat credit under the relevant Rules.

19. I have carefully considered facts of the case and submissions made by the appellant, keeping in view provisions of law and spirit of justice. For sake of brevity, without re-iterating the contentions in appeal memorandum and contents/ findings in impugned order, I proceed to focus on core issues.

20. I find that the main contention of the appellant in the present appeal that their eligibility of credit is not challenged by department and that due



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to their negligence, they couldn't provide evidences in earlier proceedings, which they are producing right now before appellant authority and claiming relief and it is a case of mere non production of documents. On perusal of Show Cause Notice (SCN), which is issued based on detailed audit proceedings in which adequate chances to defend their case was provided at the time of pre-SCN consultation and again during adjudication proceedings, all of which lasted about 3-4 years. I find that in all the documents issued during various stages, i.e. SCN and Order-In-Original (OIO), there is categorical discussions about appellant's non eligibility of CENVAT credit due to violation of various provision of law/ statute. Thus, the main contention of the appellant as above is totally incorrect.

21. Violation of law is discussed in detail in concerned SCN/ OIO. When statutory violations were alleged during audit/ SCN proceedings, it was explained in various paras, as what was expected to be done by the person availing credit, citing specific provision of Service Tax Rules and Cenvat Credit Rules. In spite of repeated letters from Audit wing they didn't care for providing satisfactorily replies and didn't attend opportunities granted to them, resulting in issuance of the SCN. I find that opportunity of pre-SCN consultation was also granted. Thus, I find that authorities at audit, SCN and adjudication stages have given adequate chances/ opportunity to defend their case. These exercises lasted for 3-4 years. If they had proper evidence, they could have very well produced it to audit team or SCN/ adjudication authorities. Thus, non-submission of documents in defense at earlier stages and producing it at appeal stage cannot be a mere case of negligence, but appears to be a case of deliberate availing and retaining of CENVAT credit with malafide intentions by concerned ISDs/ firms having status of Private Limited companies, huge infrastructures, staff, legal expertise and experience of dealing with taxation for several years.

22. It is equally relevant to say that appellant, in the self-assessment regime was required to check eligibility before taking credit. Based on Service Tax Rules for ISD and Cenvat Credit Rules specifically stipulate provisions of eligibility for CENVAT credit and contents the invoice must contain to avail credit. Appellant was required to comply with basic requirements stipulated under statute. I find that entire proceedings emanated from verification of documents for requirements by audit team. They found invoices to be not proper. Essential details were missing in the invoices and in spite of it, huge credit was taken on ineligible invoices. I find that appellant has taken very casual approach in fulfilling statutory



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obligations. Onus cast on them was that they, before taking credit, should conform to statutory requirements. In this case it was clear that they had totally by-passed/ overlooked statutory conditions for complying with law for ensuring that required information is there or not. On the other hand they were prompt in availing credit and using it for payment of tax on their final products. Had they been vigilant/ compliant at the time of taking credit, they should have objected to invoices provided to them with incomplete details and until proper invoice were received no credit should have been taken. However, they have done opposite. There is no evidence that they took any action on their own to get proper invoices from ISDs, instead they have taken easy path of taking credit overlooking statutory provisions. Thus, benefit of credit was not admissible to them way back in 2016 as proper invoices were not available.

23. From above discussion, it emerges to be substantial non-compliance of law and wrong availing of the CENVAT credit without proper documents by-passing statutory provisions/ checks prescribed. The argument put forth by the appellant to consider additional evidences at appellant stage has been examined.

24. I find that due to non-co-operative/ negligent attitude of appellant during audit / SCN/ Adjudicating proceedings it has reached to appeal stage. At every stage either they have chosen not to properly reply to departmental letters/ SCN, not attending personal hearings, submitting their defense in piecemeal manner and now they are pleading to consider new evidences. I find this approach to be not acceptable. Judicial authorities should not be burdened by such new facts/ evidences/ piecemeal submissions and are expected to deal with appreciation of available evidence and legal issues only. I find that Section 35A of Central Excise Act 1994 and Rule 5 of Central Excise (Appeals) Rules, 2001, read with Section 85(5) of Finance Act, 1994, disallow new evidence and new grounds at the appeal stage. Therefore, the plea of allowing relief on the basis of evidence/ grounds, which were not produced at the time of original adjudication cannot be considered at appeal stage.

25. As discussed in para 16 supra, the documents produced at the appeal stage also are improper and lack essential details, I also find that these arguments have already been dealt at length in the speaking order passed by the adjudicating authority in which invoice specific irregularities were discussed. In view of this and forgoing discussion, I find no reason to interfere with impugned order by the adjudication authority. Appeal is accordingly rejected and impugned order is upheld in toto.



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26. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
26. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

[Signature]

बार. रीस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot

[Signature]
13-2-2023
(शिव प्रताप सिंह)
(Shiv Pratap Singh)
आयुक्त (अपील)
Commissioner (Appeals)

By R.P.A.D.

To, M/s. Makson Pharmaceuticals (India) Pvt Ltd., Rajkot Highway, Kherali, Surendranagar, Gujarat- 363020.	सेवा में, मे० मेकसन फार्मास्युटिकल्स (इंडिया) प्राइवेट लिमिटेड, राजकोट हाइवे, खेराली, सुरेन्द्रनगर, गुजरात - 363020 ।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल - सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

