



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: 20221164SW0000737625

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/213/2022-APPEAL / 5124 - 29
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-65/2022-23
दिनांक Date : 21-11-2022 जारी करने की तारीख Date of Issue 24.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/89/2021-22
दिनांक: 29.11.2021, issued by Deputy/Assistant Commissioner, CGST, Division-VII,
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Torrént Pharmaceuticals Ltd.,
Off. Ashram Road, Navrangpura,
Ahmedabad – 380009

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North , 4th Floor, Shahjanand Arcade, Memnagar, 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 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 मामले 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.

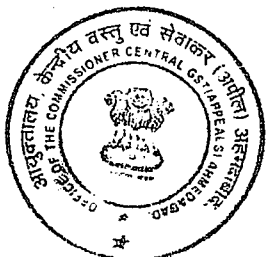
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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

The present appeal has been filed by M/s. Torrent Pharmaceuticals Ltd., Off. Ashram Road, Navrangpura, Ahmedabad-380009 (hereinafter referred to as '*the appellant*') against Order-in-Original No. CGST/A'bad North/Div-VII/ ST/DC/89/2021-22 dated 29.11.2021 (for brevity referred as "*the impugned order*") passed by the Deputy Commissioner, Central Tax, CGST & Central Excise, Division-VII, Ahmedabad North (for short referred as the "refund sanctioning authority").

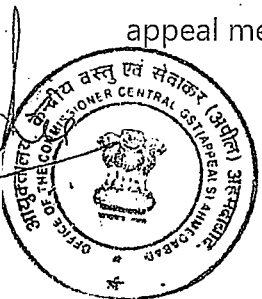
2. The appellant, engaged in the manufacture of pharmaceutical products, were holding Service Tax Registration no. AAAC5456ASD006. They filed a claim on 08.03.2018, seeking refund of Rs.43,76,581/- under Section 142(9)(b) of the CGST Act, 2017, in respect of the Cenvat credit of service tax paid under RCM on 'Business Support Services' received by them from M/s. Heumann Pharma, GmbH, a Germany based Company.

2.1 The said claim was rejected vide OIO No. Div-VII/North/100-A/Refund/Torrent 17-18 dated 18.06.2018. Aggrieved by the said decision, the appellant went in appeal and the Commissioner (A) vide OIA No. AHM-EXCUS-002-APP-120-18-19 dated 18.12.2018 remanded the case back to the original adjudicating authority for passing a fresh order in terms of the provisions of Section 142(9)(b) of the CGST Act, 2017 read with Section 11B of the CEA, 1944, ensuring the principle of natural justice. In the denovo proceeding, the refund sanctioning authority, vide the impugned order, sanctioned the refund of Rs.43,76,581/-, in cash, in terms of Section 142(9)(b) of the CGST Act, 2017 read with Section 11B of the CEA, 1944, on 29.11.2021.

3. Being aggrieved with the impugned order passed by the refund sanctioning authority, the appellant on the issue of non-granting of interest, has preferred the present appeal, wherein they contested the impugned order, mainly on following grounds:-

- The refund of Rs.43,76,581/-, was sanctioned in terms of Section 142(9)(b) of the CGST Act, 2017 read with Section 11B of the CEA, 1944. Provision of Section 142(9)(b) mentions that the Cenvat credit found admissible shall be refunded in cash under the existing law. Therefore, as per Section 11BB, they are eligible for interest on delayed refund from 08.06.2018 (i.e. 3 months from the date of refund application) till the date of impugned order (29.11.2021). To support their claim they placed reliance on the case law of Ranbaxy Laboratories Ltd.-2011(273) ELT (SC).
- Interest is automatic once refund is sanctioned. Reliance is placed on CBIC Circular No. 670/61/2002-CX dated 01.10.2002 and the decision passed in the case of Siddhant Chemicals-2014 (307) ELT 44 (All).

4. Personal hearing in the matter was held on 18.11.2022. Shri Akash Agarwal, AGM (Taxation), appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum.



5. I have carefully gone through the facts of the case, the impugned order passed by the refund sanctioning authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issue before me for decision is whether the appellant is eligible for interest on the refund of Rs.43,76,581/- sanctioned, in terms of Section 142(9)(b) of the CGST Act, 2017 read with Section 11B of the Central Excise Act, 1944?

