
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX वस्तु एवं सेवा कर भवना सातवीं मंजिल पलिटैकनिक के पास आम्बावाडी, अहमदाबाद-380015	
079-26305065	टेलीफैक्स : 079-26305136	

9713709718

क फाइल संख्या : File No : V2/155/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-178-18-19

दिनांक Date : 12-02-2019 जारी करने की तारीख Date of Issue:

25/3/2019

P.A

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 : 31/CE/Ref/AC/18-19  
दिनांक : 05-10-2018 से सृजित

Arising out of Order-in-Original: 31/CE/Ref/AC/18-19, Date: 05-10-2018 Issued by:  
Assistant Commissioner, CGST, Div: Kalol, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Wonder Packaging Industries

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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, 4<sup>th</sup> 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- षोबी/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 दूसरा मंजिल, बहमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 न्यायाधिकरण 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 वहां 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 वहां 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 यथारिथति 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.





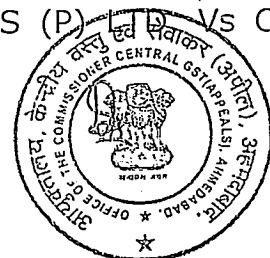
**ORDER-IN-APPEAL**

This order arises out of an appeal filed by M/s. Wonder Packing Industries , Plot No1 C/1/B, 512/13, Phase-I, GIDC, Chahtral Tal.-Kalol, Dist. Gandhinagar, Gujarat (in short 'appellant') against Order-in-Original No.31/CE/Ref/AC/18-19 dated 05.10.2018 (in short 'impugned order') passed by the then Assistant Commissioner, Central GST, Kalol Division., Gandhinagar (in short 'adjudicating authority').

2. During the course of road patrolling, a case was booked by the officers of Central Excise (Preventive), Ahmedabad-III against the appellant. Further, a show Cause Notice dated 13.08.2013 was issued to the appellant demanding Excise duty with interest and penalty. The said demand was confirmed. Being aggrieved by the order dated 09.06.2014, the appellant filed an appeal before the Commissioner (Appeals), Central Excise, Ahmedabad. Vide Order-in-Appeal No. AHM-EXCUS-CEX-003-ADC-AJS-023-17-18 dated 22.03.2018 it was order that "I set aside the impugned order allow the appeal with consequential relief". On this basis of the Order-in-Appeal, the appellant claimed refund of Rs. 13,16,463/- with interest. The adjudicating authority vide impugned order allow the refund of Rs. 13,16,463/- (Duty Rs. 9,50,985 +Interest Rs. 1,28,714/- + Penalty Rs. 2,37,304/-) but disallowed the interest on refund claimed.

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that impugned order passed by the adjudicating authority not allowing interest may be set aside to the extent of denial of interest and further he be allowed interest from the date on which the amount was deposited by the appellant on the instruction of the Revenue, till the date of refund was granted to him.

4. Personal hearing in the matter was granted and the same was fixed on 28.01.2019. But vide letter dated 25.01.2019, the appellant submitted that they will not be available on 28.01.2019 and therefore the case may be decided on merit. Further, the appellant stated that in the para 11.1 of the impugned order the adjudicating authority observed that the interest is not payable in this case, as the refund is sanctioned within time limit. In this regard the appellant has submitted that in the case of OMJAI BHAVANI SILK MILLS (P) Vs C.C.E,



CUS. & S.T, HYDRABAD reported in 2009 (243) E.L.T. 560 (Tri.Bang.), where the Tribunal held that the time restriction mentioned in Section 11BB would not be applicable in the case. In the instant case, the amount was deposited on the direction of the Central Excise Authority in the course of the investigation conducted and the proceeding initiated against the appellant. The appellant submits that the proceedings initiated against the appellant. The appellant submits that the interest cannot be restricted to the date of filing of refund application as the interest provisions under Section 11BB are not applicable in the present case. Therefore, interest has to be paid in this case from the date of deposit till the date of payment. The finding of the adjudicating authority is not tenable in law. The appellant relied on the case law of M/s Binjraka Steel Tubes Ltd Vs Commissioner of C. Ex Hyderabad-III reported in 2007(2018) E. L. T. 563 (Tri-Bang), Omjai Bhavai Silk Mills (P) Ltd Vs. C.C.E. Cus & S. T. Hyderabad reported in 2009 (243) e. L. t. 560 (Tri-Band).

