



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: 20221164SW0000617317

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2513/2021-APPEAL/4546-50
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-54/2022-23
 दिनांक Date : 02-11-2022 जारी करने की तारीख Date of Issue 09.11.2022
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/REFUND/05/AC/JRS/RUSHIL/2021-22
 दिनांक: 07.06.2021, issued by Assistant Commissioner, CGST, Division-VI, Ahmedabad-
 North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Rushil Decore Ltd,
 Rushil House, Near Sindhu- Bhavan Road,
 Shilaj, Ahmedabad-380058

2. Respondent

The Assistant Commissioner, CGST, Division-VI, 7th Floor, B.D. Patel
 House, Nr. Sardar Patel Statue, Naranpura, Ahmedabad- 380013

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 :

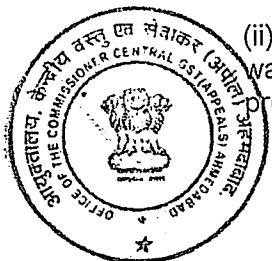
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 हांगि 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 गान्य 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.

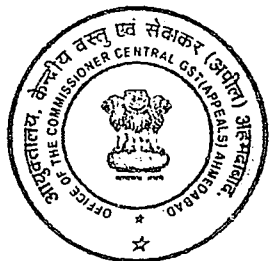
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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

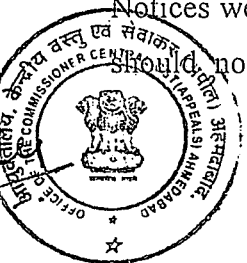
The present appeal has been filed by M/s. Rushil Décor Ltd., Rushil House, Near Sindhu-Bhavan Road, Shilaj, Ahmedabad – 380058 (hereinafter referred to as “the appellant”) against the Order-in-Original No. GST-06/REFUND/05/AC/JRS/RUSHIL/2021-22 dated 07.06.2021 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST & Central Excise, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are engaged in manufacture and clearance of goods falling under Chapter 48 and 85 of the Central Excise Tariff Act, 1985. The appellant was earlier registered with the Central Excise Department having Registration No. AABCR3005NXM001. In the GST regime, appellant is registered under GSTIN No. 24AABCR3005N1ZK.

2.1 The appellant had obtained the Advance Authorisation No. 0810134777 dated 12.03.2015 from DGFT for import of raw materials duty free to be used in the manufacture of their final product to be exported. They had imported raw material vide various bills of entry. As per the Advance Authorisation No. 081013477, the appellant required to fulfill their export obligation within 18 months period. However, due to non fulfillment of the export obligation within the time limit prescribed, the appellant required to be made payment of import duties along with applicable interest. Accordingly, the appellant has paid the amount of customs duty namely Basic Customs Duty (BCD) and Additional Customs Duty (CVD and SAD) along with interest vide Challan dated 29.04.2020.

2.2 As, the goods imported by the appellant were for used in the manufacture of finished goods in the factory, as per the erstwhile Central Excise Act, 1944 and under the Cenvat Credit Rules, 2004, in pre-GST period, in terms of Rule 3 of the Cenvat Credit Rules, 2004, the Cenvat credit of CVD and SAD paid on imported goods is admissible. Further, as per Rule 9 of the Cenvat Credit Rules, 2004, the Customs Challan, under which the CVD and SAD is paid, is a valid document on strength of which the credit can be availed and appellant could have availed the credit of the said amount on the strength of Challan. However, the said differential CVD and SAD was paid after the implementation of GST and under the GST regime. There is no mechanism to avail the credit of CVD and SAD, which is paid later on. Therefore, the appellant filed a refund application with the Jurisdictional Assistant Commissioner, CGST, Division-VI, Ahmedabad North under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017 for refund of CVD & SAD paid.

2.3 On scrutiny of refund claim, certain discrepancies were noticed. Hence, Show Cause Notices were issued to the appellant calling them to show cause as to why their refund claim should not be rejected. Subsequently, the adjudicating authority vide the impugned order



rejected the refund claim under the provision of Section 142 and 54 of the CGST Act, 2017 read with Section 11B of Central Excise, Act, 1944.

