



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 : 20221164SW000000BE29

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/469/2022 / 5153 - 67
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-081/2022-23
दिनांक Date : 23-11-2022 जारी करने की तारीख Date of Issue 28.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 03/WS08/REF/KSZ/2021-22 दिनांक: 31.12.2021 passed by Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Vodafone Idea Ltd
4th Floor, Building A,
Corporate Road, Off. S.G. Highway,
Prahlad Nagar, 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 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 इसके 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 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 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 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 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 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.

- (56) 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.

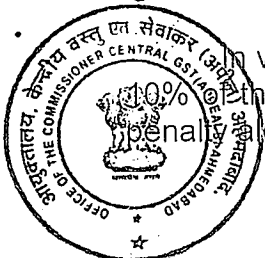
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cliv) amount determined under Section 11 D;
- (clv) amount of erroneous Cenvat Credit taken;
- (clvi) 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 the duty demanded where duty or duty and penalty are in dispute, or penalty, where one is in dispute."

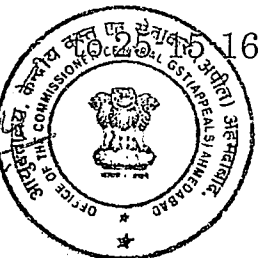


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Vodafone Idea Ltd., 4th Floor, Building A, Corporate Road, Prahladnagar, Off. Sarkhej Gandhinagar Highway, Ahmedabad- 380 015 (hereinafter referred to as the appellant) against Order in Original No. 03/WS08/REF/KSZ/2021-22 dated 31.12.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division – VIII, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were engaged in providing Telecommunication Service and were holding Service Tax Registration No. AAACA9910PST001. The appellant were providing International Inbound Roaming Services to their customers under an agreement with the Foreign Telecom Operators (hereinafter referred to as FTO) by providing connectivity to their customers during their visit to India. The consideration for provision of the said services were received from the FTO in convertible foreign exchange. The appellant considered the provision of the said services as export of services under Rule 5 of the Export of Service Rules, 2005. Accordingly, they had filed several refund claims amounting to Rs.3,65,22,866/- for rebate of the service tax in terms of Notification No.11/2005-ST dated 19.04.2005 read with Rule 5 of the Export of Services Rules, 2005 in respect of the services exported during the period from April, 2008 to October, 2012. The refund/rebate claims were rejected on the grounds that the International Inbound Roaming Services provided by the appellant did not qualify as export of services in terms of the Export of Service Rules, 2005 and also on the grounds of limitation.

2.1 Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals), Ahmedabad, who vide OIAs No.AHM-SVTAX-000-APP-014 to 17-15-16 dated 08.05.2015; AHM-SVTAX-000-APP-023 to 22-15-16 dated 22.05.2015 and AHM-SVTAX-000-APP-030 to 33-15-16



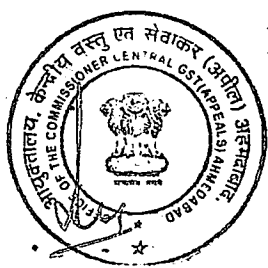
dated 01.06.2015 rejected the appeals filed by the appellant. The appellant filed appeals against the said OIAs before the Hon'ble CESTAT, Ahmedabad, who vide Order No. A/11984-11993/2019 dated 29.10.2019 set aside the said OIAs and allowed the appeals filed by the appellant.

2.2 In pursuance of the Order of the Hon'ble CESTAT, Ahmedabad, the appellant claimed refund/rebate amounting to Rs.3,65,22,866/- which was decided vide OIO No. CGST/WS08/Ref-02/ST/BSM/21-22 dated 03.07.2021 and it was held that the appellant were eligible only for rebate amounting to Rs.46,03,553/-, as the rebate claim amounting to Rs.3,19,19,313/- was barred by limitation. Further, the rebate amounting to Rs.46,03,553/- was rejected on the grounds that an application for Rectification of Mistake (ROM) was filed by the department before the CESTAT against Order dated 29.10.2019. It was held that the ROM is pending.

2.3 Being aggrieved, the appellant filed an appeal before the Commissioner (Appeals), Ahmedabad against the OIO dated 03.07.2021. The Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-001-APP-013/2021-22 dated 30.07.2021 set aside the OIO dated 03.07.2021. The appellant have filed the had filed a refund claim on 04.10.2021 for an amount of Rs.46,03,553/- on the basis of the OIA dated 30.07.2021 passed by the Commissioner (Appeal), Ahmedabad. The refund claim was sanctioned to the appellant vide the impugned order.

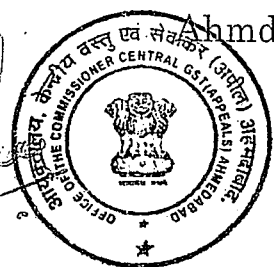
3. As no interest was sanctioned vide the impugned order, the appellant have filed the present appeal on the following grounds :

- i. Interest on refund is statutorily mandated and is automatic and inclusive and is a right of the assessee. The plain and unambiguous language of Section 11BB of the Central Excise Act, 1944 suggests that due rebate must be disbursed within three months from the



date of application. If not paid, the applicant will be entitled to interest at the rate fixed by the Government.

