



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
 26305065-079 : टेलिफैक्स 26305136 - 079 :



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)67to70/Ahd-South/2019-20 / 12847 To 12851
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-058 to 061-2019-20**
 दिनांक Date : **30-10-2019** जारी करने की तारीख Date of Issue 01/11/2019
- श्री गोपीनाथ** आयुक्त (अपील) द्वारा पारित
 Passed by Shri **Gopi Nath**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST-VI/Ref-05 to 08/SKC/QX Global/2019-20** दिनांक:
30.04.2019 , issued by Assistant Commissioner, Div-VI, CGST, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
QX Global Services LLP
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 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, where penalty alone is in dispute."

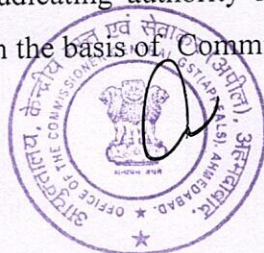


ORDER-IN-APPEAL

This order arises on account of four appeals filed by M/s QX Global Services LLP, 201, GNFC Info Tower, S.G. Highway, Bodakdev, Ahmedabad-380054 (in short 'appellant') against the Orders-in-Original No.CGST-VI/Ref-05 To 08/SKC/QX Global/ 2019-20 dated 30.04.2019 (in short 'impugned orders') passed by the Assistant Commissioner, CGST, Division-VI, Ahmedabad South (in short 'adjudicating authority') in respect of four refund claims filed by the appellant under the provisions of Notification No.27/2012-C.E.(N.T) dated 18.06.2012 read with Rule 5 of the Cenvat Credit Rules, 2004 (in short 'the CCR'), details of which are as under:

Sr. No.	OIO No. & Date	Period for which refund claimed	Amount of refund claimed(₹)	Amount of refund sanctioned (₹)	Appeal No.
1	CGST-VI/Ref-05 To 08/SKC/QX Global/ 2019-20 dated 30.04.2019	July to September 2016	2429453	2429453	V2(ST)67/Ahd-South/2019-20
2		October to December 2016	2397973	2397973	V2(ST)68/Ahd-South/2019-20
3		January to March, 2017	2824308	2824308	V2(ST)69/Ahd-South/2019-20
4		April to June, 2017	3173330	3173330	V2(ST)70/Ahd-South/2019-20

2. Brief facts of the case are that the appellant, a service provider holding Service Tax Registration No.AAACQ1087GST001, had filed four refund claims under the provisions of Notification No.27/2012-C.E.(N.T) dated 18.06.2012 read with Rule 5 of the CCR for different periods as mentioned above which were rejected by the adjudicating authority on the ground that the services claimed as export of services by them do not qualify as export of services in terms of clause (f) of sub-rule (1) of Rule 6A of the Service Tax Rules, 1994 as the appellant and their foreign service recipient are merely establishments of a distinct person in accordance with Explanation 3(b) of clause (44) of section 65 B of the Finance Act, 1994. Against the said rejection of their refund claims, the appellant filed appeals before the Commissioner (Appeals), Ahmedabad who vide OIA No.AHM-EXCUS-001-APP-268-2017-18 dated 24.01.2018 and OIA No.AHM-EXCUS-001-APP-441 to 443-2017-18 dated 20.03.2018 remanded back the cases to the adjudicating authority to decide the matter afresh. Aggrieved with the above decisions of Commissioner (Appeals), the appellant preferred appeals before the Hon'ble CESTAT, Ahmedabad who vide their Order No.A/10732-10733/2018 dated 19.04.2018 and Order No.A/11302-11304/2018 dated 27.06.2018 remanded the cases back to the Commissioner (Appeals), Central Tax, Ahmedabad. The Commissioner (Appeals), Central Tax, Ahmedabad vide OIA No. AHM-EXCUS-001-APP-117 to 120-2018-19 dated 09.11.2018 decided the cases as directed by the CESTAT wherein he has set aside the orders of the adjudicating authority rejecting the refund claims and allowed the appeals of the appellant. On the basis of Commissioner (Appeals) above orders,



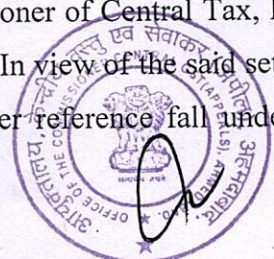
the appellant approached the adjudicating authority for their four refund claims discussed above. The adjudicating authority vide the impugned order sanctioned the four refund claims submitted by the appellant, in compliance of the Commissioner (Appeals) Order dated 09.11.2018, after having found the same in order.

