



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- टेलिफैक्स 07926305136



DIN: 20221064SW000000EC37

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/726/2021-APPEAL / 3789-93
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-44/2022-23
 दिनांक Date : 29-09-2022 जारी करने की तारीख Date of Issue 06.10.2022
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 02/AC/Pre-deposit/Refund/2021-22/NKS दिनांक: 25.08.2021, issued by Assistant Commissioner, Division-V, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s SKF Technologies India Pvt. Ltd.
 (Now SKF Engineering and Lubrication India Pvt. Ltd.),
 Milestone Kandla-333, Village-Kerala,
 Taluka-Bavla, Ahmedabad-382220

2. Respondent

The Assistant Commissioner, CGST, Division-V, Ahmedabad North, 2nd
 Floor, Shahjanand Arcade, Memnagar, Ahmedabad

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 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 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.

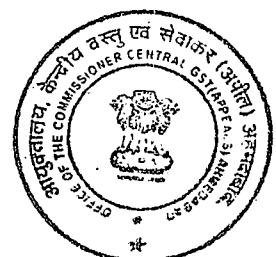
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अनुसूचि-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 अपीलो 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.

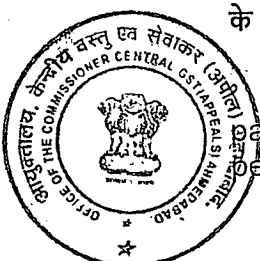
⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

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 मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।



In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

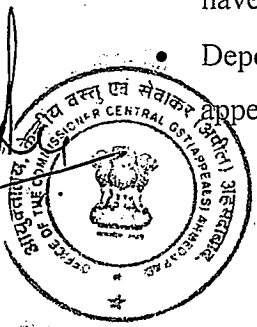
ORDER-IN-APPEAL

The present appeal has been filed by M/s. SKF Technologies India Pvt Ltd (Now SKF Engineering and Lubrication India Pvt Ltd), Milestone Kandla-333, Village- Kerala, Taluka-Bavla, Ahmedabad – 382220 (hereinafter referred to as “the appellant”) against Order-in-Original Number 02/AC/Pre-deposit/Refund/2021-22/NKS dated 25.08.2021 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST & Central Excise, Division V, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case is that the appellant had filed a refund claim of Rs.67,13,674/- and Rs.3, 75,000/- on the ground that they had paid the mandatory pre-deposit amount under Section 35F of erstwhile Central Excise Act, 1944 for filing of appeal before the Hon'ble CESTAT, Ahmedabad against the Order-in-Original No. AHM-EXCUS-002-COMMR-22-14-15 dated 27.02.2015 and now, the CESTAT, Ahmedabad has decided the matter vide their Final Order No. A/11135-11137/2020 dated 25.08.2020 and allowed the appeal of the appellant. The adjudicating authority vide the impugned order sanctioned the refund claim of Rs.67,13,674/- and rejected the refund claim of Rs. 3,75,000/- under the provision of Sub-section 2 of Section 11B of Central Excise, Act, 1944 read with provision made under Sub-section 3 of Section 142 of CGST Act, 2017.

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

- The Assistant Commissioner rejected the refund of Rs. 3,75,000/- on single ground that defect memo issued by CESTAT Registrar was in the name of M/s SKF Tech Milestone. There is no other ground for denying the refund.
- The CESTAT Registrar inadvertently mentioned the name as "SKF Tech Milestone" instead of "SKF Technologies India Pvt Ltd". There is no company in existence with name of SKF Tech Milestone. The word "Milestone" is actually part of appellant's address which has been inadvertently mentioned against the name of company
- It can be seen from the defect notice that correct address of the appellant is mentioned i.e. Milestone Kandla-333, Village -- Kerela, Taluka- Bavla, Ahmedabad, Gujarat-382220.
- The CESTAT Registrar while issuing defect memo wrongly mentioned the name milestone which is clerical mistake which does not mean that appellant has not made payment. There are no other discrepancy noticed while rejecting refund by assistant commissioner.
- Further, the defect notice refers to OIO No. AHM-EXCUS-002-COMMR-22-14-15 dated 27.02.2015 which does not include any company with the name "SKF Tech Milestone". The adjudicating authority could have very well checked the OIO and could have arrived to the correct conclusion.
- Deposit has been made by the appellant and hence refund shall be allowed to the appellant. The OIO does not deny that the appellant has made payment towards pre



deposit of Rs. 3,75,000/-. In para 10 of the OIO, the adjudicating authority has duly observed that the company had paid Rs. 3,75,000/- as pre-deposit on behalf of director which the CESTAT Registrar did not accept.

