



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



By SPEED POST

DIN:- 20231264SW000000BDA1

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3009/2023-APPEAL / 9596 - 9600
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-158/2023-24 and 21.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	21.12.2023
(ङ)	Arising out of Order-In-Original No. 07/REF/ST/GS/2022-23 dated 10.03.2023 passed by the Deputy Commissioner, CGST, Division – Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Kalpatru Power Transmission Ltd., Plot No. 101, Part-III, GIDC Estate, Sector-28, Gandhinagar, Gujarat-382028

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:-

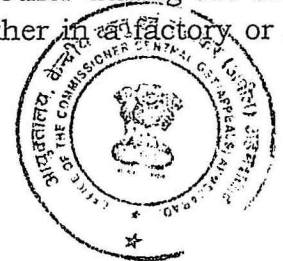
Revision application to Government of India:

(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 ईए-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.

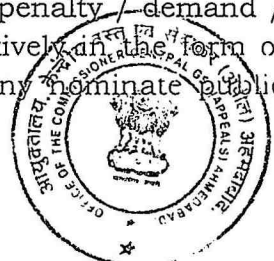
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 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) 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

M/s Kalpatru Power Transmission Ltd., Plot No. 101, Part-III, GIDC Estate, Sector-28, Gandhinagar, Gujarat-382028 (hereinafter referred to as the appellant) has filed the present appeal against Order in Original No. 07/REF/ST/GS/2022-23 dated 10.03.2023 [hereinafter referred to as "impugned order"] passed by the Deputy Commissioner, CGST, Division – Gandhinagar, Gandhinagar Commissionerate [hereinafter referred to as "refund sanctioning authority"].

2. Briefly stated, the facts of the case are that an investigation was initiated against the appellant alleging short payment of service tax under various services. The investigation culminated into issuance of SCN No. DGCEI/AZU/36-15/2013-14/593 dated 17.04.2013, wherein the service tax demand of Rs.10,01,69,146/- was proposed alongwith interest and penalty. The said SCN was adjudicated vide OIO No. AHM-EXCUS-003-COM-029-14-15 dated 20.01.2015 confirming the duty, interest and penalty. Aggrieved by the said OIO the appellant went in appeal and Hon'ble CESTAT Ahmedabad vide Order No. A/10685-10686/2022 dated 10.06.2022 allowed the appeal with consequential relief.

2.2 Consequently, the appellant filed a claim seeking refund of Rs.3,01,06,012/- (*paid during the investigation*) and Rs.75,15,000/- (*paid as pre-deposit for filing appeal before Hon'ble CESTAT*). The refund sanctioning authority vide the impugned order, sanctioned the refund claim of Rs. 1,09,85,243/- (Rs.75,15,000/- along with interest of Rs.34,70,243/- @6%) under the provisions of Section 35F and 35FF of the Central Excise Act, 1944, read with Circular No 984/08/2014-CX dated 16.09.2014, Circular No. 1053/02/2017-CX dated 10.03.2017 and Section 142(3) of the CGST Act, 2017.

3. Aggrieved by the impugned order, the appellant preferred appeal on the grounds elaborated below;

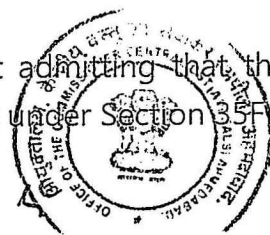
- In the Refund Application dated 28.12.2022, the Appellant had claimed the total refund of Rs. 3,76,21,012/- (Rs. 3,01,06,012 + Rs. 75,15,000/-). However, the Ld. Asst. Commissioner in the impugned order has significantly reduced the amount of refund to Rs. 75,15,000/- which was paid by the Appellants towards condition of pre-deposit. The Impugned Order has failed to even consider that the Appellants had in fact also claimed refund of Rs. 3,01,06,212/- which was paid during the investigation. Before substantially reducing the interest entitlement of the Appellant in the impugned order, the Ld. Asst. Commissioner did not offer any opportunity to the Appellant to substantiate their claim, by issuing a show cause notice or granting a personal hearing, in compliance of the principles of natural justice. Reliance is placed in the case of *Torane Ispat Udyog Pvt. Ltd. v. Union of India*, Writ Petition (L) No. 8566 of 2022 (Also: 2022 (8) TMI 1144-Bombay High Court), wherein Hon'ble Bombay High Court has observed that the concerned officer is bound to furnish reasons to the assessee and the assessee is entitled to file objections. Thereafter, the Authority shall proceed to pass a speaking order. Hon'ble Supreme Court in the case of *Dharampal Satyapal Ltd. vs. Deputy*



Commissioner of Central Excise, (2015) 5 TMI 500-Supreme Court, wherein it was observed:

"It is also trite that when a statute is silent, with no positive words in the Act or Rules spelling out need to hear the party whose rights or interests are likely to be affected, requirement to follow fair procedure before taking a decision must be read into statute, unless the statute provides otherwise."