3. The appellant has preferred the present appeal against the impugned order on the ground that while sanctioning refund, the adjudicating authority has not granted the interest payable under Section 11BB of the Central Excise Act, 1944 made applicable to service tax matters vide Section 83 of the Finance Act for the delayed refund.

4. A hearing in the matter was held on 09.10.2019. Shri Tushar Shah, CA appeared and reiterated the submissions of appeal memo and produced copies of order of Hon'ble High Court of Rajasthan in the case of J.K. Cement Works Vs. Assistant Commissioner of Central Excise & Customs [2004 (170) ELT 4 (Raj.)] and OIA passed by the Commissioner (Appeals), Ahmedabad in their own case for consideration.

5. I have carefully gone through the facts of the case, appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that initially the refund claim for the quarter July 2016 to September 2016 was filed on 03.05.2017 and the refund claims for the remaining three quarters viz. October 2016 to December 2016, January 2017 to March 2017 and April 2017 to June 2017 were filed on 14.08.2017. The refund claims ultimately were sanctioned/granted vide the impugned order dated 30.04.2019. Therefore, the appellants under appeal before me for interest for delayed sanction of refund claim in terms of the provisions of Section 11BB of the Central Excise Act, 1944 (in short '*the Act*').

6. I find that in the present case, the refund claims under consideration were filed by the appellant in terms of the provisions of Rule 5 of the CCR read with Notification No.27/2012-C.E.(N.T) dated 18.06.2012. Therefore, the first issue that comes up for consideration on the appellant's claim for interest is as to whether such refund claims would be governed by the provisions of Section 11B of the Act or otherwise. Provisions of 11BB of the Act will be applicable only in cases where the refund is sanctioned under Section 11B of the Act. I find that in the instant case, the refunds claimed by the appellant were sanctioned by the adjudicating authority as per provisions of Notification No.27/2012-CE (N.T) dated 18.06.2012 read with Section 11B of the Act as made applicable to service tax vide Section 83 of the Finance Act, 1994. Thus, refunds in the case were sanctioned under Section 11B of the Act. I also find that the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise Vs. Reliance Industries Ltd. [2010 (259) E.L.T. 356 (Guj.)] has held that refund ordered under Rule 5 of Cenvat Credit Rules, 2004 would be a refund under Section 11B(2) of Central Excise Act, 1944. Similar view is expressed by the Hon'ble High Court of Karnataka in the case of Commissioner of Central Tax, Bengaluru Vs. Netapp India Pvt. Ltd. [2019 (367) E.L.T. 145 (Kar.)]. In view of the said settled legal position, what follows in the case is that when refunds under reference fall under the purview of provisions of



Section 11B of the Act, then provisions of Section 11BB of Act also got attracts to such cases of refunds.

7. Provisions of Section 11BB of the Central Excise Act, 1944 which is made applicable to the Service Tax cases vide Section 83 of the Finance Act, 1994I provides for payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty. Section 11BB *ibid* is reproduced as under for better appreciation of the issue in appeal:

“SECTION [Interest on delayed refunds. 11BB. — 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.”

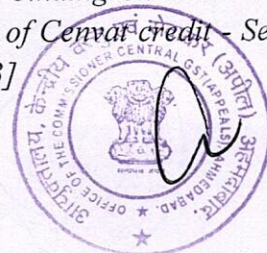
I find that the Central Board of Excise & Customs also clarified the issue of payment of interest on delayed refunds vide Circular No.670/61/2002-CX dated 01.10.2002. Relevant portion of the said Circular reads as under:

“In this connection, 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.”

