



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(  
**Office of the Commissioner,**  
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
**Central GST, Appeal Commissionerate-**  
**Ahmedabad**



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/CEXP/301/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad / 2590 T.O 259H
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-013/2021-22**  
दिनांक Date : **27.07.2021** जारी करने की तारीख Date of Issue : **11.08.2021**
- आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **Div-VII/North/07/Refund/Hasmukh/2020-21** dated **21.07.2020**, passed by Assistant Commissioner, Central GST & Central Excise, Division-VII, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** - M/s Hasumukh Tobacco Products.

**Respondent-** Assistant Commissioner, Central GST & Central Excise, Division-VII, Ahmedabad-North

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 :

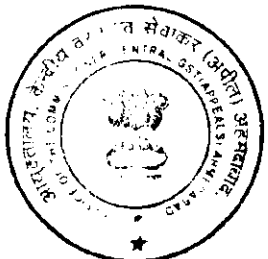
**Revision application to Government of India :**

(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, 4<sup>th</sup> 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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.

- (6) 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 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**

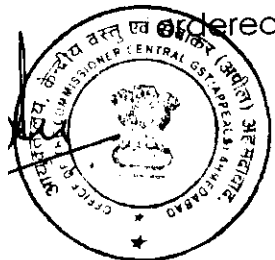
This appeal has been filed by M/s. Hasmukh Tobacco Products, 300, Meldi Estate, Gota Road, Near Kaushik Granite, Gota, Ahmedabad-382483 [hereinafter referred to as the 'appellant'], against Order-In-Original No. Div-VII/North/07/Refund/Has mukha/2020-21 dated 21-07-2020 (hereinafter referred as "impugned order") passed by the Assistant Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate (hereinafter referred to as the "adjudicating authority").

2.1. The facts of the case, in brief, are that the appellant was engaged in manufacture and packing of OM brand unmanufactured tobacco falling under CTH 24011090 of the Central Excise Tariff Act, 1985 having Registration No. ACSPP9687QM001 and were paying duty under Compounded Levy Scheme provided under Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.

2.2. The officers of erstwhile Central Excise (Preventive), Ahmedabad-II Commissionerate, during the visit of the appellant factory premises, found that one more undeclared PPM was found installed in factory premises. On conclusion of investigation, Show Cause Notice bearing F.No. V.24/15-15/OA/2015 dated 19.02.2015 was issued to appellant demanding duty amount of Rs. 3,00,02,002/- on manufacture and clearance of unmanufactured branded chewing tobacco during the period from 01.11.2013 to 30.09.2014 under Section 11A(4) of Central Excise Act, 1944 along with interest and penalty. It was also proposed for appropriation of Rs. 1,39,60,836/- paid by the appellant during investigation .

2.3. Appellant had objected SCN dated 19.02.2015 and approached to the Hon'ble Settlement Commission for settlement of their case which was decided/settled vide Final Order No. 1217CEX/WDN/2016 dated 29.07.2016 wherein the duty payable was settled at Rs. 300.02 lakh alongwith interest and penalty amount of Rs. 25 Lakhs. Redemption fine of Rs. 10,000/- was

ordered for confiscation of seized PPM valued at Rs. 1,25,000/-.



2.4. Being aggrieved by the Hon'ble Settlement Commission's Final Order No. 121/CEX/WDN/2016 dated 29.07.2016, appellant filed Special Civil Application No. 16871 of 2016 with the Hon'ble Gujarat High Court wherein they were directed to deposit the entire amount of duty of Rs. 3,00,02,002/- alongwith interest, fine and penalty. The appellant paid Rs. 3,00,02,002/- the duty demanded in SCN as per the Hon'ble Gujarat High Court vide Oral Order dated 04.10.2016.

2.5. The Hon'ble High Court of Gujarat decided the SCA No. 16871 of 2016 vide their Final Order dated 12.10.2017 wherein the matter was remanded back to the Settlement Commission for decision on aspect of 'operating machine' and also directed that machine, which was said to have been there in a factory is operative or not is required to be decided.

