



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN : 20201164SW000081868E

स्पीड पोस्ट

- क फाइल संख्या : File No : V2(69)11/GNR/2020-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-041/20-21**
दिनांक Date : **19-11-2020** जारी करने की तारीख Date of Issue 27-11-2020
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **03/C.Ex-Ref./AC/2020-21** दिनांक: **12.05.2020** , issued by
Assistnat Commissioner, CGST and Central Excise, Division-Kalol, Gandhinagar
- ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Shah Tiles Pvt. Ltd.,
Survey No. 53/P, Village-Karoli,
At & PO-Hajipur,
Taluka-Kalol, District-Gandhinagar
Gujarat-382721

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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-बी/35-इ के अंतर्गत:-

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

(क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

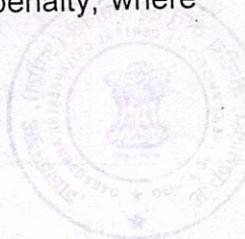
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

The present appeal has been filed by M/s. Shah Tiles Pvt. Limited, Survey No. 53/P, Village-Karoli, At & PO-Hajipur, Tal -Kalol, District -Gandhinagar (Gujarat-382721) (hereinafter referred to as '*the appellant*'), against the Order-in -Original No. 03/C.Ex-Ref./AC/2020-21 dated 12.05.2020 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, CGST and Central Excise, Division - Kalol, Gandhinagar (hereinafter referred to as '*the adjudicating authority*'). The appellant was holding Central Excise Registration Number AADCS0457PXM001 and was engaged in the manufacture of Ceramic Glazed Wall Tiles falling under Chapter Heading 69 of the Central Excise Tariff Act, 1985.

2. The facts of the case, in brief, is that the officers of D.G.C.E.I had on the basis of intelligence searched the premises of the appellant. During the course of investigation, the appellant paid an amount of Rs. 15,00,000/- towards their proposed liability. Subsequently, a Show Cause Notice bearing No. DGCEI/BRU/29/2008 dated 05.11.2009 was issued by the Additional Director, DGCEI, Ahmedabad for demanding duty amounting to Rs. 35,22,209/- along with interest and also proposing imposition of penalty. The said show cause notice was adjudicated by the Additional Commissioner, Central Excise, Ahmedabad-III vide Order-in -Original No. AHM-CEX-003-ADC-020-13 dated. 31.03.2013 confirming the duty along with interest and imposing equal penalty as well as imposed personal penalty of Rs. 3,50,000/- on Shri Hemantbhai Akhani.

2.1. Being aggrieved with the aforesaid Order-in-Original dated 31.03.2013, the appellant preferred an appeal before the Commissioner, Central Excise, (Appeals - III), Ahmedabad who vide Order-In-Appeal No. AHM-EXCUS-003-APP-339 to 340-13-14 dated 24.01.2014 set aside the O.I.O dated 31.03.2013 by ordering that "the demand of duty along with interest and penalty imposed on Appellant No. 1 & 2 respectively for the period prior to 01.03.2008 is set aside."

2.2. Being aggrieved with the aforesaid Order-in-Appeal, the department had preferred an appeal before the Hon'ble CESTAT, Ahmedabad who vide Order No. A/11786-11806/2019 dated 16.09.2019 had dismissed the appeal of department on monetary limits in terms of Board's Instructions on Government's Litigation Policy issued under F. No. 390/Misc./116/2017-JC dated 22.08.2019, as amended. Accordingly, the appellant has filed claim for refund of Rs. 15,00,000/- paid during the course of investigation on 09.03.2020 as pre-deposit under erstwhile Section 35F of the Central Excise Act, 1944.

2.3. The adjudicating authority has vide impugned order rejected the refund claim by holding that the amount of Rs. 15,00,000/- paid during the course of investigation cannot be considered as pre-deposit. Further, the refund claim was time barred under Section 11 B of the Central Excise Act, 1944 in as much as it was filed after one year from the date of issue

of Order -In-Appeal dated 24.01.2014.



3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred this appeal on following grounds:

- (a) The adjudicating authority has erred in rejecting the refund claim of Rs. 15,00,000/- credited by the appellant vide three Challans of (i) Rs.5,00,000/- dated 30.04.2008, (b) Rs.5,00,000/- dated 31.05.2008 and (iii) Rs.5,00,000/- dated 30.06.2008 by treating it the part of confirmed duty paid by them during the course of investigation and as such the same cannot be considered as an amount of pre-deposit. The said contention of the adjudicating authority is contrary to the settled facts by the various higher forums as the amount deposited during the course of investigation is a pre-deposit.
- (b) The appellant has neither received the show cause notice nor they have received any intimation of personal hearing. They came to know this fact only when copy of SCN and OIO were received together on 04.06.2020.
- (c) The ground of limitation under Section 11B of Central Excise Act 1944 is not sustainable as Section 11B is not applicable on the amount deposited during the course of investigation.
- (d) In number of cases, Hon'ble CESTAT as well as High Court has held that the amount deposited during the course of investigation is not excise duty but it is pre-deposit and Section 11B of Central Excise Act, 1944 not applicable. They relied on the following decisions in support of the said contentions:

