



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20230164SW0000333F88

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/360/2022 / 4456-60
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-131/2022-23
दिनांक Date : 18-01-2023 जारी करने की तारीख Date of Issue 19.01.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 04/Refund/CGST/Ahmd-South/AC/PMC/2022-23 दिनांक: 25.04.2022
passed by Assistant Commissioner, CGST, Division V, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Stalmec Engineering Pvt Ltd
Plot No. 365-368, GIDC Industrial Estate,
Odhav, 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 :

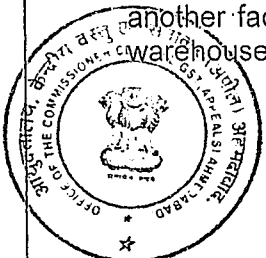
Revision application to Government of India:

(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 हानिकार खाने 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.



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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

- 16P सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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.

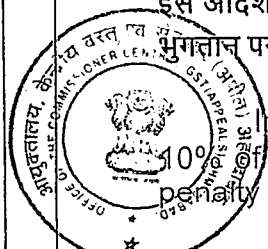
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (cclxxxvi) amount determined under Section 11 D;
(cclxxxvii) amount of erroneous Cenvat Credit taken;
(cclxxxviii) 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."

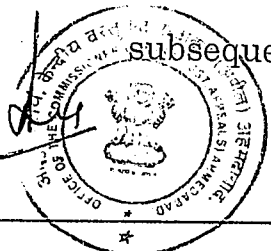


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Stalmec Engineering Pvt. Ltd., Plot No. 365/368, GIDC Industrial Estate, Odhav, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. 04/Refund/CGST/Ahmd-South/AC/PMC/2022-23 dated 25.04.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – V, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Central Excise Registration No. AAACP9170DXM001 and engaged in the manufacture of Rotary Screen Printing Machinery and Parts thereof falling under Chapter Hearing 8443 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of audit of the record of the appellant for the period from November, 2001 to December, 2006, it was observed that the appellant had exported goods namely, Rotary Screen Printing Machine during F.Y. 2002-03. The appellant was clearing the said goods at Nil rate of duty for home consumption in terms of Serial No. 193 of Notification No.06/2002 dated 01.03.2002. It was observed that the appellant was clearing the said goods for export on payment of duty and was claiming rebate in respect of the same. It was further observed that the appellant had availed cenvat credit of the inputs used in the manufacture of the said goods and had paid duty on the goods cleared for export from the accumulated cenvat credit lying in balance and thereafter claimed rebate amounting to Rs.16,16,000/-. It appeared that as the final product was exempted in term of Serial No. 193 of Notification No.06/2002 dated 01.03.2002, no cenvat credit was allowable in respect of the inputs used in the manufacture of the said exempted goods. Consequently, the rebate of the duty paid on goods cleared for export, under Rule 18 of the Central Excise Rules, 2002, was not admissible.

2.1 As the appellant were sanctioned the rebate claim, they were subsequently issued Show Cause Notice proposing recovery of the wrongly



sanctioned rebate claim amounting to Rs.16,16,000/- under Section 11A of the Central Excise Act, 1994 read with Rule 12 of the Central Excise Rules, 2002. Penalty was also proposed to be imposed under Rule 13 of the Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

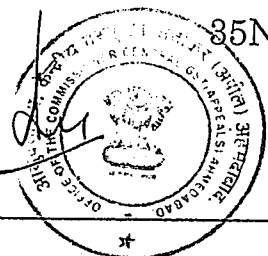
2.2 The SCN was adjudicated vide OIO No.6/ADC/2008/PRC dated 21.02.2008 and the demand was confirmed along with interest. Penalty equivalent to the demand confirmed was also imposed on the appellant. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. 127/2008(Ahd-II)CE/ID/Commr.(A)/Ahd dated 21.11.2008 rejected the appeal. The appellant carried the matter in appeal before the CESTAT, Ahmedabad, who vide Order No. A/12342/2014 dated 30.12.2014 found the appeal not maintainable, being a rebate matter. The appellant, thereafter, filed a Revision Application on 09.02.2015 and the Revision Authority vide Order No. 145/2022-CS(WZ)/ASRA/Mumbai dated 03.02.2022 set aside the OIA dated 21.11.2008 and allowed the application of the appellant.

2.3 During the course of filing appeal before the Commissioner (Appeals), Ahmedabad, the appellant had paid an amount of Rs.4,04,000/- towards pre-deposit in terms of Stay Order No. 20(Ahd-II)/2008 dated 15.05.2008 and on directions of the departmental officer, the appellant debited an amount of Rs.4,04,000/- on 31.12.2008 and Rs.4,04,000/- on 17.02.2009, under protest, from their cenvat register. Consequent to the order of the Revision Authority, the appellant filed claim for refund of Rs.12,12,000/-.