2.6. The Hon'ble Settlement Commission, Mumbai re-examined the issues as per the direction given by the Hon'ble High Court of Gujarat vide order dated 12.10.2017 and decided the case vide Order No.31/FINAL ORDER/CEX/KNA/2018 dated 25.07.2018 wherein they sent back the case under Section 32-L of the Central Excise Act, 1944 to the jurisdictional Commissioner of Central Excise, Ahmedabad-North who shall dispose of the case in accordance with the provisions of the Central Excise Act, 1944 as if no application under Section 32E had been made by the appellant.

2.7 As per the order and direction of Hon'ble Settlement Commission, Mumbai vide order dated 25.07.2018, the Commissioner, Central GST & Central Excise, Ahmedabad North decided the SCN dated 19.02.2015 vide Order-In-Original No. AHM-EXCUS-002-COMMR-13-2019-20 dated 27.12.2019 wherein he Confirmed the demand of Central Excise duty amounting to Rs. 1,76,47,000/- along with interest under Section 11A(10) of Central Excise Act 1944 read with Rule 7 and Rule 18(2) of the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 towards duty leviable on one undeclared packing machine which was found installed in factory on 03.09.2014. He also Ordered appropriation of confirmed demand of

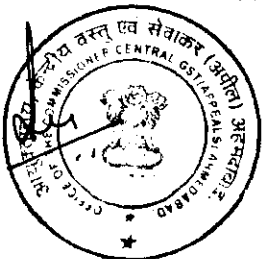


Central Excise duty of Rs. 1,76,47,000/-, interest at the applicable rate as per Section 11AA of the said Act and 25% of Penalty of Rs. 1,76,47,000/- imposed on appellant in terms of Section 11AC(1)(e) of the said Act.

3. In view of the order dated 27.12.2019 of the Commissioner, Central GST & Central Excise, Ahmedabad North, the appellant filed refund claim amounting to Rs. 57,41,690/- along with interest on 03.06.2020 which was decided by the adjudicating authority vide impugned orders wherein, the adjudicating authority sanctioned the refund claims and not allowed interest on refund sanctioned holding that the said amount is not Pre-deposit.

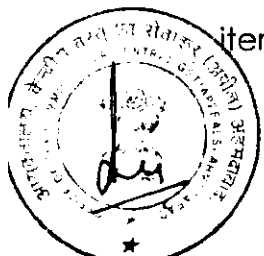
4. Being aggrieved by the impugned order dated 21.07.2020, the appellant have filed the instant appeals on the grounds that:

- ✓ Appellant had deposited the amount as directed by the Hon'ble High Court of Gujarat vide order dated 04.10.2016 without prejudice to the rights and contention of the petitioner to contest the orders in question. Thus, the amount was pre-deposit to pursue the legal remedy provided in the law, which could not have been considered as "Duty" from the date of its deposit;
- ✓ They have been deprived of this amount of Rs. 57,41,690/- since year 2016. This could be treated as unlawful actions of department for periods from year 2016;
- ✓ Returning of deposits made in 2016 for amount of Rs. 57,41,690/-, without any compensation of interest by department is unlawful & unjustified and such actions and consequences, affected the Administration of justice and the rule of Natural justice law;
- ✓ Appellant submit that para 26(i) of CBEC Circular No. 1053/2/2017-CX., dated 10.03.2017 mainly shows that where "appeal" is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with interest at prescribed rate from the date of making the deposit to the date of refund. The term "appeal" is not restricted only the appeals filed before the Commissioner (Appeals), CESTAT or High Court or Supreme Court, but it has a very wide meaning to cover all cases even before Original adjudicating authorities.



