

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(48)54 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-042-16-17

दिनांक Date : 11.07.2016 जारी करने की तारीख Date of Issue

श्री अभय कुमार श्रीवास्तव आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Abhai Kumar Srivastav Commissioner(Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-DC-10-2015 Date: 27.07.2015
Issued by: Deputy Commissioner, Central Excise, Din: Kalol, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Freshcap Investment Pvt. Ltd.

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 अंतर्गत नीचे बताए गए मामलों के बारे में
पूवोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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।

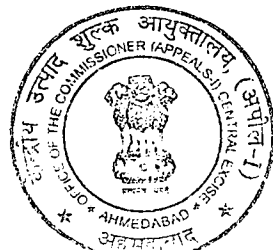
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside
India of on excisable material used in the manufacture of the goods which are exported to any
country or territory outside India.

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

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



ध 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।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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- ष0बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

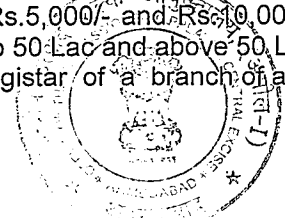
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति 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 bear 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

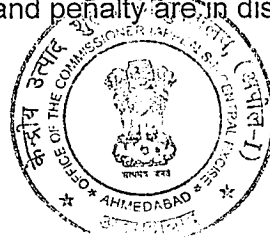
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(6)(i) इस संदर्भ में, 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।

(6)(i) 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

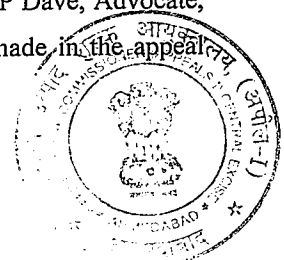
M/s Freshcap Investment Private Limited (formerly known as Capital Private Ltd), A-603, Shapath IV, Opp- Karnavati Club, S.G.Road, Ahmedabad (hereinafter referred to as "the appellant" for brevity) have filed an appeal against Order-in-Original No.AHM-CEX-003-DC-10-2015 dated 27.07.2015 (hereinafter referred to as the "impugned order"), passed by the Deputy Commissioner of Central Excise, Kalol Division(hereinafter referred to as the "Adjudicating Authority").

2. The instant appeal has been filed citing non-payment of interest on delayed sanction of refund claim by the adjudicating authority. The said refund claim was initially filed by the appellant on 26.09.2008 with the department and refund was received by them on 27.07.2015.

3. The facts of the case in brief are that the appellant is engaged in the manufacture of, *inter alia*, corrugated boxes; that they remove their goods to 100% EOUs [hereinafter referred to as EOUs, for brevity] as well as engage in home clearance; that they had filed a refund claim of Rs. 21,83,353/- on 24.09.2008 under Rule 5 of the CENVAT Credit Rules, 2004, read with Notification No. 05/2006 CE (NT) dated 14.03.2006 for accumulated CENVAT credit, which was availed by them on account of inputs/inputs service utilized by them in relation to the manufacture of goods supplied to EOUs; that the refund claim filed by the appellant was returned to the appellant on two occasions, namely on 04.11.2008 and 05.2.2009 seeking more information; that later the claim was rejected vide Order-in-Original dated 07.08.2008 on account of non-filing of documents related to supply of goods to EOUs and also on the grounds that the goods supplied to EOUs cannot be considered as 'export', going by the definition of 'export' provided in Section 2(18) of Customs Act, 1962; that vide order dated 25.02.2011, the then Commissioner (Appeals) upheld the decision of the lower authority. Being aggrieved by the order of the appellate authority, the appellant filed an appeal before CESTAT. The said appeal was decided on 26.06.2014, and the CESTAT held the clearances made to the 100% EOU as deemed exports and remanded the matter to the original adjudicating authority to decide if the refund claim was hit by time bar. On the basis of CESTAT's order, the appellant filed a revised refund claim of Rs.15,23, 636/- on 29.11.2014, which was rejected by the jurisdictional Assistant Commissioner on 10.12.2014 on the grounds that the appellant had failed to submit documents that were necessary to verify the aspect of time bar. Appellant again approached the appellate authority and he decided the issue on 31.03.2015 and held that it is an obligatory on the part of the appellant to produce required documents (i.e. warehousing certificate on the basis of which relevant date would be ascertained) before the refund sanctioning authority and remanded the case to adjudicating authority. The appellant again filed the refund claim on 27.04.2015 without the required documents and on the basis of further letter dated 05.05.2015 and 02.06.2015 issued by the department, they submitted required documents ONLY on 04.06.2015. Finally, the refund claim was sanctioned by the adjudicating authority on 27.07.2015, within two months of submission of required documents.

