



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



स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)142/Ahd-South/2019-20 / 14404 TO 14408

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-126-2019-20**
दिनांक Date : **23-03-2020** जारी करने की तारीख Date of Issue **03/04/2020**

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **09/Div-I/Refund/19-20** दिनांक: **11.09.2019** , issued by
Assistant Commissioner, Div-I, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Omega Elevators
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 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 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 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 M/s Omega Elevators, 5/C, Archana Industrial Estate, Opp. Ajit Mills, Rakhial, Ahmedabad [hereinafter referred to "appellant"] against Order-in-Original No.09/Div-1/Refund/19-20 dated 11.09.2019 [hereinafter referred to as "impugned order"] passed by the Deputy Commissioner of CGST, Division-1, Ahmedabad South [hereinafter after referred to as "adjudicating authority"].

2. Facts of the case, in brief, are that the appellant has filed refund claim of Rs. 91,23,906/- [Rs.51,16,092/- towards Service Tax paid and Rs.40,07,815/- towards interest on Service Tax paid] before the adjudicating authority on account of appeal allowed in their favour by the CESTAT, Ahmedabad. The backdrop of the said claim is that the appellant were providing service under category 'Erection, Commissioning or Installation service'. As it appeared to the department that the appellant had failed to pay Service Tax on the said service rendered during 01.07.2003 to 31.03.2005, a Show Cause Notice dated 25.05.2008, demanding Service Tax amounting to Rs.51,16,902/- along with interest and imposition of penalty was issued to them after investigation in the matter. However, the appellant paid their Service Tax liability amounting to Rs.51,16,092/- before issuance of Show Cause Notice. The demand made in Show Cause Notice was confirmed and the amount paid by them was appropriated by the then Commissioner of Service Tax, Ahmedabad, vide Order-in-Original No.STC/13/O&A/Commr/AHD/2008 dated 30.12.2008. Against the said OIO, the appellant preferred an appeal before the Hon'ble CESTAT and vide Tribunal's order dated 04.04.2019, the appeal was allowed in favour of the appellant. On the basis of the order of Hon'ble CESTAT, the appellant has filed the refund of amount paid during investigation, along with interest from the date of deposit. The adjudicating authority has sanctioned the refund claim but rejected the interest claim as there was no delay in sanctioning of refund amount as per Section 11BB of the Central Excise Act, 1944.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that the amount paid during investigation of the case is to be treated as 'deposit' as they were not required to pay Service Tax on their activities i.e installation of lift under 'Erection, Commissioning or Installation service' during relevant period; that the department insisted to pay the Service Tax, considering their activity liable for payment of Service Tax under the said service category; that when the refund is granted on illegal collection of tax, interest is also payable. They relied on Hon'ble CESTAT, Bangalore's decision in the case of M/s Binjrajka Steel Tubes Ltd [2007 (218) ELT 563] and Hon'ble CESTAT, Ahmedabad's decision in the case of M/s Amidhara Texturising Pvt Ltd [2012 (278) ELT 257].



4. Personal Hearing in the matter was held on 11.02.2020. Shri Bishan R Shah, Chartered Accountant appeared for the hearing and reiterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as oral submission made during personal hearing. The limited issue to be decided in the matter as to whether the appellant is eligible for interest on the amount of Service Tax paid during investigation of their case or otherwise.

6. I find that the amount of Rs.51,16,092/- in question was paid by the appellant during investigation of the case towards their Service Tax liability as alleged in the Show Cause Notice dated 25.05.2008. The said amount was confirmed and appropriated by the department in the OIO dated 30.12.2008, considering the amount towards tax liability. It is seen that though the appellant made the impugned payment at the time of investigation, the said payment was confirmed as duty by the jurisdictional Commissioner In his OIO dated 30.12.2008 and the said payment was appropriated towards duty demand. In the circumstances, there is no doubt on the point that what has been paid by the appellant has been adjusted towards duty and it is not a mere pre-deposit as contended by the appellant. Further, in this regard, the department has contended that the appellant had claimed the amount in question as "expenditure" in their P & L Account during 2005-06 and a Chartered Accountant certificate was also furnished by them; that accordingly, the applicability of unjust enrichment was considered while sanctioning the refund in question. This clearly show that what was sanctioned by the adjudicating authority as refund under Section 11B of the Act ibid was only a Central Excise duty paid by the appellant towards their duty liability. In the circumstances, only the provision of Section 11BB of the Act ibid attracts for sanctioning of interest, if any.