3. The appellant, on 12.04.2022, filed a claim for refund of Rs.12,12,000/- and the same was adjudicated vide the impugned order wherein the appellant was sanctioned the amount of Rs.12,12,000/- along with interest of Rs. 3,36,703/- on the pre-deposit amount of Rs.4,04,000/- paid on 15.05.2008 and it was held that the appellant were not eligible for interest on the amount of Rs.8,08,000/- deposited on 31.12.2008 and 17.02.2009.



4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :
- i. The impugned order has not addressed the issue of eligibility of interest on the amount of Rs.8,08,000/- debited, under protest, on the directions of the department. No independent findings have been given as to why they are not eligible for interest.
 - ii. The adjudicating authority has stated that the amount paid during investigation is not payment of duty but deposit and, therefore, time limit and unjust enrichment is not applicable for refund of the said amount. So for both the purposes, the payment of Rs.8,08,000/- has been considered as pre-deposit only.
 - iii. Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the Board is very clear on the aspect of refund of pre-deposit along with interest. However, while granting interest on the amount of Rs.4,04,000/-, the adjudicating authority has denied interest on Rs.8,08,000/- even after treating it as pre-deposit.
 - iv. As per the observation of the Hon'ble Supreme Court, the adjudicating authority ought to have discharged his function judicially, independently and without any control. Even after receiving the observation of the Audit during the process of pre-audit, the adjudicating authority was required to give his independent findings on the eligibility of interest on the amount deposited in terms of the directions of the Department.
 - v. Reliance is placed upon the judgment in the case of Orient Paper Mills Ltd. Vs. UOI – 1978 (2) ELT J345 (SC); Rewa Gases Pvt. Ltd. Vs. Assistant Collector of C.Ex., Satana – 2002 (140) ELT 18 (M.P.) and Bombay Chemicals Ltd. Vs. UOI – 2006 (201) ETL 167 (Bom.).
 - vi. The issue of liability to pay interest on the refund amount in different circumstances is well settled. Reliance is placed upon the judgment in the case of Daily Thanthi – 2021 (376) ELT 615 (Mad.). The issue is very much the same and in the present case the amounts paid by them were at the instance of the Department during pendency of litigation and is to be treated as being in the nature of pre-deposit under Section 35N of the Central Excise Act, 1944. Reliance is also placed upon the



judgment in the case of Amidhara Texturising (P) Ltd. – 2012 (278) ELT 257.

5. Personal Hearing in the case was held on 05.01.2023. Shri K.J.Kinariwala, Consultant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum and stated that he would be submitting some case laws as part of additional submissions.

6. In their written submission dated 10.01.2023, the appellant have submitted that :

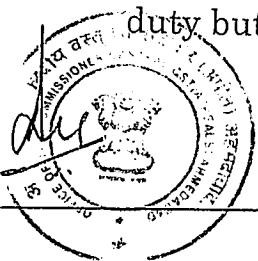
- Admittedly, the amount of Rs.8,08,000/- was paid by them under protest as per the directions of the Department vide letters dated 31.12.2008 and 05.02.2009. The adjudicating authority has in the impugned order repeatedly held that the said amount is deposit only and therefore, the aspect of time limit as well as unjust enrichment will not apply.
- It has been held in a catena of judgments that payment made during litigation is not duty but is deposit in terms of Section 35N of the Central Excise Act, 1944 and refund along with interest has to be made.
- The impugned order has been passed by just following the observation/instruction of the Audit without the adjudicating authority offering his independent findings for not granting interest..
- Pre-audit is an act of interference in the quasi-judicial proceedings as held by several courts, including the Apex Court.
- They are eligible for interest on the amount of Rs.8,08,000/- which was deposited in the course of litigation as deposit.
- Reliance is placed upon the judgment in the case of Commissioner of C.Ex., Chennai Commissioner of C. Ex., Chennai-II v. UCAL Fuel Systems Ltd. - 2014 (306) E.L.T. (26) (Mad.); Team HR Services Pvt. Ltd. v. Union of India - 2020 (38) G.S.T.L. 457 (Del.); Pr. Commr. Of CGST, New Delhi v. EMMAR MGF Construction Pvt. Ltd. - 2021 (55) G.S.T.L. 311 (Tri.-Del.); Parle Agro Pvt. Ltd. v. Commissioner, CGST,



