



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20240564SW000006.042

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4581/2023 / 5050 - 54
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-21/2024-25 dated 29.04.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.05.2024
(ङ)	Arising out of Order-In-Original No. GST-06/REFUND/7/VM/R-Karnavati/2023-24 dated 22.8.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Karnavati Club M/s. Karnavati Club Limited S. G. Highway Ahmedabad-380058

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:

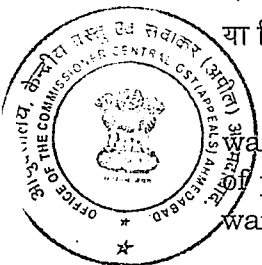
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 प्रक्रिया के दौरान हुई हो।

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

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



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.

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

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

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

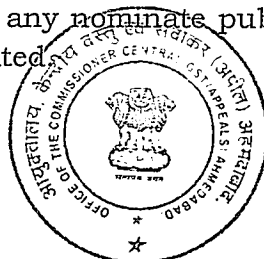
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

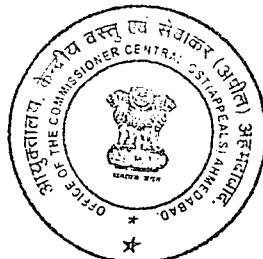
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

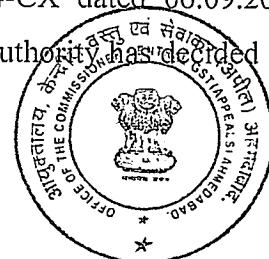
The present appeal has been filed by M/s. Karnavati Club Limited, S.G. Highway, Ahmedabad-380058 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/Refund/7/VM/R-Karnavati/2023-24 dated 22.08.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding STC Reg. No. AAACK7865QST001 and during the course of departmental audit it was observed that they were engaged in providing services like entertainment activities, games, providing residential room service, lawn and hall etc to guests of members of club but didn't paid the service tax on the same. Considering the above activities as Club Activities the membership of club or association services the appellant were issued SCN F.NO STC/4-95/O&A/10-11 dated 18.10.2010. The SCN was adjudicated vide OIO No STC/55/Commr./AHD/2011 dated 15.12.2011 wherein the service tax demand of Rs. 83,05,307/- was confirmed along with interest and penalty. The appellant preferred appeal before CESTAT. Hon'ble CESTAT vide its order no S/2134/WZB/AHD/2022 dated 25.09.2012 directed to the appellant to pay Rs. 15 lakhs under section 35F of the Central Excise Act, 1944. The same was paid by the appellant vide challan no 10002 dated 12.11.2012.

Further the Hon'ble CESTAT vide its final order A/11123/2022 dated 13.09.2022 remanded the matter back to the adjudicating authority who dropped the demand vide OIO No. AHM-EXCUS-002-Commr-01/2023-24 dated 13.06.2023. Subsequently, the appellant filed the refund of Rs. 15 Lakhs along with interest which was paid by them on the direction of the Hon'ble CESTAT. The pre deposit amount Rs. 15 lakhs was refunded to them but the interest was not given by the refund sanction authority.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- The appellant submitted that they were holding STC No. AAACK7865QST001 and engaged in providing club and association services. They have paid Rs. 15 lakhs vide challan no 10002 dated 12.11.2012 under section 35F of the Central Excise Act, 1944 in compliance of CESTAT Order No S/2134/WZB/AHD/2022 dated 25.09.2012.
- The appellant submitted that they are eligible for interest on refund of pre-deposit in terms of Provisions of Section 35FF of Central Excise Act, 1944. They stated that OIO wrongly held that Provisions contained under Section 35FF as amended by the Finance Act, 2014 will not be applicable as we have made pre-deposit in the year 2012. They also made reference of para 5 of CBIC Circular No 984/08/2014-CX dated 06.09.2014 wherein it is mentioned that in all the cases where the appellate authority has decided the



matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter seeking refund. They have also made reference of the board circular no 1053/02/2017-CX dated 10.03.2017 wherein para 26, same direction have been issued.