- ii. They rely upon the judgment in the case of Ranbaxy Laboratories Ltd. Vs. UOI – 2012 (27) STR 193 (SC) wherein it was held that the liability to pay interest under Section 11BB commences from the date of expiry of three months from the date of application of refund even if the refund has been sanctioned pursuant to the Order of an Appellate Authority. The judgment is squarely applicable to the case in hand.
- iii. In a case involving similar facts, the Hon'le High Court, Bombay had in the case of Swaraj Mazda Ltd. Vs. UOI – 2009 (235) ELT 788 (Bom.) held that unless it is recorded that the application under Section 11B cannot be termed as an application made under Section 11B, liability to pay interest after expiry of three months from the receipt of application cannot be denied. The said judgment was maintained by the Hon'ble Supreme Court – 2010 (253) ELT A019 (SC).
- iv. The date of filing of refund application is clearly mentioned in the impugned order, however, no interest has been granted. Therefore, the decision of the Hon'ble High Court is squarely applicable to the present case.
- v. As per the provisions of the Central Excise Act, 1944, interest is automatic and is a right of the appellant. They are not required to make an application for such interest.
- vi. Reliance is placed upon Circular No. 670/61/2002-CX dated 01.10.2002 issued by the CBIC wherein it was clarified that payment of interest on delayed refund is automatic and it is inclusive in the order/direction of refund and no separate order for interest is required.
- vii. Reliance is also placed upon the judgment in the case of Steelco Gujarat Ltd. Vs. CCE, Vadodara – 2009 (233) ELT 541 (Tri.-Ahmd.).

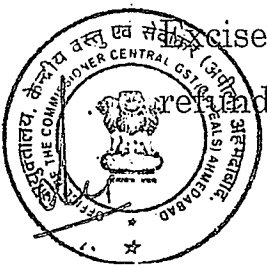


4. Personal Hearing in the case was held on 22.11.2022. Shri Siddharth Nanda, AGM-Indirect Tax, and Shri Jitesh Wadhvani, appeared on behalf of appellant for the hearing. They submitted a written submission during the hearing and reiterated the submissions made therein. They also reiterated the submission made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the materials available on records. The dispute involved in the present appeal relates to non payment of interest in terms of Section 11BB of the Central Excise Act, 1944.

6. From the materials available on record, it is observed that the appellant had preferred the ten refund claims on different dates during the period from March, 2012 to November, 2013 for a total amount of Rs.46,03,553/-. These refund claim were rejected. The matter was carried before the Commissioner (Appeals) and the Hon'ble CESTAT. Subsequently, the appellant were sanctioned the refund claims consequent to OIA No.AHM-EXCUS-001-APP-013/2021-22 dated 30.07.2021. However, this does not alter the fact that the refund claims were filed during the period from March, 2012 to November, 2013.

7. In terms of the provisions of Section 11BB of the Central Excise Act, 1944, where the amount claimed is not refunded within three months from the date of receipt of the application, interest at the rate notified by the Government is required to be paid to the applicant from the date immediately after the expiry of three months from the date of receipt of the application till the date on which refund is granted. In the instant case the appellant was sanctioned the refund on 31.12.2021, and the appellant have stated that they received the refund on 01.01.2022. Therefore, in terms of the provisions of Section 11BB of the Central Excise Act, 1944, the appellant are entitled to interest on the amount of refund from the dates on which the refund claims were received by the

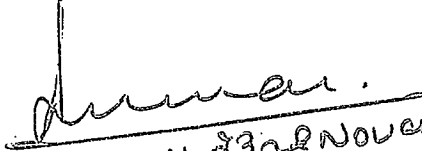


department to 31.12.2021. My view finds support from the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd supra and the judgment of the Hon'ble Bombay High Court in the case of Swaraj Mazda Ltd. Vs. UOI supra. It was held by the Hon'ble Courts in these judgments that interest under Section 11BB becomes payable on the expiry of three months from the date of receipt of application for refund.


8. In view of the facts discussed herein above, I am of the considered view that the appellant are entitled to interest under Section 11BB of the Central Excise Act, 1944. Accordingly, the appeal filed by the appellant is allowed with consequential relief.

9. 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) 23rd November, 2022.
 Commissioner (Appeals)
 Date: 23.11.2022.

Attested:


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



BY RPAD / SPEED POST

To

M/s. Vodafone Idea Ltd.,
 4th Floor, Building A,
 Corporate Road,
 Prahladnagar,
 Off. Sarkhej Gandhinagar Highway,
 Ahmedabad- 380 015

Appellant

The Assistant Commissioner,
 CGST, Division- VIII,
 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.

