



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)40/Ahd-South/2019-20 / 13056 To 13060

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-064-2019-20
दिनांक Date : 18-11-2019 जारी करने की तारीख Date of Issue 25/11/2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित
Passed by Shri Gopi Nath, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WS-08/Ref-56(ST)/BSM/18-19 दिनांक: 18.03.2019 ,
issued by Assistant Commissioner, Div-VIII, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Vodafone Idea 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 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) केंद्रीय 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 दिनोंक 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

M/s. Vodafone Mobile Services Limited, Vodafone House, Prahaladnagar, Off;SG Highway, Ahmedabad (hereinafter referred to as "appellant") has filed the present appeal against the Order-in-original No. CGST/WS-08/Ref-56(ST)/BSM/18-19 dated 18.03.2019 (hereinafter referred to as "impugned order") issued by the Assistant Commissioner, CGST Division-VIII, Ahmedabad-South (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant, a service tax registrant, filed a claim of interest under Section 11BB of Central Excise Act, 1944 (CEA) under Notification 67/2003-CE (NT) dated 12.09.2013, arising out of OIO dated 28.03.2018. The back ground for filing the claim is that they had initially filed a refund claim on 29.09.2011 under rule 5 of Export Service Rules, 2005 for Rs. 75,01,161/- in respect of service tax paid by them pertaining to the period of October 2010 to March 2011 in respect of services rendered to customers/clients of Foreign Telecom Operators (FTO) when the customers/client were on a visit to India. For the said services provided to such inbound customers, the appellant made bills to Foreign Telecom Operators (FTO) and received amount in foreign currency. The said service was claimed as export of services and accordingly, they filed the refund claim on service tax paid. As the International Inbound Roaming services provided by Foreign Telecom Operators (FTO) was not considered as export of services by the original adjudicating authority, the refund claim filed by the appellant was rejected vide OIO No. SD-01/Rebate/24/DC/11-12 dated 27.12.2011. After a long litigation, the issue was finalized in favour of the appellant by the Revision Authority, vide Order No. 01-05/2018-ST/ASRA/Mumbai dated 23.01.2018, by holding that International Inbound Roaming(IIR) services as export of services. Accordingly, the adjudicating authority has sanctioned the refund of Rs.75,01,161/- vide impugned order dated 28.03.2018 but did not sanction interest amount on the refund. The appeal filed by the appellant before the Commissioner (Appeals), for allowing interest on delayed refund was allowed vide Order-in-Appeal No.AHM-EXCUS-001-APP-037-2018-19 dated 27.08.2018. Accordingly, the adjudicating authority, vide impugned order dated 18.03.2019 has sanctioned the interest of Rs. 23,42,828/- and rejected Rs. 4,82,130/- being excess interest claimed/demanded by the appellant.

3. Being aggrieved with the impugned order dated 18.03.2019 the appellant preferred this appeal contesting inter *alia*, that:



- the impugned Order to the extent of not sanctioning the refund of interest of Rs. 4,82,130/- as per Section 11BB of the Central Excise Act, 1994 on delayed sanction of the rebate to the Appellant, is ex-facie untenable and unsustainable in law and is liable to be set aside.
- The present claim of interest on rebate was filed under Section 11BB of CEA read with Notification No. 67/2003 CE (NT) dated 12 September 2013 and not Notification No. 24/2014. As per Section 11BB of the Excise Act, refund must be disbursed within three months from the date of application, failing which, the applicant will be entitled for the interest amount at the rate fixed by Central Government in their official gazette, which cannot be below 5% and cannot exceed 30% per annum.
- vide Notification No. 67/2003, the interest for delayed sanction of refund has been notified as 6%, hence the interest on delayed refund is payable at the rate of 6%.
- In the present case, the adjudicating authority has grossly erred in relying on the Notification No. 24/2014 which prescribes the rate of interest on refund of pre-deposit under Section 35FF of CEA and not interest on rebate of export of service.
- in the instant case and adjudication authority can go beyond the statutory provision and attempt to modify and apply the statutory provisions according to what in his understanding should be the appropriate law.

4. Hearing in the matter was held on 11.09.2019. Ms Chitra Vyas, Manager-Taxation and Shri Sidharth Nanda, AGM Taxation appeared for the hearing and reiterated the submission of appeal memo and submitted provisions of relevant Notification.

5. I have carefully gone through the appeal memorandum. The limited issue to be decided in the instant case is whether the appellant is entitled for interest @6% or @ 5% on refund sanctioned by the adjudicating authority.

6. I find that in the instant case, the issue regarding International inbound Roaming (IIR) services was held as export of services by the Revision Authority, therefore, the refund claim filed by the appellant is relating to refund of service tax paid on export of service and not a refund of pre-deposit amount. As per contention of the adjudicating authority, I further find that the OIA dated 27.08.2018 supra, allowing the interest on delayed refund under Section 11BB of CEA, has been finally accepted by the department. Therefore, the interest on delayed refund is required to be given as per provisions of Section 11BB of CEA at the rate fixed by the Government by the relevant notification and not under Section 35FF of CEA.

7. In the instant case, I find that the adjudicating authority has sanctioned interest @5% on delayed refund in question by ignoring the rate of interest @6% prescribed by the Government vide notification No.67/2003-NT dated 12.09.2003 issued under Section 11BB of CEA.



7. Section 11BB of CEA stipulates that:-

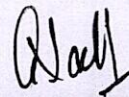
*"Interest on delayed SECTION [11BB. refunds. — If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at 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" :*

Notification 67/2003-CE (NT) dated 12.09.2003 issued under the section ibid reads as under:

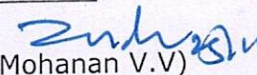
*"In exercise of the powers conferred by section 11BB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 17/2002-Central Excise (NT) dated the 13th May, 2002 [GSR 353 (E)], dated the 13th May, 2002], except as respect things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest **at six percent per annum** for the purpose of the said section."*

8. In view of the above, the appellant is eligible for interest @6% instead of 5%. Therefore, I set aside the impugned order and allow the appeal filed by the appellant.

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


 (Gopi Nath) 18/11/19
 Commissioner (Appeals)
 Date : 11.2019

Attested


 (Mohanan V.V)
 Superintendent
 Central Tax (Appeals) Ahmedabad

By R.P.A.D.

To,
 M/s. Vodafone Mobile Services Limited,
 Vodafone House, Prahladnagar,
 Off S G Highway, Ahmedabad .

Copy to:

1. The Principal Chief Commissioner of CGST, Ahmedabad Zone.
2. The Principal Commissioner of CGST, Ahmedabad - South.
3. The Addl. Commissioner, CGST (System), Ahmedabad South.
4. The Asstt./Dy Commissioner, CGST Division-VIII, Ahmedabad - South.
5. Guard File.
6. P.A. File

