



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

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DIN : 20220364SW000000CEB8

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1492/2021-APPEAL / 6648-52
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-74/2021-22
दिनांक Date : 04-03-2022 जारी करने की तारीख Date of Issue : 04-03-2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/REFUND/34/AC/JRS/GMC/2020-21 दिनांक: 25.03.2021, issued by Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Shri G. M. Chauhan,
39-B, Phase-I, Safal Vivaan,
Behind Manan Auto Link, Off. S. G. Highway,
Gota, Ahmedabad-382481

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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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 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 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 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."

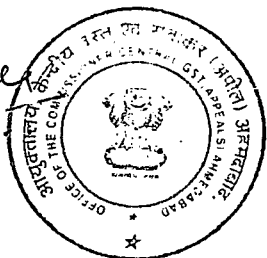


ORDER IN APPEAL

This appeal has been filed by Shri G. M. Chauhan, 39-B, Phase-I, Safal Vivaan, Behind Manan Auto Link, Off S. G. Highway, Gota, Ahmedabad-382481 (hereinafter referred to as the 'appellant') against Order-In-Original No. GST-06/REFUND/34/AC/JRS/GMC/2020-21 dated 25-03-2021 (hereinafter referred as "impugned order") passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as the 'adjudicating authority').

2. The facts of the case, in brief, are that the appellant had filed a refund claim for an amount of Rs. 81,304/- on 01.02.2021, towards differential amount of interest, in respect of their earlier refund claim for an amount of Rs. 3,02,136/-, which was sanctioned by the Assistant Commissioner, CGST, Division-VI, Ahmedabad-North (hereinafter referred to as the 'earlier adjudicating authority-1') vide OIO No. GST-06 /Refund/12 /AC/AMP /GMChauhan/2019-20 dated 09.07.2019 (hereinafter referred as "original order-1"), under Section 11B of the Central Excise Act, 1944 as made applicable to the case of Service Tax matter vide Section 83 of the Finance Act, 1994 along with interest of Rs. 44,301/- under Section 11BB of Central Excise Act, 1944.

2.1 The appellant had filed the earlier refund claim for an amount of Rs. 3,02,136/- alongwith interest on 24.10.2016 before the office of the Assistant Commissioner, Division-II, erstwhile Service Tax Commissionerate, Ahmedabad. The appellant had filed the refund claim on the ground that he had purchased unit Duplex No. 39, B Safal Vivan, Phase-I, S.G. Highway, Ahmedabad in the capacity of buyer from M/s. Safal Construction Pvt. Ltd, the builder having Service Tax Registration No. AACCS7461CST001, and for the said residential unit, the builder had charged and recovered Service Tax amounting to Rs. 3,02,136/-, which had been borne by him. Further, the said refund claim was filed by the appellant on the basis of the ruling of the Hon'ble High Court of Delhi in the case of Suresh Kumar Bansal & Anuj Goyal & Ors. Versus Union of India [2016 (6) TMI 192-Delhi High Court], wherein it was held that no Service Tax could be charged on construction contracts involving Sale of Land (immovable Property) and Services i.e. composite contracts, as there is no machinery provided under the Act or in the Valuation Rules for ascertaining the service element specifically in such contracts.

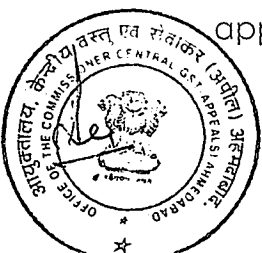


2.2 In respect of the said refund claim filed by the appellant on 24.10.2016, a Show Cause Notice dated 01.12.2016 was issued to the appellant as to why the refund of Rs. 3,02,136/- alongwith interest should not be rejected under the provisions of Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax under Section 83 of the Finance Act, 1994. Subsequently, the said refund claim had been rejected by the Assistant Commissioner, Division-II, erstwhile Service Tax Commissionerate, Ahmedabad (hereinafter referred to as the 'earlier adjudicating authority-2') vide OIO No. SD-02/REF-238/VIP/2016-17 dated 27.12.2016 (hereinafter referred as "original order-2"), after giving his findings, as reproduced below:

- In the instant case, the claimant failed to produce any invoice as per Rule 4A of Service Tax Rules, 1994;
- The GAR 7 Challans are the basic documents vide which payment liability can be ascertained & the claimant has failed to produce any documentary evidence in this regard;
- The Hon'ble High Court while passing the judgment has not expressed its opinion on amendment of Finance Act, 2012, wherein the provision (Section 65 (105)) defining all the Services under the Act was deleted and all Services (as defined under Section 65B(44) of Finance Act, 2012) were made chargeable to Service Tax except the negative list. So the said judgment is applicable to the agreements entered prior to the year 2012.
- The claimant has entered in to agreement on 28th September, 2015 with the Service Provider i.e. after year 2012, therefore the claim is ineligible & baseless as the said ruling of Hon'ble High Court is not applicable for them."

