आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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क फाइल संख्या (File No.) : **V2(84)133 /North/Appeals/ 2018-19**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-128-18-19**
दिनांक (Date): **16-Nov-18** जारी करने की तारीख (Date of issue): 21/11/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker , Commissioner (Appeals)**

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **40/Ref/V/17-18** Dated: **21/07/2018**
issued by: **Assistant Commissioner**-Central Excise (Div-V), Ahmedabad North,

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s SKF Technologies (India) Pvt. Ltd

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो |

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

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |

Cont...2

घ अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट 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 (सं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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.

(I) 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 tnan 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– ण0बी/35–इ के अंतर्गत:–

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

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 (रिस्ट्रेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात** 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than, as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी; जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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. Registar of a branch of any nominate public secior 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 ओदश 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 हैं।

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 not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन पाधिकारी के आदेश मे से प्रत्येक की एक प्रति पर रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
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.

→**Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.**

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Integrated Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

M/s. SKF Technologies(India) Pvt Ltd, Ahmedabad-Rajkot Highway, Kerala,Tal; Bavla,Dist;Ahmedabad (henceforth, "*appellant*") has filed the present appeal against the Order-in-original No.40/Ref/V/17-18 dated 21.07.2018 (henceforth, "*impugned order*") issued by the Assistant Commissioner, Central GST,Division-V, Ahmedabad-North (henceforth, "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant, a manufacturer of large size bearing filed a refund application dated 02.04.2018 claiming refund Rs.3,09,285/- of duty debited against clearance of goods under ARE-1 No.18/17-18 dated 18.04.2017 for export which were returned back. The claim was rejected under impugned order stating that there is no provision under Section 11B or any other provision under Central Excise Act, 1944 under which it can be granted as well as for the reasons that since the original claim for rebate was rejected, the present one is covered under the provisions of Section 142(3) Central Goods and Service tax Act, 2017 which stipulates that any claim of refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse.

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting inter *alia*, that the order is non-speaking on the issues raised; that there is no dispute that duty has been debited twice from Cenvat account; that duty paid in excess is without the authority of law which department cannot retain; that the show cause notice is factually incorrect as the refund claim does not pertain to refund of unavailed Cenvat credit as alleged in it; that goods exported on 18.04.2017 was brought back to the factory on 05.05.2017 due to damage in packing material, no manufacturing activities were carried out on it and it was re-exported on 17.05.2017. Hence, as per rule 16(2) they shall pay duty equivalent to the credit taken on receipt of goods. The appellant was entitled to take credit of Rs.3,09,285/- in May 2017 and was liable to pay duty Rs.3,09,285/- again in May 2017. However they inadvertently paid duty Rs.3,11,073/- on subsequent removal of goods and then refund claim has been filed; that even if it is held that there is no provision under Central Excise Act, 1944 or rules to allow refund of the amount paid inadvertently, there is also no provision to deny such refund.

Similar view has been taken in case of M/s Swastik Sanitarywares Ltd 2017(49)STR484(Guj); that the refund claim has been filed in term of Section 142(3) of CGST Act,2017; that with reference to refund in case of double payment of duty they relied on judgment in case of KDL Biotech and for considering inadvertently paid duty in the nature of deposit they relied on judgment in case of KVR constructions; that Section 142(3) of CGST Act,2017 only restricts availing Cenvat of rejected refund claim and not if excess duty is paid; that even if refund claim is rejected the appellant can now take re-credit in CGST Act,2017; that if the rebate claim is denied the duty will be cost to the appellant which will cause taxes to be exported and thus defeating the government policy of promoting exports, Etc,.

4. In the personal hearing held on 19.11.2018 Shri Arindam Chatterjee ,CA and Durgesh Kumar Kathuria reiterated the grounds of appeal.

5. I have carefully gone through the appeal memorandum. The issue involved in the present appeal is whether the appellant is entitled for refund of duty paid on goods cleared for export and returned back. The goods initially cleared for export on payment of duty Rs.3,09,285/- under ARE-1No.18/17-18 dated 18.04.2017 were returned back to the appellant's premises under back to town permission by competent authority. Rebate claim filed on said consignment was rejected stating that goods were not exported. The goods were re-exported on payment of duty Rs.3,11,073/- under ARE-1 No. 42/17-18 dated 17.05.2017 against which rebate was sanctioned to the appellant. The present appeal pertains refund claim of duty Rs.3,09,285/- which was debited from Cenvat credit register Entry No.200 dated 30.04.2017 at the time of clearance of goods under ARE-1 No.18/17-18 dated 18.04.2017 claim of rebate filed against which was earlier rejected for the reason that goods were not exported and returned back to the appellants premise. Consequent to rejection of rebate under order dated 27.03.2018, the appellant filed refund application dated 02.04.2018 which also stands rejected under impugned order.