- Further, in Para 12 of the OIO, the adjudicating authority has duly observed that the principles of unjust enrichment does not apply as the duty has been borne by the claimant i.e. M/s SKF Technologies India Pvt. Ltd.
- It is submitted that once there is no dispute regarding payment of duty, there is no question of denying the refund on the basis of incorrect Defect Memo. The Defect Memo is not a duty paying document or proof of payment of duty. The challan is the document evidencing payment of duty.
- It is submitted that amount of Rs. 3,75,000/- has been deposited by appellant only vide challan No. 0002288-15062015-00044 dated 15.06.2015. It can be seen from the copy of challan that Rs. 3,75,000/- is paid by appellant and not by SKF Tech Milestone. The full name of the appellant i.e. M/s SKF Technologies (India) Pvt. Ltd. is appearing on the challan along with Excise Registration no. AAACC4393DXM002. It can be seen that the registration no. matches with the no. appearing on the challan.
- Hence refund shall be allowed to appellant.

4. Personal hearing in the case was held on 26.09.2022. Shri Duegesh R. Kathuria, Authorised person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The dispute involved in the present appeal relates to the rejection of the refund claim amounting to Rs. 3,75,000/- paid by appellant vide Challan dated 15.06.2015 as pre-deposit, on behalf of the Director of the company, on the ground that the defect memo issued by the CESTAT Registrar was in the name of M/s SKF Tech Milestone and not in the name of the appellant.

6. I find that below mentioned facts has emerged on verifying the documents on records :

(a) The appellant had preferred an appeal before CESTAT, against the OIO No. AHM-EXCUS-002-COMMR-22-14-15 dated 27.02.2015. In the said OIO, the Commissioner confirmed demand of Rs. 1,40,46,374/- & Rs. 7,54,59,281/- (Total - Rs. 8,95,15,655/-) against the appellant. Further, penalty of Rs. 50,00,000/- was imposed on Shri Chandramowli Srinivasan, Chairman and Director of the appellant at that time. The appellant made the following payments towards mandatory pre-deposit amount under Section 35F of Central Excise Act, 1944 for filing appeal before CESTAT.

- (i) Rs. 67,13,674/- paid by the appellant vide debit in RG 23A entry no. 443 dated 13.06.2015 towards demand raised and
- (ii) Rs. 3,75,000/- paid by the appellant vide Challan 00022881506201500044 dated 15.06.2015 towards penalty imposed on Director of appellant.



(b) However, the CESTAT registrar did not accept the challan of pre-deposit paid towards director of appellant, since it was paid from own account of appellant and issued a defect memo dated 24.06.2015, which is addressed to "Shri Chanramowli Srinivasan, Chairman & Dir of M/s. SKF Milestone, Kandla-333, Village Kerala, Taluka Bavla, Ahmedabad Rajkot Highway, Ahmedabad" and the said defect memo also showing reference of OIO No. AHM-EXCUS-002-COMMR-22-14-15 dated 27.02.2015.

(c) Thereafter, the Director applied for non-assessee registration under Central Excise and paid penalty from his own account and deposited the same vide Challan no. 69103752101201610129 dated 21.01.2016.

(d) Subsequently, the CESTAT decided the matter vide their Final Order No. A/11135-11137/2020 dated 25.08.2020 and allowed the appeal in favour of appellant. All demands against the appellant and the director were dropped.

(e) After receiving CESTAT aforesaid Order dated 25.08.2020, the appellant filed a refund claim for Rs. 67,13,674/- and Rs. 3,75,000/- which was paid from appellant's account vide debit entry no. 443 dated 13.06.2015 and challan no. 00022881506201500044 dated 15.06.2015 respectively.

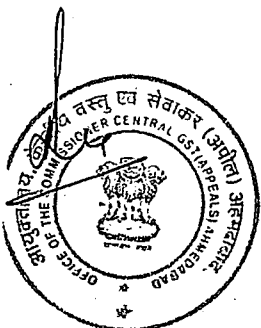
(f) The adjudicating authority vide impugned order sanctioned refund of Rs. 67,13,674/- and rejected refund of Rs. 3,75,000/- under the provision of Sub-section 2 of Section 11B of Central Excise Act, 1944 read with provision made under Sub-section 3 of Section 142 of CGST Act, 2017.