- ✓ The submissions in the form of "appeal" made before the original adjudicating authority are accepted and the demands in question are dropped, then also the amount for which demands are dropped remain as pure pre-deposit and in such cases, the Circular provides to allow interest from the date of making of the deposit till the date of payment of Refund. The said Circular also shows that refund of pre-deposit need not be subjected to process of refund of duty under Section 11B of Central Excise Act, 1944. Therefore, in all cases where authority has determined duty liability decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not. Thus, broader perspective of the Circular has not been correctly appreciated by the adjudicating authority and he has adopted restrictive view for the said Circular, which is contrary to the very objective and scheme of allowing refund in respect of pre-deposit from the date of deposit, as such pre-deposit is not duty. Accordingly, Appellant submit to interpret this circular in its right perspective in the interest of justice to allow substantive benefit of "interest" on such refund of pre-deposit made by the appellant as directed by the Hon'ble Gujarat High Court vide interim order dated 04.10.2016.
- ✓ It is also a settled law that when any amount directed to be deposited before its final assessment or adjudication in any proceedings, such deposit will not attain a character of "duty" and it shall be treated as pre-deposit only to secure remedies in a particular case. Provisions of section 11BB/35FF of the Central Excise Act for interest on delayed refund of duty are not be applicable in the case.
- ✓ The appellant relied upon the judgement of Hon'ble Supreme Court in case of Sandvik Asia Ltd 2006 (196) ELT 257 (SC), UOI Vs Tata SSL Ltd 2007 (218) ELT 493 (SC), Ranbaxy Laboratories Ltd Vs UOI 2011 (273) ELT 3 (SC) and various judgement of tribunals and requested to grant interest.

5. Personal hearing in the matter was held on 18.06.2021 through video conference. Shri P.P. Jadeja, Consultant, appeared for the hearing. He reiterated the submissions made in Appeal Memorandum and requested for



consideration. Further it is stated that as directed by the Hon'ble Gujarat High Court in order dated 05.11.2014, the appellant have deposited amount of Rs. 75,00,000/-. Also stated that remaining entire amount has been deposited by the appellant and accordingly, they requested to allow interest as a consequential benefit.

6.1 I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as additional submission made at the time of personal hearing. The limited issue which requires determination in the case is whether the appellant is entitled for interest from the date of deposit of such amount as per the Hon'ble High Court of Gujarat's order dated 04.10.2016 till the date refund sanctioned in terms of Section 35FF/11BB of the Central Excise Act, 1944 or otherwise.

6.2. I find that the adjudicating authority has discussed the issue of payment of interest in the finding and did not consider the interest on the ground that the payment made for which refund claim filed is not a refund of pre-deposit.

7.1 It is observed that the appellant in appeal memorandum and during personal hearing contended that the appellant have deposited entire amount as per the direction given by the Hon'ble Gujarat High Court vide order dated 05.11.2014 as well as order dated 04.10.2016 and accordingly, they are entitled for interest from the date of deposit till the refund granted.

7.2 It is observed that Section 11BB of the Central Excise Act 1944 deals with interest on delayed refunds which are reproduced below for ease of reference:

**"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 :*

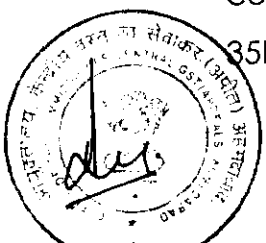
**Provided** that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, 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 provided under said section stipulates that;*

**"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."

8. In view of above, it is clear that in case of any duty or tax ordered to be refunded, the interest liability arises only after the expiry of three months from the date of receipt of refund application. In the instant case, the appellant had paid the amounts in question towards their confirmed demand of Central Excise duty and the refund claim thereon were filed on 03.06.2020, in view of order No. AHM-EXCUSE-002-COMMR-13-2019-20 dated 27.12.2019 passed by Commissioner, Central GST & Central Excise, Ahmedabad North. Further, the adjudicating authority has sanctioned the refund claims under impugned order dated 21.07.2020. Therefore, I find that there was no delay in sanctioning of said refund claims in terms of legal provisions discussed above.