6. I find that the appellant preferred rebate claim for the first time on 29.01.2018 for Rs.3,09,285/- in respect of goods cleared on 18.04.2017 for export under ARE-1 No.18/17-18. The appellant was at his liberty to re-credit the duty amount of Rs.3,09,285/- on receiving the goods back on 05.05.2017 which they failed. Since, the goods cleared for export has already received back in the factory on 05.05.2017 against which they

were entitled to re-credit the duty amount in their Cenvat register. However, they preferred rebate claim on 29.01.2018. Further, on rejection of said rebate claim on 27.03.2018, the appellant preferred refund claim dated 02.04.2018 for said amount of duty Rs.3,09,285/- which was rejected under impugned order. Thus the issue before the adjudicating authority was as to whether refund of duty can be allowed which the appellant failed to re-credit as Cenvat in term of rule 16 of Central Excise Rules,2002 on account of return of goods back to factory. The adjudicating authority has held that the appellant failed to re-credit it during material time and there is no provision under Section 11B or any other provision under Central Excise Act,1944 in which such refund can be granted. In this regard, Section 11B of the Central Excise Act,1944 are reproduced below:

Claim for refund of SECTION [11B. [duty and interest, if any, paid on such duty]. — (1) Any person claiming refund of **any** [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :]

[**Provided** further that] the limitation of [one year] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.

] * * * * [

If, on receipt of any such [(2) application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the [duty of excise and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of [duty of excise and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lyingin balance in the applicant's account current maintained with the [Principal Commissioner of Central Excise or Commissioner of Central Excise];

(c) refund of credit of duty paid onexcisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the [duty of excise and interest, if any, paid on such duty] **paid by the manufacturer, if he had not passed on the incidence of such** [duty and interest, if any, paid on such duty] **to any other person;**

(e) the [duty of excise and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;

(f) the [duty of excise and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and

interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

The proviso to sub para (2) above from under (a) to (f) specifies amount of claim which can be paid to the applicant instead of being credited to the Fund. The duty paid by the appellant in the issue on hand relates to clause (d) of above provisions. It speaks on **any duty** instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to- the duty of excise paid by the manufacture, **if he had not passed on the incidence of such duty to any other person.** Since, the goods have not reached to buyers premise, the appellant has not received any payment from buyer, and hence the question of passing on incidence of duty on the consumer does not arise. In view of this, the plea of the appellant that there is no provision to deny such refund, deserve consideration. In term of section 11B(2), the authority sanctioning refund has to satisfy himself whether duty is refundable or not based on the ingredients in said statute i.e. on time bar issue, unjust enrichment, dispute on duty paid, etc,. The adjudicating authority, without giving his findings on which ingredient of the provisions not satisfied, held that there is no provision under Section 11B or any other provision under Central Excise Act, 1944 in which such refund can be granted.

6.2 It is contested by the appellant that duty has been debited twice from Cenvat account; that duty paid in excess is without the authority of law which department cannot retain. In this regard I find that duty Rs.3,09,285/- was paid by the appellant first time on 30.04.2018 vide Cenvat credit Register Entry No.200 against clearance of goods under ARE-1 No.18/17-18 which returned back. Second time duty Rs.3,11,073/- was debited against ARE-1 No.42/17-18 dated 17.05.2017 against which rebate was sanctioned on 09.10.2017. Thus, the goods have suffered duty twice. Case law cited by the appellant wherein CESTAT,New Delhi

reported in 2005(179)ELT 224(Tri-Del) in case of KDL Biotech Ltd v/s Commissioner of Central Excise,Raigadh relevant part of which is reproduced below;

> **3.** From the record, it is evident that it is a clearcut case of payment of double duty in respect of the same goods by the appellants. Therefore, they are entitled to the refund of the duty. Their refund claim has been wrongly rejected by the authorities below. Therefore, the impugned order cannot be sustained and is set aside. The appeal of the appellants is allowed with consequential relief, if any, permissible under the law.