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

- From the provisions of Rule 3(1), 4(7) & 9(1)(b) of the Cenvat Credit Rules, 2004, the additional customs duties namely CVD and SAD is eligible for CENVAT credit under the erstwhile law. The appellant submit that only ineligibility made under the provisions is in respect of payment of additional amount of duty resulting from fraud, collusion, wilful misstatement, suppression of facts, etc. with an intent to evade payment of duty.
- In the present case the appellant had voluntary decided to make the payment of import duties along with applicable interest. Therefore, the intention of the appellant was never been of fraud, collusion, etc. to evade payment of duty.
- The documents basis which the appellant has applied for the refund is squarely covered under Rule 9 of the Cenvat Credit Rules, 2004. In fact, this is a practice which has been followed by the industry since years for payment of customs duty for the cases where export obligation has not been fulfilled.
- The appellant relied upon the following judgement wherein Hon'ble Tribunal has allowed Cenvat credit of duty paid subsequently by the appellant on account of non-fulfilment of export obligation.
 - a) Philips India Ltd. vs Commissioner of Central Excise, Vadodara – 2005 (191) ELT 1028 (Tri.-Mumbai)
 - b) Arora Fibres Ltd. vs Commissioner of Central Excise, Surat – 2010 (258) ELT 404 (Tri.-Del.)
- The appellant submitted that para 4.49 of the HBP provides for regularization of bonafide default in meeting export obligation. Also, para 4.50 of HBP provides for suo-moto payment of customs duty with interest based on self / own calculations. The appellant has suo-moto made the payment of customs duty with interest to regularize the bonafide default. Accordingly, Cenvat credit of the duties paid should be eligible to the appellant (by way of refund) when duty is paid suo-moto to regularize bonafide default which is in compliance with Foreign Trade Policy and Handbook of Procedures. In this regard the relied upon the judgement of Honb'le Tribunal in the case of Flexi Caps and Polymers Pvt. Ltd. vs. Commissioner, CGST, Central Excise, Indore – 2021-VIL-464-CESTAT-DEL-CE.
- As regard the findings of the adjudicating authority in the para 10 of the impugned order that the refund does not fall under any of the criteria provided in Section 11B(2) of the



Central Excise Act, 1944, the appellant submitted that they are eligible for refund of CVD and SAD as per Section 11B(2)(d) of the Central Excise Act, 1944 which provides for refund of duty paid.

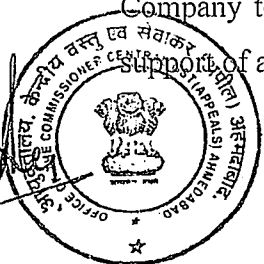
- The appellant submitted that as per Section 142(8)(b) of the CGST Act, 2017, provides that where in pursuance of an assessment or adjudication proceeding instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act. In view of the above, Section 142(3) read with Section 142 (6)(a) and Section 142(8)(b), the appellant is eligible for the refund of the taxes paid by them.

- The appellant relied on the following judgements in support of their case:

- a) NSSL Pvt. Ltd. vs. Commissioner of Central Excise, CGST Nagpur-I – 2021 (8) TMI 239
- b) R.R. Kabel Limited - OIO No. Div-VII/ 41/RR Kabel/ Ref/17-18 dated 20.06.2018
- c) Sudarshan Chemicals Ind. Ltd. vs. The Assistant Commissioner, Division II and III, CGST & CX, Raigad Commissionerate passed by the Commissioner (Appeals), Raigarh in Order-in-Appeal No. MKK/397-398/RGD/APP/2018-19 dated 21.12.2018.
- d) German Remedies Ltd. vs. Commissioner of Central Excise, Goa - 2003 (12) TMI 251 – Cestat, New Delhi
- e) Slovak India Trading Co. Pvt. Ltd. – 2006 (201) ELT 559 (Kar.)
- f) Srinivasa Hair Industries – 2016-TIOL-1203-CESTAT-MAD
- g) Schlumberger Asia Services Ltd. vs. Commissioner of CE & ST, Gurgaon-I – 2021 (5) TMI 954 – Cestat Chandigarh
- h) Bharat Heavy Electricals Ltd. vs. Commissioner of CGST, CE & Customs, Bhopal – 2019 (4) TMI 1896 – Cestat New Delhi

4. Personal hearing in the case was held on 20.10.2022. Shri Hitesh Mundra, Chartered Accountant, appeared for hearing on behalf of the appellant. He reiterated the submission made in appeal memorandum and also filed additional submissions dated 20.10.2022.