Further, in the High Court decisions referred in para 6 above, both the Hon’ble High Court of Gujarat and the Hon’ble High Court of Karnataka have held that refund ordered under Rule 5 of Cenvat Credit Rules, 2004 being a refund under Section 11B(2) of Central Excise Act, 1944, the same would be covered under Section 11BB *ibid*. Gist of the said two judgments is as under:

Commissioner of Central Excise Vs. Reliance Industries Ltd. [2010 (259) E.L.T. 356 (Guj.)]

*Interest - Refund of Cenvat credit - Interest on delayed refund of Cenvat credit - Cenvat Credit Rules, 2002/2004 or Notification No. 11/2002-C.E. (N.T.) not providing for payment or non-payment of interest on delay in refund - Refund ordered under Rule 5 of Cenvat Credit Rules, 2004 would be a refund under Section 11B(2) of Central Excise Act, 1944 - Section 11BB of Central Excise Act, 1944 providing for interest applicable where there is delay in refunding amount ordered under Section 11B(2) *ibid* - Refund under Rule 5 *ibid* also being refund under Section 11B(2) *ibid*, the same covered under Section 11BB *ibid* - C.B.E. & C. Circular No. 130/41/95-CX., dated 30-5-1995 on Section 11BB *ibid* covering refund of credit of duty paid on inputs and such instructions binding on Revenue - Interest payable under Section 11BB *ibid* on delayed refund of Cenvat credit - Sections 11B and 11BB *ibid* - Rule 5 *ibid*. [paras 1, 7, 9, 10, 12, 13]*



Commissioner of Central Tax, Bengaluru Vs. Netapp India Pvt. Ltd. [2019 (367) E.L.T. 145 (Kar.)]

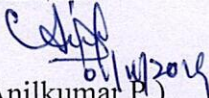
Interest - Refund of unutilized Cenvat credit - Interest on delayed refund of Cenvat credit - Cenvat Credit Rules, 2002/2004 or Notification No. 27/2012-C.E. (N.T.) not providing for payment or non-payment of interest on delay in refund - Refund ordered under Rule 5 of Cenvat Credit Rules, 2004 would be a refund under Section 11B(2) of Central Excise Act, 1944 and covered under Section 11BB ibid - Interest payable under Section 11BB ibid on delayed refund of Cenvat credit commencing from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of Central Excise Act, 1944. [paras 9, 11]

8. In fact, the above decision of Hon'ble High Court of Karnataka in the case of Commissioner of Central Tax, Bengaluru Vs. Netapp India Pvt. Ltd. [2019 (367) E.L.T. 145 (Kar.)] is on similar facts as in the case under consideration and hence is squarely applicable in the present case. The Hon'ble High Court in this case, relying on the decision of Hon'ble Supreme Court in the case of *Ranbaxy Laboratories v. Union of India* [2011 (273) E.L.T. 3 (S.C.)] has held that interest is payable under Section 11BB Central Excise Act, 1944 on delayed refund of Cenvat credit commencing from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act ibid.

9. In view of above, I find merit in the contention of the appellant. Accordingly, I hold that the appellant is entitled to interest on delayed refund of Cenvat Credit as claimed by it as per provisions of Section 11BB of the Act which is made applicable to the Service Tax cases vide Section 83 of the Finance Act, 1994 at such rate for the time being fixed by the Central Government by Notification in the Official Gazette on such refund amount from the date immediately after the expiry of three months from the date of such application of refund till the date of refund of such amount and accordingly the appeal is allowed.

10. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

Attested:


(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s QX Global Services LLP,
201, GNFC Info Tower,
S.G. Highway, Bodakdev,
Ahmedabad-380054.

Copy to:-

1. The Principal Chief Commissioner, Central Tax , Ahmedabad Zone..


(Gopi Nath)
Commissioner (Appeals)
Date: 30.10.2019.



2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST Division-VI, Ahmedabad South.
4. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.
(for uploading OIA on website)

✓ 5. Guard file.

6. P.A. File