- (i) Commissioner of C. Ex., Chennai-II Versus UCAL Fuel Systems Ltd.-2014 (306) ELT 26 (Mad.);
- (ii) M/s. Gujarat Engineering Works Versus Commr. Of C. Ex. Ahmedabad-II-2013 (292) ELT 547 (Tri.-Ahmd.);
- (iii) M/s. Essar Projects India Ltd. Versus Commr. Of C. Ex & ST, Ahmedabad-2013 (298) ELT 418 (Tri.-Ahmd.);
- (iv) M/s. Shree Ram Food Industries Versus Union of India -2003 (152) ELT 285 (Guj.);
- (v) M/s. Eastern Coils Pvt. Ltd. Versus Commr.Of C. Ex., Kolkata-I-2003 (153) ELT 290; and
- (vi) M/s. Sheela Foam Pvt. Ltd. Versus Commr. Of C.Ex., Noida-2003 (154) ELT 522 (Tri.-LB).

4. Personal Hearing in the case was held on 29.09.2020. Shri M. H. Raval, Consultant, appeared for the hearing. He re-iterated submissions made in appeal memorandum.

5. The Appellant has vide letter dated 29.09.2020 filed written submission contending, inter-alia, that:

- i) The Principal Bench of the Hon'ble Tribunal, New Delhi in the case of CCE Vs. NHK Spring Limited [2016(338) ELT 317 (Tri. – Del)] has held that since duty was paid during the course of investigation, which appellant was not legally required to be pay, it was in the nature of pre-deposit and not duty.
- ii) If the amount paid during investigation is considered as payment towards duty, the time limit to file the refund of the said amount cannot be restricted within one year from the date of Commissioner (Appeals) order as the issue involved in the matter was challenged before the CESTAT where the matter was finally settled. In other words, the issue attained finality only on the basis of CESTAT's order. They relied on the order of Hon'ble



Tribunal, Chennai in Commissioner, Central Excise Vs. Madura Coats Limited 2013 (296) ELT 258 (Tri. – Chennai). In any case, if the amount considered as deposit or duty, by following the decision supra, the amount becomes refundable only after CESTAT's order.

6. I have carefully gone through the facts of the case, the grounds of appeal made in the Appeal Memorandum and submission, oral as well as written, made by the appellant during the hearing. I find that the issue to be decided in the instant case is whether the appellant is eligible for refund of amount paid during investigation and whether they can be treated as pre-deposit under erstwhile Section 35 F of the Central Excise Act, 1944 so as to be treated as outside the purview of time limit prescribed under Section 11 B of the Central Excise Act, 1944.

7. It is observed that the appellant had paid an amount of Rs. 15,00,000/- vide Challans dated 30.04.2008, dated 31.05.2008 and dated 30.06.2008 during investigation before issuance of the SCN. This amount has been considered by the Commissioner (Appeals), Ahmedabad while disposing off the application for waiver of pre-deposit. He has not ordered for any further deposit while deciding the appeal. The legal provisions contained under relevant Section 35 F of the Central Excise Act, 1944, as existed during the relevant period, are reproduced below:

Section 35 F. Deposit, pending appeal, of duty demanded or penalty levied. – Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, the as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deemed fit to impose so as to safeguard the interest of revenue.

Provided....

It is apparent from the legal provision above that during the relevant period, the appellant has to either make payment of duty and penalty or else the Commissioner (Appeal) has to pass order for making deposit before hearing the appeal. In the instant case, the Commissioner has waived the pre-deposit and considered the appeal based on the amount paid during investigation. Hence, I am in agreement with the finding of the adjudicating in Para 15 of the impugned order that the amount of Rs. 15,00,000/- credited vide above said three challans during the course of investigation can not be considered as an amount of pre-deposit.



Therefore, I hold that the payment made by the appellant during course of investigation in this case can not be considered as pre-deposit under Section 35 F of the Central Excise Act, 1944.

7.1. I have gone through the case laws relied upon by the appellant in support of their contention that the amount paid during investigation is a pre-deposit and that the limitation prescribed under Section 11B of the Central Excise Act, 1944 do not apply to the pre-deposit. In this regard, it is observed that the Hon'ble High Court of Gujarat in case of Ajni Interiors Versus Union of India [Special Civil Application No. 10435 of 2018] considered the similar issue and passed an order on 04.09.2019 wherein it was held that "*in our view, it is clear that on appeal being allowed quashing and setting aside the order of the Authority imposing duty, the petitioner has to apply for refund in accordance with the provisions under the Act.*" The Hon'ble Court has further observed that

22. *In our view, the scope for claim of refund is strictly governed by Section 11B of the Act and though in past, there were some judicial pronouncements widening the scope of claim of refund after Supreme Court elaborated reasonings in the case of Mafatlal (supra), there remains hardly any scope for judicial intervention to enlarge it further than what is permissible.*

The claim of refund and time limit prescribed, therefore, has an avowed aim of attaching finality to the government receipt. Hence, before making any order or C/SCA/10435/2018 CAV ORDER direction, affecting it or seeking any writ resulting in refund, the claimant has to make out an extra ordinary case not covered by the decision of the Supreme Court in the case of Mafatlal (supra).

