



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20220164SW000033803C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/459/2021 / 546A 76 5468
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-82/2021-22
दिनांक Date : 31-12-2021 जारी करने की तारीख Date of Issue 03.01.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 08/CEX/Refund/DC/2020-21 दिनांक: 19.01.2021 issued by Deputy Commissioner, CGST & Central Excise, Division Kalol, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Shah Foils Limited
1820/1, Santej-Khatraj Road,
Near GEB Sub Station,
Opp. Rajnagar Bus Stop,
Santej, Kalol, Gandhinagar-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:

- (i) 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।
- (ii) 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 हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।
- (ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(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 मामले 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 दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रुपये 200/-—फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

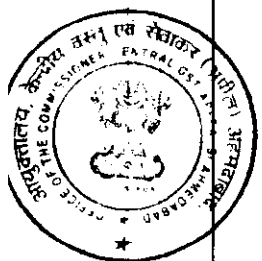
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2ndमाला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor,BahumaliBhawan,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(Appel) 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 पढ़ी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (60) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

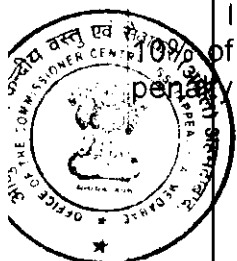
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (clxiii) amount determined under Section 11 D;
- (clxiv) amount of erroneous Cenvat Credit taken;
- (clxv) amount payable under Rule 6 of the Cenvat Credit Rules.

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 Foils Limited, 1820/1, Santej-Khatraj Road, Near GEB Sub-Station, Santej, Taluka : Kalol, District : Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. 08/CEX/Refund/DC/2020-21 dated 19-01-2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, CGST & Central Excise, Division : Kalol, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant was issued a SCN bearing F.No. DGCEI/MZU/I&IS'C'/12(4)/12 dated 06.05.2014 demanding Central Excise duty amounting to Rs.21,83,98,186/- for the period from April, 2009 to July, 2012. The said SCN was adjudicated vide OIO No. AHM-EXCUS-003-COM-12-17-18 dated 27.02.2018 wherein the demand was confirmed along with interest and penalty equivalent to the duty was also imposed. Being aggrieved, the appellant preferred an appeal before the Hon'ble Tribunal, Ahmedabad. During the pendency of the appeal, the appellant made pre-deposit of Rs.1,63,79,864/-, being 7.5% of the duty demanded, in terms of Section 35F of the Central Excise Act, 1944. Out of the total pre-deposit amount, the appellant paid an amount of Rs.80,00,000/- by challans under the erstwhile Central Excise regime. The Hon'ble Tribunal vide Final Order No. A/10120-10125/2019 dated 18.01.2019 allowed the appeal and set aside the demand confirmed against the appellant. The department challenged the order of the CESTAT before the Hon'ble High Court of Gujarat. However, the appeal of the department was dismissed by the Hon'ble High Court vide order dated 08.01.2020.

3. The appellant on 18.02.2020 filed a claim for refund of the pre-deposit amounting to Rs.80,00,000/-. Since the amount was paid by the appellant in the course of investigation and the same was part of the duty confirmed, it appeared that the same was not pre-deposit. Therefore, the appellant was issued a SCN bearing No. V.90/18-21/C.Ex.-Ref/2019 dated 03.03.2020 proposing to reject the claim for refund on the grounds of



limitation. The said SCN was adjudicated vide OIO No. 02/C.Ex.-Ref/AC/2020-21 dated 13.04.2020 and the refund claim was rejected on the grounds of limitation.

3.1 Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals), Ahmedabad against the said OIO. The Commissioner (Appeals) vide OIA No. AHM-EXCUS-003-APP-046/20-21 dated 27.11.2020 set aside the said OIO dated 13.04.2020 and allowed the appeal with consequential relief.

3.2 In view of the order of the Commissioner (Appeals), Ahmedabad, the appellant again filed a claim for refund of the pre-deposit on 05.01.2021. The claim for refund was sanctioned by the adjudicating authority vide the impugned order. However, the interest on the amount of pre-deposit was rejected on the grounds that the refund was sanctioned within the stipulated time period of three months in terms of Section 35FF of the Central Excise Act, 1944 as it stood prior to 06.08.2014.

