



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-20220164SW000000B626**स्पीड पोस्ट**

- क फाइल संख्या : File No :GAPPL/COM/STP/1208/2021 **/5358 705362**
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-033/2021-22**
 दिनांक Date : 31.12.2021 जारी करने की तारीख Date of Issue : 13.01.2022.
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No.CGST/WS08/Ref-07/ST/MK/20-21
 dated 01.03.2021/09.03.2021 passed by the Deputy Commissioner, Central GST,
 Division-VIII, Ahmedabad South Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

Shri Vaibha Jajoo,
 B/803, Dev Aurum Residency,
 Adjacent to Hotel Rajdeep Inn,
 Anandnagar Cross Roads, Prahladnagar,
 Ahmedabad-380015.

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 ईए-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.

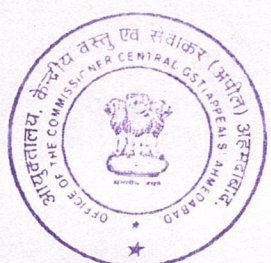
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-

Appeal to Custom, Excise, & Service Tax Appellate Tribunal:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ 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 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 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 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) -

- (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 appeal has been filed by Shri Vaibha Jajoo, B/803, Dev Aurum Residency, Adjacent to Hotel Rajdeep Inn, Anandnagar Cross Roads, Prahladnagar, Ahmedabad-380015 (in short '*appellant*') against the Order-in-Original No.CGST/WS08/Ref-07/ST/MK/20-21 dated 01.03.2021 issued on 09.03.2021 (in short '*impugned order*') passed by the Deputy Commissioner, CGST, Division-VIII, Ahmedabad South (in short '*adjudicating authority*').

2. Facts of the case, in brief, are that the appellant had entered into a contract for purchase of a residential property namely Floris, Unit Number 40, Skycity from the Developer, M/s Safal Goyal Realty LLP. The service provider, viz. the Developer/Builder, had charged and recovered from the appellant service tax amounting to Rs.5,68,395/- against the said contract being service tax payable under the services of 'Construction of Residential Complex' which was paid on 01.06.2017. Subsequently, in the month of December, 2018, the appellant had cancelled the contract for the services of construction of residential complex from the service provider and the appellant and the service provider had agreed that due to non-provision of service, the service provider shall refund the consideration paid towards services to be provided and accordingly, the service provider refunded the amount of Rs.1,19,97,478/- paid to them by the appellant in the case but did not refund the amount of service tax of Rs.5,68,395/- recovered from the appellant on the ground that it was deposited with the Government. Thereafter, the appellant filed a refund claim of Rs.5,68,395/- for the service tax borne by him as the said tax was not payable in absence of any provision of service due to cancellation of the contract for provision of service.

2.1 The said refund claim filed on 22.05.2019 by the appellant was rejected vide Order-in-Original (in short '*OIO*') No.CGST/WS08/Ref-09/BSM/19-20 dated 12.09.2019 on the ground of limitation as the claim for refund was not filed within a period of one year from the relevant date under Section 11B of the Central Excise Act, 1944 made applicable to service tax matters vide Section 83 of the Finance Act, 1994. Being aggrieved with the said OIO, the appellant preferred an appeal before the Commissioner (Appeals), Ahmedabad who vide Order-in-Appeal No.AHM-EXCUS-001-APP-019-2020-21 dated 27.05.2020 remanded the matter to the adjudicating authority for deciding the case afresh after observing that the provisions of Section 11B of the Central Excise Act, 1944 prescribing time limit to claim refund of duty paid as applicable to Service Tax vide Section 83 of the Finance Act, 1994 is not applicable in the facts of the case and accordingly the order passed by the adjudicating authority is not legally sustainable and is liable to be set aside and that as the adjudicating authority has not discussed the eligibility of refund filed by the appellant, the matter needs to be remanded back to him to decide the case afresh on merits.

2.2 In pursuance to the appellate authority's directions vide OIA dated 27.05.2020, the refund claimed by the appellant in the case was decided afresh on merits by the adjudicating authority in remand proceedings vide the impugned order wherein he has sanctioned in full the refund of service tax of Rs.5,68,395/- claimed by the appellant under Section 11B of the Central Excise Act, 1944 made applicable to service tax vide Section 83 of the Finance Act, 1994.