- In the Impugned Order, the refund claim of the Appellant as partially decided to the extent of Rs. 75,15,000/- without even considering the remaining amount of Rs. 3,01,06,012/- which was paid by the Appellants during the course of investigation is in violation of established principles of natural justice as Ld Adjudicating Authority had neither issued any show cause notice nor offered any opportunity of personal hearing to the Appellant before passing the Order. The Impugned Order is liable to be set aside to such extent.
- The Appellant is entitled for refund of the amount of Rs. 3,01,06,212/- which was paid during the adjudication proceedings along with applicable interest, in terms of Section 35 F and 35 FF of the Central Excise Act, 1944. As per the said provisions an assessee is entitled for interest in terms of Section 35FF of the Central Excise Act, 1944 in respect of an amount deposited under Section 35F of the Central Excise Act, 1944. Further, such interest would be computed from the date of payment till the date of refund.
- The quantum of pre-deposit as mentioned in Section 35F is the minimum amount of deposit which is mandatorily payable by an assessee for admission of an appeal either before Commissioner (Appeals) or before the Hon'ble CESTAT Section 35F of the Central Excise Act, 1944 only states that such amount is necessarily required to be paid by an appellant before preferring the appeal and does not stipulate that any amount in excess thereof would not be treated as a deposit. Hence, the understanding in the Impugned Order is incorrect. They relied upon the following judgments of Hon'ble Courts and Tribunals in case of :
 - Rohit Springforms Pvt. Ltd. - 2020 (2) TMI 189 CESTAT MUMBAI
 - Kukreti Steels Ltd.- 2021 (8) TMI 751 - CESTAT New Delhi
 - Maithan Ceramics Ltd. - 2019 (367) ELT 670 (Tri. - Hyd.)
 - ITC Limited - 2022 (6) TMI 674 Cestat New Delhi
 - Sandvik Asia Limited -2006 (1) TMI 55 Supreme Court
- It is evident from the above case laws that the Appellant is entitled to the refund of the entire amount paid by them during the course of proceedings, including the amount paid under protest. The above amount is liable to be refunded along with interest from the date of its payment to the date of granting of refund in terms of Section 35FF of the Central Excise Act, 1944. Thus, the Impugned Order, deserves to be quashed to the extent it has not granted the refund of Rs. 3,01,06,212/- paid by the Appellants along with interest.
- Without prejudice to above and presuming without admitting that the amount deposited prior to filing of the appeal is not a deposit under Section 35F as per the



CBEC Circular dated 16.9.2014, it is submitted that it would still be a deposit with the Government, which would be refundable with interest under Article 265 of the Constitution of India. Reliance is placed on the decision of Jain Irrigation Systems Ltd. vs. Commissioner of Central Excise, Nashik, 2015 (9) TMI 688 - CESTAT MUMBAI, wherein it was held that once an amount has not been paid as tax, it necessarily partakes the nature or colour of a deposit. Thus, in the present case, the amount deposited after issue of show cause notice and before filing of appeal is in the nature of deposit with the Government, which is refundable along with interest under Article 265 of the Constitution.

