

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, Revenue Marg, Ambawadi, Ahmedabad

Phone: 079-26305065 - Fax: 079-26305136

E-Mail : commrappl1-cexamd@nic.in



सत्यमेव जयते

आजादी का
अमृत महोत्सव**By Regd. Post**

DIN No.: 20221064SW0000836578

(क)	फाइल संख्या / File No.	GAPPL/COM/CEXP/107/2022-APPEAL / 4316 - 70
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-051/2022-23 and 27.10.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	31.10.2022
(ङ)	Arising out of Order-In-Original No. 03/ST/Refund/DC/2021-22 dated 20.01.2022 passed by the Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shilp Gravures Ltd. Address:- 780, Pramukh Industrial Estate, Sola-Santej Road, Rakanpur, Taluka-Kalol, District-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 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:-

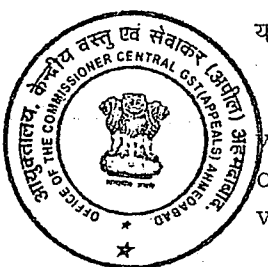
Revision application to Government of India:

(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 या किसी भण्डागार में हो माल की प्रक्रिया 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.

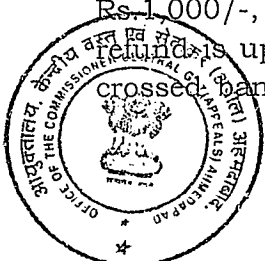
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 / refunds 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

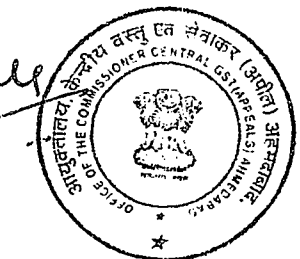
1. This Order arises out of an appeal filed by M/s Shilp Gravures Ltd, 780, Pramukh Industrial Estate, Sola-Santej Road, Rakanpur, Tal- Kalol, Dist. Gandhinagar, Gujarat [hereinafter referred to as "the appellant"] against Order-in-Original No.03/ST/Refund/DC/2021-22, dated 20.01.2022 [hereinafter referred to as "the impugned order"] passed by the Deputy Commissioner, CGST & Central Excise, Kalol Division, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant was issued a Show Cause Notice bearing No.DGCI/AZU/36-68/2006-07 dated 20.03.2007, which was adjudicated vide OIO No.29/Addl.Commr/2008 dated 09.04.2008, wherein the service tax demand of Rs.16,04,940/- was confirmed alongwith interest and penalties under Section 76 and 78 of the Finance Act,1994 (FA,1994) were also imposed.

2.1 The appellants preferred an appeal before the Commissioner (Appeal-II), Central Excise, Ahmedabad, who upheld the said OIO. Being aggrieved, the appellant filed an appeal before the CESTAT, WZB, Ahmedabad. The CESTAT vide Order No. A/11602/2016 dated 25/11/2016 ordered to set aside penalty under Section 76 of the FA,1994 and allowed payment of 25% of the penalty amount under Section 78 of the FA,1994. However, the Hon'ble CESTAT remanded back the matter to the adjudicating authority for the purpose of ascertaining the quantum of interest and fulfilment of the conditions laid down under Section 78 of the FA,1994 for the reduced amount of penalty.

2.2. In the remand proceedings, the issue was decided vide OIO No.AHM-CEX-003-ADC-MS-015-21-22 dated 15.06.2021, wherein the demand alongwith interest was confirmed and appropriated. Further, penalty of Rs.4,01,235/-, being 25% of the confirmed demand was imposed under Section 78 of the FA,1994.

2.3 Thereafter, the appellant preferred a Refund application on 12.10.2021 claiming refund of penalty amount of Rs.3,27,389 /- under Section 76 and penalty amount of Rs. 4,01,235 /-, being erroneously paid twice under Section 78 of the



FA,1994 along with interest. The refund application was decided by the adjudicating authority vide the impugned order wherein the adjudicating authority has sanctioned the refund claim of Rs.3,27,389/- under Section 11B of the Central Excise Act, 1944. However, he has rejected the claim of interest on refund amount of Rs.3,27,389/- under Section 11BB of the CEA,1944. He also rejected the refund claim of Rs. 4,01,235 /- as time-barred under Section 11B of the Central Excise Act,1944.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on following grounds:

(i) The adjudicating authority has not taken into consideration various submissions made by the appellants as well as decisions of the Tribunal relied upon.