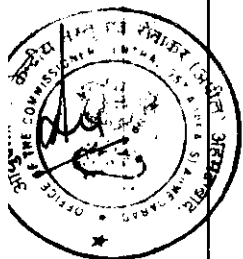
4. Being aggrieved with the impugned order, to the extent of disallowance of interest on the amount of refund sanctioned, the appellant has filed the instant appeal on the following grounds :

- i. The calculation of interest ought to be governed by the amended provisions of Section 35FF of the Central Excise Act, 1944 as they exist after 06.08.2014.
- ii. Section 35FF of the Central Excise Act, 1944 was amended w.e.f 06.08.2014 by Finance Act (No.2) 2014. By the same Finance Act, the provisions for fixed mandatory pre-deposit under Section 35F were also introduced. Prior to that the pre-deposit amount was determined by the appellate authority after filing of appeal. However, from 06.08.2014 any assessee filing appeal was required to pre-deposit a fixed amount of 7.5% or 10% of the duty demanded or penalty, as the case may be, prior to filing of appeal and the



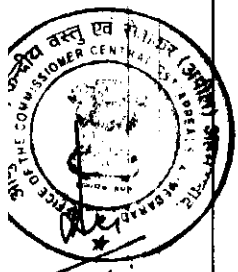
appellate authority would entertain the appeal only after the pre-deposit was made.

- iii. Under the provisions of the erstwhile Section 35FF, interest on refund of pre-deposit was payable after a period of three months from the date of receipt of the order of the appellate authority. However, under the amended Section 35FF, interest on refund of pre-deposit is payable from the date of payment of the amount.
- iv. After the amendment to Section 35F and Section 35FF, the CBIC had issued Circular No. 984/8/2014-CX dated 16.09.2014 wherein it was clarified at para 3 can be considered as pre-deposit for the purpose of Section 35F. Further, as per para 3.2 it was clarified that since the amount paid during the investigation attains the character of pre-deposit only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections/
- v. Though the payment of Rs.80,00,000/- was made by them prior to 06.08.2014, the appeal before the Hon'ble Tribunal, Ahmedabad was filed on 05.06.2018. Thus as per para 3.2 of the said Circular, the said amount attained the character of pre-deposit only on 05.06.2018 and is deemed to be made on 05.06.2018.
- vi. It is not in dispute that the appeal before the Hon'ble Tribunal was filed by them under the amended provisions of Section 35F of the Central Excise Act, 1944. It is for filing of the appeal, the amount of Rs.80,00,000/- paid during the investigation was adjusted towards the mandatory pre-deposit. Therefore, for the purpose of Section 35F, the payment of pre-deposit is the date of filing of appeal i.e. 05.06.2018 and the refund is to be granted in terms of the provisions as they existed on 05.06.2018.
- vii. Thus, in terms of Section 35FF of the Central Excise Act, 1944 interest is payable from the date of payment of pre-deposit i.e.05.06.2018 till the date of sanction of refund i.e. 19.01.2021.
- viii. It is settled law that the Circulars issued by the CBIC is binding upon the department. They rely upon the decision in the case of : CCE, Bolpur Vs. Ratan Melting & Wire Industries – 2008 (12) STR



416 (SC); CCE, Vadodara Vs. Dhiren Chemical Industries – 2002 (139) ELT 3 (SC); Ranadey Micronutrients Vs. CCE – 1996 (87) ELT 19 (SC); Paper Products Ltd. Vs. CCE – 1999 (2) ELT 765 (SC) and Darshan Boardlam Ltd. Vs. UOI – 2013 (287) ELT 401 (Guj.).

- ix. Without prejudice to the above, the adjudicating authority is factually and legally incorrect in observing that the refund of the pre-deposit has been granted within the time limit. The refund has been granted after observing that the same is required to be treated as pre-deposit under Section 35F. However, interest has not been granted after wrongly observing that the refund has been granted within the stipulated time period in terms of Section 35FF as it stood prior to 06.08.2014.
- x. From a plain reading of Section 35FF as it stood prior to 06.08.2014 it is clear that the interest is payable from the date of expiry of three months from the date of communication of the order of the appellate authority. In the present case, the Final Order dated 18.01.2019 of the Hon'ble Tribunal was never stayed by any superior court. In fact the appeals filed by the department was dismissed by the Hon'ble High Court of Gujarat and the Hon'ble Supreme Court.
- xi. The appeal was filed by the department before the Hon'ble High Court on 29.07.2019. Even on an approximate basis, if the date of filing appeal before the Hon'ble High Court is taken as the date of communication of the order of the Hon'ble Tribunal, the time limit of three months had expired in October, 2019, whereas the refund was granted to them on 19.01.2021. Therefore, even under the erstwhile Section 35FF, the refund was sanctioned beyond the time limit specified.
- xii. The department ought to have granted refund of the pre-deposit once the appeal was disposed by the Hon'ble Tribunal on 18.01.2019, however, the same was not granted to them. The adjudicating authority has not only failed to grant refund of the pre-deposit within three months of the order dated 18.01.2019 but also failed to grant the refund even after they had formally claimed vide letter dated 18.02.2020.



