



सत्यमेव जयते

आयुक्त का कार्यालय,
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद अपील आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi,
Ahmedabad 380015



☎-079-26307521

टैलेफैक्स : 079-26305136

- क फाइल संख्या :File No : V2(CEX)/2/EA-2/GNR/2019-20 /15574 ट 15578
- ख अपील आदेश संख्या :Order-In-Appeal No.: AHM-EXCUS-003-APP-34-20-21
दिनांक Date : 24.08.2020 जारी करने की तारीख Date of Issue: 03/09/2020
आयुक्त (अपील) द्वारा पारित
Passed by Commissioner (Appeals) Ahmedabad
- ग Arising out of Order-in-Original: 805/REB/CEX/NK/2017-18, Date: 24-10-2017 Issued by:
Assistant Commissioner,CGST, Div:Gandhinagar, Gandhinagar Commissionerate,
Ahmedabad.
- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता
Name & Address of the Appellant & Respondent
Appellant- The Assistant Commissioner, CGST-Gandhinagar Division.
Respondent- M/s. Smaltochmica India Pvt. Ltd, Gandhinagar (Gujarat).

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 प्रकिया के दौरान हुई हो।

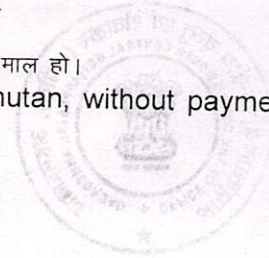
(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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।

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, बहूमाली 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 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 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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 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

This order arises out of remand proceedings in pursuance of Order dated 20.03.2019 of the Hon'ble CESTAT, Ahmedabad in appeal preferred by M/s Smaltochimica India Pvt Ltd, Survey No.478, Block No.439, Vill & Post Chandrala Tal & Dist. Gandhinagar(Gujarat) [hereinafter referred to as "the respondent"] against the Order-in-Appeal No. AHM-EXCUS-003-APP-0265-17-18 dated 26.03.2018/18.04.2018 passed by the Commissioner (Appeals), Ahmedabad. The said Order-in-Appeal was passed on an appeal filed by the Assistant Commissioner of CGST Division, Gandhinagar under Section 35E (2) of Central Excise Act, 1944 [hereinafter referred to as "the appellant"] against Order-in-Original No.805/Reb/CX/NK/2017 dated 25.10.2017 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST Division, Gandhinagar [hereinafter referred to as "adjudicating authority"] in case of the respondent as per Review Order No.32/14.02.2018 issued by the Commissioner of CGST, Gandhinagar.

2. The facts of the case, in brief, are that during the course of the audit of the records of the respondent by the department, it was observed that they had taken cenvat credit of service tax amounting to Rs.38,62,643/- paid by them in respect of commission paid on sales to their sales commission agent. Since it appeared that credit of input services i.e., the services of commission agent is not admissible, Show Cause Notices dated 07.04.2015 and 23.10.2015 were issued to the respondent demanding recovery of the wrongly availed cenvat credit amounting to Rs.38,62,643/- for the period March, 2011 to January, 2014 and Rs.14,05,222/- for the period February, 2014 to March, 2015 along with interest and also proposing penalty. Subsequent to issue of the said notices, the respondent debited the said amounts of availed credit under protest. The above notices were adjudicated by the Additional Commissioner, Central Excise, Ahmedabad-III vide Order-in-Original No.AHM-CEX-003-ADC-MLM-053-054-15-16 dated 30.03.2016 wherein he confirmed the demands along with interest and imposed penalty. Being aggrieved with the aforesaid order, the respondent preferred an appeal before the Commissioner (Appeals), Ahmedabad who vide Order-in-Appeal No.AHM-EXCUS-003-APP-274 to 275-16-17 dated 27.03.2017 set aside the demands confirmed and the penalties imposed. Consequently, the respondent has filed a refund claim amounting to Rs.52,67,865/-pertaining to the amount of duty paid under protest against the demand issued vide Show Cause Notices dated 07.04.2015 and 23.10.2015 on account of audit objection raised against them. The adjudicating authority has sanctioned the said amount holding it as pre-deposit under Section 35F of the Central Excise Act, 1944 (in short 'CEA') along with interest of Rs.6,77,570/- under Section 35 FF of the Act ibid from the date of payment to till the date of refund sanctioned.