6. It is observed that the refund was claimed under Section 142 (9) (b) of the CGST Act, 2017 and the same was sanctioned under Section 142(9)(b) of the CGST Act, 2017 read with Section 11B of the CEA, 1944, by the refund sanctioning authority. However, the appellant is claiming interest under 11BB of the CEA.

6.1 The provision of Section 142(9)(b) of CGST Act, 2017 and Section 11BB of CEA,1944, are reproduced for reference.

➤ **Section 142(9)(b) of CGST Act, 2017:**

(b) "where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or Cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing 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 (1 of 1944) and the amount rejected, if any, shall not be admissible as input tax credit under this Act."

➤ **SECTION [11BB. Interest on delayed refunds** — *If any duty ordered to be refunded under sub-section (2) of section-11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :*

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. - *Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [National Tax Tribunal] or any court against an order of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal [National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.]*



6.2 As per the provision of Section 142(9)(b) of CGST Act, 2017, if any amount is found to be refundable or Cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law. Further, as per the existing law, refund is to be ordered to be granted as per the sub-section (2) of Section 11B of the Central Excise Act, 1944 (1 of 1944). In the instant case, the refund was granted in terms of Section 142(9)(b) of CGST Act, 2017 and Section 11B of CEA, 1944.

6.3 Provisions of Section 11BB, governs the question relating to payment of interest on belated payment of refund. As per Section 11BB, the liability to pay interest arises, if the refund ordered to be granted under sub-section (2) of Section 11B is not refunded to the claimant, within three months from the date of such application.

6.4 In the instant case, it is observed that the appellant has filed a refund claim on 08.03.2018 on their own in terms of the provision of Section 142(9)(b) of CGST Act, 2017. Therefore, the refund is not arising in consequence to any order, so the explanation to Section 11BB shall not apply. The refund was granted to them by the refund sanctioning authority on 29.11.2021, i.e. after three years of filing the claim, which is way beyond the prescribed period of three months from the date of filing of the claim. In terms of Section 11BB, if the duty/tax found refundable, if not refunded within three months from the date of refund application, then interest shall paid to the claimant, at the rate prescribed. I therefore, find that the appellant is eligible for interest on delayed refund.

6.5 The appellant has placed reliance on the judgment of Hon'ble Supreme Court passed in the case of *M/s. Ranbaxy Laboratories Ltd. v. UOI* reported on [2011-TIOL-105-S.C.-CS = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)] wherein the Apex Court has categorically held that interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944, on the expiry of period of three months from the date of receipt of application under Section 11B(1) *ibid* and not from the date of order of refund or Appellate Order allowing such refund. Relevant extract of the judgment is reproduced as under;

"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. ...Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.



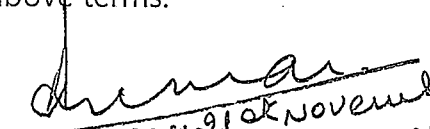
(Emphasis Supplied)

6.6 Similarly, clarification was also given by the Board vide Circular No. 670/61/2002-CX dated 01.10.2002, wherein it was directed that the provisions of Section 11BB of the CEA, 1944 are attracted automatically for any refund sanctioned beyond a period of three months.

7. I find that the decision of Hon'ble Apex Court in case of *Ranbaxy Laboratories Ltd.* (supra) as well as the Circular dated 01.10.2002 relied by the appellant are squarely applicable to the present case. I, therefore, find that the appellant is entitled to interest on the sanctioned amount of refund, in terms of Section 11BB of the Central Excise Act, 1944.

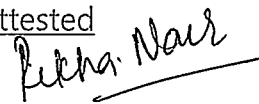
8. In view of the above, I set-aside the impugned order and allow the appeal filed by the appellant.

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


(Akhilesh Kumar) 11/11/2022
Commissioner (Appeals)

Date: .11.2022

Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Torrent Pharmaceuticals Ltd.,
Off. Ashram Road,
Navrangpura,
Ahmedabad-380009

Appellant

The Deputy Commissioner,
CGST and Central Excise, Division-VII,
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)
The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
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