



सत्यमेव जयते

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  
07926305065- टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)132/Ahd-South/2019-20/14437 TO 14442

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-056-2019-20  
दिनांक Date: 27-03-2020 जारी करने की तारीख Date of Issue 04/06/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)

ग Arising out of Order-in-Original NoV/Refund/Div-IV/17-136/Vishal/19-20 दिनांक: 21.06.2019  
issued by Assistant Commissioner, Div-IV, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Vishal Fabrics Ltd  
Ahmedabad

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 issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया 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.

(b) 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।



(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।

(b) 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।

(c) 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।

(d) 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 जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

Any person aggrieved by an Order-In-Appeal issued under the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017, may file an appeal before the appropriate authority.

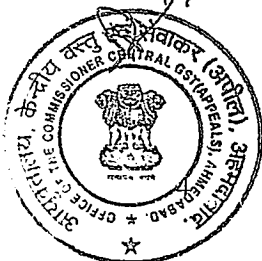


## ORDER-IN-APPEAL

M/s. Vishal Fabrics Limited, 02, Near Kashiram Textile Mills, Ranipur, Narol, Ahmedabad-382402 (henceforth, "appellant") has filed the present appeal against the Order GST-RFD-06 (Order-In-Original) No.V/Refund/ Div-IV/17-136/Vishal/19-20 dated 21.06.2019 (henceforth, "impugned order") issued by the Assistant Commissioner, Central GST, Division-IV(Narol), Ahmedabad-South (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant filed a refund claim of ITC accumulated due to Inverted Tax Structure for the month of January, 2019 for Rs.82,99,676/- under Section 54(3) of Central Goods and service Tax Act, 2017 which was sanctioned under impugned order withholding Rs.25,17,632/- towards interest against late reversal of ITC in term of CBIC Circular No.94/12/2019-GST dated 28.03.2019.

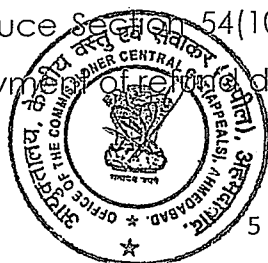
3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that the adjudicating authority erred in law and fact by withholding for January 2019 said amount of refund; that as against amount of ITC to be lapsed Rs.3,62,07,080/- (CGST Rs.1,81,03,540/- & SGST Rs.1,81,03,540/-), there was balance of ITC Rs.33,53,10,283/- (CGST Rs.15,57,84,532/- & SGST Rs.17,95,25,721/-) in Electronic Credit Ledger after filing GSTR-3B for the month of July 2018 ; that from July to October 2018, available ITC was never below amount to be lapsed; that amount is not at all utilized, the question to charge interest on delay in reversing the amount does not arise; that in term of amendment in Section 50 of CGST Act which was approved in Budget 2019 by the Parliament in July 2019 by which it is settled now that interest is required to be paid only on that portion of tax which is paid by debiting the Electronic Cash Ledger and that since there is no payment from Electronic Cash Ledger, the interest cannot be levied; that in erstwhile indirect tax laws Excise, Service Tax and VAT regime also, a tax payer was liable to pay interest on delayed payment of tax but it was calculated on net tax liability after set off of input tax credit. They placed reliance judgment of Hon'ble Gujarat High Court in case of Shabnam Petrofils Pvt Ltd v/s Union of India.



4. In the personal hearing held on ~~18.02.2020~~, Shri Krunal Agarwal, CA appeared and reiterated the grounds of appeal memorandum. The appellant then after filed additional submission under letter dated 16.03.2020 stating that in the 39<sup>th</sup> GST council meeting it has been decided to retrospectively amend the Section 50 of the Central Goods and Service Tax act,2017 to charge interest on delayed payment of GST to be charged on net cash liability i.e. w.e.f 01.07.2017. They pleaded that in the instant case, the matter involved is short payment of refund by the assessing officer on account of interest on delayed reversal wherein the reversal was made out of ITC balance and there was no cash payment in such reversal. So when there is no reversal through electronic cash ledger, there cannot be levy of interest on such delayed reversal under Section 50 of CGST Act,2017. They further argued that the assessing officer has erred in law and fact of the case by invoking Section 54(10)(b) of CGST Act,2017 and deducting the refund amount on account of interest on delayed reversal.

5. I have gone through the facts of the case, the impugned original order, the grounds raised under appeal memorandum and the oral averments made during the course of personal hearing as well as additional submission. I find that the refund claim filed by the appellant was held admissible in full and stands sanctioned under impugned order. However, it was also observed by the adjudicating authority that ITC in respect of earlier period August,2018 was reversed by the appellant late by 141 days in GSTR 3B return of February 2019 filed on 02.03.2019 and hence interest attributable in term of Section 50(1) and in term of CBIC Circular No.94/12/2019-GST dated 28.03.2019 calculated to Rs.25,17,632/- was withheld by the adjudicating authority under the provisions of Section 54(10)(b) of CGST Act,2017 from the amount of sanctioned. I find that the appeal has been preferred aggrieved with the decision by which said amount were withheld against interest on delayed reversal of ITC. Therefore, the limited issue before me is whether impugned OIO was right or not in withholding said amount of refund.