7. I find that the adjudicating authority had rejected the refund of Rs. 3,75,000/- without giving any cogent reason in the finding portion of the order and only discussed as under:

"15. As per practice prevailing in erstwhile Central Excise the subject refund claim was sent to Audit (HQ) vide this office letter dated 24.08.2021 for pre-audit purpose as the claim amount was more than Rs. 05 lakhs. In reply to this office letter Audit Section vide letter no. VI/1(b)20/Pre-Audit/Div-V/17-18 dated 25.08.2021 has intimated to that the refund claim is found in order and cleared the file with following remarks :

"It is notice that defect memo of Rs. 3,75,00/- by CESTAT issued to M/s. SKF Tech Milestone and not to M/s. SKF Technology India Pvt. Ltd., Therefore, the amount of Rs. 3,75,000/- is not eligible for refund in case of M/s. SKF Technologies India Pvt. Ltd.

Further JDC/JAC must ensure that no recoverable arrears are outstanding against the assessee and the order has been accepted by the competent authority."



8. I also find that main contention of the appellant is that the CESTAT Registrar inadvertently mentioned the name as "SKF Tech Milestone" instead of "SKF Technologies India Pvt Ltd", which is a clerical mistake which does not mean that appellant has not made payment. There is no company in existence with name of SKF Tech Milestone. The word "Milestone" is actually part of appellant's address which has been inadvertently mentioned against the name of company.

9. I also find that the adjudicating authority in Para 10 of the impugned order has duly observed that the appellant had paid Rs. 3,75,000/- as pre-deposit on behalf of director which the CESTAT Registrar did not accept, which reads as under:

"10. Further, the claimant had paid Rs.3,75,000/- pre-deposit for appeal filed by director Mr. Chandramowli Srinivasan. The pre-deposit was made vide Challan No. 00022881506201500044 dated 15.06.2015. The CESTAT registry did not accept the said deposit as claimant had paid the same from his own account and issued a defect memo."

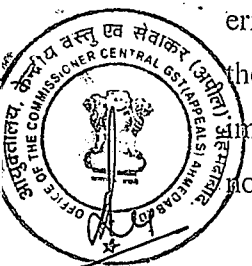
10. In this regard, I find that the amount of Rs. 3,75,000/- paid by the appellant on behalf of their Director not considered as pre-deposit by the CESTAT registrar, however, it cannot be said that the said amount was not paid by the appellant. In my considered view the said amount also counts towards pre-deposit made by the appellant, as the said amount was not considered as pre-deposit made by the Director of the appellant by the CEATAT registrar. In respect of the refund under Section 11B of the Central Excise Act, 1944 relevant document is duty paying documents, which in the present case is Challan No. 00022881506201500044 dated 15.06.2015. I also find that the said Challan has been issued in the name of the appellant and not 'SKF Tech Milestone' and also submitted by the appellant to the adjudicating authority along with their refund claim.

11. I also find that the Board vide Circular No.1053/02/2017-CX dated 10.03.2017 inter alia instructed that where the appeal is decided in favour of the party, he shall be entitled to refund of the amount deposited in terms of Section 35F of the Central Excise Act, 1944. The relevant text of the circular read as under:

"26. Refund of pre-deposits:-(i) 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

(ii) 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."

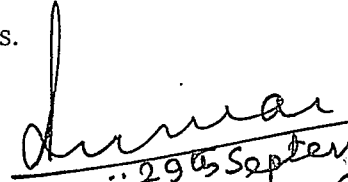
12. In view of the discussion made in para supra, I find that the adjudicating authority has erred in rejecting refund of Rs. 3,75,000/- and it is also pertinent to note that the said rejection by the adjudicating authority is without giving any proper finding. Therefore, I hold that the impugned order passed by the adjudicating authority rejecting refund claim of Rs. 3,75,000/-, is not legal and proper and deserve to be quashed. Accordingly, I set aside the impugned order in




respect of the rejection of refund amount of Rs. 3,75,000/- and allow the appeal filed by the appellant.

13. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.


29 September, 2022
(Akhilesh Kumar)
Commissioner (Appeals)

Attested


(R. C. Maniyar)
Superintendent (Appeals),
CGST, Ahmedabad

Date : 29.09.2022



By RPAD / SPEED POST

To,
M/s. SKF Technologies India Pvt Ltd
(Now SKF Engineering and Lubrication India Pvt Ltd),
Milestone Kandla-333,
Village- Kerala, Taluka-Bavla,
Ahmedabad – 382220

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division-V, Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division V, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- ✓ 5) Guard File
- 6) PA file