2.1. Being aggrieved with the amount of interest sanctioned, the department filed the appeal before the Commissioner (Appeals), Ahmedabad mainly on the following grounds:



- The adjudicating authority has erred in considering the amount paid under protest by the respondent as deposit under Section 35F of the CEA and also in sanctioning the interest of Rs.6,75,570/- in terms of Section 35FF of the Act *ibid*;
- In the instant case, the respondent has paid the said amount after issuance of show cause notice and the amount so paid by way of reversal of credit is the total amount involved in the show cause notice and not equal to 7.5% of the duty, penalty as required under Section 35 F;
- Since in the present case, amount was not paid under Section 35F, the adjudicating authority has erred in granting interest under Section 35FF of the Act *ibid*;
- The respondent has filed the refund claim on 04.10.2017 and the same was sanctioned on 25.10.2017 i.e within three months from the date of filing of refund claim. Hence, interest under Section 11BB of CEA is not applicable to the instant case. Hon'ble Apex Court decision in case of M/s Ranbaxy Laboratories [2011 (273) ELT 3] was relied on in this regard.

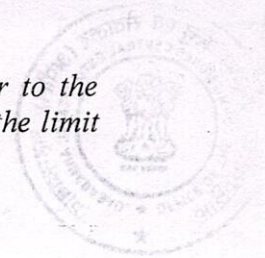
3. The above appeal filed by the department was decided by the Commissioner (Appeals), Ahmedabad vide Order-in-Appeal No. AHM-EXCUS-003-APP-0265-17-18 dated 26.03.2018 issued on 18.04.2018. He observed that the department has questioned only the part of sanctioning of interest on the refund claim sanctioned. He had allowed the departmental appeal by observing that the payment over and above of the amount of 7.5% stipulated under Section 35F of CEA cannot be considered as deposit under the provisions of Section 35 F *ibid* and therefore the impugned order of the adjudicating authority holding that the amount paid by the respondent as under Section 35F of CEA and the sanctioning of interest on entire amount under Section 35FF of CEA, is not correct and that the respondent has filed the refund claim on 04.10.2017 and the same was sanctioned on 25.10.2017 and that as per provisions of Section 11BB of CEA and Hon'ble apex Court decision in case of M/s Ranbaxy Laboratories, interest liability arises only if the amount not refunded within three months from the date of refund application and therefore, in such circumstances also, the adjudicating authority has wrongly sanctioned the interest on such refund claim. Hence, he held that the interest sanctioned by adjudicating authority is not proper and required to be recovered.

4. Aggrieved with the above decision of Commissioner (Appeals), Ahmedbad, the respondent filed an appeal before the Hon'ble CESTAT, Ahmedabad who vide their Final Order No.A/10591/2019 dated 20.03.2019 in the said appeal, has remanded the matter to the Commissioner (Appeals) to pass a fresh order by observing as under:

4. Heard both sides and perused the record. I find that the Adjudicating Authority has sanctioned interest on refund relying on Para 3 of Circular No. 984/08/2014-CX, dated 16-9-2014, the same is reproduced below :-

“3. Payment made during investigation :

3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit



of Rs. 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections."

The aforesaid Para of the Board Circular was considered by the Commissioner and in his order in Para 7, he stated that "At most, in my opinion, from the total amount paid, the adjudicating authority can consider 7.5% of the amount as deposit under Section 35F of CEA as clarified by the Board."

5. In view of the above clear findings, at least for the portion of 7.5%, the matter should have been remanded to the Adjudicating Authority. However, the entire appeal of the Revenue was allowed. Therefore, there is apparent error in the order of the Commissioner (Appeals). As regard the legal issue whether the appellant is entitled for the interest on the entire amount paid before passing adjudication order, I find that the appellant under the statute is required to make only deposit of 7.5% of the duty amount. The Board Circular 984/08/2014-CX, dated 16-9-2014 also considered only 7.5% as deposit under Section 35F. Therefore, no amount over and above 7.5% can be considered as deposit under Section 35F. Consequently, interest on said amount is not applicable in terms of Section 35FF. With the above findings, I remand the matter to the Commissioner (Appeals) to pass a fresh order. The impugned order is modified to the above extent.

5. Based on the above directions of the Hon'ble CESTAT, the appeal under reference is taken up for consideration afresh.

6. Personal hearing in the matter was held on 19.08.2020. Dr. Nilesh V Suchak, Chartered Accountant appeared on behalf of the respondent for the same and requested to pass a fresh order as the Tribunal has given a finding regarding vagueness of order passed by Commissioner (Appeals).