(ii) The adjudicating authority has erred in holding the payment of Rs. 4,01,235/- (paid on 02.01.2017) against penalty under section 78 of the FA,1994 as time barred. In order to arrive at this conclusion, the adjudicating authority had argued that the CESTAT order was issued on 25.11.2016 and the payment of the said amount was made on 02.01.2017, hence the amount is not a pre-deposit. Further, since the amount was paid on 02.01.2017, therefore the time limit of one year period under Section 11 B of the Central Excise Act, 1944 expired on 01.01.2018.

(iii) The adjudicating authority disregarded the fact that after being remanded by the CESTAT, the issue of Penalty under section 78 of FA,1994 was again decided vide OIO No.AHM-CEX-003-ADC-MS-015-21-22 dated 15.06.2021 in which the Penalty of Rs. 4,10,325 /- was imposed. Therefore, if at all the time limitation of one year in terms of Section 11 B of the CEA,1944 is required to be calculated, the same would commence on 16.06.2021 and since the refund claim was filed on 14.10.2021, it stands well within the stipulated period of One year.

(iv) The adjudicating authority has erred in not interpreting that time limitations of one year as per Section 11 B of the CEA,1944 pertains to cases of refund of duty and interest only and this would not be applicable in this



case, as, the amount claimed was paid as Penalty under section 78 of the FA,1994. Theyrelied onthe CESTAT decisions in the case of CCE Vs Fibre Foils Ltd – 2000 (122) ELT 640 and Cooper Pharma Vs CCE – 2017(357) ELT 929.

(v) The adjudicating authority has grossly erred in relying on the CESTAT decision in the case of M/s. GSRTC – 2012(2) ECS 160 in as much as the reference to Para 99 (ii) of the Hon'ble Supreme Court order is not squarely applicable to the situation in the instant case.

(vi) the adjudicating authority has wrongly rejected the claim of interest.

(vii) that the adjudicating authority has grossly erred in not appreciating that department cannot withhold an amount of Penalty wrongly paid twice as in the present case.

4. Personal Hearing in the case was held on 09.09.2022 in virtual mode. Mr.Uday M. Joshi, Advocate, attended the hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum as well as oral submissions made by the appellant at the time of Personal Hearing. I find that there are two issues before me for decision. Theyare as under:

(i) Whether the impugned orderrejecting the refund claim of interest on Rs.3,27,389 /- under Section 11BB of the Central Excise Act, 1944 is legal and proper or otherwise.

(ii) Whether the impugned order rejecting the refund claim amount of Rs. 4,01,235/- under Section 11B of the Central Excise Act, 1944 is legal and proper or otherwise.

6. I find that the first issue raised by the appellant pertains to claim of interest on the refund of penalty amount of Rs.3,27,389 /-, which was deposited by them as penalty under Section 76 of the Finance Act,1994 on 14.05.2008. By virtue of the Order of the CESTAT, Ahmedabad, dated 25.11.2016, the said amount of Rs.



3,27,389/- became refundable. The said amount was refunded to the appellant vide the impugned order.

6.1. Interest on delayed refunds is governed by Section 11 BB of the Central Excise Act,1944 which reads as under:

“ 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 ..”

A plain reading of the section makes it clear that the statute allows interest only on **Refund of Duty in certain cases**, whereas in the instant case the appellant have claimed interest on penalty amount. Therefore, the claim of the appellant for interest on refund of penalty is not sustainable on merits.

6.2 Further, I also find that the issue is no longer res integra and, on identical issue, the Hon'ble Supreme Court of India, in the case of Commissioner of Cus. (Port), Kolkata Versus Coronation Spinning India arising out of Civil Appeal No. 1569 of 2005 with C.A. Nos. 1570-1571 of 2005, has decided the issue on 1.5.2015. It was held that:

“....These appeals are accordingly partly allowed holding that interest at the rate of 12% shall be paid to the respondents on the amount of duty and not on fine and penalty. The said amount shall be paid to the respondents within two months.”

