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- टेलेफैक्स07926305136

स्पीड पोस्ट

क फाइल संख्या : File No : V2(30)136/Ahd-South/2019-20/1820 TO 1824

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-02-2020-21**
दिनाँक Date : **27-04-2020** जारी करने की तारीख Date of Issue 12/06/2020

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **08/Div-I/Refund/19-20** दिनाँक: **23.08.2019** , issued by Deputy Commissioner, Div-I, Central Tax, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shrikrishnakeshav Laboratories 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) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश 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 अपीलीग न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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 out of an appeal filed by M/s Shree Krishna Keshav Laboratories Ltd., Nr. Yogeshwar Estate, B/h Torrent Power Ltd., Amraiwadi Road, Ahmedabad – 380 008 (in short 'appellant') against Order-in-Original No.08/Div-I/Refund/19-20 dated 23.08.2019 (in short 'impugned order') passed by the Deputy Commissioner, CGST, Division-I, Ahmedabad South (in short 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant are engaged in the manufacturing of I.V. Fluids (Salts, Sugar & Electrolytes) falling under Chapter Heading No.3004 of the Central Excise Tariff Act, 1985 and are holding Central Excise Registration for the same. The appellant has filed a refund claim on 27.05.2019 for an amount of Rs.21,95,560/- under Section 142(3) of the CGST Act, 2017 on the ground that they have made double payment of duty by mistake, for the period from March, 2016 to March, 2017.

2.1 The circumstances leading to the alleged double payment of duty has been explained by the appellant as that during the audit of their records by the department, it was pointed out to them that they had wrongly utilized cenvat credit for payment of central excise duty on goods cleared by them by availing the benefit of Notification No.1/2011-CE dated 01.03.2011 which was not permitted in terms of proviso to Rule 3(4) of the Cenvat Credit Rules, 2004 and that wrong utilization of cenvat credit had resulted in short payment of excise duty in respect of goods so cleared under the said Notification No.1/2011-CE and that they agreed with the above objection and has accordingly paid the amount of central excise duty of Rs.15,84,962/- paid by them earlier through Cenvat Credit along with interest of Rs.3,90,060/- and penalty of Rs.2,37,744/-; that thus central excise duty came to be paid twice on the same goods, the first time when paid through cenvat credit and the second time when paid by cash as per the Audit Objection, which resulted into double payment of duty on the same goods. The appellant has also pointed out some discrepancies in the calculation of short payment of duty arrived at by the Audit Party and has also contended that they were not liable for any penalty for there being no suppression of facts in the matter. The appellant submitted that the actual short payment of duty in the case was only Rs.12,117/- as per their calculation and after adjusting the said short payment along with interest and penalty payable, they have claimed the refund for an amount of Rs.21,95,560/- (which includes Rs.15,72,845/- as Central Excise duty, Rs.3,86,788/- as interest and Rs.2,35,926/- as penalty). It was the contention of the appellant that Central Excise duty discharged through Cenvat Credit for the clearance under Notification No.1/2011-CE was a mistake of law and on pointing out by the department the appellant have again discharged Central Excise duty through Challan which has resulted into double payment of Central Excise duty on the same clearance; that Limitation for

refund of duty paid under Mistake of Law is not governed under Section 11B of the CEA, 1944; that in case of double payment of Central Excise duty, refund is available; that no unjust enrichment is applicable in the case; that there was no short payment of duty as alleged in the audit report; that it is their claim that if the duty discharged through cenvat credit is not acceptable, it has to be given as re-credit in the Cenvat Credit Account and that this being dispute of re-credit of cenvat credit, and, due to Roll out of GST, the appellant have no option but to enforce their right to claim the refund of Cenvat Credit under the provisions of Section 142(3) of CGST Act, 2017 read with Section 174 of CGST Act, 2017.

2.2 The said refund claim filed by the appellant was rejected by the adjudicating authority vide the impugned order holding that the appellant is not eligible for refund on the ground that the claim has been preferred beyond the time limit prescribed under Section 11B of the Central Excise Act, 1944 and they have also failed to produce substantive evidences. The adjudicating authority has also observed that payment of duty made in wrong manner does not debar the claimant from applicability of law of limitation and that the claim for refund in the present case was filed even after more than 12 months from the date of audit, which was not convincing and that audit objections have been settled by the Department on compliance made by the appellant and it can not be reverted and that had it not been detected during the audit, it would have remained un-noticed and hence payment of penalty is justified.

3. Aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following contentions:

(a) The order which is prejudicial to the interest of the appellant is passed without applying the principles of natural justice as the letter for personal hearing last fixed on 22.08.2019 was not received by them and thus it is on record that opportunity of hearing is not availed by the appellant;

(b) The adjudicating authority has not given findings or commented categorically on the various issues and contentions raised by the appellant with regard to the refund claimed and has passed the order without rebutting various citations made in the issue. Therefore, the impugned order being non-speaking is bad in law;

(c) The adjudicating authority has recorded findings in para 14, 15 and 16 without properly evaluating the facts which is not correct. The ground for rejection is not all relevant. It is the case of double payment, hence the appellant has asked for re-credit of the Cenvat Credit and cited various decisions in this regard;

however, the learned Adjudicating authority had not contested the said decisions; and

(d) The adjudicating authority has not considered any of the grounds of refund, instead have rejected refund claim merely on flimsy ground and the impugned order is non-speaking order and is in gross violation of principle of natural justice. They rely on the settled law laid down by the Hon'ble Supreme Court of India in the case of Assistant Commissioner of Commercial Tax Vs. Shukla & Bros. [2010 (254) ELT 6 (SC)] in this regard.

4. Personal hearing in the matter was held on 11.02.2020. Shri Kunal A. Mehta, Director, and Shri Vijay N. Thakker, Consultant, appeared on behalf of the appellant and reiterated the submissions made Appeal Memorandum 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 the issue to be decided is as to whether in the facts and circumstances of the case, the refund claim preferred by the appellant is admissible or otherwise.

6. It is observed that the appellant is engaged in manufacture of Intravenous Fluids and cleared it on payment of central excise duty @6% and also a part of the goods are cleared after payment of duty at concessional rate of duty @2% in terms of Notification No.1/2011-CE dated 01.03.2011 as amended. Subsequently, the department conducted audit of their records and issued Final Audit Report No.2204 of 2018-19 (Excise and Service Tax) dated 20.07.2018. As per Revenue Para 1 of Central Excise, it was pointed out that they had wrongly utilized cenvat credit for payment of duty on goods cleared under Notification No.1/2011-CE resulting in short payment of duty amounting to Rs.15,84,962/- through their Account Current. The appellant agreed with the objection and settled the para by paying the amount along with interest and penalty. These are undisputed facts.

7. The appellant has filed the refund claim under dispute in the appeal on 27.05.2019 for an amount of Rs.21,95,560/- which consisted of C.Ex. duty - Rs.15,72,845/- ; Interest – Rs.3,86,788/- and Penalty – Rs.2,35,926/-. On going through the grounds of refund submitted by the appellant, it is seen that the refund of central excise duty has been claimed on the contention that as they have paid the duty short paid on account of wrong utilization of cenvat credit in cash on being pointed out during audit, they are eligible for re-credit of the amount of cenvat credit utilized earlier wrongly for payment of duty. Whereas the refund of interest and penalty seems to have been preferred by challenging the audit objection. It is their case that their's was a case of payment of central excise duty by wrong mode and not the case of

evasion of duty and since there being no suppression of facts, the penalty paid @15% is not leviable under Section 11AC of the Central Excise Act, 1944 and that in fact there was only short payment of Rs.12,117/- which was recoverable from them and the interest and penalty leviable or payable by them is only on that amount.

7.1 It is a fact undisputed that the audit objection referred in the matter has been raised on the basis of records of the appellant only. Therefore, the appellant could have pointed out the discrepancy, if any, in the matter at that point itself and they had the option not to accept the objection. Nothing prevented them from resorting to a legal recourse in the matter by taking a notice on the issue. Without taking such legal remedies available, claiming refund after about one year of audit by contending that the objection settled was not correct and there was no short payment of duty or short payment was of a small amount is not legally tenable. There is nothing on records which suggest that the appellant have challenged the subject audit objection. Nor is there any evidence that the payment in this regard has been made by them under protest. After settling an issue by paying duty along with interest and penalty in terms of statutory provisions, the proceedings in respect of the said issue gets concluded and it is not open for an assessee to challenge it later as it would jeopardize the interest of the department. It is a fact that had the appellant not accepted the audit objection at the time of audit in March 2018, the department could have taken necessary measures to safeguard its interest by issuing a notice in the matter, which is not possible now as such a notice would be hit by the provision of limitation for issue involved in the matter being pertaining to the period from March 2016 to March 2018.

7.2 Further, it is seen that the basic objection of the audit of wrong utilization of cenvat credit is not refuted by the appellant. They, themselves, in their calculation shows that there was a wrong payment of duty of Rs.15,50,696/- from cenvat credit account in respect of goods cleared under Notification No.1/2011-CE during the disputed period. The proviso to Rule 3(4) of the Cenvat Credit Rules, 2004 stipulated that *Cenvat Credit shall not be utilized for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No.1/2011-CE dated 01.03.2011 is availed.* Thus, the contravention of the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004 is clearly visible in records. Even while admitting that there was wrong utilization of cenvat credit, it is not clear on what grounds the appellant considers that there was no short payment of duty. It is not a simple case of wrong mode of payment of duty as claimed by the appellant but clearly a case of contravention of the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004. It is settled law that when such a contravention is committed, the recovery thereof would follow with interest liability and penalty for contravention. Under the circumstances, the appellant's contentions challenging audit objection do not hold water, even on merits.

