

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)166/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0160-2018-19
दिनांक Date : 20-03-2019 जारी करने की तारीख Date of Issue _____ 26/3/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/Ref-121/SKC/Amit/18-19 दिनांक: 30.11.2018 issued by Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Amit N Shah
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 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 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 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 ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-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 alone is in dispute."



ORDER-IN-APPEAL

Amit N. Shah, C/1, Priyadarshini Apartment, Behind NRI Tower, Near Pawan Bungalows, Bodakdev, Ahmedabad (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-in-Original No. CGST-VI/Ref-121/SKC/Amit/18-19 dated 30.11.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant was engaged in providing services under the categories of 'Legal Consultancy Service, Construction Services Other than Residential Complex Service and Works Contract Service' and hold valid registration number ALKPS7138LSD001. The appellants had filed a refund claim of ₹65,94,893/- on 27.10.2016, before the adjudicating authority. The adjudicating authority, out of the total refund claim of ₹65,94,893/-, rejected ₹57,64,301/- and sanctioned ₹8,30,592/- but credited the same to the Consumer Welfare Fund in terms of the provision of Section 12 C of the Central Excise Act, 1944 read with Section 11B of the Central Excise Act, 1944, vide OIO number SD-02/REF-281/VIP/2016-17 dated 15.02.2017. Being aggrieved, the appellant filed an appeal before me and I, vide OIA number AHM-EXCUS-001-APP-147-2017-18 dated 03.11.2017, set aside the said OIO and allowed the appeal with consequential relief. On the basis of my above mentioned OIA, the appellant approached concerned adjudicating authority and filed an application for refund of ₹63,06,128/- on 07.12.2017. The adjudicating authority, vide OIO number CGST-VI/REF-106/AMIT-SHAH/17-18 dated 07.03.2018, sanctioned the entire claim of refund amounting to ₹63,06,128/-. After that, the appellant again filed an application before the adjudicating authority for payment of interest amounting to ₹4,40,141/- on delayed payment of refund.

2.1. The adjudicating authority, vide the impugned order, rejected the refund claim of interest amounting to ₹4,40,141/- for delayed payment, stating that no refund was initially due to the appellant and hence, question of payment of interest does not arise. He further stated that The Commissioner (Appeals) had allowed the refund of the appellant by allowing the appeal however, no provision of payment of interest was discussed in the said OIA. Also, it was further alleged that as the appellant had not preferred any appeal against the OIO number CGST-VI/REF-106/AMIT-SHAH/17-18 dated 07.03.2018, it was presumed that the appellant was fully satisfied and accepted the said OIO under which the refund was sanctioned.

3. Being aggrieved with the impugned order, the appellant filed the present appeal. The appellant stated that the original claim of refund amounting to ₹65,94,893/-, was filed by him on 27.10.2016 and thus the claim was delayed by 406 days from the expiry of three months from the



date of filing of refund claim. He cited various case laws in support of his claim and requested to ensure that the said interest is sanctioned at the earliest.

4. Personal hearing in the case was granted on 07.03.2019 wherein Shri Bishan Shah, Chartered Accountant, on behalf of the appellant appeared before me and reiterated the contents of appeal memorandum.

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the appellant and oral submission made at the time of personal hearing. At the onset, I find that the appellant has received the actual amount of refund but they were not given interest for the delayed payment. As the appellant filed another refund claim for interest, same was rejected by the adjudicating authority on the following grounds;

(a) No refund was initially due to the appellant and hence, question of payment of interest does not arise.

(b) The Commissioner (Appeals) had allowed the refund of the appellant by allowing the appeal however, no provision of payment of interest was discussed in the said OIA.

© The appellant had not preferred any appeal against the previous OIO number CGST-VI/REF-106/AMIT-SHAH/17-18 dated 07.03.2018, therefore, it was presumed that the appellant was fully satisfied and accepted the said OIO under which the refund was sanctioned.

Now, I would like to discuss all the issues, mentioned above.

6.1. Regarding the first issue that no refund was initially due to the appellant and hence, question of payment of interest does not arise, I find that the adjudicating authority is not correct. The original claim of refund was rejected, vide OIO number SD-02/REF-281/VIP/2016-17 dated 15.02.2017, on a wrong ground. The claim was legally due to the appellant but the same was wrongly rejected/credited to Consumer Welfare Fund by the adjudicating authority. Thus, it is quite preposterous on the part of the adjudicating authority to state that no refund was initially due to the appellant.

6.2. Now comes the next issue where the adjudicating authority, in the impugned order, has claimed that the Commissioner (Appeals) had allowed the refund of the appellant by allowing the appeal however, no provision of payment of interest was discussed in the said OIA. It seems that the adjudicating authority has failed to go through my previous OIA number AHM-EXCUS-001-APP-147-2017-18 dated 03.11.2017, properly. In paragraph 7 of the said OIA, I had set aside the OIO number SD-02/REF-281/VIP/2016-17 dated 15.02.2017 and allowed the appeal **with consequential relief**. The word consequential relief means all types of relief



that legally follow the refund claim directly. When the claim was bonafide and was delayed by more than 3 months, while getting sanctioned, the appellant is eligible to get the interest under Section 11BB of the erstwhile Central Excise Act, 1944.

6.3. Regarding the final issue i.e. the appellant had not preferred any appeal against the previous OIO number CGST-VI/REF-106/AMIT-SHAH/17-18 dated 07.03.2018, therefore, it was presumed that the appellant was fully satisfied and accepted the said OIO under which the refund was sanctioned, I consider that if at a particular time, a claimant fails to ask for his right, that cannot be denied to him belatedly.

Moreover, in his previous appeal that was filed before me, the appellant had asked for interest of delayed refund. In paragraph 3 of my previous OIA, I had specifically mentioned about that in the last sentence of the said paragraph. That was the reason I had allowed the appeal of the appellant with consequential benefits. Such cavalier attitude of the adjudicating authority shows utter disregard for the rules which is well laid in the Board's Circular number 670/61/2002 dated 01.10.2002. The Board has very categorically directed that wherever a claim of refund is sanctioned beyond the prescribed period of three months, interest shall be paid to the applicant. I would like to reproduce below, some important lines from paragraph 2 of the said Circular;

*"2. Board would like to stress that the provisions of Section 11BB of Central Excise Act, 1944 **are attracted automatically for any refund sanctioned beyond a period of three months.** The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest".*

Thus, I find the attitude of the adjudicating authority very deplorable.

7. In view of my above discussions and findings, I set aside the impugned order and allow the appeal with direction to the adjudicating authority to allow the interest for delayed payment of refund beyond three months from the date of application in terms of the decision of the Hon'ble Apex Court in the case of Ranbaxy Laboratories vs. Union of India [2012(27)STR193(SC)] *"Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable"*.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



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

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.

ATTESTED

S. DUTTA
(S. DUTTA) 26/5/19

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.



BY R.P.A.D.

To,

Amit N. Shah, C/1,

Priyadarshini Apartment, Behind NRI Tower,

Near Pawan Bungalows, Bodakdev,

Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad (South).
3. The Assistant Commissioner, System, Central Tax, Ahmedabad (South).
4. The Dy./Asstt. Commissioner, Service Tax, Div-VI, Ahmedabad (South).
5. ~~Guard File.~~
6. P.A. File.

