



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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स्पीड पोस्ट

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- क फाइल संख्या : File No : GAPPL/COM/CEXP/574/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-27/2021-22**
दिनांक Date : **18.10.2021** जारी करने की तारीख Date of Issue : **27.10.2021**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **Div-VII/North/15/Refund/Hasmukh/2020-21** dated **18.06.2021**, passed by the Deputy Commissioner, Central GST & Central Excise, Div-VII, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Hasmukh Tobacco Products, 300, meldi Estate, Gota Road, Near kaushik Granite, Gota, Ahmedabad-382483.

Respondent- Deputy Commissioner, Central GST & Central Excise, Div-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 :

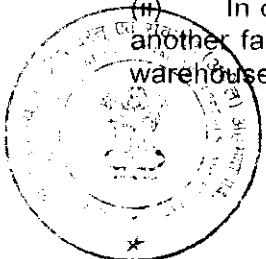
Revision application to Government of India :

(i) 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।

(iii) 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 भारत 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 जा ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा भारत को 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) केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मारा के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्षक के अंतर्गत धारा 35 ई 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, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केंद्रीय 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, अपीलों के मामले में सीमा शुल्क, केंद्रीय 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 (CESTA) 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 पढ़ी 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।

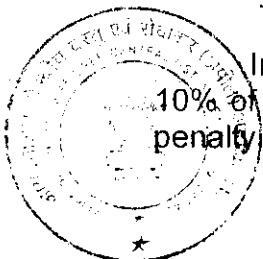
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."



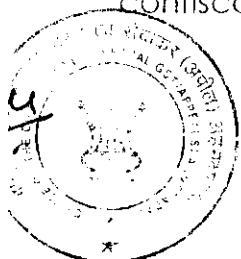
ORDER IN APPEAL

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/15/Refund/Hasmukh/2020-21 dated 18-06-2021 (*hereinafter referred as "impugned order"*) passed by the Deputy Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate (*hereinafter referred to as the 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant are engaged in manufacture and packing of OM brand unmanufactured tobacco falling under CTH 24011090 of the Central Excise Tariff Act, 1985 and holding Central Excise Registration ECC 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.

2.1 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 installed and working in their factory premises. After further investigation, Show Cause Notice 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 .

2.2 The Appellant approached the Hon'ble Settlement Commission, Mumbai for settlement of their case, accepting duty liability for August, 2014 and for September, 2014. The said case was ordered for settlement vide Commission's Final Order No. 121/CEX/WDN/2016 dated 29.07.2016, on payment of the entire duty of Rs. 300.02 Lakhs with applicable interest, penalty of Rs. 25 Lakhs and Redemption Fine of Rs. 10,000/- in lieu of confiscation of the seized PPM valued at Rs. 1,25,000/-..



2.3 Being aggrieved by the Hon'ble Settlement Commission's Final Order No. 121/CEX/WDN/2016 dated 29.07.2016, the appellant filed Special Civil Application No. 16871 of 2016 before the Hon'ble High Court of Gujarat wherein the Hon'ble High Court vide Interim Order dated 04.10.2016 directed the appellant to deposit the entire amount of duty. Accordingly, the appellant paid the entire amount of duty of Rs. 3,00,02,002/- and also deposited amount of Redemption Fine of Rs. 10,000/- vide Challan No. 80040 dated 11.10.2016.

2.4 Subsequently, the Hon'ble High Court of Gujarat passed Final Order dated 12.10.2017 in SCA No. 16871 of 2016, wherein the matter was remanded to the Settlement Commission for decision on aspect of 'operating machine' and to ascertain that seized machine found undeclared in the factory on 03.09.2014 is operative or not for the purpose of charging duty in the case of the appellant.

2.5 The Hon'ble Settlement Commission, Mumbai then re-examined the matter and passed Final Order No.31/FINAL ORDER/CEX/KNA/2018 dated 25.07.2018 wherein the application filed by the appellant under Section 32-L of the Central Excise Act, 1944 has been sent back to the jurisdictional Commissioner of Central Excise, Ahmedabad-North with directions to 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.