4.1 In the additional submissions dated 20.10.2022, the appellant have informed that the amount of CVD and SAD amounting to Rs. 10,77,863/- is reflected in the books of accounts under the head “Balance with Government Authorities” under “Other Current Assets” and the incidence of such amount of duty or tax claimed as refund has not been passed on by the Company to any other person. Copy of C.A. certificate dated 08.10.2021 is also enclosed in support of above contention.



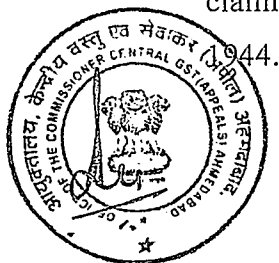
4.2 They, in support of their argument that refund of Cenvat credit of Rs.10,77,863/- is eligible to them, relied on various other case-laws:-

- *M/s. ITCO Industries Ltd- 2022-VIL-456-CESTAT-CHE-CE*
- *M/s. Mithila Drugs Pvt Ltd- 2022-VIL-454-CESTAT-Del-CE*
- *M/s. New Age Laminators Pvt. Ltd. – 2022-TIOL-694-CESTAT-DEL*
- *M/s. Circor Flow Technologies India Pvt. Ltd.-2022(59) GSTL 63 Tri-Chennai*
- *M/s. Indo Tooling Pvt. Ltd.- 2022(61) GSTL 595(Tri-Del)*

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, submission made in the additional submission dated 20.10.2022, arguments put forth during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether, in the facts and circumstances of the case, the appellant's claim for refund of CVD and SAD paid in GST period in respect of import made under Advance Authorisation during pre-GST period is legally permissible as per the provisions of Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017 or otherwise?

6. On going through the present case records, I find that the appellant had imported certain inputs under Advance Authorisation Scheme without payment of duties in pre-GST period under Advance Authorisation No. 0810134777 dated 12.03.2015 vide various bills of entry. As per the Advance Authorisation No. 081013477, the appellant was required to fulfill their export obligation within 18 months period i.e. up to 11.09.2016. However, they could not fulfill export obligation as required within stipulated period and they have paid applicable Basic Customs duty, CVD and SAD after implementation of GST i.e. after 01.07.2017, on 29.04.2020. Subsequently, the appellant had filed refund claim of Rs. 10,77,863/- under Section 11B of Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, in respect of CVD & SAD so paid.

7. The adjudicating authority has rejected the refund claim mainly on the grounds that (i) the refund claim filed by the appellant does not fall under any of criteria of Section 11B of the Central Excise Act, 1944; (ii) Section 142(3) of the CGST Act, 2017 deals with the refund of Cenvat credit, whereas, the appellant has not applied for refund of Cenvat credit and the amount paid by them i.e. CVD & SAD is not a Cenvat credit and, therefore, not eligible to refund as per Section 142(3) of the CGST Act, 2017; (iii) the amount of tax paid by the appellant in GST era should be treated as arrears of GST and is not admissible to them as input tax credit as per provisions of Section 142(8)(a) of the CGST Act, 2017 and once it is declared as not admissible as credit, the question of refund of such amount under transitional provision does not arise; and (iv) the appellant has failed to file the said refund claim within the stipulated period as provided under Section 11B of the Central Excise Act,



7.1 The Appellant has mainly contended that as per Section 142(8)(b) of the CGST Act, 2017, which provides that where in pursuance of an assessment or adjudication proceeding instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act. In view of the above, Section 142(3) read with Section 142 (6)(a) and Section 142(8)(b), the appellant claim to be eligible for the refund of the taxes paid by them.

