



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in

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आजादी का
अमृत महोत्सव

By Regd. Post

DIN No.: 20230164SW0000999FEB

(क)	फाइल संख्या / File No.	GAPPL/COM/STD/95/2022-APPEAL / 7693 - 3301
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-100/2022-23 and 27.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	27.01.2023
(ङ)	Arising out of Order-In-Original No. 04/ST/Refund/DC/2021-22 dt. 24.02.2022 passed by the Deputy Commissioner, CGST & CE, Division-Kalol Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate, 2nd Floor, Janta Super Market, Kalol, Gandhinagar- 382715
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Sintex Industries Limited, Head/Corporate Office, Near Seven Garnala, Kalol, Gandhinagar, Gujarat-382721

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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.

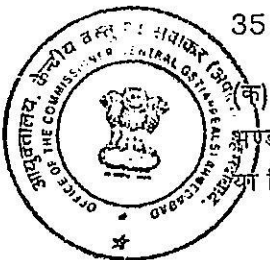
भारत सरकार का पुनरीक्षण आवेदन:-

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 :-

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 :-

(क) 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 भण्डारण किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।



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।

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.

(घ) 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।

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.

(2) 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.

(3) 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।

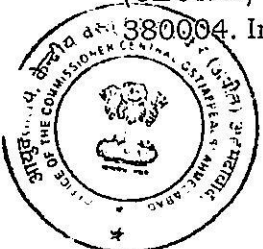
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.



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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपील 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

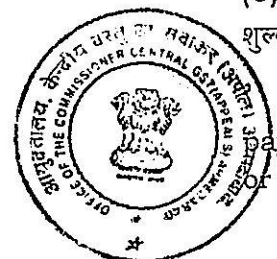
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

(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।

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."



अपीलिय आदेश / ORDER-IN-APPEAL

The Deputy Commissioner, CGST Division-Kalol, Commissionerate-Gandhinagar (hereinafter referred to as the 'Department'), in pursuance of the Review Order No. 01/2022-23 dated 03.06.2022 issued from F.No. GEXCOM/REV/ GST/ OIO/ 1412/ 2022- REV- O/o COMMR-GST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed this appeal against the Order-in-Original No. 04/ST/REFUND/DC/2021-22 dated 24.02.2022 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner, CGST Division-Kalol, Commissionerate-Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Sintex Industries Limited, Near Seven Garnala, Kalol, Tal-Kalol, Dist. Gandhinagar (hereinafter referred to as the "respondent").

2. The facts of the case, in brief, are that the respondent is a manufacturer of Plastic Utility products having manufacturing facilities across India. The respondent were also having Service Tax Registration No. SD/KLL/ISD/01/2005 dated 28.11.2005 as Input Service Distributor (hereinafter referred to also as ISD). The respondent had filed a refund claim for an amount of Rs. 4,04,11,541/- on the basis of OIO No. AHM-EXCUS-003-COM-023-20-21 dated 24.08.2020 passed by the Commissioner of Central GST and Central Excise, Gandhinagar. Their application for refund was rejected vide OIO No.04/S-Tax/Refund/DC/2020-21 dated 29.01.2021 passed by the Deputy Commissioner, CGST Division-Kalol, Commissionerate- Gandhinagar. Being aggrieved, the respondent filed an appeal before the Commissioner (Appeals), CGST, Ahmedabad, who decided the issue vide OIA No.AHM-EXCUS-003-APP-50/2021-22 dated 29.10.2021 in favour of the respondent.

2.1 Thereafter, the respondent tendered an application dated 29.11.2021 seeking Refund amounting to Rs. 4,04,11,541/- alongwith Interest @ 12% per annum. A Show Cause Notice F.No.GEXCOM/RFD/CE/121/2020-CGST-DIV-KLL-COMMRTE-GANDHINAGAR dated 24.01.2022 (in short 'SCN') was issued, proposing rejection of Interest @ 12% on the Refund amount. The SCN was decided vide the impugned order wherein the refund for an amount of Rs. 4,04,11,541/- was sanctioned under Section 11B of the Central Excise Act, 1944



(CEA, 1944) alongwith Interest amounting to Rs.2,44,01,927/- under Section 11BB of the CEA, 1944 (@ 6% per annum).

3. Being aggrieved with the impugned order, the Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order to the extent of inappropriate sanction of interest from the date of payment of amounts instead of from the expiry of three months of date of receipt of refund application and to remand the case back for re-ascertaining the interest in terms of Section 11BB of the Central Excise Act, 1944.