4. The appellant has filed the present appeal demanding interest on delayed payment of refund claim stating that they had filed the refund claim on 24.09.2008 and that it was given to them only on 27.07.2015. They have staked their claim citing section 11BB of the Central Excise Act, 1944. To support their claim, the appellant has cited various judgments.

5. A personal hearing in the matter was held on 17.06.2016 and Smt. Shilpa P Dave, Advocate, appeared before me on behalf of the appellant. She reiterated her submissions made in the appeal papers and submitted various judgments on the issue for consideration.



6. I have carefully gone through the facts of the case and the submissions made by the appellant in the appeal memorandum as well as by the advocate at the time of personal hearing. The issue under consideration is the entitlement of interest on purportedly delayed payment of refund amount. The appellant has mainly contended that as per the provisions of Section 11BB of the Central Excise Act, 1944 and the citations submitted by them during the course of personal hearing, they are entitled for interest on the purportedly delayed payment of refund. As per the provisions of Section 11BB *ibid*, if any claim is not refunded within three months from the date of receipt of refund application, interest at applicable rate is to be paid on such claim of duty immediately after the expiry of three months from the date of receipt of refund application, till the date of refund of such duty.

7. In the instant case, I find that the appellant had filed the refund claim for unutilized accumulated CENVAT credit under Rule 5 of CENVAT Credit Rules, 2004, read with Notification No. 05/2006-CE (NT) dated 14.03.2006. The said notification stipulates filing of the refund application with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, in original, with the jurisdictional central excise officer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944.

8. The refund claim dated 24.09.2008 filed by the appellant has gone under litigation before Commissioner (Appeals) and CESTAT, wherein the orders of the original adjudicating authority and appellate authority were challenged by the appellant. The original adjudicating authority returned/rejected the said refund claim on various occasions, namely on 04.11.2008, 05.02.2009, 07.08.2009, 10.12.2014, primarily on the grounds that the appellant had not submitted the refund claim with the relevant documents as provided under Not. No. 5/2006-CE(NT) dated 14.3.2006. It is a fact on record that the appellant submitted the relevant documents only on 04.06.2015, after which his claim was acceded to and the refund was given on 27.7.2015. This is not disputed by the appellant.

9. I find that the refund claim by the appellant was on account of supply of goods to EOU under CT-3 Certificate/bond, which resulted into accumulation of the CENVAT credit. As per condition 3 of the Notification No. 5/2006-CE(NT) dated 14.3.2006, the manufacturer is required to submit an application in a prescribed format along with the Shipping Bill or Bill of Export, duly certified by the officer of customs to the effect that goods have in fact been exported. Further, as per condition laid down in the Notification No.05/2006-CE (NT) dated 14.03.2006, the 'relevant date' is to be considered as per Section 11B of Central Excise Act, 1944.

10. The relevant excerpts on 'relevant date', from clause (B) of explanation to Section 11B are reproduced below for ease of reference:

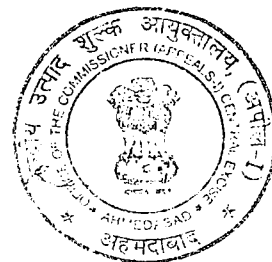
"relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

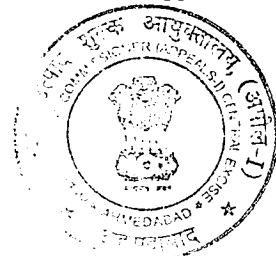


11. In this case, the goods were, however, not exported out of India. Despite the departmental view that refund of accumulated CENVAT credit cannot be granted in cases of clearances to EOUs [refer CBEC's Instruction F. No. 96/85/2015-CX.I dated 7.12.2015, paragraph B.24], the High Court of Gujarat, in the case of Commissioner v/s Metflow Cast P Ltd [2016(331) ELT (Guj)], has held that refund of accumulated credit in respect of clearances to EOU by DTA unit is admissible under Rule 5 of CENVAT Credit Rules, 2004. In the case under consideration also, the refund was held as admissible by terming the clearances as 'deemed export' by the Hon'ble Tribunal vide order dated 26.6.2014.

12. As the 'relevant date' under section 11B does not cover a situation relating to clearances to EOU, resort is to be taken to Board's Circular No.851/9/2007-CX dated 03.05.2007, which states that the goods shall be removed from the factory to EOU under the cover of ARE-3 form and receipt of goods shall be certified by the EOU and jurisdictional Central Excise Officer in ARE-3 form. Therefore, on comparison with other situations finding mention in the definition of "relevant date", the date on which the goods are received by the EOU is to be construed as the relevant date. In the given circumstances, in order to ascertain the aspect of time bar, date of certificate of re-warehousing on the ARE-3 form becomes relevant.

