



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 : 20221064SW000032323B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2586/2021 / 3779 - 83
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-058/2022-23
दिनांक Date : 29-09-2022 जारी करने की तारीख Date of Issue 06.10.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. **WS07/Ref-25/Goldmine/2019-20** दिनांक: **09.08.2020** passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s Goldmine Stocks Pvt Ltd**
"Goldmine House", 4, Niranjan Nirakar Society,
Nr. Shreyas Railway Crossing, Ahmedabad - 380007

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.



(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 दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष 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 होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलोय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 रु.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.

- (35) 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)-

- (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.

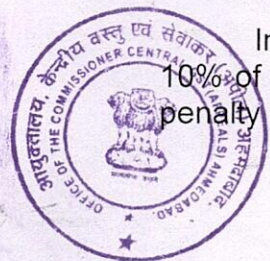
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxxviii) amount determined under Section 11 D;
- (lxxxix) amount of erroneous Cenvat Credit taken;
- (xc) 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. Goldmine Stocks Pvt. Ltd., "Goldmine House", 4, Niranjani Nirankar Society, Near Shreyas Railway Crossing, Ahmedabad – 380 007 (hereinafter referred to as the appellant) against Order in Original No. WS07/Ref-25/Goldmine/2019-20 dated 09.08.2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AAACG5445NST001 under the category of Stock Broker service, Banking and other Financial Service. An inquiry was conducted against the appellant by the Directorate General of Goods and Service Tax Intelligence, Ahmedabad (DGGI) and during the course of the investigation, the appellant had paid an amount of Rs.52,40,295/-. Subsequently, the DGGI vide letter F.No.DGGI/AU/GR.D/12(4)-100/2018-19 dated 05.03.2020 informed that they have concluded the inquiry. Thereafter, the appellant filed for refund, of the amount paid by them, on 06.01.2020 which was sanctioned to them on 11.05.2020. The appellant subsequently filed refund claim for interest amounting to Rs.3,67,826/- under Section 35FF of the Central Excise Act, 1944. However, the claim for refund of interest under Section 35FF of the Central Excise Act, 1944 was rejected vide the impugned order.

3. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

- i. The amount was paid by them under protest during the course of the investigation, therefore, they were entitled to claim interest from the date of deposit till its realization. As the amount paid by them was under protest, it is not a pre-deposit and the amount was retained by the department without any authority of law. It was recorded in the impugned order itself that the amount was paid under protest.



ii. They rely upon the decision in the case of Shahi Exports Ltd. Vs. Commissioner of C.Ex., & S.T, Gurgaon-I – 2022 (58) GSTL 367 (Tri-Chan.).

4. Personal Hearing in the case was held on 29.08.2022. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum and submitted written submissions during the hearing.

5. In their additional written submissions filed on 29.08.2022 the appellant reiterated the contentions made in the appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to rejection of claim for refund of interest under Section 35FF of the Central Excise Act, 1944.

7. I find that the appellant were sanctioned refund of the amount paid by them within three months from the date of filing of refund claim. Therefore, the appellant are not entitled to refund in terms of Section 11BB of the Central Excise Act, 1944. However, I find that the appellant have claimed refund of interest in terms of Section 35FF of the Central Excise Act, 1944. It would, therefore, be pertinent to the said Section, which is reproduced below :

“Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount :

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act.]”

8. Section 35F of the Central Excise Act, 1944 provides for payment of pre-deposit of the disputed amount for appeals to be entertained by the Commissioner (Appeals) and the Tribunal. In the instant case, I find that



the payment was made by the appellant in the course of an inquiry initiated against by them by DGGI, Ahmedabad. However, the inquiry proceedings did not culminate into Show Cause Notice being issued to the appellant or any order being passed in adjudication of such Show Cause Notice. Neither was any appeal filed by the appellant pursuant to the inquiry of DGGI which warranted pre-deposit in terms of Section 35F of the Central Excise Act, 1944. Therefore, the amount paid by the appellant in the course of the inquiry does not assume the colour of pre-deposit envisaged under Section 35F. Consequently, the provisions of Section 35FF of the Central Excise Act, 1944 are not attracted for granting interest to the appellant, as claimed by them. Therefore, I do not find any merit in the claim of the appellant for refund of interest under Section 35FF of the Central Excise Act, 1944.

9. The appellant have in their appeal memorandum contended that they had paid the amount in the course of the inquiry under protest and that this fact has been recorded in the impugned order itself. I have examined the case records as well as the impugned order and find no evidence has been submitted by the appellant to substantiate their contention that the amount was paid by them under protest. I also do not find any mention in the impugned order regarding the payment being made under protest by the appellant.

10. I find it pertinent to refer to Circular No.984/8/2014-CX dated 16.09.2014 issued by the CBIC, wherein at Para 3.2 it was clarified that:

“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.”

10.1 It is clear from the above clarification issued by the CBIC that the payment made during investigation can be considered to be deposit under Section 35F of the Central Excise Act, 1944 only when appeal is filed.

11. The appellant have relied the judgments in the case of Shahi Exports Ltd. Vs. Commissioner of C.Ex., & S.T, Gurgaon-I – 2022 (58) GSTL 367 (Th. Chan.) and Lanvin Synthetics Pvt. Ltd. Vs. Commissioner of



C.Ex.(Appeals), Mumbai-I – 2020 (374) ELT 759 (Tri.-Mumbai). Having perused the said judgments, I find that they were pronounced in the facts and circumstances where the payments were made under protest in the course of the investigation and where SCNs were issued. In the present appeal, the appellant have not put forth any evidence to establish that the payments made by them during the investigation was under protest. Therefore, I find that the said judgments have not applicability to the facts and circumstances of the present appeal.

12. In view of the facts discussed herein above, I am of the considered view that the adjudicating authority has rightly rejected the claim for refund of interest, under Section 35FF of the Central Excise Act, 1944, filed by the appellant. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant.

13. 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
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 29.09.2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Goldmine Stocks Pvt. Ltd.,
 "Goldmine House",
 4, Niranjani Nirankar Society,
 Near Shreyas Railway Crossing,
 Ahmedabad – 380 007

Appellant

The Assistant Commissioner,
 CGST, Division- VII,
 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.

