



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 : 20221064SW000081818E

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2646/2021 / 3801 - 05
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-060/2022-23**  
दिनांक Date : **06-10-2022** जारी करने की तारीख Date of Issue 07.10.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of OIO No. **01/Ref/RBB/AC/Div-I/2020-2021** दिनांक: **04.08.2021** passed by Assistant Commissioner, CGST, Division-I, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

1. M/s BTI Tex Pvt Ltd  
Shrine Co-op Ind. Estate,  
Behind Pushpak Estate,  
Near Gujarat Bottling Cross Roads,  
Rakhial, Ahmedabad-380023

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, 4<sup>th</sup> 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 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 दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का 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 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 सेवा कर 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 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 Appellate 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 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश 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.

- (36) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) के प्रति अपील 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:

- (xci) amount determined under Section 11 D;
- (xcii) amount of erroneous Cenvat Credit taken;
- (xciii) 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. BTI Tex Pvt. Ltd., Shrine Co-op. Industrial Estate, Behind Pushpak Estate, Near Gujarat Bottling Cross Road, Rakhial, Ahmedabad – 380 023 (hereinafter referred to as the appellant) against Order in Original No. 01/Ref/RBB/AC/Div-I/2020-2021 dated 04.08.2021 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division-I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AACCB5856CXM001 and were engaged in the manufacture of Textile Weaving Machines and Parts thereof falling under CETH 84 of the Central Excise Tariff Act, 1985. The appellant had filed a claim for refund for an amount Rs.48,320/- on 06.07.2021 being the amount paid as pre-deposit in respect of appeal filed by them before the Commissioner (Appeals), Ahmedabad. The said appeal was allowed by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-001-APP-85/20-21 dated 30.03.2021. The appellant had filed the refund claim on the grounds that the demand confirmed vide the OIO supra, was set aside vide the OIA supra. The claim for refund filed by the appellant was sanctioned vide the impugned order, but the same was appropriated towards confirmed dues amounting to Rs.25,84,574/- which was pending recovery from the appellant.

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

- i. The impugned order deserves to be quashed being arbitrary as well as illegal as well as violative of principles of natural justice inasmuch as they were not heard prior to passing of the order.
- ii. The adjudicating authority erred in not appreciating that the demand of Rs.25,84,574/- had no relation whatsoever with the refund as the same related to Central Excise (Cenvat credit) whereas the





refund related to demand of service tax which was set aside in appeal. Without there being any provision of law to do so, the adjudicating authority has appropriated the refund towards the demand.

- iii. The adjudicating authority has not appreciated that the demand of Rs.25,84,574/- was also separately challenged by them and on rejection of the appeal vide OIA No.AHM-EXCUS-001-APP-02/2021-22 , they have preferred an appeal before CESTAT, Ahmedabad for which and additional pre-deposit amounting to Rs.64,620/- has also been made. Therefore, there was no question of appropriating the refund amount against the confirmed demand, which apart from being a separate one, has also been challenged in the Tribunal and appeal has been registered.
- iv. It is a settled position by virtue of various circulars that no recovery can be made during the pendency of appeal once required amount is pre-deposited.
- v. The impugned order be quashed to the extent it directs appropriation of the refund amount towards confirmed demand.

4. Personal Hearing in the case was held on 19.07.2022 through virtual mode. Shri Uday M. Joshi, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further stated that he would submit Board's circulars on the issue as part of additional submission.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The issue to be considered in the present appeal is whether the impugned order appropriating the refund of pre-deposit amounting to Rs.48,320/- towards confirmed dues pending against the appellant is proper and legal or otherwise.

6. It is observed that the appellant had sought refund of the amount of pre-deposit made by them for filing appeal before the Commissioner (Appeals). The appeal filed by the appellant was decided in their favour.





Consequently, the appellant filed for refund of the amount paid by them as pre-deposit. The adjudicating authority has, vide the impugned order, sanctioned the refund but appropriated the same against confirmed dues of Rs.25,84,574/- pending against the appellant.

6.1 The appellant have, however, contested the appropriation of the refunded amount on the ground that the order confirming the demand was appealed by them before the Commissioner (Appeals), Ahmedabad and pre-deposit of Rs. 1,93,850/- was made by them. As the appeal was rejected by the Commissioner (Appeals) vide OIA No. AHM-EXCUS-001-APP-02/2021-22 dated 29.04.2021, an appeal has been filed by them before the CESTAT, Ahmedabad and they have made additional pre-deposit amounting to Rs. 64,620/- and the appeal is pending before CESTAT, Ahmedabad. The appellant have submitted copies of the challans evidencing payment of pre-deposit. It is observed that the appeal No. EXCISE/10780/2021 dated 13.08.2021 filed by the appellant before CESTAT, Ahmedabad is pending before the Hon'ble Tribunal.

6.2 It would be pertinent to refer to Circular No.984/8/2014-CX dated 16.09.2014 issued by the CBIC, the relevant portion of which is reproduced below :

“4.1 Vide Circular No. 967/1/2013, dated 1st January, 2013, Board has issued detailed instructions with regard to recovery of the amounts due to the Government during the pendency of stay applications or appeals with the appellate authority. This Circular would not apply to cases where appeal is filed after the enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962.

4.2 No coercive measures for the recovery of balance amount i.e., the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act, 1962, shall be taken during the pendency of appeal where the party/assessee shows to the jurisdictional authorities :

(i) proof of payment of stipulated amount as pre-deposit of 7.5%/10%, subject to a limit of Rs. 10 crores, as the case may be; and

(ii) the copy of appeal memo filed with the appellate authority.

4.3 Recovery action, if any, can be initiated only after the disposal of the case by the Commissioner (Appeals)/Tribunal in favour of the Department. For example, if the Tribunal decides a case in favour of the Department, recovery action for the amount over and above the amount deposited under the provisions of Section 35F/129E may be initiated unless the order of the Tribunal is stayed by the High Court/Supreme Court. The recovery, in such





cases, would include the interest, at the specified rate, from the date duty became payable, till the date of payment.”

6.2 It is clear from the above Circular issued by the CBIC, that no coercive measures should be taken for recovery of dues during pendency of appeal where the pre-deposit has been made in terms of Section 35F of the Central Excise Act, 1944. In the instant case, I find that the appellant have submitted copies of the challan evidencing pre-deposit made by them for filing appeal before the CESTAT. Further, the appeal filed by the appellant is pending before the CESTAT, and hence, coercive action could not have been initiated against the appellant for recovery of the confirmed dues. The circular issued by the CBIC are binding in nature for departmental officers. Further, the appellant have also not made any request for adjustment of the refund towards any confirmed dues. Consequently, the impugned order appropriating the refund of pre-deposit, made by the appellant for filing appeal in this case, cannot be appropriated toward the confirmed dues during pendency of the appeal in another case before CESTAT, Ahmedabad.

7. In view of the above facts and considering the Circular issued by CBIC, I set aside the impugned order appropriating the amount sanctioned as refund and allow the appeal filed by the appellant with consequential relief.

8. 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.

*Akhil*  
( Akhilesh Kumar ) 6 October, 2022  
Commissioner (Appeals)  
Date: .10.2022.

Attested:

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

**BY RPAD / SPEED POST**

To

M/s. BTI Tex Pvt. Ltd.,

Appellant





Shrine Co-op. Industrial Estate,  
Behind Pushpak Estate,  
Near Gujarat Bottling Cross Road,  
Rakhial, Ahmedabad – 380 023

The Assistant Commissioner,  
CGST, Division- I,  
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.