6.3. Further, the Hon'ble Tribunal, Ahmedabad has, vide Final Order No. A/11653/2021 dated 01.04.2021 passed in the case of Bundy India Limited Vs. CCE & ST – Vadodara – I, held that the appellants are not entitled to any refund of interest on penalty amount under section 11 BB.



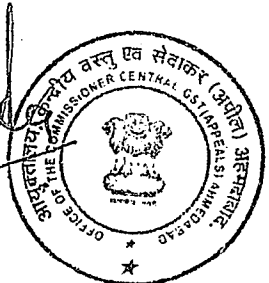
6.4. In view of the above, I find that there is no reason/ground to interfere with the impugned order passed by the adjudicating authority rejecting the appellant's claim of interest on the refund amount of Rs.3,27,389 / -. The impugned order is upheld to this extent.

7. As regards the second issue, I find that there is no dispute that the appellant has paid the penalty amount twice. Firstly, after passing of the OIO No. 29/Addl.Commr/2008 dated 28.03.2008 when they had paid an amount of Rs. 4,01,235/- (being 25% of the penalty amount of Rs. 16,04,940/- imposed under Section 78 of FA,1994) on 14.05.2008 vide GAR-7 Challan. Subsequently, after passing of the order dated 25.11.2016 by the Hon'ble CESTAT, Ahmedabad, which allowed benefit of 25% of penalty in terms of second proviso Section 78 (1) of the Finance Act,1994 subject to fulfillment of the conditions laid down therein, they had paid the amount of Rs.4,01,235/- on 02.01.2017. In the remand proceedings, the Additional Commissioner, CGST & Central Excise, Gandhinagar vide OIO No.AHM-CEX-003-ADC-MS-015-21-22 dated 15.06.2021 quantified the amount of reduced penalty under second proviso to Section 78 (1) of FA,1994 at Rs.4,01,235/- and appropriated the said amount, as being already paid by the appellant on 14.05.2008.

7.1. The adjudicating authority vide the impugned order has rejected the refund under Section 11 B of the Central Excise Act,1944 being time barred.The relevant Section 11B of the Central Excise Act, 1944, reads as under:

"(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 ..."

Hence, it is crystal clear that Section 11B of the Central Excise Act,1944 deals with various provisions for refund of duty of Central Excise and/or interest only. However, in the instant case, the adjudicating authority vide the impugned order has applied these provisions to reject the claim for refund of penalty, which in my considered opinion is not legally tenable as per the wordings of Section 11B of the Central Excise Act, 1944.



7.2. The adjudicating authority, while rejecting the refund claim of penalty amount erroneously paid twice by the appellant, has relied upon the decision of CESTAT, WZB, Ahmedabad in the case of C.S.T., Ahmedabad Vs GSRTC - 2014 (33) S.T.R. 283 (Tri. - Ahmd.). Upon going through the facts of the said case, I find that, M/s GSRTC had filed a refund claim after a period of three years seeking refund of an amount paid by them as Service Tax. The claim was rejected as time barred by the jurisdictional Deputy Commissioner of Central Excise & Service Tax. This decision of the Deputy Commissioner was upheld by the CESTAT as the proviso to Section 11B stands applicable in the said case. Whereas, in the present case, the appellant has sought refund of penalty amount erroneously paid twice. Therefore, application of the judicial pronouncement is not squarely applicable to the facts of the instant case.

7.3 I also find force in the contentions of the appellant by referring to the following decisions of the CESTAT:

➤ in the case of *Cooper Pharma Vs CCE – 2017(357) ELT 929*, the Tribunal held that :

“...Section 11B *ibid* deals with filing of refund application in respect of Central Excise duty. Since there is no specific mention about refund of penalty in Section 11B *ibid*, I am of the view that time limit prescribed therein would not have any application for sanction of such refund amount. Further, the amount in question was recovered by the Department under Section 11 *ibid*, before disposal of appeal by the Tribunal in setting aside the said penalty amount. Since as a consequence of the Tribunal’s order, the appellant has claimed the refund amount, the same cannot be retained by the Department ...”