23. *In view of the clear pronouncement of law by the Constitution Bench of the Supreme Court with regard to refund claim, precedents relied on by the petitioner are not applicable as they are not on the issue directly covering the field since the payment is made by the petitioner voluntarily during the course of investigation towards Central Excise Duty, in Form No. TR-6, without any protest and refund claim is also not filed in the prescribed form, that too, within a period of limitation as prescribed along with an affidavit stating that petitioner has not passed on duty to another person, this petition is liable to be rejected."*

7.2 I also find that the Hon'ble CESTAT, WZB, Ahmedabad in their decision vide Order No. A/11311/2018-WZB/AHD dated 26.06.2018, in case of M/s. Ratnamani Metals & Tubes Ltd. has considered the similar issue and held that:

"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."

7.3 Similar view was expressed by the Hon'ble Tribunal, Ahmedabad in a subsequent decision rendered by them vide Order No. A/10859 /2020 dated 18.03.2020 issued in the case of M/s Comexx, Ahmedabad, wherein it is held that:

"In the aforesaid circumstances, we find that the decisions relied on by the appellant in his support were passed without appreciating the decision of Hon'ble Apex Court in the case of Doaba Co-operative Sugar Mills (supra) and in the case of Mafatalal Industries Limited vs. UOI – 1997 (89) ELT 247(SC). In both these decisions it has been categorically held that refund under Central Excise Act would be governed by Section 11B. In these circumstances, we find that the refund claim filed by the appellant would be governed by the provisions of limitation prescribed under Section 11B of Central Excise Act, 1944. Since the refund was filed after expiry of limitation the same cannot be entertained."

7.4 The above mentioned judgements of the Hon'ble High Court of Gujarat and the Hon'ble Tribunal, Ahmedabd are later judgements on the issue *vis-a-vis* the case laws relied upon by the appellant. Therefore, being later judgments on the issue, the said judgments take precedence over the earlier ones relied on by the appellant. Further, these are judicial pronouncements of jurisdictional Tribunal as well as of Hon'ble High Court and is therefore binding in nature in view of principles of judicial discipline.

8. It is further observed that the term "relevant date" for filing refund has been defined under Section 11 B of the Central Excise Act, 1944. As per Explanation contained under clause B (ec) of the said Section, in case where the duty becomes refundable as a consequence of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court, the relevant date is the date of such judgement, decree, order or direction. It is observed that the appellant has become eligible for refund from the date of issuance of Order-in-Appeal dated 24.01.2014, which is the relevant date for consideration of time limit prescribed under Section 11B of the Act. I find that the appellant has filed refund application on 09.03.2020 which is after six year of passing of the order of the Commissioner (Appeals) and hence is beyond the limitation of one year prescribed under Section 11B *ibid*. It has been contended by the appellant that the matter has attained finality after passing of the order of the Hon'ble CESTAT, Ahmedabad on 16.09.2019 when the Hon'ble Tribunal had dismissed the appeal filed by the department. I find that the contention of the appellant is not backed by legal provision in as much as there was no stay on the operation of the order of the Commissioner (Appeals). I have gone through the case laws

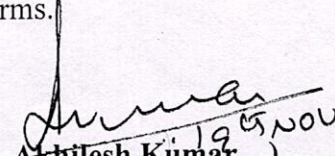


relied upon by the appellant and particularly in the case of Commissioner Central Excise Versus Madura Coats Limited [2013(296) ELT 258 (Tri. – Chennai)] to contend that since the department had challenged the order of Commissioner (Appeals) before Hon'ble Tribunal, the appellant had correctly filed refund after order of the Tribunal. I find that the facts of the said case are different in as much as that in the case of Madura Coats, substantive question of law was pending before the Hon'ble High Court on reference from the Tribunal. The said case law is not applicable to case in hand in as much as the substantial question of assessment was in favour of the appellant and there was no stay on operation of the said order of the Commissioner (Appeals). Hence, I hold that the contention of the appellant that they were eligible for refund after the order of the Tribunal is not backed by the legal provisions and is liable for rejection.


9. In view of the above discussions , I reject the appeal filed by the appellant being devoid of merits and uphold the impugned order.

10. 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.


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 19.11.2020.

Attested:


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

By R.P.A.D/Speed Post

To

M/s. Shah Tiles Pvt. Ltd.,
Survey No. 53/P, Village-Karoli,
At & PO-Hajipur,
Taluka Kalol, District Gandhinagar,
Gujarat-382721.

Copy to:

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