2.6 As per the order and direction of Hon'ble Settlement Commission, Mumbai vide order dated 25.07.2018, after due course of law, the Commissioner, Central GST & Central Excise, Ahmedabad North passed Order-In-Original No. AHM-EXCUS-002-COMMR-13-2019-20 dated 27.12.2019 wherein the demand of Central Excise duty amounting to Rs. 1,76,47,000/- has been confirmed 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 and demand of the rest of the amount of

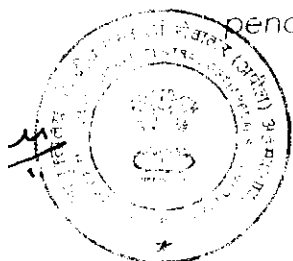


Rs. 1,23,55,000/- has been dropped. It was also ordered for appropriation of confirmed demand of Central Excise duty of Rs. 1,76,47,000/- alongwith interest at the applicable rate as per Section 11AA of the said Act and 25% of Penalty of Rs. 1,76,47,000/- imposed on appellant in terms of Section 11AC(1)(e) of the said Act.

2.7 In pursuance of the order dated 27.12.2019 passed by the Commissioner, Central GST & Central Excise, Ahmedabad North, the appellant had filed refund claim for an amount of Rs. 57,41,690/- on 03.06.2020 which was sanctioned vide OIO No. DIV-VII/North/07/Refund/Hasmukh/20-21 dated 21.07.2020 by the Assistant Commissioner, CGST, Div-VII, Ahmedabad-North.

2.8 Simultaneously, being aggrieved with the OIO AHM-EXCUS-002-COMMR-13-2019-20 dated 27.12.2019 passed by the Commissioner, Central GST & Central Excise, Ahmedabad-North, the appellant preferred an appeal with Hon'ble CESTAT, Ahmedabad against the duty confirmed against them. The Hon'ble Tribunal vide Final Order No. A/10006-10008/2021 dated 11.01.2021 and rectified vide Misc. Order No. M/10044/2021 dated 23.02.2021 finally ordered as below:

- Confirmed the demand of Central Excise duty of Rs. 29,59,000/- towards duty leviable for the month of August, 2014 alongwith interest leviable thereon under Section 11AA of the Central Excise Act, 1944;
- Vacated the confiscation of seized PPM and set aside Redemption Fine of Rs. 10,000/- imposed on the appellant;
- Imposed penalty @10% of Rs. 29,59,000/- on the appellant and set aside the penalty on Shri. Has Mukhbhai Ugarchand Patel, Authorised Signatory under Rule 26 of the Central Excise Rules, 2002;
- Ordered for appropriation of duty amount of Rs. 36,82,000/- with interest under Section 11AA of the CEA, 1944, as deposited in the month of September, 2014 for the month of September, 2014;
- Ordered for appropriation of confirmed demand of Central Excise duty of Rs. 29,59,000/- alongwith interest under Section 11AA of CEA, 1944 and 10% of Penalty on Rs. 29,59,000/- imposed on the appellant amounting to Rs. 2,95,900/-, from the amounts which the appellant has deposited during pendency proceedings and also directed the JDC to calculate actual



interest and communicate the same to the appellant as part of appropriating such payments:

- *The remaining amount of duty and corresponding penalty and interest over and above mentioned in the Order were set aside.*

2.9 Thereafter, in pursuance of the Final Order No. A/10006-10008/2021 dated 11.01.2021 issued by the Hon'ble Tribunal, the appellant filed a refund claim before the adjudicating authority for an amount of Rs. 1,73,59,222/- along with interest on 22.03.2021.

3. The adjudicating authority vide issuance of impugned order sanctioned the refund claim of Rs. 1,73,59,222/- to the appellant but not granted any amount towards interest thereon.

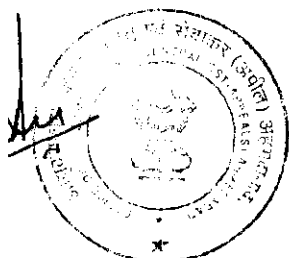
4. Being aggrieved, by the impugned order dated 18.06.2021, the appellant has filed the present appeal on the grounds that:

- 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. 1,73,59,222/- 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. 1,73,59,222/-, 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 to 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 17.09.2021 through video conference. Shri P.P. Jadeja, Consultant, appeared for the hearing. He reiterated the submissions made in Appeal Memorandum and requested to allow the due "Interest" on the amount of refund sanctioned in the present case, as a consequential benefit.

6. 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 of refund sanctioned in terms of Section 35FF/11BB of the Central Excise Act, 1944 or otherwise.