3.1 The refund was sanctioned by the adjudicating authority consequent upon OIA No. AHM-EXCUS-003-APP-50-2021-22 dated 29.10.2021 issued by the Commissioner (Appeals), CGST, Ahmedabad. The appellate order held that the respondents were entitled to refund of the amounts deposited by them alongwith interest in terms of Section 11BB of the Central Excise Act,1944. The Commissioner (Appeals) also held that the refund had arisen as a consequence of OIO passed by the Commissioner, CGST, Gandhinagar and therefore the refund claim filed by the respondents was to be decided within the framework of Section 11B of the Central Excise Act,1944.

3.2 Section 11B and 11BB of the Central Excise Act, 1944 read as :

Section 11B. Claim for refund of duty and interest, if any, paid on such duty. –

(1) Any person claiming refund of any 1 [duty of excise and interest, if any, paid on such duty] may make an application for refund of such 2 [duty and interest, if any, paid on such duty] to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of 1 [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such 2 [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

Provided that ...

Section 11BB. Interest on delayed refunds. –

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty



per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation . - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal , National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal , National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.

3.3 The Commissioner (Appeals) had considered the amounts paid by the respondents as tax/duty and therefore ordered to sanction the refund in terms of Section 11B of the Central Excise Act, 1944 and to sanction the interest on delayed payment of refund in terms of Section 11BB *ibid*.

3.4 Although the respondents have claimed that the amount paid by them should be treated as deposit, they have not challenged the findings of the Commissioner (Appeals) vide OIA No. AHM-EXCUS-003-APP-50-2021-22 dated 29.10.2021. Refund of deposits/pre-deposits are provided under Section 35FF of the Central Excise Act, 1944 whereas, the OIA had directed for payment of refund in terms of Section 11BB of the CEA, 1944. Hence , the adjudicating authority has erred in deciding the refund claim by treating the amount paid by the respondents as a deposit and granting interest from the date of payment of the said amount in terms of Section 35FF.

3.5 The impugned order states to sanction the Refund under Section 11BB of the CEA, 1944, however while quantifying the Interest, the adjudicating authority has granted interest from the date of payment in terms of Section 35FF, hence the adjudicating authority has erred by going beyond the scope of the OIA and inappropriately sanctioned the interest from the date of payment and not after three months from the date of receipt of refund application.

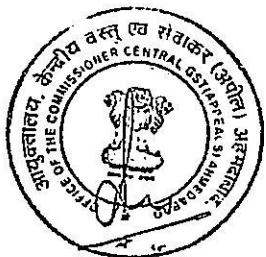


3.6 Reliance is placed on the decision of the Hon'ble Supreme Court of India in the case of Ranbaxy Laboratories Vs Union of India reported at 2011 (273) ELT 3 (SC) and the decision of the Hon'ble CESTAT, Ahmedabad in the case of Wonder Packaging Industries Vs. CCE & ST, Ahmedabad-III.

4. Personal Hearing in the case was held on 09.01.2023 Shri Chintan Vasa, Chartered Accountant, appeared for personal hearing as authorised representative of the respondent. He submitted a written submission during hearing as cross-objection to appeal. He re-iterated the submissions made in the cross-objection to appeal. None appeared from the department.

4.1. Vide the written submission, the respondent has submitted their cross objection as detailed below:

- The appeal filed is not in accordance with law as the same was required to be filed in terms of Section 84(1) read with Section 84(2) of the Finance Act, 1994 whereas the same is filed in terms of Section 35E of the Central Excise Act, 1944.
- In terms of Section 84(1) of the Finance Act, 1994, the appeal is required to be filed within 3 months from the date of the impugned order which expires on 23.05.2022 and the appeal has been filed by the department on 03.06.2022. Hence, the same is barred by time limitation.
- The fact that the refund granted to the respondent was actually a deposit made by them during the course of an investigation and this fact was submitted by them during the course of litigation, hence the amount was a deposit and not a tax and eligible for refund. They relied on the following decisions :
 - Commissioner of central Excise (Appeals), Bangalore Vs KVR Construction reported in 2012 (26) STR 195 (Kar.)
 - Swastik Sanitaryware Ltd. Vs UOI [2013 (296) ELT 321 (Guj.)]
 - Joshi Technologies International, Inc India Projects Vs UOI [2016 (6) TMI 773 Gujarat High Court]
- They contended that various judicial authorities have ruled that amount paid to the Government, which is not liable to be paid, shall be treated as a deposit and liable to be refunded. In support they have cited the following decisions :
 - Geojit BNP Paribas Financial Services Vs CCE, Cus & S.T, Kochi [2015 (39) STR 706] delivered by Kerala High Court.