6. I reproduce Section 54(10) of the CGST Act, 2017 wherein withdrawal of payment of refund due to the claimant is prescribed:



(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may —

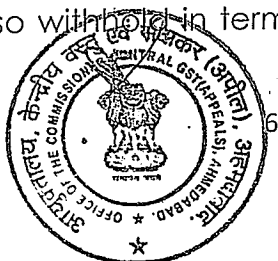
(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

*Explanation.* — For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

6. 1 As specified above, where refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, such refund may be withhold until the registered person furnishes the return or pay the tax, interest or penalty as the case may be. Furthermore, it is also specified at clause (b) above that deduction from refund due can be made in respect of tax, interest penalty.

7. I find that the adjudicating authority has withheld the part amount from total refund which was due to the claimant and therefore, since the amount is withheld, the same needs to be withheld in term of sub section (a) of Section 54(10) of CGST Act,2017. However, I find that the impugned order withheld said amount invoking Section 54(10)(b) of CGST Act,2017. Therefore, I observe that the argument of the appellant that the adjudicating authority erred invoking Section 54(10)(b) of CGST Act,2017 which does not allow withholding of the refund amount is correct. I further observe that withholding payment of refund is used with the word 'until' in sub section(b) above. Therefore, in a situation mentioned in the said section 54(10), refund due to the claimant can be withheld UNTILL the said person has furnished the return or paid the tax, interest or penalty, as the case may be. I find that the impugned order is silent on the time line up to which said amount is withheld. Thus, by not prescribing time line up to which it has been withheld, the impugned order has not complied with the all ingredients of the sub provision supra. The intention of the provision of Section 54(10)(a) of CGST Act,2017 is to withheld or keep such amount for the time being. Amount so withheld in term of this sub section can never be



of permanent nature. In other word, in a case where amount of refund was due to the person but part of it qualify for not paying to the claimant for the reasons so specified, the same may be **deducted** in term of Section 54(10)(b) of CGST Act,2017 from the refund amount due to them. Thus in the situations where deducting of amount from refund is made applicable, there is no need for waiting of the events i.e. furnishing of the return or payment of the tax, interest or penalty. Whereas, while invoking Section 54(10)(a) of CGST Act,2017 i.e. **withholding** payment of refund due, it has always to be with the word "until" which mandates upon the authority to prescribe time limit until which the same is withheld. Thus, the proper interpretation of the word "withhold" as used in the statute supra is to refrain from giving the amount of refund which otherwise is due to the claimant. However, without prescribing time limit for which said amount is withhold, the provision cannot be said to have complied in full. The impugned order is not maintainable on said count.

8. The appellant has also contested that in the 39<sup>th</sup> Meeting of the GST Council held on 14.03.2020, it has been decided that interest for delay in payment of GST is to be charged on the net tax liability of registered person and not on gross amount. Said decision shall take effect retrospectively w.e.f. 01.07.2017. Press Release issued in this regard has been submitted by the appellant for considering in their case. Thus, I find that the issue of liability of interest on account of delayed filing of GSTR 3B return to be calculated whether on gross tax liability or on net tax liability is now settled at rest deciding that interest needs to be paid on net tax liability only i.e. on that portion of tax which is paid by debiting the Electronic Cash Ledger. In the present case, since there is no payment through cash ledger, the interest cannot be levied in term of the above decision of GST Council which proposes amendment to Section 50 of the CGST Act,2017 retrospectively w.e.f. 01.07.2017. In other word, there is no delay in any cash payment on which interest can be charged. Also, the available balance of ITC was excess than the amount which was required to be reversed, the interest on delay in lapsing the ITC cannot be charged in term of said decision of GST Council 39<sup>th</sup> Meeting of the GST Council held on 14.03.2020. In addition to the said decision of GST Council, I also rely on judgment of Hon'ble Gujarat High Court in case of Shabnam Petrofills Pvt Ltd v/s Union of



India under which issue of refund i.e. inverted tax structure refund of excess duty was decided in favor of the petitioner and the Circular No.56/30/2018-GST and Noti. No.20/2018 dated 24.08.2018 were quashed, set aside and declared ultra virus by the judgment supra.

9. In view of the observations above, I accept the appeal filed by the appellant and reject the impugned order to the extent it withheld the amount of refund.

10. अपीलकर्ता 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.

(Mukesh Rathore)

Joint Commissioner, CGST, Appeals.

Date:



Attested

(D.A. Parmar)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad.

By R.P.A.D.

To,

M/s. Vishal Fabrics Limited,  
02, Near Kashiram Textile Mills, Ranipur, Narol,  
Ahmedabad -382402.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad.
3. The Principal Commissioner of Central Tax, Ahmedabad-South.
4. The Additional /Joint Commissioner, Central Tax (System), Ahmedabad-South.
5. The Assistant Commissioner, CGST Division-IV(Narol), Ahmedabad-South.
- ~~6. Guard File.~~
7. P.A. File