Thus, it is clear that the claim of the refund of the appellant on the amounts paid in pursuant to the audit objection, which stand settled, does not sustain before law. In this regard, I rely on the decision of Hon'ble CESTAT, Ahmedabad in the case of M/s Amar Engineering Co. Vs. Commissioner of C.Ex. & S.T., Vadodara-I [2019 (26) GSTL 116 (Tri.-Ahmd.)].

7.3 Now coming to the claim of refund of cenvat credit utilized wrongly for payment of duty earlier, it is a settled legal position that once the duty short paid on account of wrong utilization of cenvat credit is paid by cash through PLA, then the assessee would be entitled for recredit of the Cenvat credit earlier utilized for payment of duty. Therefore, the appellant in the instant case is eligible for re-credit of the cenvat credit earlier utilized. However, such a re-credit has to be claimed by following the procedures of refund provided under the statute as there is no provision under Central Excise Act, 1944 and Rules for suo moto taking of credit, as has been held by various courts/Tribunals. The Larger Bench of the Hon'ble CESTAT in their decision in the case of BDH Industries Ltd. Vs. Commissioner of Central Excise (Appeals), Mumbai-I [2008 (229) ELT 364 (Tri.-LB)] has held that:

> *"12. We find that there is no provision under Central Excise Act and Rules allowing suo moto taking of credit or refund without sanction by the proper officer. The appellant's contention that refund in respect of duty paid twice cannot be considered as refund of duty and is only the accounting error does not appeal to us as the debit entry made in the accounts is towards payment of duty only and therefore refund of these amounts has to be considered as refund of duty only. The PLA account and the credit accounts are required to be submitted to the department and any correction carried therein, need to have department's sanction. We also note that the law relating to refund has been fully analysed by the Apex Court in the case of Mafatlal Industries (cited supra) which makes it very clear that all types of refund claim be there of excess duty paid or otherwise are to be filed under Section 11B and have to pass the proof of not passing on the incidence of duty to others. The recent decisions of Hon'ble Supreme Court in the case of Sahakari Khand Udyog and Others clearly laid down that all refunds have to pass through doctrine of unjust enrichment, even if it is not so expressly provided for in the statute. From these decisions it clearly emerges that all types of refund have to be filed under Section 11B of the Central Excise Act and no suo moto refund can be taken unless and until the department is satisfied that the incidence of duty has not been passed on."*

The Hon'ble CESTAT, Ahmedabad in their decision in the case of Horizon Polymers Engg. (P) Ltd. Vs. Commissioner of Central Excise & Service Tax, Ahmedabad-III [2018 (360) ELT 126 (Tri.-Ahmd.)], by following the Larger Bench decision referred above, has held similar view. The decision of the Hon'ble Tribunal in the case of Wires and Fabriks (SA) Ltd. [2016 (338) ELT 626 (Tri.-Kolkata)] relied upon by the

appellant has also held same view. Further, the Hon'ble High Court of Gujarat in their decision in the case of Indo-Nippon Chemicals Co. Ltd. Vs. Union of India [2005 (1850 ELT 19 (Guj.) has held in clear terms that refund/re-credit of Cenvat credit wrongly reversed, would be subject to the provisions of Section 11B, as Modvat/Cenvat credit is nothing but a constituent of duty.

7.4 In view of the above judicial pronouncements, it is clear that the refund/re-credit of the wrongly utilized/reversed Cenvat credit in the instant case would be subject to the provisions of Section 11B of the Central Excise Act, 1944 and the limitation period prescribed in Section 11B ibid would be applicable for filing the claim of refund for such Cenvat credit. As per provisions of Section 11B of the Act ibid, a claim for refund is to be filed before expiry of one year from the relevant date, which in the instant case is date of utilization of credit for payment of duty. However, such limitation is not applicable where duty has been paid under protest. In the present case, the amount of credit for which refund is claimed, has been paid by the appellant during the period from March, 2016 to March, 2017 and the refund claim for the same has been preferred by them on 27.05.2019, which is clearly beyond the period of limitation prescribed under the statute. There is nothing on records that such an amount has been paid under protest. Even the appellant does not have such a claim. I, therefore, do not find any error in the adjudicating authority's decision in holding that the refund of the cenvat credit/duty claimed by the appellant was hit by limitation under the provisions of Section 11B of the Act ibid.