2.3 Thereafter, the appellant had filed appeal against the "original order-2" passed by the 'earlier adjudicating authority-2', before the Commissioner (Appeals), Central Tax, Ahmedabad (herein after referred as 'the original appellate authority'). The said appeal was decided vide OIA No. AHM-EXCUS-002-APP-352-17-18 issued on 23.03.2018 (herein after referred as 'the original appellate order'), wherein 'the original appellate authority' has upheld the "original order-2" passed by the 'earlier adjudicating authority-2'.

2.4 Being aggrieved with the 'original appellate order', the appellant filed an appeal before the Hon'ble CESTAT, Ahmedabad, who decided the appeal in favour of the appellant vide Final Order No. A/10874-10876/2019



dated 10.05.2019 and remanded the matter to the adjudicating authority to reprocess the claim.

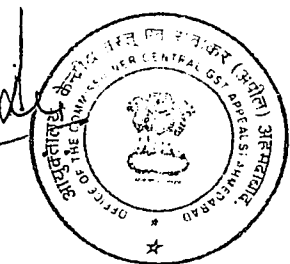
2.5 Subsequently, the appellant vide letter dated 10.06.2019 approached the 'earlier adjudicating authority-1' requesting to give effect to the Final Order No. A/10874-10876/2019 dated 10.05.2019 passed by the Hon'ble CESTAT, Ahmedabad. The 'earlier adjudicating authority-1' reprocessed the claim of the appellant, and by issuing the 'original order-1', sanctioned the refund claim of Rs. 3,02,136/- to the appellant under Section 11B of the Central Excise Act, 1944 and also granted interest of Rs. 44,301/- [calculated @6% for the period beyond three months from the date of application of refund by the appellant i.e. 24.10.2016] under Section 11BB of the Central Excise Act, 1944.

2.6 Thereafter, the appellant has filed refund claim for an amount of Rs. 81,304/- on 01.02.2021 before the adjudicating authority, claiming differential amount of interest [claiming interest @9% on the refund amount of Rs. 3,02,136/- for the period from 04.12.2014 i.e. the date of payment of Service Tax to the department till 18.07.2019 i.e. the date of grant of refund]. The adjudicating authority, vide impugned order, rejected the refund claim of interest of Rs. 81,304/-, under Section 11BB read with Section 11B of the Central Excise Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of Finance Act, 1994.

3. Being aggrieved by the impugned order, the appellant has filed the present appeal on the grounds, as reproduced under the following paragraphs.

3.1 The refund claim of Service Tax of Rs. 3,02,136/- was filed on 24.10.2016, in respect of the said amount wrongly collected by builder on 04.12.2014, as held by Hon'ble Delhi High Court in the case of Sureshkumar Bansal & Anuj Goyal & Others Versus Union of India reported at [2016 (6) TMI 192] while deciding the WP (C) No. 2235/2011. The directions contained in Para-56 of the said judgment of Hon'ble High Court, are reproduced below:

"the concern officer of the respondent No.1 shall examine whether the builder has collected any amount as Service Tax from the Petitioners defined in Section 65 (105) (zzzh) of the Act and has deposited the same with the respondent authorities. Any such amount



deposited shall be refunded to the Petitioners with interest at the rate of 6% from the date of refund".

3.2 Though the refund claim was based on 'the Court's Order and it was confirmed by Adjudicating authority as well as Appellate Authorities in their respective orders, the Adjudicating Authority arbitrarily applied the provisions contained in Section 11B/11BB of 'the Act', restricting the calculation of interest from the date of filing of Refund Claim, instead of taking date of payment for calculation of interest as held by 'the Court' in its ruling referred in above para, without offering an opportunity of being heard.

3.3 The following submissions made to the adjudicating authority on 01.02.2021, while submitting the refund claim for revision of calculation of interest in terms of number of days and rate of interest, which have not been taken into consideration.

