



सत्यमेव जयते

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



DIN:20230364SW000000DB22

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/357/2022-APPEAL / 9478-62
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-188/2022-23
दिनांक Date : 10-03-2023 जारी करने की तारीख Date of Issue 15.03.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 03/AC/2022-23/REF दिनांक: 23.05.2022, issued by Deputy/Assistant Commissioner, CGST, Division-I, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Sovereign Metals Ltd.
(Earlier known as M/s. Edelweiss Metal Ltd.),
Revenue Block-184,185&187, Phase-III,
GIDC Naroda, Ahmedabad-382330

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-I, Ahmedabad North
,Ground Floor, Jivabhai Mansion Building, Aashram Road, Ahmedabad -
380052

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

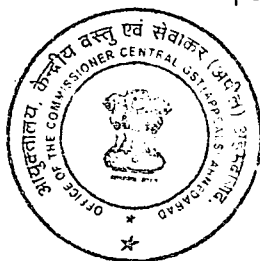
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

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

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

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

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

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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

M/s. Sovereign Metals Ltd. (earlier known as M/s. Edelweiss Metal Ltd), Revenue Block -184, 185 & 187, Phase-III, GIDC Naroda, Ahmedabad-382330 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.03/AC/2022-23/REF dated 23.05.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North Commissionerate, Ahmedabad (hereinafter referred to as '*the refund sanctioning authority*'). The appellant were registered with the department and were holding Central Excise Registration No.AACCE9681QEM001 as well as Service Tax Registration No.AACCE9681QSD001.

2. Facts of the case, in brief, are that during the course of audit of appellant's statutory records and audited books of accounts, carried out by the Central Excise & Service Tax Audit-II Commissionerate, Ahmedabad, for the period February, 2014 to June, 2015, it was noticed that the appellant had taken inadmissible CENVAT credit on certain inputs and input services. A FAR No. 642/2014-15 dated 04.01.2016 was thereafter issued, followed by a Corrigendum dated 27.05.2016. On the revenue paras raised, the appellant vide CENVAT debit entries reversed amount totaling to Rs.26,00,790/-, under protest.

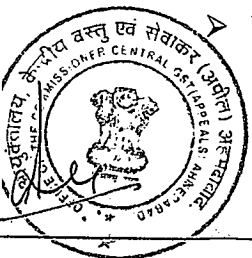
2.1 As the remaining amount and interest was not paid, a Show Cause Notice (SCN) No.CE/15-65/C-1/AP-II/FAR-642/RP-2,4 & 5/15-16 dated 08.07.2016 was issued to the appellant proposing recovery of Rs.31,95,876/- under Section 11A(4) of the CEA, 1944 and appropriation of amount of Rs.26,00,790/- paid under protest against the said demand. Interest under Section 11AA and imposition of penalty under Sections 11AC of the CEA, 1944 were also proposed.

2.2 The said SCN was adjudicated by the then A.C., C.Ex., Division-I, Naroda, Ahmedabad vide O-I-O No.06/AC/Demand/18-19 dated 17.07.2018, wherein the demand alongwith interest was confirmed and penalty equivalent to demand amount was also imposed.

2.3 Aggrieved by the said O-I-O, the appellant preferred appeal before the Commissioner (A), who vide O-I-A No.AHM-EXCUS-002-APP-111-18-19 dated 30.10.2018, upheld the O-I-O. Being aggrieved by the said O-I-A the appellant preferred appeal before the Tribunal. The Hon'ble CESTAT, Ahmedabad vide Order No. A/10227/2022 dated 08.03.2022, held the CENVAT credit admissible and allowed the appeal filed by the appellant. Consequent to the CESTAT Order, the appellant filed an application before the A.C., Division-I, seeking refund of Rs.26,00,790/- alongwith interest. The refund sanctioning authority vide, impugned order, allowed the refund but remained silent on the admissibility of interest.

3. The appellant is, therefore, in appeal against the impugned order passed by the refund sanctioning authority, on the grounds elaborated below:-

- Interest on the refund amount was sought from the date of deposit till the date of refund, but was not considered by the refund sanctioning authority.
- The amount claimed as refund was paid as deposit under protest and since the issue has attained finality, the appellant is entitled to interest from 18.10.2015 (date of payment) to 25.03.2022 (date of refund).



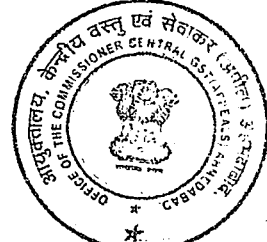
- They placed reliance on various case laws:
- 2006 (196) ELT 257 (SC)-Sandvik Asia Ltd.
 - 2022 (380) ELT 319-Kesar Enterprises.
 - 2015(324) ELT 58- Karur KCP Packaging Ltd.
 - 2007 (215) ELT 166 (SC)- ONGC Ltd.
4. Personal hearing in the matter was held on 6.03.2023. Shri P. P. Jadeja and Shri Mukesh J. Matreja, both Consultants, appeared on behalf of the appellant. They reiterated the submissions made in the appeal memorandum.
5. I have carefully gone through the facts of the case, the impugned order passed by the refund sanctioning authority, earlier OIO, OIA, CESTAT Order as well as the submissions made by the appellant in their appeal memorandum and at the time of personal hearing. The limited issue to be decided in the present appeal is as to whether the appellant is eligible for the interest on the refund of Rs.26,00,790/- sanctioned vide the impugned order?
6. On examining the facts of the case, I find that the appellant have made the deposit of Rs.26,00,790/- under protest during the course of audit and subsequently in light of the Hon'ble Tribunal's Order dated 08.03.2022, they had sought refund of the said amount and alongwith interest accruing from the date of deposit. The refund sanctioning authority has granted the refund under Section 11B of the Central Excise Act, 1944. He, however, did not give any findings on the admissibility of interest. Thus, the appellant is in appeal challenging non-payment of interest. The appellant have claimed that the disputed amount was paid as deposit under protest and since the issue has attained finality, they are entitled to interest from date of payment (18.10.2015) to the date of refund (25.03.2022).
7. Though interest was sought by the appellant while filing the refund claim, the same was neither denied nor granted by the refund sanctioning authority. I find that there is no specific finding in the impugned order as to whether the appellant is entitled to the interest on refund under Section 11BB or otherwise with the reasons. Thus, to that extent the impugned order is a non-speaking order. Therefore, in the interest of natural justice, I find it is a fit case to be remanded to the refund sanctioning authority for recording his findings on the claim of the appellant for interest on the amount of refund sanctioned.
8. In view of the above discussion, I allow the appeal filed by the appellant by way of remand.
9. The appeal filed by the appellant stands disposed off in above terms.

Arun Kumar
 10/5 March 2023
 (अखिलेश कुमार)
 आयुक्त(अपील्स)

Attested

Rekha A. Nair
 (Rekha A. Nair)
 Superintendent (Appeals)

Date: 03.2022



CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Sovereign Metals Ltd.

(earlier known as M/s. Edelweiss Metal Ltd),

Revenue Block -184, 185 & 187,

Phase-III, GIDC Naroda,

Ahmedabad-382330

Appellant

The Assistant Commissioner

CGST, Division-I,

Ahmedabad North

Ahmedabad

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
4. Guard File.