➤ in the case of *CCE Vs Fibre Foils Ltd – 2000 (122) ELT 640* the Tribunal had held that :

“...This appeal from Revenue claims that the limitation provided in terms of Section 11B of the Central Excise Act, 1944 would apply not only to the refund of duty but also refund of penalty. The wording and the title of the said Section do not support this claim. The Commissioner in his order has clearly brought out that this penalty was deposited in terms of the direction of the Appellate Authority in terms of Section 35F of the



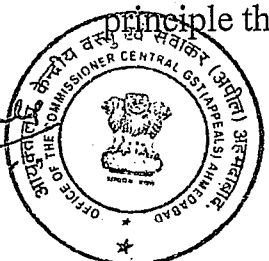
Act. The Revenue have not cited any case law in support of their claim. The appeal does not have merit and is dismissed..”

7.4. I further find that, the CESTAT, SZB, Chennai had held in the case of Dalmia Cements (Bharat) Ltd. Versus Commissioner of C.Ex., Trichy; 2010(259) E.L.T. 734 (Tri. - Chennai) that:

“...The jurisdictional Dy. Commissioner adjudicated the case against the appellants and imposed equal amount of penalty in addition to demanding duty amount and interest thereon. It is agreed by both sides that duty amount, interest thereon as well as 100% penalty were paid within one month from the date of communication of the order. In the circumstances, in terms of the 1st and 2nd proviso to Section 11AC, the appellants were required to only pay 25% of the penalty and having paid the entire penalty, they are entitled to refund of excess penalty of 75%. On an application filed by them, the jurisdictional Dy. Commissioner has sanctioned the refund to the appellants and also they have received the amount. Subsequently, the jurisdictional Commissioner has reviewed the order of the refund leading to the impugned order by the lower appellate authority holding the refund to be in admissible. I am of the view that the action of the jurisdictional Commissioner to review the action of the Dy. Commissioner refunding the excess amount of penalty and the subsequent order of the lower appellate authority are totally unwarranted and uncalled for. As such, the Order-in-Appeal is set aside.”

7.5. It is also observed that penalty amount @ 25% of the duty amount under second proviso to Section 78 (1) of the FA, 1994 was quantified for the first time vide OIO No. AHM-CEX-003-ADC-MS-015-21-22 dated 15.06.2021. Hence, I find merit in the contentions of the appellant that the claim for refund was filed in time i.e. within one year of the order dated 15.06.2021 passed by the Additional Commissioner. Hence, the impugned order passed by the adjudicating authority is not legally sustainable.

8. In view of the discussions made above and following the ratios of the above decisions, I find that the adjudicating authority has erred in following the settled principle that ‘Penalty paid in excess by the appellant do not stand to be hit by time



limitations as prescribed under Section 11B of the erstwhile Central Excise Act, 1944'. Therefore, the impugned order is set aside to the extent of rejecting the amount of Rs. 4,01,235/- paid on 02.01.2017 as penalty under Section 78 of the Finance Act, 1994.

9. Accordingly, I reject the appeal filed by the appellant seeking refund of interest on the refund amount of Rs.3,27,389/-. Further, I allow the appeal filed by the appellant seeking refund of Rs. 4,01,235/- paid on 02.01.2017 erroneously as penalty under Section 78 of the Finance Act, 1994.

10. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

Akhil
27 October, 2022
(AKHILESH KUMAR)
Commissioner (Appeals)

Dated: 27th October, 2022

साक्षात् / Attested

(Somnath Chaudhary)
Superintendent (Appeals)
CGST, Appeals, Ahmedabad



By Regd. Post A. D
M/s Shilp Gravures Ltd,
780, Pramukh Industrial Estate,
Sola-Santej Road,
Rakanpur, Tal -Kalol,
Dist. Gandhinagar, Gujarat

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar
3. The Deputy /Asstt. Commissioner, CGST & CE, Kalol Division, 2nd Floor, Janta Super Market, Kalol, Gandhinagar
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Gandhinagar.
5. Guard file
6. PA File

