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: 20220364SW000000C445

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1491/2021-APPEAL / 6895-99

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-80-2021-22**
दिनाँक Date : **17-03-2022** जारी करने की तारीख Date of Issue 21.03.2022

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **GST-06/REFUND/32/AC/JRS/KHODAJI/2020-21** दिनाँक: **23.03.2021**, issued by Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Shri Khodaji Chunthaji Thakor
47-B, Safal Vivaan, Phase I, B/H Maruti Suzuki Arena,
Off S.G. Highway, Gota, Ahmedabad - 382481

2. Respondent

The Assistant Commissioner, CGST, Division-VI, Ahmedabad North
7th Floor, BD Patel House, Nr. Sardar Patel Statue, Naranpura, Ahmedabad-380014

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 पूवोक्त 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 मामलें 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 डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम,(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 दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(10) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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:
(xiii) amount determined under Section 11 D;
(xiv) amount of erroneous Cenvat Credit taken;
(xv) 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 Khodaji Chunthaji Thakor, 47-B, Safal Vivaan, Phase-I, 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/32/AC/JRS/KHODAJI/2020-21 dated 23-03-2021 (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. 3,13,531/- on 27.01.2021, which was charged and recovered from them by the builder towards Service Tax [as per Receipt No. 05 dated 14.09.2016] in respect of residential unit at Duplex No. 47, B Safal Vivaan, Phase-I, S.G. Highway, Ahmedabad purchased from the said builder. It has been contended that as the Building Use Permission (BU permission) had already been issued on 21.10.2014 by the Competent Authority in respect of the said residential unit and accordingly, it was claimed that as the said residential unit was purchased after issuance of BU permission, as such no Service Tax was payable thereon.

2.1 The adjudicating authority while considering the refund application submitted by the appellant, found the claimant eligible for the refund under the provisions of Section 11B of the Central Excise Act, 1944 made applicable to service tax matters vide Section 83 of the Finance Act, 1994 read with sub-section (3) & (5) of the Section 141 of the Central GST Act, 2017 and accordingly, sanctioned the refund claim amounting to Rs. 3,13,531/- to the appellant vide the impugned order under Section 11B of the Central Excise Act, 1994 made applicable to service tax matters vide Section 83 of the Finance Act, 1994. However, as regards the claim of the appellant for interest thereon, the findings of the adjudicating authority as per para-20 of the impugned order are as reproduced below:

> *"20. I find that Section 11BB clearly and categorically specified that if any duty ordered to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application under sub-section (1) of Section 11B, there shall be paid to the appellant interest at the notified rate 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. The significant words are "expiry of three months from the date of receipt of such application". In the instant case, the said claimant has filed*

application of refund on 27.01.2021 and as per the provision of Section 11B, the same is required to be sanctioned within three months from the date of filing refund claim. I therefore find that Section 11B and 11BB of Central Excise Act, 1944 are statutory legal binding provisions, as such the same can not be overlooked under any circumstance. As such I do not find any justification of granting interest in this regard."

3. Being aggrieved by the impugned order, the appellant has filed the present appeal, requesting "to issue necessary directions to the adjudicating authority to calculate interest on Rs. 3,13,531/- being the amount of refund from 14.09.2016 (date of deposit) to 05.04.2021 (date on which refund sanctioned was deposited in their bank account) as directed by Delhi High Court and @ 9% as held by Telangana High Court in WP No. 5980/2017". The grounds of appeal filed by the appellant are briefly reproduced under the following paragraphs.

3.1 Hon'ble Delhi High Court has vide para 56 of its judgment in the case of Suresh Kumar Bansal & Others Vs. UOI reported at [2016 (6) TMI (192) Delhi HC] directed Service Tax department that:

"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 deposit till the date of refund".

3.2 The adjudicating authority has by implications accepted that the claim is not based on the provisions contained in Section 11B/11BB of the Act for the reasons stated below:

(i) The claim has not been submitted before the expiry of one year from the relevant date, as required under the provisions of Section 11B of the act. Still the refund claim is entertained thereby meaning that the adjudicating authority was of a view that the provisions contained in Section 11B/11BB are not applicable.

(ii) In the present case, the application was made on plain paper and accordingly, neither the claim was submitted in Form-R nor the relevant documents i.e. Copy of TR-6/GAR-7, PLA, copy of returns evidencing payment of duty, copy of invoices etc. and documents evidencing that duty have not been passed on to the buyer etc.

were submitted therewith. Still the refund claim is entertained thereby meaning that the adjudicating authority was of a view that the provisions contained in Section 11B/11BB are not applicable.

(iii) In the instant case, the court has held that the service tax was not payable; hence it is not the payment of duty, cess etc. Accordingly, the provisions contained in Section 11B are not applicable.

3.3 In view of the above facts, it is proved that the adjudicating authority has not treated it as duty or cess by not applying provisions contained in Section 11B of the act. Hence, it has to be treated at par with Pre-deposits and the provisions of Section 35F of the act are to be applied. Accordingly, the adjudicating authority has erred in denying interest on collection of alleged service tax by the builder and hence it has to be treated at par with pre-deposit and interest is to be calculated from the date of its payment (i.e. 14.09.2016) to the date (i.e. 05.04.2021) on which refund was deposited by the department in the account of the appellant.