9. It is observed that the appellant have relied upon the decisions of Hon'ble Supreme Court in the case of M/s Sandvik Asia Ltd [2006 (196) ELT 257 (SC) wherein, issue pertains to interest in respect of amount which was collected by the department as tax without authority of law/ illegally collected, and pertains to amount pre-deposited made under Section 35FF. However, in the instant case, the payment is towards confirmed



demand of central excise duty which were made by the appellant themselves and the refund application were filed only after finalization of the case by the Commissioner, Central GST & Central Excise, Ahmedabad North. The facts of the case on hand, therefore, stand distinguished from the facts of the case decided by the Hon'ble Tribunal in the cases referred above. I find that in the case of M/s Ratnamani Metal Tubes & Ltd., reported at 2019(366)ELT 0139 (Tri-Ahmd), the Hon'ble CESTAT, Ahmedabad has decided an identical matter and held that interest on refund of tax paid during investigation, is payable from three months of filing of refund application. The relevant para of the Hon'ble Tribunal's order is reproduced below:

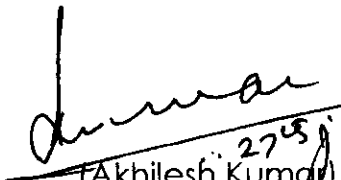
"5. I find that the limited issue to be decided by all this case is that in case, of deposit made during the investigation of the demand case whether interest on refund of such amount shall be payable from the date of deposit of such amount or from the date after 3 months of filling the refund application. As regard, the deposit made during the investigation it is obvious that there is no provision in Central Excise or to make a deposit. Whatever payment made it is towards the probable Excise duty liability for which the investigation is undergoing, therefore, it cannot be said that any deposit made during the investigation so made by the assessee is not a duty but only a deposit. Once the adjudication authority confirms the demand the said amount stands confirmed as duty only, the same being the duty stands appropriate against the demand confirmed in the adjudication order. For this reason also the amount even though that paid during the investigation, shall be considered as payment of duty. When this be so the refund of such duty amount is clearly governed by the Section 11B of Central Excise Act, 1944. In case of refund under Section 11B provision, of interest is available under Section 11BB. In terms of such section, of interest is payable only from the date after completion of 3 months from the date of filling the refund application. Therefore, the interest in any case is not payable from the date of deposit of the amount during the investigation. On the issue of interest on refund of duty the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Ltd. v. Union of India*, 2011 (273) E.L.T. 3 (S.C.) wherein, the Court has held that the interest on refund under Section 11B is payable only from the date of expiry of three months from the date of receipt of application for refund. Therefore, now there is no ambiguity or doubt that from which the date interest is payable in case of refund of duty. As Regard the decision relied upon by the Ld. Counsel in the case of *Futura Ceramics Pvt. Ltd.* (supra). I find that this decision has not considered the various judgment relied upon by the Ld. AR particularly the case of *Ranbaxy Laboratories Ltd., Kamakshi Tradexim (India) Pvt. Ltd.*, therefore, the decision of this Tribunal dated 21-11-2017 is distinguished. As per my




above discussion, the impugned order is upheld. The appeal is dismissed."

10. Respectfully following the Hon'ble Tribunal's decision in the case of M/s Ratnamani Metal Tubes & Ltd. (supra), it is clear that interest under Section 11BB ibid becomes payable on the expiry of a period of three months from the date of receipt of the application. In view of above legal pronouncement, the payment made by the appellant towards demand confirmed by Hon'ble Settlement Commission cannot be considered as deposit. Thus, it is held that the appellant is not eligible for interest from the date of payment made by them as per directions of Hon'ble High Court towards demand confirmed by Hon'ble Settlement Commission.

11. In view of above discussion, the appeal filed by the appellant is rejected. The appeal filed by the appellant stands disposed of in above terms.

  
 (Akhilesh Kumar)  
 Commissioner (Appeals)  
 Ahmedabad  
 / /2020

Attested

  
 (Atul B Amin)  
 Superintendent (Appeals)  
 CGST, Ahmedabad



By R.P.A.D

To

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 Near Kaushik Granite, Gota,  
 Ahmedabad-382483

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Asstt/Dy Commissioner, CGST, Division-VII, Ahmedabad North.
4. The Assistant Commissioner, System-CGST, Ahmedabad North.
- ~~5.~~ Guard File.
6. P.A. File.