- (i) The provisions contained in Section 11B/11BB are not applicable in the present case as what was collected was not Service Tax and hence, it has to be treated as 'Deposit'.
- (ii) Circular No. 984/08/2014-CX issued by CBEC on 16.09.2014 was referred, wherein instruction of calculation of interest on deposit from the date of deposit of amount are issued.
- (iii) The following judgments have been relied upon, in support of their contention:
 - Hon'ble High Court in case of K.V.R Constructions Versus CCE [(2010) 25 STT 436 (Kar)]
 - Hexacom (I) Ltd. Versus CCE, Jaipur [2003 (156) ELT 357 (Tri. Del)]
 - CCE, Raipur Versus Indian Ispat Works Ltd [2006 (3) STR 161 (Tri. Del)]
 - Hon'ble High Court in case of Geep Industrial Syndicate Ltd. Vs. Union of India [1990 (47) ELT 311 All.]
 - Pfizer Products India Private Limited Versus Commissioner of Customs & ST, Bangalore [2015-TIOL-442-CESTAT-BANG]
 - Sandvik Asia Limited Versus Commissioner of Income Tax-I, Pune [2006-TIOL-07-SC-IT]
 - Ajanta Leather Fashion (P) Ltd. Versus Commissioner of Customs (Port), Kolkata [2007 (218) ELT 624 (Tri. Kol)]
- (iv) The rate of interest on refund is revised to @9% p.a. through Section 56 of the GST Act. The main clause and explanation of Section 56 are *pari materia* with Section 11BB of the Central Excise Act, 1944. This being



latest, it will prevail over provisions contained in Section 11BB of the Central Excise Act, 1944.

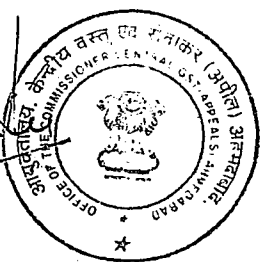
- (v) The Telangana High Court in the case of Vasudha Bommi reddy Versus Asstt. Commissioner of Service Tax in Appeal Number-WP-5980/2017, held that, "38. For all these reasons, this Writ Petition is allowed and the 1st respondent is directed to refund a sum of Rs. 33,77,539/- to the petitioners with interest @ 9% per annum from the date of payment of the same by the petitioners to the 4th respondent i.e. 19.06.2014 till the date of payment to the petitioners. No costs".
- (vi) Accordingly, the appellant prayed to calculate interest following the abovementioned judgment of Telangana High Court, which is based on 'the Court's' judgement and taking into consideration the harassment caused to the Service Recipient, by Adjudicating Authority. The facts of the case of appellant are identical. In view of the same as well as upward revision in the rate of interest through Section 56 of GST Act, the appellant has claimed refund @ 9% from the date of payment till the date of refund.

3.4 Further, vide letter dated 10.03.2021 and reply to SCN vide letter dated 18.03.2021, submitted to the adjudicating authority, the appellant has again reiterated the said contentions, as mentioned in Para-3.1 to 3.3 above.

4. Personal hearing in the matter was held on 12.11.2021. The appellant appeared in person for the personal hearing. He re-iterated the submissions made in Appeal Memorandum. He also submitted a synopsis of submissions during hearing.

5. 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 issues which require determination in the case are as under:

- (i) Whether the appellant is entitled for interest, from the date of deposit of such amount till the date of refund sanctioned, in respect of their claim for refund of Rs. 3,02,136/- filed on the basis of Delhi High Court judgment in case of Sureshkumar Bansal & Anuj Goyal & Ors Versus UOI [2016 (6) TMI 192 (Del. HC)] or otherwise?

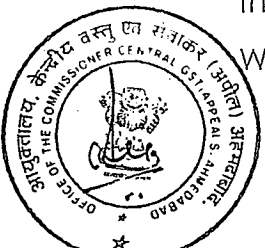


- (ii) Whether the appellant is entitled for interest @ 9% p.a. on the refund, as per the judgment of Hon'ble High Court of Telangana in case of Vasudha Bommireddy Versus Asstt. Commissioner of Service Tax in Appeal Number-WP 5980/2017 and also in terms of the provision of Section 56 of GST Act or otherwise?

6. It is observed that the appellant has mainly contended that the refund claim was based on the Delhi High Court's order and not under Section 11B/11BB of the Central Excise Act, 1944. Hence, it was to be treated as 'Deposit' and hence he was entitled for interest from the date of deposit and not from the date of claim of refund. Further, the appellant also contended that CBEC vide Circular No. 984/08/2014-CX dated 16.09.2014 issued instructions for calculation of interest on deposit from the date of deposit of amount.