3.4 Hon'ble Telangana High Court in the case of Vasudha Bommireddy Vs. Assistant Commissioner of Service Tax in Appeal No. WP No. 5980/2017 in its judgment dated 20.12.2019 interpreting Delhi High Court's judgment in the case of Suresh Kumar Bansal & Others Vs. UOI, has directed to refund the amount deposited with 9% interest from the date of deposit. Since the Telangana High Court's judgment is latest interpreting Delhi High Court judgment, it will prevail over the judgment of Hon'ble Delhi High Court so far as the date and rate of calculation of interest is concerned.

3.5 Hon'ble CESTAT, Ahmedabad vide para-1 of the Final Order No. A/10874-10876/2019 dated 10.05.2019 has held that *"The brief facts of the case is that the appellant are the buyers of the flat from the builder. The builder have paid the service tax and collected from the appellants. The appellants later on found that as per the judgment of Delhi High Court in the case of Suresh Kumar Bansal & Others Vs. U.O.I [2016 (6) TMI 192 (Del.)] there is no tax liability on sale-purchase of flat, accordingly the appellants filed refund claim in respect of service tax borne by them and paid and collected by the service provider. The lower authorities though agreed upon the merit that as per Delhi High Court Judgment, the service tax is not payable but the claim was rejected for want of various documents such as ST-3 returns of service provider, payment particulars of the service provider etc., therefore the appellants are before us".*

4. In response to the letter dated 09.12.2021 issued to the appellant informing him for the Personal hearing scheduled on 22.12.2021 in the matter, the appellant submitted letter dated 15.12.2021 vide which the submissions made in the Appeal Memorandum have been re-iterated and also requested to decide their case on the basis of the statement of facts, grounds of appeal and its enclosures.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum. 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. 3,13,531/-, as per the 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 or otherwise?*

6. It is observed that the appellant has mainly contended that the refund claim was based on the ruling of the court and not as per the provisions contained in Section 11B of the Central Excise Act, 1944. Hence, it was to be treated at par with 'Pre-Deposits' and the provisions contained in Section 35 F of the Act are to be applied. Hence, the provisions of Section 11BB of the Act would not be applicable and he was entitled for interest from the date of deposit till the date of grant of refund.

6.1. As regards the contention of the appellant to treat the payment at par with the 'Pre-deposit' and to apply the provisions of Section 35F of the Central Excise Act, 1944, I find it is very clear that the provisions of Section 35FF of the act is applicable only in respect of interest on delayed refund of amount deposited under Section 35F of the Central Excise Act, 1944, 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. 3,13,531/-, which was charged and recovered by the builder as 'Service Tax', for which the refund claim was subsequently filed by

the appellant before the 'adjudicating authority' on the basis of the ruling of the Hon'ble High Court of Delhi [2016 (6) TMI 192-Delhi]. Accordingly, I find that the contention of the appellant to treat the amount of deposit in question at par with 'Pre-deposit' and accordingly the provisions of Section 35/35FF of the Act to be made applicable on it, is not legally 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. Further, the appellant has also contended for interest @9% from the date of deposit as per the judgment dated 20.12.2019 of Hon'ble Telangana High Court in the case of Vasudha Bommireddy Vs. Assistant Commissioner of Service Tax in Appeal No. WP 5980/2017. As regards the said contention, it is observed as per the facts available on record that the appellant was neither 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 nor in the Appeal No. WP 5980/2017 filed before Hon'ble Telangana High Court, for which the abovementioned judgment dated 20.12.2019 has been delivered. 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 as per the legal provisions contained under Section 11B of the Act as existed during the material time. Further, as per the facts available on records, the claim for refund was filed by the appellant on 27.01.2021 and the same has been sanctioned vide the impugned order dated 23.03.2021 i.e. within a period of three months from the date of receipt of application for refund. Accordingly, as per the findings at para-20 of the impugned order, the adjudicating authority has not found the appellant, entitled for any interest thereon in terms of the provisions of Section 11BB of the act. 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 –TIOL-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. 3,13,531/- filed by the appellant on 27.01.2021, stated to be wrongly collected by builder as Service Tax, had been considered by the adjudicating authority vide impugned order and sanctioned the said amount to the appellant under Section 11B of the Central Excise Act, 1944. . Further, it is also undisputed fact that the refund claim has been sanctioned in the present case within a period of three months from the date of receipt of application for refund. Accordingly, the appellant are not entitled for any interest thereon in terms of the provisions of Section 11BB of the Central Excise Act, 1944.

6.3.5 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% 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.

17th March, 2022.

(Akhilesh Kumar)
Commissioner
CGST (Appeals), Ahmedabad

Date: 17/ March/ 2022

Attested

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

By R.P.A.D

To
Shri Khodaji Chunthaji Thakor,
47-B, Safal Vivaan, Phase-I,,
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.