



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 - टेलीफैक्स 07926305136



DIN: 20230964SW00008182E7

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1236/2023/5337 - 41
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-113/2023-24  
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 08.09.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. CGST/Ref-19/IIM/AC/DAP/2022-23 दिनांक: 14.12.2022 passed by Assistant Commissioner, CGST, Division VI, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s. Indian Institute of Management,  
Wing-5, Vikram Sarabhai Road,  
Vastrapur, 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 :

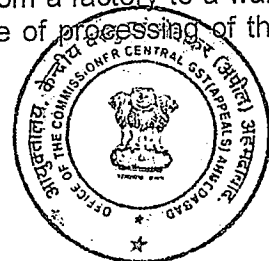
**Revision application to Government of India:**

(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, 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 :

(i) 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) केंद्रीय 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, केंद्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केंद्रीय 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, केंद्रीय 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 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.

10 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)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- इप लिया गलत सेनवैट क्रेडिट की राशि;
- बप 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

The present appeal has been filed by M/s. Indian Institute of Management, Wing-5, Vikram Sarabhai Road, Vastrapur, Ahmedabad -- 380015 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST-VI/Ref-19/IIM/AC/DAP/2022-23 dated 14.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant has filed a refund claim of Rs. 4,26,710/- on 16.09.2022 for the pre-deposit made at the time of filing of appeals before the Hon'ble CESTAT, Ahmedabad. The CESTAT, Ahmedabad has decided the matter vide their Final Order No. A/11126/2022 dated 14.09.2022 and allowed the appeal of the appellant. The adjudicating authority vide the impugned order sanction the refund claim of Rs. 4,26,710/- under the provision of Section 11B of the Central Excise, Act, 1944 as made applicable in the case of Service Tax matter vide Section 83 of the Finance Act, 1994 read with Section 142(3) of the Central Goods and Service Tax Act, 2017. However, the adjudicating authority has not paid / disburse interest on the said pre-deposit amount.

3. Being aggrieved with the impugned order passed by the adjudicating authority in respect of not paid interest on pre-deposit amount, the appellant have preferred the present appeal on the following grounds:

- The appellant are a premier education institute having Centralized Service Tax Registration No. AAAT11274FST001.
- The appellant being aggrieved by Order-in-Original No. CGST-VI/Dem-01/IIM/DC/DRS/2020-21 dated 24.08.2020 passed by the Deputy Commissioner, CGST, Division-VI, Ahmedabad South Commissionerate, and Order-in-Appeal No. AHM-EXCUS-001-APP-025/2021-22 dated 24.12.2021 passed by the Commissioner (Appeals), CGST, Ahmedabad confirming the demand of tax under the category of "Mailing List Compilation and Mailing Services", had filed an appeal before the Hon'ble CESTAT, Ahmedabad vide Service Tax Appeal No. 10133 of 2021. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/11126/2022 dated 14.09.2022 allowed the appeal filed by the appellant.
- While preferring the said appeal before the Hon'ble CESTAT, the appellant had deposited an amount of Rs. 4,26,710/- as statutory pre-deposit on 18.01.2016. On



receiving appellate final order in their favour, the appellant preferred an application for refund of pre-deposit made at the time of filing of appeal.

- The adjudicating authority has vide the impugned order has allowed the said refund claim and sanctioned the refund claim of Rs. 4,26,710/-, however, the adjudicating authority has overlooked the request of the appellant as also the statutory mandate of granting interest over delayed refund of pre-deposit.
- The appellant submitted that the impugned order has been passed without taking into consideration the mandatory provisions of the Circular No. 984/08/2014-CX dated 16.09.2014, which clearly provides that if pre-deposit is to refunded in terms of Section 35FF of the Central Excise Act, 1944, the same has to be done along with interest. In the said circular in point 5.1 provided for refund of pre-deposit and interest subject to Section 35FF of the Central Excise Act, 1944. After, 16.08.2014, the said section reads as under:

*"Section 35FF. Interest delayed refund of amount deposited under section 35F.-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 percent 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 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."*