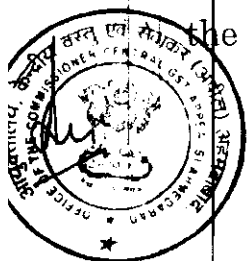
xiii. They rely upon the decisions in the case of : CCE, Hyderabad Vs. ITC Limited – 2003 (12) TMI 90 (SC); State of Gujarat Vs. Essar Steel Ltd – 2016 (50 TMI 221 (Guj. HC); Principal Commissioner of Customs Vs. H.V. Ceramics – 2019 (365) ELT 390 (Guj.); LSE Securities Ltd. Vs. Asstt. Commr., S.T, Chandigarh; Chief Terminal Manager Vs. CCE, Ahmedabad-I – 2018 (1) TMI 712; Commissioner of C.Ex.,& Cus, Vadodara-II – 2008 Vs. Kilburn Engg. Ltd.- (226) ELT 154 (Tri.-Ahmd)

5. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Ms. Devanshi Sharma, Advocate, appeared on behalf of the appellant for the hearing. She reiterated the submissions made in appeal memorandum and in additional written submission.

6. In the additional written submissions filed by the advocate of the appellant the submissions made in the appeal memorandum were reiterated. It was also submitted that the department has filed an appeal vide Appeal No. E/10167/2021 on 18.03.2021 before the Hon'ble Tribunal, Ahmedabad against OIA No. AHM-EXCUS-003-APP-046/20-21 dated 27.11.2020 and the same is pending before the Hon'ble Tribunal.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The issue before me for decision is as whether the appellant is entitled to interest, on the refund of pre-deposit, in terms of Section 35FF of the Central Excise Act, 1944 or otherwise.

7.1 I find that the appellant had paid the amount of Rs.80,00,000/- during the years 2012 and 2014 in the course of the investigation. Subsequently, upon confirmation of the demand raised against them vide OIO dated 27.02.2018, the appellant had filed appeal before the Hon'ble Tribunal, Ahmedabad on 05.06.2018, which was decided in their favour by the Hon'ble Tribunal. The claim for refund followed as a consequence of



commencement of Finance (No.2) Act, 2014, which in the instant case is 06.08.2014. In the instant case, the appeal before the Hon'ble Tribunal was filed by the appellant on 05.06.2018. Therefore, the appeal is governed by the amended provisions of Section 35F of the Central Excise Act, 1944.

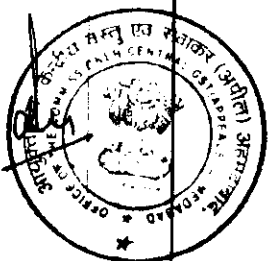
7.4 Further, Section 35FF of the Central Excise Act, 1944 was also amended from 06.08.2014 by Finance (No.2) Act, 2014, the amended section is reproduced as under :

“Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount :

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act.]”

7.5 Since the appeal was filed by the appellant before the Hon'ble Tribunal on 05.06.2018 under the amended provisions of Section 35F of the Central Excise Act, 1944, the refund of pre-deposit made in terms of Section 35F will also be governed by the provisions of the amended Section 35FF of the Central Excise Act, 1944.