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the respondent and the observations of the Hon'ble Tribunal in their Order dated 20.03.2019 mentioned above. I find that the issue to be decided in the case is as to whether in the facts and circumstances of the case, the adjudicating authority's act of sanctioning of interest under Section 35FF of the CEA on the entire amount of duty paid under protest by the respondent by considering the amount so paid as a pre-deposit under Section 35F of CEA is legally correct or otherwise?

8. The matter has remanded by the Hon'ble Tribunal as they found an apparent error in the Order of the Commissioner (Appeals) in allowing the entire appeal of the Revenue even while giving a finding in his order that from the total amount paid, the adjudicating authority can consider 7.5% of the amount as deposit under Section 35F of CEA as clarified by the Board.



9. After going through the facts of the case, I find that there is no dispute regarding admissibility of the refund claimed by the respondent and the department has only questioned the granting of interest on the refund claimed and sanctioned. It is observed that the adjudicating authority has sanctioned the interest in terms of Section 35FF of CEA, considering the amount of central excise duty paid by the respondent under protest as a pre-deposit of amount under Section 35 F of the CEA. I find that Section 35 F of CEA stipulates for deposit of 7.5% of duty demanded or penalty imposed before filing appeal in the Tribunal or Commissioner (Appeals), provided that the amount required to be deposited shall not exceed rupees ten crores. Further, I observe that, vide Circular dated 16.09.2014, the CBEC has clarified that *"Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections"*. From the said clarification of the Board, it is clear that out of the payments made prior to filing of appeal, the amount of payment which is equal to 7.5% of the duty/penalty under dispute only would be qualified as a pre-deposit amount in terms of Section 35F of CEA and when that being so, needless to say that the interest payable under Section 35FF of the Act ibid would be on the said amount qualified as pre-deposit under Section 35F ibid. The Hon'ble CESTAT in their Order dated 20.03.2019 discussed in para 4 above, has held in clear terms that no amount over and above 7.5% can be considered as deposit under Section 35F and consequently, interest on said amount is not applicable in terms of Section 35FF. In view thereof, it is to be held that the adjudicating authority has erred in holding the entire amount of duty paid under protest in the case as a pre-deposit under Section 35F of CEA and consequently sanctioning of interest under Section 35FF on the amount, which is in excess of the amount qualified as a pre-deposit under Section 35F of CEA, is also erroneous.

10. I find that the issue under dispute is clearly stand settled by the clarification issued by the Board vide their Circular No. 984/08/2014-CX dated 16.09.0214 referred above. Therefore, the department's contentions on their interest liability in the matter would hold good to the extent it pertains to the amount which is over and above of the amount qualified as pre-deposit of 7.5% stipulated under Section 35 of CEA. In so far as the amount of payment which has to be considered a pre-deposit under Section 35F of CEA as per Board's clarification, the department would be liable to pay interest under Section 35FF of CEA while refunding the said amount. For the remaining amount of payment, the refund would be governed by the provisions of Section 11B of CEA as per which there would be no interest liability as the said amount was refunded well within three month of the date of application for the same.



11. In view of the above discussions, I hold that the respondent is entitled for interest under Section 35FF of CEA only on the amount of payment which is qualified as pre-deposit as per Section 35F of CEA viz. 7.5% of the duty/penalty under dispute and hence the amount of interest sanctioned by the adjudicating authority in excess of the said eligible interest is erroneous and liable for recovery from the respondent. Accordingly, the impugned order is set aside to the extent discussed above and the appeal filed by the department is allowed to the extent the impugned order has been set aside.

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

The appeal filed by the appellant stands disposed off in above terms.

(Signature)
24 August, 2020
(Akhilesh Kumar)

Commissioner (Appeals)

Date: 24.08.2020.

Attested:

(Signature)
(Anilkumar P.)
Superintendent
CGST Appeals
Ahmedabad.



BY R.P.A.D./SPEED POST

To

The Assistant Commissioner,
CGST - Gandhinagar Division,
Gandhinagar Commissionerate.

Appellant

M/s Smaltochimica India Pvt Ltd.
Survey No.478, Block No.439,
Vill & Post Chandrala
Tal & Dist. Gandhinagar(Gujarat).

Respondent

Copy to:

1. The Principal Chief Commissioner, CGST & C.Ex. , Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Gandhinagar Commissionerate.
3. The Asst. Commissioner (System), CGST & C.Ex., Gandhinagar Commissionerate.
(for uploading the OIA)
4. Guard File.
5. P. A. File.

