

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, वस्तु एवं सेवा कर भवन, सप्तवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	टेलीफैक्स : 079 - 26305136
: 079-26305065			

क फाइल संख्या : File No : **V2/72/GNR/2019-20/13558 To 13562**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-51-19-20**

दिनांक Date : **06/01/2020** जारी करने की तारीख Date of Issue: **17/01/2020** *C. file*

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **09/CE/Ref/AC/2019-20**
 दिनांक : **13/08/2019** से सृजित

Arising out of Order-in-Original: **09/CE/Ref/AC/2019-20**, Date: **13/08/2019** 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. Electrothem India 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।

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, 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।

(iii) 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 दिनोंक 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- १0बी/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 2nd 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 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 रुपये 5 लाख या उससे कम है वहां रुपये 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 5 लाख या 50 लाख तक हो तो रुपये 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपये 50 लाख या उससे ज्यादा है वहां रुपये 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 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 और 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 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 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

M/s. Electrotherm India Ltd., 72, Village-Palodia, Tal-Kalol, Dist-Gandhinagar(henceforth referred as "appellant") has filed the present appeal against the Order-in-Original 09/CE/Ref/AC/2019-20 dated 13.08.2019 (henceforth referred as "impugned order") passed by the Assistant Commissioner, Central GST, Kalol Division, Gandhinagar(henceforth referred as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant is a manufacturer of Induction Melting Furnace falling under Chapter 85 of the Central Excise Tariff Act, 1985. They had filed a refund application dated 15.04.2019 (received by Divisional Office 22.04.2019) for an amount of Rs.33,64,267/- alongwith interest as applicable, which they had reversed as CENVAT credit during the investigation and was subsequently vide Order-In-Original No.AHM-CEX-003-ADC-JC-25-18-19 dated 27.03.2019 of the Additional Commissioner, Central GST and Central Excise, Gandhinagar held admissible. The appellant was allowed said refund under impugned order but the claim for interest was denied.

3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that the appellant is entitled for interest on amount of refund for the period from date of deposit till the date of refund by the department; that the amount was deposited on 17.01.2007 i.e. the date on which the department made inquiry; that deposit was not in pursuant to any order and therefore never in the nature of pre-deposit under Section 35; the appellant cited various case laws in the favor of the grounds advanced. It was contested that Section 35FF as prevailing prior to 2014 will not apply in this case as the amount was deposited in term of first proviso to Section 35F.

4. In the personal hearing held on 18.12.2019, Shri S.J. Vyas, consultant reiterated the submissions in Appeal Memorandum and requested to consider the appeal.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, oral and written submissions made at the time of personal hearing. It is observed that the refund of Cenvat credit reversed during investigation became payable on account of Order-In-Original dated 27.03.2019 of the Additional



Commissioner, Central GST and Central Excise, Gandhi nagar, which stands sanctioned under impugned order. Therefore, the limited issue to be decided in this case is that in case of deposit made during the investigation, whether interest on refund of such amount shall be payable from the date of deposit of such amount or from the date after 3 months of filing the refund application.

6. I observe that similar issue was decided by the Hon'ble CESTAT, in case of M/s. Ratnamani Metals & Tubes v/s Commissioner of C.Ex.& S.T., West Zonal Bench, Ahmedabad reported in 2019(366) ELT(Tri-Ahd) wherein it is held that date of filing refund claim is relevant date for computation of interest if made after 3 months **and not date of making deposit**. Relevant part of the judgement is reproduced below:

5. I find that the limited issue to be decided by all this case is that in case, of deposit made during the investigation of the demand case **whether interest on refund of such amount shall be payable from the date of deposit of such amount or from the date after 3 months of filing the refund application**. As regard, the deposit made during the investigation it is obvious that there is no provision in Central Excise or to make a deposit. Whatever payment made it is towards the probable Excise duty liability for which the investigation is undergoing, therefore, it cannot be said that any deposit made during the investigation so made by the assessee is not a duty but only a deposit. Once the adjudication authority confirms the demand the said amount stands confirmed as duty only, the same being the duty stands appropriate against the demand confirmed in the adjudication order. For this reason also **the amount even though that paid during the investigation, shall be considered as payment of duty. When this be so the refund of such duty amount is clearly governed by the Section 11B of Central Excise Act, 1944**. In case of refund under Section 11B provision, of interest is available under Section 11BB. In terms of such section, of interest is payable only from the date after completion of 3 months from the date of filing the refund application. **Therefore, the interest in any case is not payable from the date of deposit of the amount during the investigation**. On the issue of interest on refund of duty the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Ltd. v. Union of India*, 2011 (273) E.L.T. 3 (S.C.) wherein, the Court has held that the **interest on refund under Section 11B is payable only from the date of expiry of three months from the date of receipt of application for refund**. Therefore, now there is no ambiguity or doubt that from which the date interest is payable in case of refund of duty. As Regard the decision relied upon by the Ld. Counsel in the case of *Futura Ceramics Pvt. Ltd.* (supra). I find that this decision has not considered the various judgment relied upon by the Ld. AR particularly the case of *Ranbaxy Laboratories Ltd., Kamakshi Tradexim (India) Pvt. Ltd.*, therefore, the decision of this Tribunal dated 21-11-2017 is distinguished. As per my above discussion, the impugned order is upheld. The appeal is dismissed.

7. In the instant case, it is observed that the appellant had reversed the amount in question towards their duty liability, during the course investigation of the case. Further, the Cenvat credit reversed by the appellant was initially confirmed under order dated 26.02.2010 of the Joint Commissioner, Central Excise, Ahmedabad. Therefore, the payment made by the appellant towards the Excise duty liability for which the investigation were undergoing, cannot be considered as deposit as contended by the appellant. Looking into the facts of the instant case, the decision of Hon'ble Tribunal, Ahmedabad supra is squarely applicable



to this case. In view of the above legal position made clear by Hon'ble CESTAT, wherein it is held that in case of amount paid as deposit during investigations, is towards probable 'Duty' liability only and therefore, date of filing refund claim is relevant date for computation of interest and not date of making deposit. In view of said legal position established by Hon'ble Tribunal to which I'm bound to follow, the appellant is not entitled for interest on amount of refund from date of deposit till the date of refund by the department. The case laws cited by the appellant in this regard are distinguishable from the fact of the instant case as in the said case laws, it is held that the amount in question were not paid towards Excise duty, but only by way of deposit during investigation. In the case on hand, amount in question i.e. Cenvat were reversed towards Excise duty only and hence appellant is not entitled for interest on amount of refund from date of deposit till the date of refund by the department. Further, in context of the decision relied upon by the appellant in the case of Futura Ceramics Pvt. Ltd., I find that it is already observed under above order supra that said decision has not considered the various judgment relied upon, particularly the case of Ranbaxy Laboratories Ltd. and Kamakshi Tradexim (India) Pvt. Ltd. Therefore, the decision of Tribunal in the case of Futura Ceramics Pvt. Ltd is distinguished. In view of above legal pronouncement that the payment made during investigation is against probable duty liability only and cannot be considered as deposit, the plea of the appellant that Section 35FF as prevailing prior to 2014 will not apply in this case as the amount was deposited in term of first proviso to Section 35F is not relevant.

8. In view of the observations above, the impugned order does not require any interference. The grounds advanced by the appellant are not acceptable. The appeal filed by the appellant is rejected.

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.

(Signature)
(Akhilish Kumar) 6th January, 2020

Commissioner, CGST (Appeals)
Date:

Attested

(D.A. Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. Electrotherm India Ltd.,

72, Village-Palodia, Tal-Kalol, Dist-Gandhinagar

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Gandhinagar
4. The Asstt./Deputy Commissioner, CGST Division-Kalol, Gandhinagar
5. Guard File.
6. P.A. File