7. As per Section 11BB of the Central Excise Act, 1944, "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 prescribed, 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". Explanation to the Section ibid states that "where any order of refund is made by the Commissioner (Appeals), Appellate 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 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. Further, as per Section 11B of the Act ibid, in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate



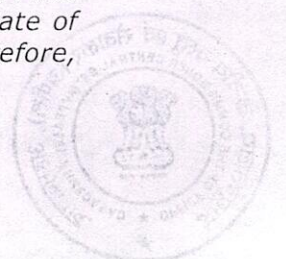
authority, Appellate Tribunal or any court, "relevant date" shall be the date of such judgment, decree, order or direction.

7.1 In view of above, it is clear that in case of any duty or tax ordered to be refunded, the interest liability arises only after the expiry of three months from the date of receipt of refund application. In the instant case, it is observed that the appellant had paid the amount in question towards their Service Tax liability and the refund claim thereon was filed on 11.06.2019, in view of CESTAT's order dated 04.04.2019. It is also observed that the adjudicating authority has sanctioned the refund claim on 11.09.2019. Therefore, there was no delay in sanctioning of said refund claim. Hence, liability of interest does not arise.

8. It is further observed that the appellant has relied on the decision of Hon'ble Tribunal, Ahmedabad in the case of M/s Binjrajka Steel Tubes and M/s Amidhara Texturising Ltd supra. The said decisions are distinguishable from the facts of the instant case. In the said case, the assessee had filed refund application to return the amount so paid as the department has insisted for the payment and no Show Cause Notice was issued to them. However, in the instant case, the payment towards tax liability was made on their own volition towards the duty liability. Further, Show Cause Notice and adjudicating proceedings were concluded by the Department without any delay and the amount paid by the appellant was appropriated as duty. The appellant has filed the refund application only after finalization of the case by the Hon'ble CESTAT. Therefore, the facts of the instant case are quite different from the case laws cited.

8.1 Further, I find that the Hon'ble Tribunal, Ahmedabad in case of M/s Ratnamani Metal Tubes & Ltd [2019 (366) ELT 0139] has held that there is no provision under Central Excise law to call amount paid during investigations as 'Deposit' and amount so paid is towards probable 'Duty' liability only. The relevant para is as under:

"5. I find that the limited issue to be decided by all this case is that in case, of deposit made during the investigation of the demand case whether interest on refund of such amount shall be payable from the date of deposit of such amount or from the date after 3 months of filling the refund application. As regard, the deposit made during the investigation it is obvious that there is no provision in Central Excise or to make a deposit. Whatever payment made it is towards the probable Excise duty liability for which the investigation is undergoing, therefore, it cannot be said that any deposit made during the investigation so made by the assessee is not a duty but only a deposit. Once the adjudication authority confirms the demand the said amount stands confirmed as duty only, the same being the duty stands appropriate against the demand confirmed in the adjudication order. For this reason also the amount even though that paid during the investigation, shall be considered as payment of duty. When this be so the refund of such duty amount is clearly governed by the Section 11B of Central Excise Act, 1944. In case of refund under Section 11B provision, of interest is available under Section 11BB. In terms of such section, of interest is payable only from the date after completion of 3 months from the date of filling the refund application. Therefore, the interest in any case is not payable from the date of deposit of the amount during the investigation. On the issue of interest on refund of duty the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. v. Union of India, 2011 (273) E.L.T. 3 (S.C.) wherein, the Court has held that the interest on refund under Section 11B is payable only from the date of expiry of three months from the date of receipt of application for refund. Therefore,



