



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय
Office of the Commissioner (Appeals)
 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 :

DIN-20211264SW0000818418

स्पीड पोस्ट

- क फाइल संख्या : File No :GAPPL/COM/STP/1323/2020 /4532 To M536
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-021/2021-22**
 दिनांक Date : 29.09.2021 जारी करने की तारीख Date of Issue : 02.12.2021
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.01/Div-V/DC/KN/2020-21 dated 19.11.2020
 passed by the Assistant Commissioner, Central GST, Division-V,
 Ahmedabad South Commissionerate.
- ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s Span (Kathwada) Commercial Co-Operative Society Ltd.,
 Plot No.,537, GIDC, Kathwada,
 Opposite Pashupatinath Mandir,
 Ahmedabad.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :
- (ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।
- (ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(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 एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-

Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.



- (2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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 पढ़ी 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 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 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 adjudicating authority shall bear 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 contained 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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

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 an appeal filed by M/s Span (Kathwada) Commercial Co-Operative Society Ltd., Plot No.537, GIDC, Kathwada, Opposite Pashupatinath Mandir, Ahmedabad (hereinafter referred to as the '*appellant*'), against Order-In-Original No.01//Div-V/DC/KN/2020-21 dated 19.11.2020 (hereinafter referred as "*impugned order*") passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad South Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant is a registered cooperative society engaged in construction of industrial sheds to the members of the co-operative society. Based on an intelligence gathered by the DGCEI, Ahmedabad that the appellant was not paying service tax on the taxable services provided by them, an inquiry was initiated against them which culminated into issuance of a Show Cause Notice F.No. DGCEI/AZU/36-77/2015-16/ 884 dated 23.03.2016 to the appellant demanding service tax to the tune of Rs.26,40,668/- along with interest from them under the head of Commercial Construction. The said Notice was adjudicated by the Assistant Commissioner, CGST Division-V, Ahmedabad South vide Order-in-Original (OIO) No.MP/05/DEM/2018-19 dated 26.04.2018 wherein he had dropped the demand against the appellant. Aggrieved with the said OIO, the department preferred an appeal before the Commissioner (Appeals), Ahmedabad, who vide Order-in-Appeal (OIA) No. AHM-EXCUS-001-APP-123-2018-19 dated 31.12.2018 allowed the appeal in favour of Revenue. The appellant filed an appeal against the said OIA before the Hon'ble CESTAT, Ahmedabad, who vide their Final Order No.A/10185/2020 dated 14.01.2020 set aside the demand and OIA on the ground of limitation and allowed the appeal of the appellant.

2.1 In the meanwhile, consequent upon the dropping of the demand against them by the adjudicating authority vide OIO dated 26.04.2018, the appellant had filed an application for refund of the amount of Rs.9,00,000/- paid/deposited by them during the course of investigation of the case on 09.10.2018, which was sanctioned to them on 28.12.2018. Thereafter, after the Hon'ble Tribunal's Order dated 14.01.2020, the appellant filed an application for refund of the pre-deposit amounting to Rs.1,98,050/- on 12.02.2020, which was sanctioned to them vide OIO No.V/84/19-07/REF/2019-20 dated 14.02.2020.

2.2 Later on, the appellant on 22.09.2020, has come up with another claim of refund for an amount of Rs.2,56,412/ as interest payable on the delayed payment of refund of Rs.9,00,000/- sanctioned to them on 09.10.2018. The said claim for refund of interest filed by the appellant was rejected by the adjudicating authority vide the impugned order observing that the refund of Rs.9,00,000/- was claimed by the appellant on 09.10.2018 and it was sanctioned on 28.12.2018 and, thus, there was no delay in sanctioning the refund and the same was sanctioned within the stipulated time limit of three months under the provisions of



Section 11B of the Central Excise Act, 1944 made applicable to service tax matters vide Section 83 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal contending, *inter alia*, that:

- since the appellant was not liable to pay service tax on their activity and the amount of Rs.9,00,000/- was paid by them at the instance of the department, the amount so paid is to be treated as deposit; and
- When refund is granted of any tax illegally collected without authority of law, interest is also liable to be paid from the date of payment of duty to the date of payment of refund. They rely on the Tribunal decisions in the case of Binjraka Steel Tubes Ltd. Vs. Commissioner of Central Excise, Hyderabad-III [2007 (218) ELT 563 (Tri.-Bang)] and in the case of Amidhara Texturising (P) Ltd. Vs. Commissioner of Central Excise, Surat [2012 (278) ELT 257 (Tri.-Ahmd.)] in support of their above contention.

4. Personal hearing in the matter was held on 21.09.2021 through virtual mode. Shri Bishan Shah, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum and oral submissions made at the time of personal hearing. The issue to be decided in the case is whether in the facts and circumstances of the case, the appellant's claim for interest on the refund of Rs.9,00,000/- sanctioned to them on 28.12.2018 in respect of payments made by them in June, 2014 during the course of an inquiry against them, is legally admissible or otherwise.