6.1. As regards the CBEC Circular No. 984/08/2014-CX dated 16.09.2014 relied upon by the appellant, I find that the said Circular has been issued in respect of the payment required to be made as deposit in compliance of the provisions of Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, at the time of filing appeal before the appellate authority. Whereas, in the present case, it is observed that the interest has been claimed by the appellant in respect of the amount of Rs. 3,02,136/- which was charged and recovered by the builder as 'Service Tax', for which the refund claim was subsequently filed by the appellant before the 'earlier adjudicating authority-2' on the basis of the ruling of the Hon'ble High Court of Delhi [2016 (6) TMI 192-Delhi]. Accordingly, I find that instructions issued under CBEC Circular dated 16.09.2014 are not applicable to the facts of the present case and hence, the contention of the appellant relying on the said Circular is not sustainable.

6.2 It is further observed that the appellant has claimed for interest for the period from the date of deposit of the amount till the date of refund sanctioned, as granted by the Hon'ble Delhi High Court in case of Sureshkumar Bansal & Anuj Goyal & Ors Versus UOI [2016 (6) TMI 192 (Del. HC)], on the premise that their refund claim was filed on the basis of said judgment of Hon'ble Delhi High Court and not under Section 11B/11BB of the Central Excise Act, 1944. As regards the said contention, it is observed as per the facts available on record that the appellant was not a petitioner in the W.P. (C) No. 2235/2011 filed before the Hon'ble Delhi High Court, for which



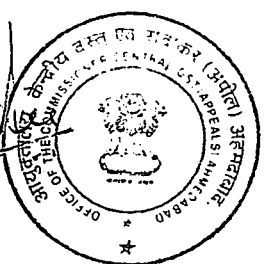
the said judgment has been delivered on date 03.06.2016 by the Hon'ble High Court. Hence, the relief granted by the Hon'ble High Court in Writ Jurisdiction will be available to the parties to the application. I find that the appellant has been granted refund on the basis of said judgement and that he has also been granted interest as per the legal provisions contained under Section 11B/11BB of the Act as existed during the material time. Hence, I find that there is no legal infirmity caused to the appellant.

6.3. As regards the contention of the appellant for consideration of their refund application and interest thereon, beyond the provisions of Section 11B/11BB of the Central Excise Act, 1944, it is pertinent to mention that Section 11B/11BB are the only provisions under the Central Excise Act, 1944, as made applicable to service tax vide Section 83 of the Finance Act, 1994 [other than the provisions of Section 35FF applicable in case of deposit made in compliance of Section 35F of the Central Excise Act, 1944] , under which the Central Excise Officers have been authorized to consider the refund application filed by any person and to pay interest thereon, in case of delayed refund, under the provisions of Section 11BB of the Central Excise Act, 1944. In this regard, it is also relevant to examine the judicial pronouncements on similar issue to decide the issue in a correct perspective.

6.3.1. The Hon'ble Tribunal, Ahmedabad, in the case of Petronet LNG Limited vs. CC, Ahmedabad [2018 -TIOI-3265-CESTAT Ahmedabad], has examined the decision of Hon'ble Apex Court in the case of Collector of Chandigarh vs. Doaba Co-operative Sugar Mills - 1988 (37) ELT 478 (SC) and came to following conclusion:-

"4. We have carefully considered the submissions made by both the sides and perused the record. We find that the limited issue to be decided by us is, However, the Hon'ble Supreme Court in various judgments held that all the refund claims of customs and excise has to be governed by Section 27 of the Customs Act or Section 11B of the Central Excise Act, 1944. In the case of Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills - 1988 (37) E.L.T. 478 (S.C.), the Hon'ble Apex Court held as under :-

"6. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no

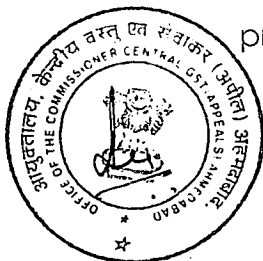


application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail. The appeal, therefore, has no merits and it is accordingly not entertained and dismissed. There is no order as to costs."

From the above judgment, it is clear that even if there is refund of duty which was recovered without authority of law, the refund made before the departmental authority, limitation provided under Customs/Central Excise Act shall be applicable. The Hon'ble Supreme Court has held that authorities functioning under an Act is bound by its provisions and any refund proceedings beyond the limitation provided under the Customs/Central Excise Act, the same can be initiated in the Civil Court. In the case of Paros Electronics Pvt. Limited v. UOI - 1996 (83) E.L.T. 261 (S.C.), the Hon'ble Supreme Court held that customs authorities cannot grant refund, being a creation of statute they are bound by limitation of Section 27 of the Customs Act.