8. I find that the Appellant had imported raw material to be used in the manufacture of their final product to be exported, under Advance Authorisation scheme in pre-GST period i.e. before 01.07.2017 without payment of BCD, CVD and SAD. As the appellant could not fulfill export obligation as required within stipulated period i.e. before 11.09.2016, they have paid applicable BCD, CVD and SAD on the said imported inputs in GST era i.e. after 01.07.2017 on 29.04.2020. As per the facts available on records, I find that the Cenvat Credit Rules, 2004 were not in existence, when the appellant had paid CVD & SAD vide Challan dated 29.04.2020 and Cenvat credit of such CVD & SAD in question is allowable as credit under the erstwhile Cenvat Credit Rules, 2004.

8.1 In this regard, I find that in the identical situation the Hon'ble New Delhi Tribunal in the case of Flexi Caps and Polymers Pvt. Ltd., vs. Commissioner, CGST & Central Excise, Indore - 2021 (9) TMI 917-CESTAT, New Delhi, held that as the appellant was entitled to Cenvat credit under Cenvat Credit Rules, which is now not available due to GST regime, they are entitled to refund under Section 142 read with Rule 146 of the CGST Act.

8.2 I also find that the issue involved in the instant case has already been decided by various tribunals recently in favour of the various appellants. The Hon'ble CESTAT, Principal Bench New Delhi in the case of M/s. Mithila Drugs Pvt. Ltd. vs. Commissioner, CGST, Udaipur reported in 2022-VIL-454-CESTAT-DEL-CE, while allowing appeal, has held as under :

"7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance authorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in August, 2018 by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observing in the impugned order, that without producing proper records of duty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question is allowable, as credit is no longer available under the GST regime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act.



8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellant of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of order alongwith interest under Section 11BB of the Central Excise Act. The impugned orders are set aside."

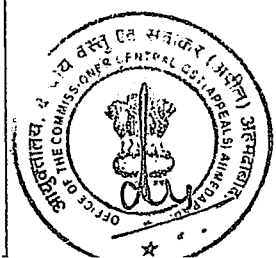
8.3 The Hon'ble CESTAT, Principal Bench New Delhi in the case of M/s. New Age Laminators Pvt. Ltd. vs. Commissioner, CGST, Surya Nagar, Alwar reported in 2022-TIOL-694-CESTAT-DEL, while allowing appeal, has held as under :

"7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance 4 E/A Nos. 50991-50992/2021 authorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in May, 2018 & May, 2019, by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observing in the impugned order, that without producing proper records of duty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question is allowable, as credit is no longer available under the GST regime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act.

8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellants of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of this order alongwith interest under Section 11BB of the Central Excise Act. The impugned orders are set aside."

8.4 The Hon'ble CESTAT, Regional Bench Chennai in the case of M/s. ITCO Industries Ltd. vs. Commissioner of GST & Central Excise, Salem reported in 2022-VIL-456-CESTAT-CHE-CE, while allowing appeal, has held as under :

"11. From the narration of facts, it can be seen that Department has rejected the claims invoking Rule 9 (1) (b) of Cenvat Credit Rules, 2004. The said provision has already been reproduced above. The Department is of the view that credit is not eligible as appellant has paid the duties only after issuing a demand notice. On perusal of the alleged demand notice, it is merely in the nature of an intimation letter and has not been issued invoking any provisions of Customs law or Excise law. Further, in such intimation also, there is no allegation of any fraud, collusion or suppression of facts with intent to evade payment of duty. There is no evidence placed before me to establish that the duties



were paid after adjudication and rendering a finding of fraud, collusion or suppression of fact with intent to evade payment of duty. In such circumstances, the credit cannot be denied. I hold that the appellant is eligible for credit of CVD and SAD paid by them. The Tribunal in the case of *Circor Flow Technologies (supra)* and *Mithila Drugs Pvt. Ltd. (supra)* had analysed a similar issue. In *M/s. Mithila Drugs Pvt. Ltd.*, the facts are identical to that of the instant case. The relevant paragraphs read as under :

“5.1 Learned Counsel further relies on the precedent ruling of this Tribunal in *Flexi Caps and Polymers Pvt. Ltd., vs. Commissioner, CGST & Central Excise, Indore -2021 (9) TMI 917-CESTAT, New Delhi*, wherein also pursuant to demand of service tax under reverse charge mechanism after 30.06.2017, for transaction related prior to the said date (01.07.17), this Tribunal held that as the appellant was entitled to cenvat credit under Cenvat Credit Rules, which is not now available due to GST regime, is entitled to refund under Section 142 read with Rule 146 of the CGST Act.