6.3 The issue of admissibility of refund on duty paid twice was also involved in case of Swastik Sanitorywares Ltd v/s UOI law 2017(49)STR 484(Guj) relevant portion of the same are reproduced below;

> **15.** In the present case, however, we find that the second deposit of the same amount on clearance of the same goods did not amount to deposit of excise duty and was a pure mistaken deposit of an amount with the Government which the revenue cannot retain or withhold. Such claim, therefore, would not fall within Section 11B of the Act. It is true that insofar as the Act is concerned, for refund of duty, the provision is contained in Section 11B. However, merely because there is no specific statutory provision pertaining to return of amount deposited under a mistake, *per se*, in our opinion, should not deter us from directing the respondents to return such amount. Admittedly, there is no prohibition under the Act from returning such an amount. Allowing the respondents to retain such amount would be, in our opinion, highly inequitable. We may not be seen to suggest that such a claim can be raised at any point of time without any explanation. In a given case, if the petitioner is found to be sleeping over his right, or raises such a claim after unduly long period of time, it may be open for the Government to refuse to return the same and this court in exercise of discretionary writ jurisdiction, may also not compel the Government to do so.
>
> **16.** In the present case however, no such inordinate delay is pointed out. The petitioners have contended that the error was noticed by them some time in October, 2003 whereupon immediately on 1-11-2003, such refund claim was filed.
>
> **17.** In a recent judgment in case of *C.C. Patel & Associates Pvt. Ltd.* (supra), this court had occasion to deal with somewhat similar situation where the petitioner had deposited service tax twice which was not being refunded by the Department. In that context, it was observed as under :-
>
> (12) We fail to see how the department can withhold such refund. We say so for several reasons. Firstly, we notice that under sub-section(3) of section 68, the time available to a service provider such as the petitioner for depositing with the Government service tax though not collected from the service recipient was 75 days from the end of the month when such service was provided. This is in contrast to the duty to be deposited by a service provider upon actual collection by the 15th of the month following the end of the month when such duty is collected. Sub-section (3) of section 68 thus provided for an outer limit of 75 days, but never provided that the same cannot be paid by the 15th of the month following the end of the month when such service was provided. Thus, if the petitioner deposited such duty with the Government during a particular quarter on the basis of billing without actual collection, he had discharged his liability under sub-section (3) of section 68. Thereafter, on an artificial basis, the Assessing Officer could not have held that he ought to have deposited same amount once all over again in the following quarter. This is fundamentally flawed logic on the part of the Assessing Officer.
>
> (13) Further, to accept such formula adopted by the Assessing Officer would amount to collecting the tax from the petitioner twice. The petitioner having already paid up the service tax even before collection in a particular quarter, cannot be asked to pay such tax all over again in the following quarter on the same service on the ground that such tax had to be deposited in the later quarter but was deposited earlier. Any such action would be without authority of law. Further, before raising demand of Rs. 1,19,465/- under the head of duty short paid, the Assessing Officer should have granted adjustment of the duty already paid by the petitioner towards the same liability.
>
> (14) Under the circumstances, we are of the opinion that the department cannot withhold such amount which the petitioner rightfully claimed. Under the circumstances, question of applying limitation under section 11B of the Act would not arise since we hold that retention of such service tax would be without any authority of law.
>
> **18.** Before closing, we may record that with some of the observations made by this court in the case of *Indo-Nippon Chemicals Co. Ltd.* (supra), with respect, we have serious doubts. However, since such questions do not directly arise in this petition, we refrain from making any further observations in this regard.
>
> **19.**Under the circumstances, the amount of Rs. 91,128/- is payable to the petitioners by the respondents. However, since the petitioners filed such a claim only on 1-11-2003, they cannot claim interest on any period prior thereto.

20. It is, therefore, directed that the respondents shall pay to the petitioners a sum of Rs. 91,128/- with simple interest at the rate of 9% per annum after a period of three months from the date of the application dated 1-11-2003 till actual payment. The petition is disposed of accordingly. Rule made absolute.

6.4 The facts of the present case in respect of twice payment of duty are similar to the facts under above referred case law and squarely applicable. Further, the adjudicating authority has also observed that the appellant **failed** to re-credit the duty at the time of return of goods back to factory. In view of this amount involved in the claim is inadvertently paid one which the department cannot withhold.

7. In view of the above, I allow the appeals and set aside the impugned order.

9. अपीलकर्ता 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.

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. SKF Technologies(India) Pvt Ltd.,
Rajkot Highway, Kerala, Tal-Bavla, Dist-Ahmedabad.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad - North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad- North.
4. The Asstt./Deputy Commissioner, CGST Division-V, Ahmedabad - North.
5. Guard File.
6. P.A. File