5. I have carefully gone through the appeal memorandum, submissions made evidences available on records and case law submitted by the appellant. Accordingly, I proceed to decide the case on merits. In the instant case, the amount was deposited on the direction of the Central Excise Authority in the course of the investigation. The appellant now claims interest on the refund from the date of deposit to the date of refund was sanctioned.

6. The adjudicating authority has stated in the impugned order that the interest in question is not payable to the appellant as the refund was sanctioned within time limit under Section 11 B of Central Excise Act, 1944. I find that interest on delayed refund is payable under Section 11 BB of the CEA and as per the said Section, interest becomes payable only from the date immediately after the expiry of three months from the date of receipt of such refund application till the date of refund. Therefore, it appears that the adjudicating authority has wrongly quoted Section 11B of CEA in the impugned order. Further, I find in the impugned order that the adjudicating authority has not mentioned the date of filing of the refund claim in question so as to find out whether he has sanctioned the refund within three months of date of filing or otherwise and whether the appellant



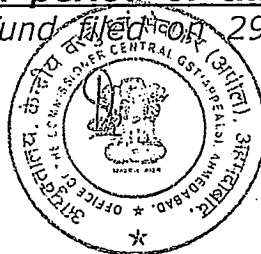
is eligible for interest or not as per provisions of Section 11BB of CEA. Anyway, I conclude that interest on delayed refund is eligible to the appellant only after expiry of three months from the date of refund application as stipulated under Section 11BB of CEA. I find that on this very issue there is catena of decisions which held that interest under Section 11BB of CEA becomes payable only after expiry of a period of three months from the date of application. In this regard, I rely the decision of the Hon'ble Apex Court in the case of *Ranbaxy Laboratories Ltd. v. Union of India* reported in 2011 (273) E.L.T. 3 (S.C.) wherein it has held that interest for delayed refund was payable under Section 11BB from the date of expiry of 3 months period from the date of receipt of application. The Hon'ble Court has held that:

*"Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that **interest under the said Section becomes payable on the expiry of a period of three months** from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable".*

The above decision has been followed by the Hon'ble High Court of Gujarat in case of *M/s Kamakshi Tradexim (I) Pvt Ltd* [2017 (351) E.L.T. 102 (Guj.)].

7. Further in the case of *M/s Prempreet Textiles Industries Ltd vs. Union of India* [2013 (293) E.L. T. 523 (Guj.)], wherein the Hon'ble Gujarat High Court held also held that:

*Refund - Interest for delay - Amount deposited during course of investigation - On appeal to Tribunal, counsel gave undertaking not to pursue its refund during pendency of appeal, hence, it was treated as pre-deposit for entertaining appeal, which had to be refunded on Tribunal allowing the appeal - HELD : Refund of amount considered as pre-deposit is at par with refund of duty - **Any delay in its refund beyond period of three months attracts interest** - On facts, refund filed on 29-3-2000 but*



amount claimed continued to lie as pre-deposit - Tribunal decided in favor of appellants on 3-9-2001, with direction that payment of interest would start running from that date - As refund was given on 4-2-2004, interest was payable from 3-9-2001, when Tribunal had set aside order of Commissioner with consequential relief, and not from 28-8-2003 when Tribunal held claim was not barred by limitation - Section 11B of Central Excise Act, 1944. [paras 14, 15, 16]

8. In view of above discussion and ratio of the Hon'ble Supreme Court's decision as well as Hon'ble High Court's decision, I hold that interest is eligible to the appellant, if there is a delay beyond the period of three months from the date of refund application.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)  
प्रधान आयुक्त (अपील्स)  
Date : 12.01.2019

Attested:

*by*  
12/03/19  
(B.A. Patel)  
Supdt. (Appeals)  
Central GST, Ahmedabad.



**BY SPEED POST TO:**

M/s. Wonder Packing Industries,  
Plot No1 C/1/B, 512/13, Phase-I, GIDC, Chahtral  
Tal.-Kalol, Dist. Gandhinagar, Gujarat

\_Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Gandhinagar (RRA Section).
- (3) The Joint Commissioner, CGST, Gandhinagar.
- (4) The Asstt. Commissioner, CGST, Division Kalol.
- (5) The Asstt. Commr (System), CGST, Gandhinagar.  
(for uploading OIA on website)
- (6) Guard file
- (7) P.A. file.

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