The appellant also placed reliance on the decision in following cases:

- The decision of the Hon'ble CESTAT Allahbad in case of M/s Parle Agro Pvt. Ltd. Vs. Commissioner of CGST Noida 2021-TIOL-306-CESTAT All.
- The judgement pronounced in case of M/s Fujikawa Power and M/s Kenzo International Vs. CCE &ST, Chandigarh-I:
- The decision of Hon'ble Allahbad High Court in case of Ebiz. Com Pvt. Ltd.[2016(9) TMI 1405-Allahbad High Court .

The appellant stated that on the basis of above principles of law set out by judicial Pronouncements, he is eligible for interest. The appellant requested to allow their appeal.

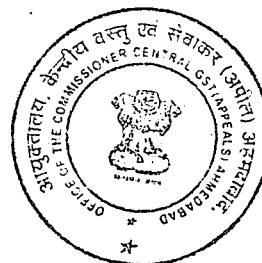
4. Personal hearing in the case was held on 17.04.2024. Shri Bishan Shah,CA, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, denying the interest on the amount Rs. 15,00,000/- which was paid as pre-deposit in 2012, in the facts and circumstance of the case, is legal and proper or otherwise.

6. AS per submission before me, It is observed that the appellant filed a refund claim of Rs. 15 lakhs which was paid by them on dated 12.11.2012 under section 35F of the Central Excise Act,1944 in compliance of CESTAT Order No S/2134/WZB/AHD/2022 dated 25.09.2012. The refund of pre-deposit is governed by the Section 35FF incorporated in the Central Excise Act, 1944 with effect from 6.8.2014.

Section 35FF of the Central Excise Act, 1944 provides as under:- 35FF. Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five percent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount.

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act.



[Note: Section 35FF of the Central Excise Act, 1944 has been substituted vide section 106 of the Finance Act, 2014 with effect from 6.8.2014]

As per the findings of the adjudicating authority in the instant case the pre deposit is made in 2012 which is well before 06.08.2014 and therefore the earlier provisions of Section 35FF of the Central Excise Act, 1944 will be applicable. The earlier provisions of Section 35FF are as under:

[SECTION 35FF. Interest on delayed refund of amount deposited under section 35F. — Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent.

From the above it is observed that where the deposits are made prior 06.08.2014 by the appellant under section 35F and the case is decided in favour of appellant by the appellate authority, the same is required to be refunded within prescribed time period failing which the appellant becomes eligible for interest on such delay.

7. In this regard, I find that similar issue came before the Hon'ble CESTAT West Zone Bench, Ahmedabad in the case between Hasmukh Tobacco Products Versus Commissioner of Central Excise Appeal No 10828 & 10957 of 2021-SM.

The issue framed in the case was as below:

“The issue involved in the present case is whether the appellant is entitled for interest from the date of deposit of pre-deposit or after the three months from the date of filing of refund application.”

After going through various judgements passed by Hon'ble Supreme Court, High Court and Tribunals, including the judgements relied upon by the appellant in this appeal, the Hon'ble CESTAT, Ahmedabad vide final Order No A/10235-10236/2023 dated 07.02.2023 passed the below order in the above case:

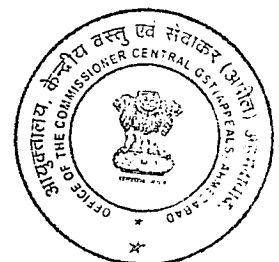
“5. In view of the above judgements, it is settled that the appellant are entitled for interest on refund of pre-deposit amount @6% from the date of deposit till the date of refund.”

8. In view of the above judgement, I set aside the impugned order to the extent of rejection of interest and partially remand the matter back to the adjudicating authority,

9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

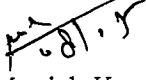
(ज्ञानचंद जैन)



आयुक्त (अपील्स)

Date : 27.7.23

Attested

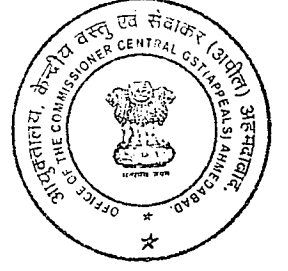


Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. Karnavati Club Limited,
S.G. Highway,Ahmedabad-380058

The Assistant Commissioner,
CGST, Division-VI,
Ahmedabad North



Appellant

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- 5) Guard File
- 6) PA file