- Dayapara Tea Co. Ltd Vs Assistant Collector of Central excise & Others [1998 (35) ELT 292 (Cal.)] delivered by Kolkata High Court.
 - CCE, Bangalore-III Vs Motorola India Pvt.Ltd [2006 (206) ELT 90] delivered by Karnataka High Court.
 - Heavy Engineering Corporation Ltd. Vs UOI [2004 (167) ELT 396] delivered by Calcutta High Court.
 - Hindustan Insecticides Ltd. Vs Assistant Collector of Customs [1992 (58) ELT 458].
- It is a settled law that amounts paid during the investigation are considered as deposits and are liable to be refunded if adjudged or held that such amounts are not tax/duty. In support they cited the following decisions :
- Commissioner of Customs Vs Mahalaxmi Exports [2009 (12) TMI 555 – Gujarat High Court]
 - Commr. of Cus, Bangalore Vs Motorola India Pvt Ltd [2006 (4) TMI 390 – Cestat, Bang.]
 - M/s Maheshraj Chemicals Pvt.Ltd Vs CCE., Ahmedabad [2014 (7) TMI 150 – Cestat, Ahmedabad]
 - M/s Nissan Copper Ltd. Vs CCE & ST., Vapi [2014 (8) TMI 222 – Cestat, Ahmedabad]
 - M/s Parle Agro Pvt.Ltd Vs CCE, Noida [2017 (2) TMI 984 – Cestat, Allahabad]
- Circular No.984/08/2014-CX dated 16.9.2014 issued by the CBEC stipulated at Para-3 that the amounts paid during investigation take the colour of a pre-deposit. At Para-5 of the said circular further states that pre-deposit is not a duty and hence should be refunded within 15 days of the letter seeking refund. They also cited the following decisions in support:
- Paper products Ltd Vs CCE 1999 (112) ELT 765 (SC), the Apex Court held that Circulars issued by the Board are not just binding on the department, but the department is also precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provisions.
 - Similar rulings in Collector of central Excise, Vadodra Vs Dhiren Chemical Industries [2002 (143) ELT 19 (SC)]
 - CCE Vs Usha Martin Inc. [1997 (94) ELT 460 (SC)]



- Regarding the applicability of interest from the date of deposit they distinguished the citations cited by the adjudicating authority and referred to their submission before the authority in their appeal against the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, the oral submissions made at the time of personal hearing and additional submission given by the respondent. It is observed that the issue to be decided in this case is Whether the impugned order sanctioning Interest under Section 11BB of the Central Excise Act,1944 on delayed refund, from the date of deposit of the amount is legal and proper or otherwise.

6. In the present appeal, the contention of the department is that, the adjudicating authority was directed by the Commissioner (Appeals) vide OIA No. AHM-EXCUS-003-APP-50/2021-22 dated 29.10.2021 for sanctioning the refund claim to the appellant in terms of Section 11B of the Central Excise Act, 1944 alongwith interest in terms of Section 11BB of the Central Excise Act, 1944. However, while sanctioning the interest, the adjudicating authority has erred in granting interest from the date of deposit of the amount instead of sanctioning interest from the expiry of three months of date of receipt of refund application, as stipulated under Section 11 BB of the Central Excise Act,1944.

7. I find that the issue of interest and its interpretation has been settled by the Hon'ble Apex court in case of Ranbaxy Laboratories Ltd v/s Union of India [2012 (027)ELT 193 SC] wherein it is held that :

(9) " It is manifest from the a fore-extracted provisions that Section 11 BB of the Act comes in to play only after an order for refund has been made under Section 11BB of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of an application to be submitted under sub-section (1) of Section 11BB of the Act, then the applicant shall be paid interest at such rate as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of an application. The explanation appearing below the proviso to Section 11BB introduced a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise but by the court shall be deemed to be an order made under sub-section (2) of Section 11BB of the Act. It is clear that the



explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act.

Manifestly, interest under Section 11BB of the Act becomes payable, if on expiry of a period three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable."

Applying the ratio of the above decision of the Hon'ble Apex Court with the present appeal, it is observed that the 'Department' has misconstrued the decision of the Hon'ble Apex Court and overlooked the lines "...the said explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable." As from the above, it is crystal clear that the date from which the interest becomes payable has to be decided on the merits of the refund claim and not merely on the 'words' of the mandate.

7.1 I further find that, the issue of date of granting interest has been discussed in detail and recorded at Para-18 of the impugned order by the adjudicating authority. Referring to a number of judicial pronouncements, where, in all cases the judicial authorities have ruled that "*interest has to be paid from the date of deposit*". I also find it relevant to refer to the decision of the Hon'ble CESTAT, WZB, Mumbai in the case of *Lanvin Synthetics Pvt. Ltd. Vs Commissioner of Cenntal Excise (Appeals), Mumbai-I*, wherein the Hon'ble Tribunal ruled that :