6. It is observed that in the facts of the case, it is undisputed that the payment of Rs.9,00,000/-, which was refunded subsequently on dropping of the demand, was made by the appellant during the course of investigation/inquiry initiated against them and this amount was deposited by them against the probable tax liability for which the investigation/inquiry was going on. It is the case of the appellant that since they were not liable to pay any service tax on their activity, the above amount, paid by them during the course of inquiry at the instance of the department, is to be treated as a deposit and not as tax and that as the amount so paid being against an illegal levy, they were eligible for interest on the said amount paid from the date of payment of the amount to the date of refund of the said amount. In this regard, I find that the issue as to whether the amount paid by the assessee during the course of investigation would have the colour of tax/duty or not has been examined by various judicial forums, wherein it was held that what was paid by the appellant in the course of the investigation is nothing but duty/Service Tax. The Hon'ble CESTAT, WZB, Ahmedabad in their decision vide Order No. A/11311/2018-WZB/AHD



dated 26.06.2018, in case of M/s. Ratnamani Metals & Tubes Ltd. [2019 (366) ELT 139 (Tri.-Ahmd.)] has considered the similar issue and held that:

"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.

I find that the above judgement of the Hon'ble Tribunal, Ahmedabad is squarely applicable to the facts involved in the present appeal.

6.1 Further, the Hon'ble High Court of Gujarat in their decision dated 04.09.2019 in the case of Ajni Interiors Versus Union of India [Special Civil Application No. 10435 of 2018] has categorically held that refunds of amounts paid during investigation would be governed by the provisions of Section 11B of the Central Excise Act, 1944. The Hon'ble High Court in their above said decision has observed that:

14. Considering the arguments advanced by learned advocates of the parties and scanning the material on record, it is clear that the case of the petitioner that payment towards Excise Duty is in the form of pre-deposit is misconceived. Considering the annexures annexed with the petition i.e. Challans for deposit of Central Excise Duty in Form No.TR-6, that too, without protest is the payment towards the Excise Duty and can never be considered as pre-deposit. If any payment is made as a pre-condition for exercising the statutory right it can be termed as pre-deposit. However, it cannot be equated with voluntary deposit of Excise Duty paid even during the course of investigation and prior to show cause notice or adjudication to assert that it is pre-deposit. The payment of duty was intended to



prevent the incidence of interest and liability accruing from the non-payment of duty, and hence, it cannot be termed as deposit."

6.2 Thus, it is now a settled legal position in view of the above judicial rulings that any amount paid by the assesses during investigation/inquiry would in the nature of duty/tax and hence the refund of such amounts paid would have to be governed by the provisions of Section 11B of the Central Excise Act, 1944. Therefore, the appellant's contention that the amount paid by them during inquiry/investigation was in the nature of deposit and not as tax is not legally tenable in view of the above judicial pronouncements. When it is held that refund of amount paid during investigation/inquiry would be in terms of the provisions of Section 11B of the Central Excise Act, the interest if any payable on account of delay in sanctioning such refund would be as per provisions of Section 11BB of the Act *ibid*. Section 11BB of the Act *ibid* lays down that in case any duty paid is found refundable and if such duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. Therefore, the appellant's claim for interest in the case from the date of payment of the amount in June, 2014 fails to survive legally.

6.3 In view of the above discussed settled legal position, it is quite evident that interest, if any, payable in the case would be in terms of Section 11BB of the Central Excise Act, 1994, made applicable to service tax matters vide Section 83 of the Finance Act, 1994, which would come into play only upon expiry of three months from the date of receipt of the refund application. As per facts available on records, the application for refund of the amount of Rs.9,00,000/- paid during inquiry/investigation in the case was submitted by the appellant on 09.10.2018 and the refund of the said amount in full was sanctioned on 28.12.2018. Thus, it is quite evident that the refund claimed was sanctioned to the appellant within three months from the date of filing of the refund application. Hence, there does not arise any situation or cause for sanctioning interest in the present case.

6.4 The judgements of the Hon'ble High Court of Gujarat and the Hon'ble Tribunal, Ahmedabd referred and relied by me in para 6.1 are later judgements on the issue *vis-a-vis* the case laws relied upon by the appellant. Therefore, being later judgments on the issue, the said judgments take precedence over the earlier ones relied on by the appellant. Further, these are judicial pronouncements of jurisdictional Tribunal as well as of Hon'ble High Court and is therefore binding in nature in view of principles of judicial discipline. It is also pertinent to observe that even in the case relied upon by the appellant i.e., in the case of Amidhara Texturising (P) Ltd. Vs. Commissioner of Central Excise, Surat [2012 (278) ELT 257 (Tri.-Ahmd.)], the Hon'ble Tribunal had in fact sanctioned interest under the provisions



of Section 11BB of the Central Excise Act, 1944 only from the date after the expiry of three months from the date of filing of the refund application.

7. In view of the above discussions, I do not find any merit in the contentions raised by the appellant in the appeal for their claim of interest on the refund sanctioned in the case. As such, there is no need to interfere the decision taken by the adjudicating authority vide the impugned order. Accordingly, the impugned order is upheld and the appeal filed by the appellant is rejected for being devoid of merits.

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

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

Akhil
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 29.09.2021

Attested

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



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Ahmedabad South.
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