- The appellant is entitled to refund of the principal amount of Rs. 3,01,06,212/- and interest on the entire refund amount under Section 35FF, from the date of payment of the said amount till the date of refund as the entire amount was deposited by the Appellants in the nature of pre-deposit under Section 35F. Once the amount is in the nature of pre-deposit under Section 35F, the Appellant is entitled to interest under Section 35FF of the Central Excise Act, 1944 from the date of payment of such amount to the date of its refund.
- Reliance in this regard, is placed on the following cases, wherein it was held that the amount deposited during the course of investigation is in the nature of pre-deposit under Section 35F and thus, interest @ 12% is to be granted on the same from the date of payment.
 - Jai Bhawani Concast Pvt. Ltd. -, 2022 (9) TMI 1281-CESTAT NEW DELHI
 - Rishabh Transformers- 2022 (6) TMI 378 - CESTAT NEW DELHI
 - Allied Chemicals and Pharmaceuticals Pvt. Limited vs. - 2022 (4) TMI 929-CESTAT NEW DELHI
 - Amar Pratap Steels Pvt. Ltd. - 2022 (8) TMI 536 – CESTAT NEW DELHI
 - Gautam Industries and Industrial Casting - 2022 (1) TMI 507-CESTAT CHANDIGARH
- Hence, in view of the above case laws, the Appellants are also entitled to interest on the entire amount which was deposited by them during the course of proceedings. Thus, to the extent the Impugned Order has considered only the amount of Rs.75,12,686/- towards 7.5% pre-deposit and has granted interest only on that amount, the Impugned Order deserves to be quashed. The Appellants are entitled to interest on the entire amount paid by them i.e. Rs. 3,76,21,012/-
- CBEC Circular dated 16.09.2014 uses the terminology 'date of deposit' and further provides that the date of filing of appeal would be treated as date of deposit and accordingly, the interest would be payable from the said date of deposit only. However, Section 35FF of the Central Excise Act, 1944 provides for grant of interest on the refund of pre-deposit amount from the date of payment of such amount. Further, there is no deeming fiction provided under the said section as to what would be deemed as date of payment. Therefore, in light of the settled legal proposition, it is submitted that the Appellant is entitled to interest on the refunded amount from the date of payment of such amount till its realization. The Appellant further submits that the courts have granted interest @ 12% also in



some of the above judgments whereas the interest granted in the Impugned Order is at 6%.

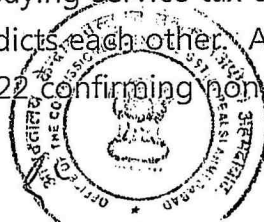
- Hon'ble Courts have granted interest from the date of actual payment in the above judgments, but also granted compensatory interest at 12% in some of the cases. In the present case, even if the case of the Ld. Adjudicating Authority in the Impugned Order is accepted for the sake of argument, then for the remaining amount of deposit, interest is required to be calculated at the compensatory rate of 12%, and not the statutory rate of 6% under Section 35FF of the Central Excise Act, 1944.
- The Appellant requested to quash and set aside the Impugned Order-in-Original dated 10.03.2023 to the extent that it denies the refund of the amount of Rs.3,01,06,212/- along with interest to them.

4. Personal Hearing in the case was held on 25.10.2023. Shri Ambarish Pandey, Advocate, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow their appeal.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum, additional written submission, oral submissions made during personal hearing and the documents available on record. The issue to be decided in the present appeal are;

- a) Whether not granting refund of Rs.3,01,06,212/- paid during the investigation is legal and proper or otherwise?
- b) Whether restricting the interest on the amount of Rs.75,15,000/- instead of Rs.75,12,686 (actually paid) is legal and proper or otherwise?
- c) Whether appellant is eligible for interest @12% instead of 6% granted by the refund sanctioning authority.

6. The appellant during the period of investigation deposited amount of Rs.3,01,06,012/- in March, 2016. A notice was issued and subsequently decided against the appellant vide OIO dated 20.01.2015. The appellant challenged the said OIO before Hon'ble CESTAT Ahmedabad and additionally deposited an amount of Rs.75,25,000/- as pre-deposit at the time of filing appeal. However, in the appeal proceedings, the matter was decided in their favour and consequently they filed a claim on 28.12.2022, seeking refund of said amounts. In the refund claim filed the appellant also placed on record their letter no. KPTL/2015-16/SCN/715 dated 15.3.2016, informing the JDC that the amount of Rs.3,01,06,012/- deposited as tax and paid under protest would be reflected as receivable in their books of account and that they would avail CENVAT credit of this amount after one month from the date of communication. The department may intimate the objection if any. In response, the JDC vide letter dated 09.05.2016, informed that the pre-deposit of said amount cannot be availed as CENVAT credit as the same will not qualify as service tax paid. As the act of paying service tax under protest and then availing the CENVAT credit of the same contradicts each other. Alongwith the claim they also submitted C.A. certificate dated 22.12.2022 confirming non-availment of



said amount against any service tax or other liabilities and have shown the same as recoverable in their Books of Accounts.