7.5 I also do not find any merit in the contentions of the appellant that limitation under the provisions of Section 11B of the Act ibid would not applicable in their case for their's being a case of payment of duty by mistake of law. In the instant case, it is not that the duty was not required to be paid by the appellant but was paid by him by mistake. But the duty was required to be paid in the case and the duty was paid in an illegal manner by wrong utilization of cenvat credit, which made the payment done in such manner null and void. Therefore, it does not seem to be a case of payment of duty by mistake of law, as claimed by the appellant and the case laws relied by them in this regard are not relevant to the facts of the present case. In the instant case, it is an admitted position that cenvat credit has been wrongly utilized for payment of duty in respect of goods cleared under Notification No.1/2011-CE in gross contravention of the provisions of Rule 3(4) of the Cenvat Credit Rules, 2004. Proviso to Rule 3(4) of the Rules ibid clearly stipulates that *Cenvat Credit shall not be utilized for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No.1/2011-CE dated 01.03.2011 is availed.* When the statutory provision is clear and unambiguous, ignorance of law cannot be an excuse and the plea of genuine mistake in interpretation cannot hold good. The Hon'ble High Court of Allahabad in

the case of Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. v. Union of India - 2014 (305) E.L.T. 100 (All.) has held that :

> *" 24. It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner. It is well established that when law requires something to be done in a particular manner, any other procedure adopted or the procedure deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law. The principle was recognized in Nazir Ahmad v. King-Emperor AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which we do not propose to refer all but would like to refer a few recent one."*

8. Further, it is to observe that as per the transitional provisions under Section 142(3) of the CGST Act, 2017, every claim for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, filed after 01.07.2017, has to be dealt with in accordance with the provisions of existing law. Therefore, the provisions governing refund matters would remain the same as earlier and the legal position discussed in the foregoing paras would be valid to such cases also.

9. In view of the above discussions, I find that the adjudicating authority's decision of rejecting the claim of the appellant for refund of cenvat credit wrongly utilized for payment of duty first time and the interest and penalty paid as per audit objection, is legal and proper and there does not seem to be any reason for interfering with the said decision. However, it is noticed that he was in error in observing that the appellant had wrongly claimed the benefit of Notification No.1/2011-CE, which was not the case as revealed from the audit objection. The benefit of the said Notification was not disputed in the objection. Similarly, he was not correct in calling for evidences on non-carry forward of unutilized cenvat to GST regime as such a situation does not exist in the facts of the case and hence was of no relevance to the matter under his consideration. However, these facts does not impair the legality of his decision in rejecting the refund claims.

10. With regard to the plea of the appellant on violation of principles of natural justice in the impugned order, I find that the appellant has been given opportunities of personal hearing on 29.07.2019, 16.08.2019 and 22.08.2019 and it is their contention that the letter for hearing on 22.08.2019 has not been received by them. From the said facts, it is clear that the appellant was given ample opportunities to represent their case which they could not avail rightly. Regarding the contentions that the adjudicating authority has not correctly appreciated their case on merit, it is observed that the

adjudicating authority in the impugned order has discussed the admissibility of the refund claimed by the appellant and has clearly held that refund of wrongly utilized cenvat credit was hit by limitation and that the refund of interest and penalty was not admissible as they being a part of settled assessment. It is the case that when the refund claim of the appellant was found not tenable on basic legal premises itself, the adjudicating authority did not find it relevant to look into the other contentions of the appellant. It is not correct to expect that the authority would counter all the grounds of the appellant especially when he finds that the claim fails to survive on initial scrutiny. Therefore, the appellant's stand that the impugned order is non-speaking and in violation of principles of natural justice, does not carry any merit.

11. In view of the above discussions, the appeal filed by the appellant is rejected being devoid of merits and the impugned Order is upheld.

12. 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.

(Akhilesh Kumar) 27th April, 2020.
Commissioner (Appeals)

Date: 27.04.2020.

Attested:

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

BY SPEED POST TO:

M/s Shree Krishna Keshav Laboratories Ltd.,
Nr. Yogeshwar Estate,
B/h Torrent Power Ltd.,
Amraiwadi Road,
Ahmedabad – 380 008.

Copy to:-

(1) The Principal Chief Commissioner, CGST, Ahmedabad Zone.
(2) The Principal Commissioner, CGST, Ahmedabad South (RRA Section).
(3) The Deputy Commissioner, CGST, Division-I, Ahmedabad South.
(4) The Asstt. Commr(System), CGST , Ahmedabad South.
(for uploading OIA on website)
(5) Guard file
(6) P.A. file.