

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(73)3 /EA-2/Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-082-16-17

दिनांक Date : 04.08.2016 जारी करने की तारीख Date of Issue 10/8/16

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: 102/Ref/14-15 Date: 25.11.2014

Issued by: Assistant Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता Name & Address of the Appellant & Respondent

M/s. Ratnamani Metals & Tubes 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 पूर्वोक्त 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 हों।

(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- एबी/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

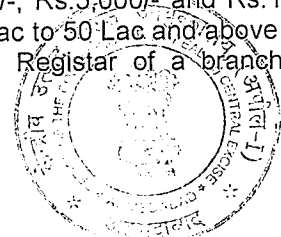
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल 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 इ.ए-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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर 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 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 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 paisa 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 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 अर्जी 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,

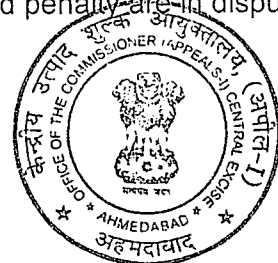
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

This appeal has been filed by the Assistant Commissioner of Central Excise, Kadi Division, Ahmedabad-III (hereinafter referred to as "the appellant" for brevity) in terms of review order No. 04/2015-16 dated 13.05.2016 passed by the Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as "the review authority") against Order-in-Original No. 102/Ref/14-15 dated 25.11.2014 (hereinafter referred to as "the impugned order") passed by Assistant Commissioner of Central Excise, Kadi Division, Ahmedabad-III, in the case of M/s Ratnamani Metals & Tubes Ltd, S. No. 769, Ahmedabad-Mehsana Highway, Indrad, Near Chhatral, Ta. Kadi (hereinafter referred to as "the respondent").

2. The facts briefly are that the respondent had availed CENVAT credit on capital goods of Rs. 5,02,508/- which was sought to be denied by the department vide a show cause notice dated 9.10.1998. After a series of litigation wherein the matter travelled before the original adjudicating authority, twice before the Commissioner(A) and once before the Hon'ble Tribunal, it was held that the credit availment of Rs. 3,35,770/- was correct. Thereafter, based on OIA No. 53/2010 dated 23.2.2010, the respondent filed a refund claim of Rs. 9,52,853/- on 11.2.2013. It is imperative to mention, that the total amount paid as pre-deposit, interest, duty was to the tune of Rs. 11,19,591/-. The jurisdictional Assistant Commissioner, vide order-in-original No. 64/Refund/2013 dated 19.08.2013, sanctioned refund of Rs. 7,44,986/-, after deduction of Rs. 2,07,867/- [being interest on ineligible CENVAT credit Rs. 1,66,738/- wrongly availed]. This order was challenged before the Commissioner(A) who vide his OIA No. 3/2014-15 dated 21.4.2014, held that interest on wrong availment be recovered based on the notification in vogue and that the interest be granted to the respondent on delayed refund.

4. Accordingly, the adjudicating authority vide OIO No. 102/Ref/14-15 dated 25.11.2014 has sanctioned an amount of Rs. 3,53,258/- (i.e. Rs. 30,019/- due to recalculation of interest to be paid on wrong availment of CENVAT credit - based on the rate of interest in vogue and Rs. 3,23,239/- in respect of delayed refund of pre-deposit amount/amount recovered, from various rebate claims).

5. Feeling aggrieved, the appellant has filed this appeal, primarily on two grounds, namely: (i) that the interest on pre-deposit amount of Rs. 2,00,000/- was wrongly granted from 04.07.2003 to 22.03.2013, that the interest is to be sanctioned from 26.07.2003 i.e. from the date of pre-deposit or within three months from the date of order by Tribunal/Court or other final authority, as per CBEC circular No. 802/35/2004-CX dated 08.12.2004 ; and (ii) that the interest is wrongly granted on Rs. 9,52,853/-, when in reality, the interest was to be paid only on Rs. 7,44,986/-.

4. The respondent has filed cross-objection in this matter vide letter dated 24.02.2016, wherein they have, *inter alia*, stated that the interest is payable on pre-deposit from the date of deposit. Personal hearing was held on 15.07.2016 and Shri R Ravichandran, General Manager(Commercial) appeared on behalf of the appellant. He reiterated the submissions made in their letter dated 24.02.2016 and drew attention to para 5.2 of Board's Circular No. 984/08/2014-CX dated 16.09.2014. He further stated that out of the disputed amount of Rs. 99,944/- they are contesting for Rs. 46,126/- only, and that this is on account of the fact that while the department recons the relevant date for refund as 15.04.2007, they want it to be construed as from 04.07.2003.



5. I have carefully gone through the facts and grounds of the appeal and the submissions made by the respondent. The limited point to be decided as raised by Revenue is already listed on the previous page.