6.1 It is observed that Hon'ble CESTAT Ahmedabad decided the issue on merits in favour of the appellant wherein the entire demand confirmed vide OIO dated 20.01.2015 was set-aside on merits. Therefore, the amounts i.e. the amount of Rs.3,01,06,012/- paid during the investigation and Rs.75,15,000/- paid as pre-deposit for filing appeal before Hon'ble CESTAT shall be eligible for refund. However, the refund sanctioning authority sanctioned refund of only Rs.75,15,000/- alongwith interest of Rs.34,70,243/-. The impugned order is silent on the admissibility of refund claim of Rs.3,01,06,012/- paid during the investigation as no findings were recorded on this account. The appellant submitted C.A. certificate dated 22.12.2022 confirming non-avilment of said amount against any service tax or other liabilities and have shown the same as recoverable in their Books of Accounts, however, no findings was recorded countering their submissions. I find that the amount paid by the appellant, during the course of investigation and appropriated against the confirmed demand cannot be retained by the department when the said demand was subsequently held as unsustainable on merits by Hon'ble CESTAT. Rejection of refund of such amount should be made by raising a SCN and following the principles of natural justice, which I find was not followed by the refund sanctioning authority. The adjudicating authority by not recording the rejection of refund claim of Rs.3,01,06,012/- has denied the justice to the appellant. As natural justice is the essence of fair adjudication, I find that the issue pertaining to the refund of Rs.3,01,06,012/- needs to be remanded back to the refund sanctioning authority for passing a speaking order after granting personal hearing to the appellant.

6.2 Further, attention is also invited to Circular No. 984/8/2014-CX., dated 16-9-2014, wherein Board at para-3 has clarified that;

"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."

Any amount paid during investigation takes the colour of deposit. So, where the appeal is decided in favour of the party/assessee, they shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.



7. As regards, the payment of interest, it is observed that at para-5 of aforesaid circular, it is clarified that the refund of pre-deposit is to be made alongwith interest at the prescribed rate from the date of making deposit to the date of refund in terms of Section 35FF.

"5. Refund of pre-deposit :

5.1 Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.

5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.

5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

5.6 It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 supra."

7.1 Section 35FF inserted vide F.A. (No.2) Act, 2014, w.e.f 6.8.2014, stipulates that any amount paid for filing appeal has to be treated as pre-deposit and interest shall accrue from the date of payment till the date of refund of such amount. Further, the rate of interest is prescribed in Notification No.24/2014-C.E. (N.T.), dated 12-8-2014. Interest @ 6% per annum has been fixed for delayed refund of pre-deposit under Section 35FF of Central Excise Act, 1944.

[SECTION 35FF. Interest on delayed refund of amount deposited under section 35F. —
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.]

7.2 In the instant case, the refund sanctioning authority has granted interest @6% on the amount Rs.75,12,686/- instead of considering the actual pre-deposit of



Rs.75,15,000/- made by the appellant. As far as the rate of interest is concerned, I find that the interest rate has correctly fixed @6%. However, by restricting the interest on the amount Rs.75,12,686/-, I find that the adjudicating authority has not acted in accordance with the law. Any amount deposited by the appellant under Section 35F has to be returned with applicable rate of interest, irrespective of the fact whether the payment made exceeded 7.5% of duty amount. The appellant has deposited Rs.75,15,000/- as pre-deposit challenging the confirmed demand. So long as the amount represent pre-deposit, interest shall be granted on this amount considering the same as pre-deposit without restricting the amount to 7.5% of duty. Thus, I find that the appellant is eligible for interest on entire amount of deposit made i.e. Rs.75,15,000/-.

8. In view of the discussion and findings in the foregoing paras, I partially set-aside the impugned order and remand the matter back to the refund sanctioning authority to re-examine the issues listed at para-5 (a) and (b) and pass a speaking order after following the principles of natural justice.

9. 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]
21.12.2023

ज्ञानचंद जैन

आयुक्त (अपील्स)

सत्यापित/Attested :

[Signature]

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

Dated: 21.12.2023



BY RPAD / SPEED POST

To

M/s Kalpatru Power Transmission Ltd.,
Plot No. 101, Part-III, GIDC Estate,
Sector-28, Gandhinagar,
Gujarat-382028.

Appellant

The Deputy Commissioner,
CGST, Division – Gandhinagar,
Commissionerate Gandhinagar.

Respondent

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
4. ~~Guard File.~~

