
 <p>केंद्रीयकर आयुक्त (अपील)</p> <p>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</p>		
<p>वस्तु एवं सेवा कर भवन</p> <p>सातवांमजिलेपॉलिटेक्निककेपास</p> <p>आम्बावाडी, अहमदाबाद-380015</p>	<p>GSII Building-7th Floor</p> <p>Near Polytechnic</p> <p>Ambavadi, Ahmedabad-380015</p>	
<p>079-26305065</p>		<p>079-26305136</p>

क फाइल संख्या : File No : **V2(32)96/AHD-III/2016-17** *517/521*

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-076-17-18**

दिनांक Date : **28.08.2017** जारी करने की तारीख Date of Issue: *13/9/17*

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **281/REF/AC/2016** दिनांक : **02.11.2016** से सृजित

Arising out of Order-in-Original: **281/REF/AC/2016**, Date: **04.01.2017** Issued by: Assistant Commissioner, Central Excise, Div: Mehsana, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Zirconia Cera Tech Glazes

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।

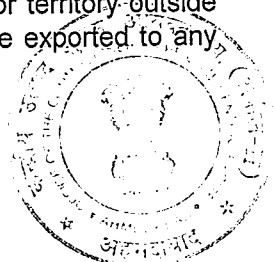
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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- एबी/35-इ के अंतर्गत:-

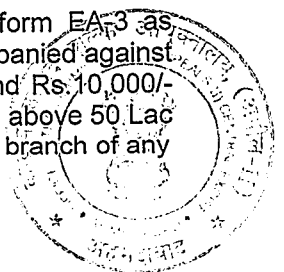
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

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 रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहाँ रुपए 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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।

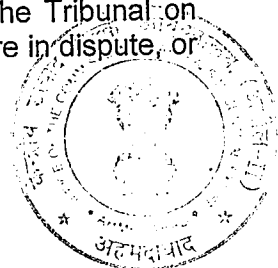
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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 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 M/s Zirconia Cera Tech. Glazes, S No.2346, Near Balol Gas Station, Village-Palej, Mehsana (hereinafter referred to as "the appellant") against Order-in-Original No.281//Ref/AC/2016 dated 04.01.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Mehsana Division (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case is that the appellant had filed a refund claim of Rs.24,00,000/- with interest under the provisions of Section 11B of Central Excise Act, 1944 (CEA) on 19.05.2015 before the adjudicating authority, pertains to the duty which was voluntarily deposited during investigation of a case booked against them by the Directorate General of Central Excise & Intelligence, Ahmedabad. Vide Order-in-Original No.58/Ref/CE/AC/2015 dated 08.07.2015, the adjudicating authority has sanctioned the said refund amount but silent regarding claim of interest. The appeal filed by the appellant was remanded by the appellate authority, vide OIA No.AHM-EXCUS-003-APP-008-1617 dated 09.05.2016 for passing a speaking order with respect to eligibility of interest. Vide the impugned order, the adjudicating authority has rejected the claim of interest.

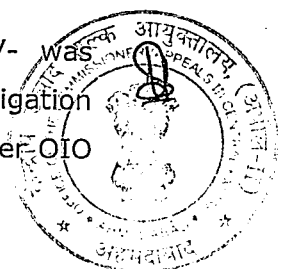
3. Being aggrieved, the appellant has filed the present appeal on the grounds that the adjudicating authority has erred in granting interest as it was a pre-deposit and interest thereon is payable from the date of pre-deposit till the date of payment; that as per Section 35 FF of Central Excise Act, 1944, interest is payable from the date of deposit till the date of payment. They relied on various case laws in the case of;

- [i] Kandhari Beverages Ltd- 2002(144) ELT 15 (P&H)
[ii] ONGC-2007 (215) ELT 166 (SC)
[iii] CCE Vs UACL Fuel System Ltd-2014 (306) ELT 26 (Mad)
[iv] OIA No.CCESA-VAD (APP-II/PJ-100/2015-16 dated 18.02.2016 of Commissioner (A) Vadodara.

