


	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GSST Building 7 th Floor Near Polytechnic Ambavadi, Ahmedabad 380015	
	सातवांमजिले पोलिटिकल कलेक्शन पास, आम्बावाडी, अहमदाबाद-380015		
 079-26305065			 079-26305136

क फाइल संख्या : File No : **V2/99&100/GNR/2018-19**

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5912

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP- 67 to 68-18-19**

दिनांक Date : **14.08.18** जारी करने की तारीख Date of Issue:

29/8/2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

G. file

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : 10 to 13 & 04 to 09/Ref/S.Tax/NK/2018-19 दिनांक : 04-05-2018 से सृजित

Arising out of Order-in-Original: 10 to 13 & 04 to 09/Ref/S.Tax/NK/2018-19, Date: 04-05-2018 Issued by: Assistant Commissioner, CGST, Div: Gandhinagar, Gandhinagar Commissionerate, Ahmedabad.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. GSPC LNG 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।

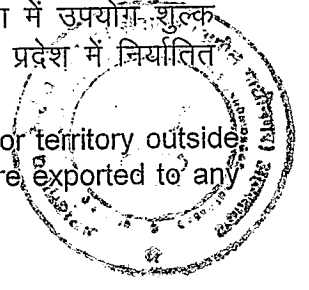
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by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

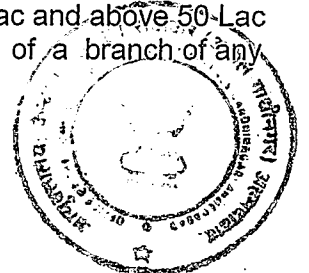
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 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 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 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 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, 1988 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 अर्जी एवं अपील को लागू नहीं होंगे।

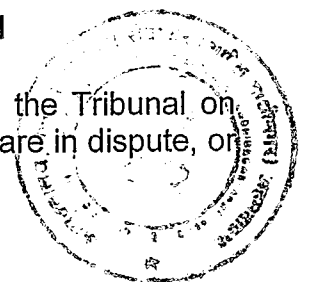
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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 order arises out of two appeals filed by M/s. GSPC LNG Ltd., B-103, IT Tower-2, Infocity, Near Indroda Circle, Gandhinagar-382009 (in short 'appellant') against Order-in-Original nos. (in short 'impugned orders') passed by the Assistant Commissioner, CGST Division, Gandhinagar (in short 'adjudicating authority') as detailed below. Since the issue involved in both the appeals is common, I take for disposal by a common order.

Sr.No.	Order-in-Original No. and Date.	Period involved.	Appeal No.
1	10 to 13/Ref./S.Tax/NK/2018-19 dtd.04.05.2018	August-2013 to June-2014.	V2/99/GNR/2018-19
2	04 to 09/Ref./S.Tax/NK/2018-19 dtd.04.05.2018	July-2014 to December-2015.	V2/100/GNR/2018-19

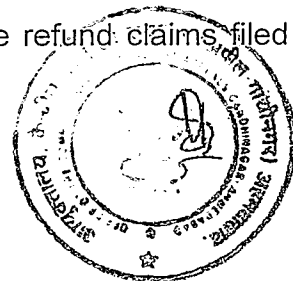
2. Briefly stated that the adjudicating authority vide impugned orders rejected claim of interest on delayed refund filed by the appellant in terms of OIA No.167/17-18 dated 30.11.2017 and 212/17-18 dated 21.02.2018 passed by this appellate authority in their own case in denovo adjudication respectively.

3. Aggrieved with the impugned order, the appellant has filed the present appeals wherein, *inter alia*, submitted that the adjudicating authority did not pay Interest on Rs.14,81,89,248/- (Rs.10,37,42,769/- + Rs.4,44,46,479/-) on refund claimed for the period August-2013 to December-2015 in terms of Section 11BB of the Central Excise Act, 1944 vide impugned orders. They rely upon the Board's Circular No.670/61/2002-CX dated 01.10.2002 and case laws viz. Ranbaxy Labo. Ltd. Vs. UOI [2011(273)ELT-3(SC)], Hindustan Coca-Cola Breweries Pvt. Ltd. Vs. UOI [2015(324)ELT-299 (Guj.HC)], CCE &ST vs. Reliance Industries Ltd.[2014-TIOL-2152-CESTAT-AHM].

4. Personal hearing in the matter was held on 25.07.2018. Shri Rutvij Modi, CA, appeared on behalf of the appellant and reiterated the ground of appeals and stated that interest not paid despite para 6(b) of the OIAs passed in their own case.