5. On the analysis of above judgments of Hon'ble Supreme Court, the gist is that any refund filed before the Customs/Central Excise authorities can only process the claim under Customs/Central Excise Acts and the departmental authorities have no jurisdiction to go beyond the provisions made under the Act and limitations provided under Section 27/Section 11B."

6.3.2. The above judicial pronouncement of Hon'ble Tribunal is of jurisdictional Tribunal and that it has examined various decisions of Hon'ble Supreme Court while passing judgement therein. Hence, I find it a settled position of law that any authority, being creature of statute has no authority to go beyond the provisions of the act and accordingly, any refund claim filed before the Central Excise authorities can only be processed under the provisions of the Central Excise Act and cannot go beyond the inherent provisions made under the act.



6.3.3. The relevant provisions of Section 11BB of the Central Excise Act, 1944 and Notification No. 67/2003 dated 12.09.2003 are also reproduced below:

"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

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.

Notification No. 67 / 2003 - Central Excise (N.T) dated: 12.9.2003

"In exercise of the powers conferred by Section 11 BB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.17 / 2002 Central Excise (NT) dated the 13th May, 2002 (G.S.R 353 (E), dated the 13th May, 2002), except as respect things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at six percent per annum for the purpose of the said section".

6.3.4 In the present case, as per the facts available on record, it is undisputed that the refund claim for an amount of Rs. 3,02,136/- filed by the appellant on 24.10.2016, stated to be wrongly collected by builder as Service Tax, had been considered by the 'earlier adjudicating authority-1' vide 'original order-1' and sanctioned the said amount to the appellant under Section 11B of the Central Excise Act, 1944 and also granted interest of Rs. 44,301/- [calculated @6% for the period beyond three months from the date of application of refund by the appellant i.e. 24.10.2016] under Section 11BB of the Central Excise Act, 1944.

6.3.5 As regard the contention of the appellant claiming interest @9% in terms of the provisions of Section 56 of CGST Act, 2017, I find it proper to

examine the relevant transitional provisions, as reproduced below:



"Section 142. Miscellaneous transitional provisions.-

(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944):

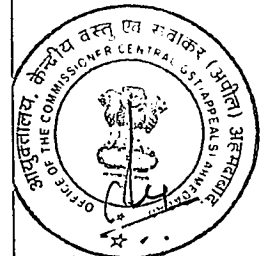
(5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 1944)."

"Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

(48) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;"

It is observed in the present case that the appellant has claimed interest in respect of the amount of Rs. 3,02,136/- [for which the refund has already been granted to them alongwith interest under the provisions of Section 11BB of the Central Excise Act, 1944] which was paid as 'Service Tax' by them under the provisions of Finance Act, 1994. Accordingly, in terms of the abovementioned provisions of Section 142 of the CGST Act, 2017 read with Section 2(48) of the said act, I find it clear that claim for refund of such amount paid under the existing law i.e. Finance Act, 1994 alongwith interest thereon can be considered under the provisions of the existing law i.e. Section 11B/11BB of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994. Hence, the contention of the appellant claiming interest @9% in terms of the provisions of Section 56 of CGST Act, 2017 is not legally sustainable.

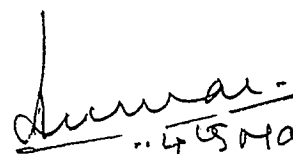


6.3.6 In view of the discussion above, I find that the adjudicating authority or the appellate authority, being creature of provisions of the act, can not go beyond the provisions of the act and hence, the contention of the appellant claiming interest for the period from the date of deposit and @9%, which is beyond the provisions of Section 11BB of the Central Excise Act, is not legally sustainable. Accordingly, I find that the impugned order passed by the adjudicating authority is as per settled position of law and legally correct.

7. On careful consideration of the relevant legal provisions, judicial pronouncements and submission made by the appellant, I passed the Order as below:

- (i) I do not find any merit in the contention of the appellant claiming interest @9% and for the period from the date of deposit of the amount as Service Tax, which is beyond the statutory provisions of Section 11BB of the Central Excise Act, 1944. Hence, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

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


.. 4th March, 2022..

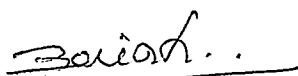
(Akhilesh Kumar)

Commissioner

CGST (Appeals), Ahmedabad

Date: 04/03/2022

Attested



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

By R.P.A.D

DIN- 20220364 SW000000CEB8

To

Shri. G. M. Chauhan,
Phase-I, 39, B Safal Vivaan,
Behind Manan Auto Link,
Off S. G. Highway, Gota,
Ahmedabad-382481



Copy to:

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