...
7. *In this case, the department is not contesting the refund of principal amount sanctioned and paid to the appellant. Part of the interest amount paid to the appellant is also not in dispute. However, the contention of Revenue is that the appellant should be entitled for interest on the delayed refund for the period from 15-10-2015 to 22-12-2015 (i.e. the period between expiry of three months from the date of passing of the order by the Hon'ble Bombay High Court and the date of sanction of the refund amount by the department).*

...
15. *In terms of the directions contained in para 15 of the order, petitioners approached the jurisdictional authorities for the refund of amounts deposited by them along with the accrued interest. The Jurisdictional Assistant Commissioner allowed the request made and granted the refund of the amount deposited along with the accrued interest from the date of deposit to the date of refund. Against this order revenue filed the appeal before the Commissioner (Appeals). This appeal was allowed by the Commissioner (Appeals) by the impugned order, restricting the amount of interest from the date of the order of Honourable High Court to the date of refund.*



17. ... Thus in my view the order of the Commissioner (Appeals) allowing the appeal filed by the revenue and restricting the interest from the date of decision of Bombay High Court is without jurisdiction and needs to be set aside on this count only.

...

The facts of the above referred case is identical to the instant case and hence, they are squarely applicable. The Hon'ble Tribunal has in this case categorically ruled that, 'interest is liable to be paid from the date of deposit of the amount'.

7.2 It is also relevant to refer to the decision of the Hon'ble CESTAT, WZB, Ahmedabad dated 22.12.2022 in the case of Omega Elevators Vs C.C.E.- Ahmedabad-I in Service Tax Appeal No. 10626 of 2020-SM wherein the Hon'ble Tribunal rules that :

2. during the investigation appellant paid the service tax amounting to Rs. 51,16,092/-. The matter was adjudicated and the demand was confirmed. Thereafter, the matter travelled up to this Tribunal and Tribunal vide Final Order dated 04-04-2019 held that the appellant is not liable to pay service tax. Thereafter, the appellant claimed the refund from the department. The refund claim was sanctioned to the appellant but interest on account of delayed refund was not given to the appellant on the ground that there was no delay in sanctioning of refund amount as per Section 11BB of the Central Excise Act, 1944. On appeal, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, and held that interest liability would arise only after 3 months from the date of filing of refund application. Ld. Commissioner contended that since in this case, the refund application was filed only on 11-06-2019 and the refund sanctioning authority has sanctioned the refund claim on 11.09.2019 i.e, within three months from date of refund application, no interest is payable.

7. On careful consideration of submissions made by both the sides, I find that it is an amount paid by the appellant as service tax during the course of investigation. This fact is not in dispute. When any amount paid during the investigation, it is only a predeposit made by the appellant. On succeeding in the appeal, the predeposit made in connection to the said appeal is liable to be refunded with interest. The order of Tribunal has attained finality. In that circumstance, the appellant is entitled to claim interest from the date of deposit till its realization. Further, the issue is no longer res integra as the Division Bench of this Tribunal in Parle Agro (P) Ltd. v. Commissioner, CGST - 2021-TIOL-306-CESTAT-ALL, following the ruling of the Apex Court in Sandvik Asia Ltd. - 2006 (196) E.L.T. 257 (S.C.) = 2007 (8) S.T.R. 193 (S.C.) have held that such amount deposited during investigation and/or pending litigation is ipso facto pre-deposit and interest is payable on such amount to the assessee being successful in appeal, from the date of deposit till the date of refund. Therefore, I am of the view that impugned order is not sustainable in the eyes of law.

The Hon'ble Tribunal has ruled in this identical case that 'amount deposited during investigation and/or pending litigation is ipso facto pre-deposit and interest is payable on such amount to the assessee being successful in appeal, from the date of deposit till the date of refund'. The judgement passed in Omega Elevators is of jurisdictional Tribunal and is binding upon the Commissioner (Appeals).



8. In view of the above discussions and judicial pronouncements, I am of the considered view that the impugned order passed by the adjudicating authority sanctioning interest to the respondent from the date of deposit is legal and proper and liable to be upheld. Consequently, the appeal filed by the department is dismissed.

9. विभाग द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the department stands disposed off in above terms.

Akhil Kumar
(Akhil Kumar)
Commissioner (Appeals)
Date : 27th January, 2023

Attested

(Somnath Chaudhary)
Superintendent (Appeals)
CGST, Ahmedabad



By Regd. Post A. D

1. The Deputy Commissioner
CGST Division- Kalol,
Commissionerate- Gandhinagar

APPELLANT

2. M/s. Sintex Industries Limited
Near Seven Garnala, Kalol,
Tal- Kalol, Dist. Gandhinagar

RESPONDENT

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST & Central Excise, Commissionerate-Gandhinagar.
3. The Deputy/Asstt. Commissioner, CGST, Division-Kalol, Commissionerate-Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad.
5. Guard file
6. PA File