5. I have carefully gone through the appeal memorandums, submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether appellant is entitled to claim interest on delayed refund in terms of Section 11BB of the Central Excise Act, 1944 or otherwise. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the adjudicating authority has passed two OIOs in denono adjudication as stated above in para 1 for the refund claims filed by the



appellant on different dates for the period from August-2013 to December-2015. I have carefully gone through both the impugned orders. I also find that this appellate authority vide OIA No. 167/17-18 dtd.30.11.2017 and 212/17-18 dtd.21.02.2018 had allowed refund of service tax paid on specified services provided to SEZ from the date of application i.e. 16.08.2013 and also payment of interest from due date on delayed sanction and payment of refund claimed in terms of provisions contained in Section 11BB of the Central Excise Act, 1944. The appellant has claimed that the adjudicating authority has not paid interest on delayed sanction and payment of refund claimed in terms of provisions contained in Section 11BB *ibid*, In this regard, my findings are as under:

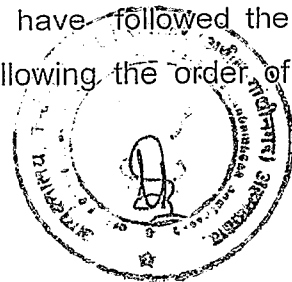
6(A). Refund claims filed for the period August-2013 to June-2014:

I find that the adjudicating authority vide impugned order dtd.04.05.2018 has sanctioned and paid Rs.1,59,43,424/- (Rs.1,65,56,564/- Less Rs.6,13,140/- time-barred) alongwith interest from due date being the part amount rejected vide OIO dtd.31.03.2017. But in fact the appellant is also entitle to interest from due date on amount already sanctioned and paid belatedly Rs.10,37,42,769/- vide OIO dtd. 31.03.2017 in terms of provisions contained in Section 11BB of the Central Excise Act, 1944. I also find that the adjudicating authority in the impugned order has **not given any reasoned findings for non-payment of interest from due date on said belated sanction and payment of Rs10,37,42,769/-** vide OIO dtd.31.03.2017 in spite of OIA No.167/17-18 dtd.30.11.2017 passed by this appellate authority in the appellant's own case.

6(B). Refund claims filed for the period July-2014 to December-2015:

In this regard, I find that the adjudicating authority vide impugned order dtd.04.05.2018 has sanctioned and paid Rs.1,05,98,046/- alongwith interest from due date being the part amount rejected vide OIO dtd.18.07.2017/21.07.2017. But in fact the appellant is also entitle to interest on amount sanctioned and paid belatedly vide OIO dtd. 30.05.2016, 19.07.2016, 14.09.2016 and 18.07.2017 form the due date in terms of provisions contained in Section 11BB of the Central Excise Act, 1944. I also find that the adjudicating authority in the impugned order has **not given any reasoned findings for non-payment of interest from due date on said belated sanction and payment of Rs1,05,98,046/-** in spite of OIA No.212/17-18 dtd.21.02.2018 passed by this appellate authority in the appellant's own case.

7. I find that it is a settled law that delayed refund beyond stipulated time invariably attracts interest. The adjudicating authority should have followed the order passed by this appellate forum scrupulously. Not following the order of



higher appellate forum is gross violation of judicial discipline as held in a catena of judgment of the jurisdictional high courts. I find that the Hon'ble High Court of Gujarat in case of Lubi Industries LLP Vs. UOI reported in 2017(52) STR-95 (Guj.) has held as under:

“Adjudication - Judicial discipline - Identical issue already been decided by CESTAT in favour of petitioner, despite which the adjudicating authority had once again given a decision against the petitioner - HELD : Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in case of the same assessee - Departmental Authorities would be bound by the judicial pronouncements of the statutory Tribunals - Even if decision of Tribunal was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision - Only choice open for adjudicating authority was to decide the case in consonance with the judgment of Tribunal and thereafter leave it to Departmental Authorities to decide the question of filing appeal against such an order, if otherwise permissible in law - Impugned order set aside - Sections 35 and 35E of Central Excise Act, 1944. [paras 6, 7]”

It seems that the adjudicating authority has deliberately ignored the Hon'ble Apex Court decision in case of Ranbaxy Laboratories Ltd. Vs. UOI reported in 2011(273) ELT-3 (SC) which has settled the issue and there is no ambiguity left. Such deliberate ignorance of Apex Court order is contemptuous and malafide. Accordingly, the appeals filed by the appellant succeeds and allowed with consequential relief as per law and impugned orders are set-aside to the extent of non-payment of interest on delayed sanction and payment as sated above.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stands disposed of in above terms.

उमाशंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

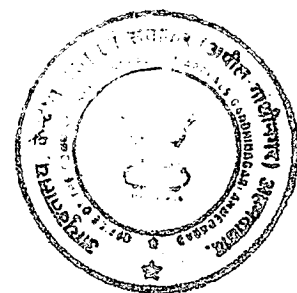
Dt. 14/08/2018.

Attested:

B.A. Patel
29/08/18
(B.A. Patel)
Supdt.(Appeals)
Central GST, Ahmedabad.

BY SPEED POST TO:

M/s.GSPC LNG Ltd.,
B-103, IT Tower-2, Infocity,
Near Indroda Circle,
Gandhinagar-382009.



Copy to:-

- (1) The Chief Commissioner, Central Tax, Ahmedabad Zone.
- (2) The Commissioner, Central GST, Gandhinagar (RRA Section).
- (3) The Assistant Commissioner, Central GST, Gandhinagar Division.
- (4) The Asstt. Commissioner(System), Central GST, Gandhinagar.
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