NOIDA 2022 (380) E.L.T. 219 (Tri.-All.); Kesar Enterprises v. Commissioner, CGST, NOIDA 2022 (380) E.L.T. 319 (Tri.-All.); Commr. of C. Ex., Panchkula v. Riba Textiles Ltd. - 2022 (62) G.S.T.L. 136 (P&H); Load Control India Pvt. Ltd. Final Order No. 21012/2019 dated 18.11.2019 of CESTAT, Bangalore; Fujikawa Power Final Order No. 61041-61042/2019 dated 26.11.2019 of CESTAT, Chandigarh; Marshall Foundry Engg. Pvt. Ltd. Final Order No. 61058-61062/2019 dated 28.11.2019 of CESTAT, Chandigarh; Hitesh Industries Final Order No. 51631-51633/2020 dated 07.12.2020 of CESTAT, New Delhi; J. K. Cement Works Final Order No. 51052/2021 dated 02.03.2021 of CESTAT, New Delhi; Jovex International Final Order No. 52002/2021 dated 25.11.2021 of CESTAT, New Delhi; Batra Henlay Cables Final Order No. 52118/2021 dated 05.01.2022 of CESTAT, New Delhi; Gautam Industries Final Order No. 60014-60015/2022 dated 13.01.2022 of CESTAT, Chandigarh; Green Valley Industries Ltd. Final Order No. 75189/2022 dated 11.04.2022 of CESTAT, Kolkata.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the additional written submissions and the materials available on records. The issue before me for decision is as whether the impugned order, rejecting the claim of the appellant for interest in respect of the amounts paid by them during pendency of their appeal, in the facts and circumstances of the case, is legal and proper or otherwise.

8. It is observed that the appellant had filed an appeal before the Commissioner(Appeals) against OIO No.6/ADC/2008/PRC dated 21.02.2008 confirming the demand amounting to Rs.16,16,000/-. The Commissioner (Appeals) granted stay vide Stay Order No. 20(Ahd-II)2008 dated 15.05.2008 and in terms of the Stay Order, the appellant had paid the amount of Rs.4,04,000/-. The appellant have contended that the further amount of Rs.8,08,000/- paid by them on 30.05.2008 and 30.12.2008 is not duty but deposit in terms of Section 35N of the Central Excise Act, 1944, as



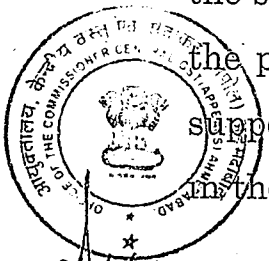
the amount was paid by them, under protest, on the directions of the Department during pendency of the litigation. It is, therefore, pertinent to refer to the provisions of Section 35N of the Central Excise Act, 1944, which is reproduced below :

“Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005, sums due to the government as a result of an order passed under sub-section (1) of section 35C shall be payable in accordance with the order so passed.”

8.1 From a plain reading of the above provisions of Section 35N, it is evident that the same deals with payment of the dues arising out of orders of the CESTAT passed in terms of Section 35C (1) of the Central Excise Act, 1944 during pendency of appeals filed before the High Court or the Supreme Court.

8.2 In the instant appeal, the appellant had, on the directions of the department, made payment of Rs.8,08,000/- during the pendency of their appeal before the Hon'ble Tribunal, Ahmedabad. The amount recovered from the appellant were due to the Government in terms of an order confirming the demand against the appellant. Therefore, clearly the provisions of Section 35N of the Central Excise Act, 1944 are not applicable to the facts of the present case.

8.3 The appellant have in support of their claim that the payment was deposit in terms of Section 35N, relied upon the judgment in the case of Daily Thanthi – 2021 (376) ELT 615 (Mad.). I have perused the said judgment and find that in the said case the payment was made by the petitioner during pendency of their appeal before the Hon'ble Supreme Court and, therefore, the Hon'ble High Court had held that the payment was deposit in terms of Section 131 of the Custom Act, 1962 and Section 35N of the Central Excise Act, 1944. Considering that the facts involved in the present appeal are entirely different, I am of the considered view that the said judgment of the Hon'ble High Court of Madras is not applicable to the present case. Similarly, the other judgment cited by the appellant in support of their contention too deal with cases where the payment was made in the course of the investigation or as pre-deposit in terms of Section 35F



of the Central Excise Act, 1944. Therefore, the judgments cited by the appellant are not applicable to the facts of the present appeal as the payment was made during pendency of their appeal before the Hon'ble Tribunal, Ahmedabad and the payment was over and above the amount of pre-deposit paid in terms of the Stay Order of the Commissioner (Appeals).

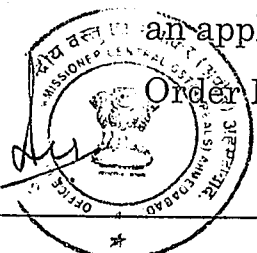
9. I find it relevant to refer to Circular No.984/8/2014-CX dated 16.09.2014 issued by the CBIC, the relevant part of which is reproduced below :

“3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections. ”

9.1 The Board had, vide the above Circular, clarified that the amount paid in the course of investigation or audit would attain the colour of pre-deposit upon filing of appeal to the extent of 7.5% or 10% in terms of Section 35F and the amount paid over and above shall not be treated as deposit under the said section. The above Circular was issued subsequent to the amendment of Section 35F of the Central Excise Act, 1944 w.e.f 06.08.2014 providing for mandatory payment of pre-deposit for filing of appeals before the Commissioner (Appeals) and the CESTAT. Similarly, Circular No. 1053/02/2017-CX dated 10.03.2017 referred to by the appellant was also issued considering the amended provisions of Section 35F of the Central Excise Act, 1944. Even in terms of these Circulars, only the amount to the extent prescribed in Section 35F would be considered as pre-deposit.