3. A personal hearing in the matter was held on 20.07.2016 and Shri M.H.Raval, Consultant appeared for the same. He reiterated the submissions made in the appeal and submitted additional written submission

4. I have carefully gone through the facts of the case, submissions made in the appeal memorandum as well as at the time of personal hearing. The limited point to be discussed in the instant case is relating to the admissibility of interest on amount deposited during investigation of case.

6. I observe that in the instant case, an amount of Rs.24,00,000/- was deposited by the appellant in the year 2008-09 during the course of investigation conducted against them by DGCEI officers. The said case was finalized as per OIO



8. I observe that the Hon'ble Supreme Court of India, in case of M/s ONGC *supra* held that:

"Appellant is a public section undertakings Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum....."

In the case of M/s UACL Fuel System, the Hon'ble High Court of Madras *supra* has held that:

"We are in full agreement with the finding rendered by the learned single Judge that the limitation contained in Section 11B of the Central Excise Act is not applicable to the case of the first respondent since the amount in question was not paid towards excise duty but only by way of deposit during investigation. Moreover, as per Section 11BB of the Central Excise Act, this Court can order payment of interest at a very reasonable rate and accordingly, learned single Judge directed the appellants to refund a sum of Rs. 13,20,578/- relating to the final order No. 471 of 2007, dated 30-4-2007 to the first respondent with interest @ 6% per annum from the date of deposit till the date of payment to the first respondent".

The Commissioner (Appeals), Vadodara, vide his order dated 18.02.2016 *supra* followed the above cited decisions and hold that:

"In view of the two decisions of the Hon. Apex Court and High Court of Madras cited supra, according to them the due respect and reverence I follow the ratio of the judgments and hold that in the light of these judgments the appellant is entitled for **interest on amount refunded from the date of deposit till the date of refund by the department.**

9. The adjudicating authority has rejected the claim mainly by stating [i] the proviso to Section 35 FF of Central Excise Act, 1944, prior to its amendment vide Finance Act, 2014; and [ii] Board's Circular No.802/35/2004-CX dated 08.12.2004. He contended that Section 35 FF *ibid* permits interest only from the date of expiry of three month from the date of communication of appellate order to the department. Further, I observe that the Board letter dated 08.12.2004 referred to



above also stipulate that deposit made in terms of Section 35 F of the Central Excise Act, 1944 shall be returned from the date of decision of Appellate authority/Court.

10. From the facts and circumstances of the instant case, I observe that the appellant has deposited the said amount during the course of investigation of case booked against them, which was subsequently set aside by the Hon'ble CESTAT. It is nowhere clarified, till the issuance of Board's Circular No.984/8/2014-CX dated 16.09.2014 that the amount paid during investigation, prior to the date on which appeal is filed, can be considered to deposit made towards fulfillment of stipulation under Section 35 F of the Act. In the circumstances, Proviso to Section 35 FF of the Act and the Board's circular dated 08.12.2014 referred to above has no relevancy in the instant case.

11. Further, I observe that the Hon'ble CESTAT has set aside the order of Commissioner with consequential relief. In the circumstances, as natural corollary, it follows that the appellant is entitled for refund of amount so deposited with other relief. Looking into the above facts, I am of the view that the decisions cited by the appellant referred to above are squarely applicable to the instant case.

12. In view of above, by following the decisions supra, I hold that the appellant is entitled for interest on amount refunded from the date of deposit till the date of refund by the adjudicating authority.

11. The appeal filed by the appellant stands disposed of accordingly.

Uma Shankar

(उमा शंकर)

आयुक्त (अपील्स)

Date: 28/08/2017

Attested

Mohanan V.V.

(Mohanan V.V)
Superintendent (Appeals)
Central Excise, Ahmedabad

By R.P.A.D.

To
M/s Zirconia Cera Tech Glazes,
S No.2346, Near Balol Gas Station,
Village-Palej, Mehsana

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- Mehsana, Ahmedabad-III
5. Guard file.
6. P.A file.