now there is no ambiguity or doubt that from which the date interest is payable in case of refund of duty. As Regard the decision relied upon by the Ld. Counsel in the case of Futura Ceramics Pvt. Ltd. (supra). I find that this decision has not considered the various judgment relied upon by the Ld. AR particularly the case of Ranbaxy Laboratories Ltd., Kamakshi Tradexim (India) Pvt. Ltd., therefore, the decision of this Tribunal dated 21-11-2017 is distinguished. As per my above discussion, the impugned order is upheld. The appeal is dismissed."

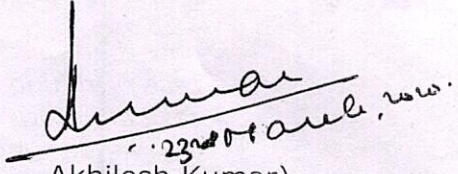
Further, I also find that the Hon'ble CESTAT, Ahmedabad in an identical case of M/s Ashima Ltd [2019 (369) ELT, 967] also decided the issue and held that interest on refund of tax paid during investigation is payable from three months of filing of refund application. The relevant para is reproduced below:

"5. As per the above clear position of law considering with the facts of the present case, the refund application filed by the applicant was admittedly filed on 14-7-1999 only, thereafter, the cause of action for refund arises. Since an amount i.e. 60 Lacs minus adjudged due as per order in original, dated 21-4-1999 become refundable and the same should have been sanctioned within 3 months from date of filing of application i.e. 14-7-1999. Accordingly, on such balance amount the interest is payable from 3 months of date of filing the refund i.e. 14-7-1999. As regard remaining amount of refund that has arisen only from the date of Tribunal order dated 12-6-2002 by which the demand confirmed by the original order was set aside, that means the amount of duty which was set aside by the Tribunal become refundable from 3 months of Tribunal order dated 12-6-2002. Accordingly, on such amount interest is payable from 3 months of date of Tribunal order. As regard the submission of Ld. Counsel that it is a deposit made during investigation which was otherwise not required, the interest is payable from the date of deposit, we do not agree with this submission of the Ld. Counsel for the reason that the appellant has suo motu deposited an amount of Rs. 60 Lacs and admittedly the refund application for the same was filed on 14-7-1999, therefore, since the appellant themselves have not claimed the refund earlier, there is no question of sanction of the same and consequential interest from the date of deposit. The Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. (Supra), clearly held that in case of refund, interest is payable from 3 months of the date of filing of application. In the present case, the period for interest has to be reckoned not only with reference to filing of refund application but also as per the provision of explanation (B)(ec) of Section 11B, therefore, interest is payable in accordance with said provision. As per our above observation, the appeal is partly allowed in above terms."


9. In view of above decisions and the decision of the Hon'ble Tribunal, Ahmedabad in the case of M/s Ratnamani Metal Tubes supra, interest on amount deposited during investigation by the appellant is only eligible after expiry of three months from the date of refund application. In the instant case, the appellant has made refund application on 11.06.2019 on account of the Hon'ble CESTAT's order dated 04.04.2019 and the adjudicating authority has sanctioned the refund claim on 11.09.2019 i.e within three months from date of refund application. Therefore, I find that the adjudicating authority has rightly rejected the claim of interest filed by the appellant.



12. In view of foregoing discussion, I reject the appeal filed by the appellant. The appeal stands disposed of accordingly.


 Akhilesh Kumar
 Commissioner (Appeals)
 /03/2020

Attested


 (Mohanan V.V)
 Superintendent (Appeals),
 CGST, Ahmedabad.



By RPAD.

To,
 M/s Omega Elevators,
 5/C, Archana Indu. Estate,
 Opp. Ajit Mill, Rakhial, Ahmedabad
Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-II, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
- ✓ 5. Guard File.
6. P.A.