6. Learned Authorised Representative Sh. Mahesh Bhardwaj appearing for the Revenue relies on the impugned order.

7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GST regime, for the imports made prior to 30.06.2017 is not disputed under the advance authorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in August, 2018 by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observing in the impugned order, that without producing proper records of duty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question is allowable, as credit is no longer available under the GST regime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6) of the CGST Act.

8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellant of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of order 9 Excise Appeal No.40303 of 2021 Excise Appeal No.40304 of 2021 along with interest under Section 11BB of the Central Excise Act. The impugned orders are set aside.”

12. After appreciating the facts and evidence as well as applying the principles of law laid in the above decisions, I am of the view that the rejection of refund claims cannot be



justified. The impugned orders are set aside. Appeals are allowed with consequential relief, if any, as per law."

9. Thus, I find that the issue involved in the instant case has already been decided by various tribunals as enumerated above. By respectfully following above orders, I hold that the appellant is eligible for refund of CVD and SAD as claimed by them under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the Central GST Act, 2017.

10.1 However, as regard, the refund claim filed by the appellant within time limit and not hit by unjust enrichment, I find that while passing the impugned order, the adjudicating authority held as under:

"16. I further find that the said claimant was required to file the said claim within the stipulated period as provided under Section 11B of Central Excise Act, 1944. I however ongoing through the facts and records find that the said claimant has failed to file the said refund claim within the stipulate period as provided under Section 11B of Central Excise Act, 1944. I therefore, conclude that the claim is hit by the limitation of time bar. I further find that there is no evidence or certificate which could establish that the said claimant has not passed the incidence of said amount claimed as refund under Section 11B of Central Excise Act, 1944. I therefore find that present claim is contrary to the provisions of law and hence inadmissible."

10.2 I find that the appellant, in their grounds of appeal, contended that they have made payment of import duties on 29.04.2020 and refund claim has been filed by them on 26.04.2021, hence, the claim is within the time. I also find that along with their additional submission produced during the course of personal hearing, the appellant also submitted a Certificate dated 08.10.2021 from Chartered Accountant that the amount of CVD and SAD amounting to Rs. 10,77,863/- is reflected in books of accounts and incidence of such amount of duty or tax claimed as refund has not been passed on by the company to any other person.

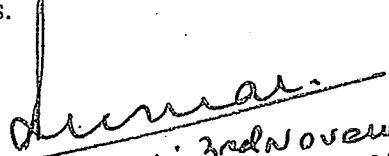
10.3 In this regard, I find that in the brief facts of the impugned order or in the findings portion of the impugned order, the date of filing of refund claim is given by the adjudicating authority. Thus, I find that the adjudicating authority has erred in passing order that the claim is hit by the limitation of time bar, without mentioning the date of filing of refund. Accordingly, I find that it would be proper to remand back the present case to the adjudicating authority for the purpose of verification of the factual details regarding filing date of refund claim and also for verification of the document i.e. CA Certificate dated 08.10.2021 submitted by the appellant before this authority, which is not submitted before the adjudicating authority and to decide the case afresh. The appellant is also directed to submit the CA Certificate dated 08.10.2021, within 15 days of the receipt of this order, before the adjudicating authority.



11. In view of the above discussion, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.


12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
3rd November, 2022..
Commissioner (Appeals)

Attested

Date : 03.11.2022


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



By RPAD / SPEED POST

To,
M/s.Rushil Décor Ltd.,
Rushil House,
Near Sindhu-Bhavan Road, Shilaj,
Ahmedabad – 380058

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division-VI, 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 VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- 5) Guard File
- 6) PA file