13. I find that the appellant failed to submit the required ARE-3 duly certified by the EOU/jurisdictional Central Excise Officer with the refund claim initially. Even after the directions of CESTAT and Commissioner (Appeals), who remanded back the case to the refund sanctioning authority, the appellant took *almost seven years* to furnish the re-warehousing certificate. Thus, repeated submissions of defective application by the appellant could only be acted upon by return/rejection of claim. Needless to mention, without the re-warehousing date, it was not possible to ascertain the aspect of time bar and thus the refund could not have been granted, and unless refund claim was mature for being considered for sanction, it would have been premature to talk about interest. Therefore, refund sanctioning authority cannot be faulted for the delayed sanction/payment of refund, and interest. Until the claim assumes the character of an actionable claim in the eyes of law, no right of interest can be held to have accrued to the appellant. In other words, the date(s) on which defective application(s) was/were filed are of no consequence, in so far as interest liability is concerned. The date for payment of interest in case of such refund can only be reckoned with from the date on which proper refund application, complete in all respect, was filed before the refund sanctioning authority. In the instant case, I find that though several opportunities were given for removal of defects the same were not availed for a very long period. As the delay in submission of a comprehensive actionable claim was on their own accord, the appellant is not entitled for the interest.

14. The advocate of the appellant has during the course of personal hearing relied on certain cases. On going through the case laws relied upon viz. M/s. Tata Chemicals Ltd [High Court order dated 30.7.2015], Ranbaxy Laboratories Ltd [2011(273) ELT 3(SC)], Jayanta Glass Ltd [2004(165) ELT 516 (LB)], J K Cements [2004(170) ELT 4] affirmed by the SC on 29.10.2004, Pfizer Products India P Ltd [2015 (324) ELT 259 (Kar.)] it is observed that in all these cases it has been held that interest is admissible after three months from the filing date of refund claim, till its sanction. Further, in the case of M/s. Sterlite Industries Ltd [2015(315) ELT 608] & Reliance Industries Ltd [2010(259) ELT 356 (Guj)], it has been held that section 11BB of the Central Excise Act, 1944 is applicable to refunds under rule 5 of the CENVAT Credit Rules, 2004.

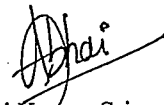


15. There is no dispute that interest is admissible after three months from the date of filing refund claim till its sanction. The case laws cited supra holding grant of interest from date of filing of refund claim are, however, in respect of such claims as were complete, correct and without defects – in one simple word- actionable. In this case, it is clearly evident that the claim was never submitted with the relevant documents, despite directions from the adjudicating authority and the appellate authority. I find that when the necessary document was submitted on 04.06.2015, the refund was granted on 27.7.2015. As the refund was sanctioned within the stipulated time of three months from the date of filing of an actionable claim, the question of interest under section 11BB of the Central Excise Act, 1944 does not arise. In fact, the Principal Bench of the Tribunal in the case of M/s. Malwa Cotton Spinning Mills Ltd [2013(295) ELT 313 (Tri-Del)] has clearly held that in case of a defective refund application, no right of interest accrues. The relevant portion of the said order is quoted hereinafter for ease of reference:

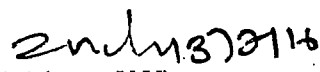
“3. It is settled law that once the claim does not assume the character of correct claim in the eyes of law, no right accrues of interest by department in case on which defective application was filed and an opportunity given for removal of defects is a course of natural justice to entertain proper application filed within limitation and no interest can be claimed against a defective application. Only on the date when defective application is rectified and a proper application comes to record, that date is relevant date for refund with, interest in case refund is delayed. Therefore, Revenue is correct to grant interest from the date on which valid application comes to record. We do not find any legal infirmity in the order of the first appellat authority for which appeal of the assessee is dismissed.”

16. In view of above discussion and by following aforesaid decision of Hon'ble Tribunal, I reject the appeal filed by the appellant. The case is disposed of accordingly.

Date: 11/07/2016

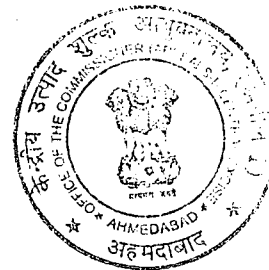

(Abhai Kumar Srivastav)
Commissioner (Appeals-I)
Central Excise, Ahmedabad

Attested


(Mohanan V.V)
Superintendent (Appeal-I)
Central Excise, Ahmedabad

By R.P.A.D

To
M/s Freshcap Investment Private Limited
(formerly known as Capital Private Ltd),
A-603, Shapath IV, Opp- Karnavati Club,
S.G.Road, Ahmedabad



Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kalol, Ahmedabad-III
5. Guard file.
6. P.A.