6. Before dwelling on to the issue, for ease of understanding, interest was sanctioned vide the impugned OIO, in the following manner:

Table-I

Sr. No.	Amount on which interest accrued [Rs.]	Date from which interest accrued	Date upto which interest accrued	No. of days on which interest accrued	Rate of interest	Amount of interest. [Rs.]	
	1	2	3	4	5	6	
1	2,00,000	4.7.2003	11.9.2003	69	8%	3,025	
		12.9.2003	22.8.2013	3632	6%	1,19,408	
2	2,82,074	24.12.2008	22.8.2013	1702	6%	78,919	
3	4,70,779	30.4.2009	22.8.2013	1575	6%	1,21,887	
	9,52,853	Total					3,23,239

Refund of Rs. 7,44,986/- was sanctioned vide OIO No. 64/Refund /2013 dated 19.8.2013 earlier. The bifurcation of the amounts is as follows:

Table-II

Sr. No.	Details of amount paid	Amount	By way of
1	2	3	4
1	Rs. 2,00,000/- debited vide RG23 Pt. II entry no. 267 dtd 26.7.2003[as pre-deposit as per CESTAT's order dated 4.7.2003]	2,00,000	Credit in the CENVAT account
2	Rs. 4,48,412/- [less] Rs. 1,66,738/- = Rs. 2,82,074/-. [This amount was appropriated vide OIO no. 1300'Reb/08-09 dtd 24.12.08]	2,82,074	Cheque
3	Rs. 4,70,779/- [less] Rs. 2,07,867/- interest on wrong availment of credit of Rs. 1,66,738/-. This amount was appropriated vide OIO NO. 61'Reb/09-10 dated 13.4.09	2,62,912/-	Cheque
	Total	Rs. 7,44,986/-	

7. The first issue is determination of the date, from which interest is to be granted on pre-deposit, which was paid on 26.7.2003, vide debit in RG 23 Pt. II. The department's contention is that the adjudicating authority has calculated the interest of Rs. 1,22,433/- erroneously, from 04.07.2003; that it should be either from the date of deposit i.e. from 26.07.2003 or after three months from the date of Tribunal's order dated 15.1.2007, as stipulated in Board's circular No. 802/35/2004-CX dated 08.12.2004.

8. CBEC vide its circular dated 08.12.2004, which was in vogue during the period of dispute, had clarified that pre-deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal. The Hon'ble Tribunal in the case of M/s. Ajay Metachem Sud Lchemie P Ltd [2014(303) ELT 208 (Tri-Kolkata)] wherein, in respect of refund of a pre-deposit made on 7.9.2002, held that in view of the Section 35FF of the Central Excise Act, 1944, the appellant was entitled to interest after expiry of three months from the date of order, and that this principle would apply even for cases pertaining to the period prior to 10.5.2008 [when Section 35FF, ibid was inserted] in view of Tribunal's order in the case of Kamdeep Marketing P Ltd [2011(265) ELT 88 (Tri-Del)].



9. Assessee has cited para 5.2 of Board's Circular No. 984/08/2014-CX dated 16.09.2014 to contend that the interest be sanctioned from the date of pre-deposit. It is, however, pertinent to note that this circular was issued in response to an amendment made in the appeal provisions, namely section 35F of the Central Excise Act, 1944 by Finance Act (No. 2), 2014 to prescribe for mandatory pre-deposit. Further the second para of this circular clearly draws attention to the saving clause in section 35F *ibid*, wherein it is mentioned that all appeals pending before the enactment of the said Act would be governed by erstwhile provisions. Therefore, in the instant case, the respondent is entitled for refund after three months from the date of Tribunal's order dated 15.1.2007.

10. The second issue in the departmental appeal is that the adjudicating authority sanctioned interest on Rs. 9,52,853/-, when it should have been sanctioned only on Rs. 7,44,986/-. A cursory glance on *Table -I* and *Table -II* supra, clearly reveals that the interest should have been granted on the amounts mentioned in column 3 of Table-II. The departmental contention that the interest was wrongly sanctioned on Rs. 4,70,779/- [Sr. No. 3 of Table -II] instead of Rs. 2,62,912/- since the amount of interest of Rs. 2,07,867/- recovered from the appellant towards inadmissible CENVAT credit, was required to be deducted from the amount of Rs.4,70,779/-, appears to be logical and correct.

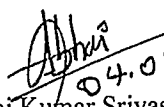
11. To sum up, it is ordered as follows:

(i) interest to be calculated for pre-deposit amount of Rs. 2,00,000/- after three months from the date of Tribunal's order dated 15.1.2007, in terms of Board Circular No. 802/35/2004-CX dated 8.12.2004.

(ii) interest to be granted on Rs.2,92,931/- instead of Rs.4,70,779/- [refer *col. 3 of Table-II* and *Sr. no. 3 under column no. 1 of Table-I*].

12. In view of the foregoing, I allow the department appeal and remand the case to the adjudicating authority, for re-calculation of interest as discussed in the above paras. The appeal is accordingly disposed of.

Date: 04.08.2016


04.08.2016
(Abhai Kumar Srivastav)
Commissioner (Appeals-I)
Central Excise, Ahmedabad

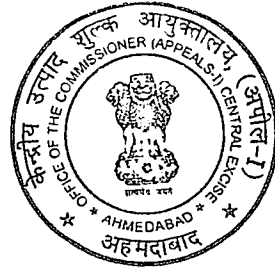
Attested



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

BY R.P.A.D

M /s Ratnamani Metals & Tubes Ltd,
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Copy to:-

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4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kadi Ahmedabad-III
5. Guard file.
6. P.A