6.1 I find that the adjudicating authority held in the impugned order that *the appellants have paid an excess amount of Rs. 1,73,59,222/- which is eligible to them pursuant to issuance of order dated 11.01.2021 and 23.02.2021 of the Hon'ble Tribunal; that the claim is filed by the appellant within the time period of one year from the date of order issued by the Hon'ble CESTAT and hence, the claim is not hit by limitation; that the claim has been examined with reference to unjust enrichment clause of the Section 11B of the CEA, 1944 and found in order.* However, I find that the adjudicating authority has neither discussed the issue of payment of interest in the impugned order nor sanctioned any amount to the appellant towards interest on the amount of refund sanctioned.

6.2 It is observed that the appellant has contended in appeal memorandum and during personal hearing that they 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.

6.3 As regards the contention of the appellant, I find 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. ---

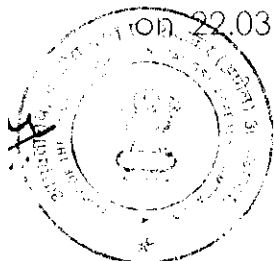
If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding 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."

6.4 In view of above provision of Section 11BB of the Central Excise Act, 1944, 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 present case, the appellant had paid the amounts in question towards their demand of Central Excise duty which were ordered to be paid by Hon'ble Settlement Commission, Mumbai Final Order No. 121/CEX/WDN/2016 dated 29.07.2016 towards duty alongwith interest leviable thereon and at a later stage also confirmed by the Commissioner, Central GST & Central Excise, Ahmedabad North vide Order No. AHM-EXCUSE-002-COMMR-13-2019-20 dated 27.12.2019. In the present case, the refund claim thereof was filed on 22.03.2021 in terms of the Final Order No. A/10006-10008/2021 dated



11.01.2021 passed by the Hon'ble Tribunal, Ahmedabad. Further, the adjudicating authority has sanctioned the refund claims under impugned order dated 18.06.2021. Therefore, I find that there was no delay in sanctioning of said refund claims in terms of legal provisions discussed above.

7. 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 of the act. However, in the present 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 Hon'ble CESTAT, Ahmedabad. The facts of the case on hand, therefore, stand different from the facts of the case decided by the Hon'ble Supreme Court in the above referred case.

7.1 Further, 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 wherein it is 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

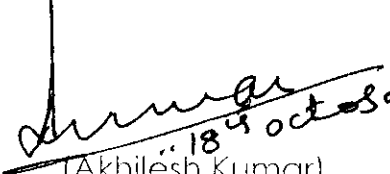


governed by the Section 11B of Central Excise Act, 1944. In case of refund under Section 11B provision, of interest is available under Section 11BB. In terms of such section, of interest is payable only from the date after completion of 3 months from the date of filling the refund application. Therefore, 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."

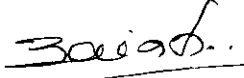
7.2 In view of above legal pronouncement, the payment made by the appellant towards demand confirmed by the Hon'ble Settlement Commission cannot be considered as deposit and accordingly, the appellant is not eligible for interest as contended from the date of payment of such amount made by them as per the directions of Hon'ble High Court towards demand confirmed by Hon'ble Settlement Commission. Further, 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 the present case, the application for refund has been submitted by the appellant on 22.03.2021 in terms of the Order No. A/10006-10008/2021 dated 12.01.2021 issued by the Hon'ble CESTAT, Ahmedabad wherein the refund has been sanctioned by the adjudicating authority vide the impugned order dated 18.06.2021. In view of the above, I find that the contention of the appellant claiming interest under the provisions of Section 11BB and Section 35FF of the Central Excise Act, 1944, in respect of the amounts sanctioned as refund by the adjudicating authority vide the impugned order, is not sustainable.

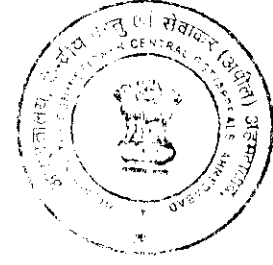


8. Hence, the appeal filed by the appellant is rejected and stands disposed of in above terms.


18th October, 2021
(Akhilesh Kumar)
Commissioner (Appeals)
Ahmedabad
18/10/2021

Attested


(M. P. Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D

To

M/s. Hasmukh Tobacco Products,
300, Meldi Estate, Gota Road,
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.