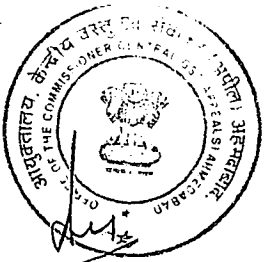
9.2 The dispute in the present case pertains to the period prior to the amendment of Section 35F of the Central Excise Act, 1944. Accordingly, on an application by the appellant, the Commissioner (Appeals) had, vide Stay Order No. 20(Ahd-II)2008 dated 15.05.2008, directed the appellant to make



pre-deposit of an amount of Rs.4,04,000/-. The appeal filed by the appellant was rejected by the Commissioner (Appeals) vide order dated 21.11.2008. Since there confirmation of demand was upheld by the Commissioner (Appeals) and there was no stay against recovery by any higher appellate authority, the department sought to recover the confirmed dues from the appellant and the appellant had paid Rs.4,04,000 on 30.12.2008 and Rs.4,04,000/- on 17.02.2009. The appellant eventually succeeded in their case before the Revision Authority, who vide Order dated 03.02.2022 set aside the OIA dated 21.11.2008 passed by the Commissioner (Appeals). Accordingly, the appellant claimed refund of the amounts paid by them vide application dated 12.04.2022 and the same was sanctioned to them vide the impugned order dated 25.04.2022 i.e. within three months from the date of application from refund. Consequently, the appellant are not eligible for interest in terms of Section 11BB of the Central Excise Act, 1944. Further, since the amounts paid by the appellant is not a pre-deposit in terms of Section 35F of the Central Excise Act, 1944, they are also not eligible for interest in term of Section 35FF of the Central Excise Act, 1944. Additionally, as the dispute pertains to the period prior to amendment of Section 35F of the Central Excise Act, 1944 w.e.f 06.08.2014, the provisions of the said Section are not applicable to the present case.

9.3 I also find it pertinent to refer the judgment of the Hon'ble Tribunal in the case of XLO India Ltd. Vs. Commissioner of C.Ex. & Customs, Pune - 2004 (178) ELT 639 (Tri.-Mumbai). In the said case, the Hon'ble Tribunal had held at Para 6 that :

“Even as per the appeal memorandum and written submissions, the payment of amount confirmed in order-in-original by appellant is voluntary without any reservation, due to the hard pressure by the department, and as stay application was still pending. So this cannot be considered as predeposit. If the appellant's case to be accepted, he should have paid that amount while filing the appeal itself, and not after filing stay application. Admittedly, payment is made, as stay application was not decided. This is not shown as pre-deposit before Collector (Appeals) immediately after payment. Appellant is now trying to show it as pre-deposit without any supporting evidence. As held by lower authorities refund is claimed after six months from the date of payment. No protest under Rule 233B of Central Excise Rules is shown by appellant at any point of time. No reason is assigned in that regard. The appellant has not taken proper precaution in paying the amount. He has not tried to show his refund claim in time. There is a safeguard under Section 11B of Central Excise Act regarding the payment of amount as confirmed and demanded by department, which is set aside in appeal later on, which is not utilised by appellant, and in the absence of it, the appellant



cannot get back the amount paid, as refund. Section 11B of Central Excise Act does not specifically exclude the refund claim based on the orders of appellant authorities. As contended by appellant; even if it is outside the purview of Section 11B, under what provision he can get the refund is not pointed out. So under these circumstances his case can not be upheld. Accordingly it is rejected. Point raised is answered in the negative.”

10. In view of the facts discussed hereinabove and following the judgment of the Hon'ble Tribunal in the case of XLO India Ltd. supra, I am of the considered view that the appellant are not eligible for interest on the amount of Rs.8,08,000/-, paid towards the confirmed demand, during pendency of their appeal before the Tribunal and Revision Authority.

11. In view of the facts discussed herein above, I hold uphold the impugned order and reject the appeal filed by the appellant.

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

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

Akhilesh Kumar
13 January, 2023.
(Akhilesh Kumar)

Commissioner (Appeals)

Date: .01.2023.

Attested:

(Signature)
(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Stalmec Engineering Pvt. Ltd.,
35/368, GIDC Industrial Estate,
Odhav, Ahmedabad

Appellant

The Assistant Commissioner,
CGST, Division- V,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
5. P.A. File.