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. The appellant in his appeal has contended that the adjudicating authority has missed to follow Section 11BB of the Central Excise Act, 1944 and Departmental Circular No.670/61/2002-CX dated 01.10.2002 issued from F.No.268/51/2002-CX.8 issued by the Central Board of Excise & Customs; that he rely on the case laws in the case of Tata Chemicals Ltd. Vs. Commissioner of C.Ex., Rajkot [2016 (334) ELT 133 (Tri.-Ahmd.)] and Ranbaxy Laboratories Ltd. Vs. UOI [2011 (273) ELT 3 (SC)] in support of his contention; that he also rely on the case laws in the case of Paper Products Ltd. Vs. CCE [1999 (112) ELT 65 (SC)] and Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries [2002 (143) ELT 19 (SC)] to contend that circulars/instructions issued by CBEC are binding on the department; that in appellant's own previous case, the learned Commissioner (Appeals) granted interest on service tax refund after expiry of three months from the date of submission of refund claim till the date of actual payment; that it is settled legal position under the law that the authorities and judiciary cannot adopt a contrary view to the one already adopted in the case of an assessee; that in this regard, he rely on the case law in the case of Commissioner of Income Tax Vs. Excel Industries Ltd. [2014 (309) ELT 386 (SC)] and in the case of Tata Steel Ltd./ SAIL Vs. CCE, Jamshedpur [Order No.FO/A/75016-75022/2016]; that as per the principles of judicial discipline, any final order of the higher authorities i.e. Appellate Authority, Tribunal, High Court or Supreme Court, is required to be followed by the subordinate authority; and that he relies on the case laws in the case of (i) UOI Vs. Kamlakshi Finance Corporation Ltd. [1991 (55) ELT 433 (S.C.)], (ii) Topland Engines Pvt. Ltd. Vs. UOI [2008 (9) STR 331 (Guj.)] and (iii) Lubi Electricals Ltd. Vs. Commissioner of Service Tax, Ahmedabad [2010 (17) STR 217] in support of their contention on principle of judicial discipline.

4. Personal hearing in the matter was held on 18.11.2021 through virtual mode. Shri Vaibhav Jajoo, the appellant, attended the hearing and re-iterated submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, appeal memorandum and 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 is entitled for interest on refund amount sanctioned to them.

6. On going through the impugned order, it is observed that the refund of service tax claimed by the appellant in the case is sanctioned by the adjudicating authority 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. When the refund has been sanctioned under the provisions of Section 11B *ibid*, the provisions of Section 11BB of the Central Excise Act, 1944 would come into play automatically in case of any delay in sanctioning the refund.



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.”

7.1. The 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 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. The Hon'ble Tribunal, Ahmedabad in their decision in the case of *Tata Chemicals Ltd. Vs. Commissioner of C.Ex. Rajkot* [2016 (334) ELT 133 (Tri.-Ahmd.)], by relying upon the above decision of the Hon'ble Supreme Court, has held similar views on interest liability under Section 11BB of the Act ibid and this decision of the Hon'ble Tribunal was affirmed by the Hon'ble High Court of Gujarat while dismissing the departmental appeal against the said decision of the Hon'ble Tribunal.

7.2 I further find that in the appellant's own case on similar set of facts, the Hon'ble Tribunal, Ahmedabad vide their Order No.A/13814/2017 dated 24.11.2017 and the Commissioner (Appeals), Ahmedabad vide OIA No.AHM-EXCUS-001-APP-097-2018-19 dated 05.11.2018 with reference to the above decision of Hon'ble Tribunal, had granted interest on the amount of service tax refunded.



8. 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 the amount paid as service tax 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 the rate of 6% fixed by the Central Government by Notification No.67/2003-C.E.(N.T.) dated 12.09.2003 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. Consequently, the appeal filed by the appellant is allowed.

9. 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.

(Signature)
31st December, 2021
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 31.12.2021

Attested

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



BY R.P.A.D. / SPEED POST

To

Shri Vaibha Jajoo,
B/803, Dev Aurum Residency,
Adjacent to Hotel Rajdeep Inn,
Anandnagar Cross Roads, Prahladnagar,
Ahmedabad-380015.

Copy to:-

1. The Chief Commissioner, CGST& Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, CGST& Central Excise, Ahmedabad-South.
3. The Assistant Commissioner, CGST& Central Excise, Division-VIII, Ahmedabad South.
4. The Assistant Commissioner (System), CGST HQ, Ahmedabad South.
(for uploading the OIA)

~~5.~~ Guard file

6. P.A. File