7.6 It is also pertinent and important to note that in terms of the proviso to Section 35FF, the provisions of the amended Section 35FF are not applicable to “*the amount deposited under section 35F, prior to the commencement of the Finance (No.2) Act, 2014*”. In the instant case, it is an undisputed fact that the amount of Rs.80,00,000/- was paid by the appellant, during the year 2012 and 2014, in the course of investigation. However, at the time of payment the same was not a pre-deposit and neither was the payment made under Section 35F of the Central Excise Act, 1944. Therefore, the said payment is not covered by the exclusion in terms of the proviso to Section 35FF of the Central Excise Act, 1944.



the appellant succeeding in the Hon'ble Tribunal. The limited issue before me is whether the appellant is entitled to interest in terms of the provisions of Section 35FF of the Central Excise Act, 1944 as it stood prior to 06.08.2014 or whether the provisions of the amended Section 35FF of the Central Excise Act, 1944 are applicable. In this regard, I find that though the payment of the amount of Rs.80,00,000/- was paid, during the year 2012 and 2014, in the course of the investigation, the SCN issued to them was decided on 27.02.2018 and the appeal before the Hon'ble Tribunal was filed on 05.06.2018. Therefore, the provisions of the amended Section 35F and 35FF of the Central Excise Act, 1944 are applicable to the appeal filed by the appellant before the Hon'ble Tribunal.

7.2 It is relevant to refer to the provisions of Section 35F of the Central Excise Act, 1944, which is reproduced as under :

“ The Tribunal or the Commissioner (Appeals) , as the case may be, shall not entertain any appeal –

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the [Principal Commissioner of Central Excise or Commissioner of Central Excise];

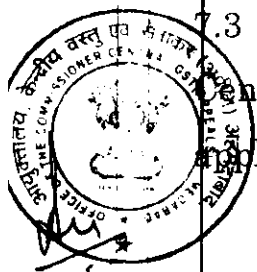
(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.”

7.3 From a bare reading of the second proviso to Section 35F of the Central Excise Act, 1944, it is evident that the amended provisions is not applicable to the stay applications and appeal filed before the



8 I find that subsequent to the amendment of Section 35F and 35FF of the Central Excise Act, 1944, the CBIC had issued Circular No. 984/8/2014-CX dated 16.09.2014. Para 3.1 and 3.2 of the said Circular is reproduced as under :

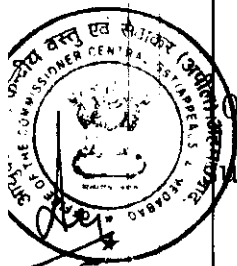
“3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or 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.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.”

8.1 It has been clarified by the CBIC in very clear terms that the payment made during investigation can be considered to be deposit under Section 35F of the Central Excise Act, 1944. Further, it has also been clarified that the amount paid during the investigation takes the colour of deposit under Section 35F only when the appeal is filed and, therefore, the date of filing appeal shall be deemed to be the date of deposit made in terms of Section 35F of the Central Excise Act, 1944.

9. In the instant case, I find that the amount of Rs.80,00,000/- was paid by the appellant during the year 2012 and 2014 and the appeal before the Hon'ble Tribunal, Ahmedabad was filed by them on 05.06.2018. Therefore, as clarified by the CBIC vide Circular No. 984/8/2014-CX dated 16.09.2014, the amount paid by the appellant assumed the character of pre-deposit in terms of Section 35F of the Central Excise Act, 1944 only from 05.06.2018 i.e. the date of filing of appeal before the Hon'ble Tribunal. Therefore, the provisions of the amended Section 35FF of the Central Excise Act, 1944 are applicable to the pre-deposit made under the amended Section 35F of the Central Excise Act, 1944.

10. The advocate for the appellant had in the additional written submissions submitted that the department has filed an appeal before the



Hon'ble Tribunal, Ahmedabad against OIA No. AHM-EXCUS-003-APP-046/20-21 dated 27.11.2020 passed by this authority in the case of the same appellant. However, there is nothing on record to indicate that the said OIA has been stayed or overruled by the Hon'ble Tribunal.

11. In view of the facts discussed herein above, it is held that appellant are entitled to interest, on the amount of pre-deposit refunded to them, in terms of the amended Section 35FF of the Central Excise Act, 1944. Accordingly, the impugned order, to the extent it pertains to rejection of interest, is set aside for not being legal and proper and the appeal filed by the appellant is allowed with consequential relief.

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)
(Akhilesh Kumar)
Commissioner (Appeals)
Date: .12.2021.

Attested:

(Signature)
(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Shah Foils Limited,
1820/1, Santej-Khatraj Road,
Near GEB Sub-Station,
Santej, Taluka : Kalol,
District : Gandhinagar

Appellant

The Deputy Commissioner,
CGST & Central Excise,
Division- Kalol,
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)
4. Guard File.
5. P.A. File.