- In the present case, the appellant are governed by the current provision since the dispute arose well after the 2014 amendment. A plain reading of the amended act will clearly show that while before 2014 the interest had to paid within 3 months of the approval of refund claim, now since the amendment, the government for ease of the tax payer and so streamline the process of refund so that it can be given back in a timely manner, made it mandatory to pay interest immediately.
- In this regard, the appellant relied upon the following case laws:

a) *Marshall Foundry & Engg. Pvt. Ltd. and Ors. Vs. Respondent: Commissioner of CGST, Faridabad – MANU/CJ/OO81/2019*



- b) *Panacea Biotec Limited Vs. Commissioner of Central Goods and Service Tax (East), New Delhi –MANU/CE/0185/2021*  
 c) *Maithan Ceramics Ltd. Vs. Commissioner of Central Tax, Visakhapatnam – MANU/CH/0136/2019*

- The appellant further submitted that it was not only the statutory mandate but even otherwise a contention raised by the appellant while seeking refund. It was therefore, incumbent upon the adjudicating authority to decide the said request while sanctioning the refund. The order passed in as much as it overlooks such important contention of the appellant is not only grossly illegal but also arbitrary and in clear violation of principles of natural justice.
- It is hence, an undeniable fact that the appellant are entitled to claim interest from the date of payment of initial amount till the date its refund and the adjudicating authority herein has erred in fact & law in not allowing the interest under Section 35FF of Central Excise Act, 1944 on refund of pre-deposit made under Section 35F of the Central Excise Act, 1944.

4. Personal hearing in the case was held on 28.08.2023. Shri Yash Modi, Advocate, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the lower authority in the impugned order has sanctioned refund of the pre-deposit amount. However, he has not sanctioned interest on the refund payable from the date of deposit in terms of Section 35FF of the Central Excise Act, 1944 and the Circular of CBEC dated 16.09.2014. Therefore, he requested to order the lower authority to sanction the due interest to the appellant.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the appellant are entitled to interest on pre-deposit, or otherwise.

6. I find that the adjudicating authority while sanctioning refund of Rs. 4,26,710/- categorically accepted that the said amount is a pre-deposit. The relevant portion of the Para 8 of the impugned order reads as under:

*"8. In view of the circular and the order of the CESTAT, Ahmedabad dated 14.09.2022 which is in favor of the claimant, refund of pre-deposit amount is admissible. As regards bar of unjust enrichment, I find that the said amount is a pre-deposit amount for filing appeal is not payment of duty. Hence, refund of pre-deposit*



*need not be subjected to the process of refund of duty and required to be refunded under Section 35F of C. Ex. Act, 1944, therefore, the principle of unjust enrichment is not applicable in the present case."*

7. I find that the appellant eligible for refund of the amount paid as pre-deposit under Section 35F of the Central Excise Act, 1944 along with the interest as per the provision of Section 35FF of the Central Excise Act, 1944, which reads as under:

***"Section 35FF. Interest on delayed refund of amount deposited under section 35F. -***

*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."*

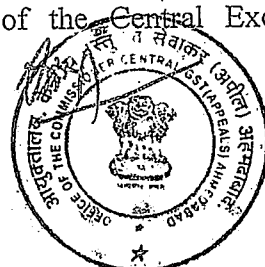
7.1 I also find that CBIC vide Circular No.984/08/2014-CX dated 16.09.2014 specify the refund of pre-deposit and its procedures. The relevant portion of the said circular is reproduced herewith as under:

***"5. Refund of pre-deposit:***

*5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962."*

7.2 In view of the aforesaid circular, I find that there is specific instruction of the CBIC that in case of pre-deposit, the appellant eligible for refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund. However, the adjudicating authority in the impugned order not granted interest to the appellant and remain silent about the interest in the finding as well as in order portion of the impugned order, though he also refer the Circular No. 984/08/2014-CX dated 16.09.2014 in Para 7 of the impugned order.

8. In view of the above discussion, I hold that the appellant is entitled for interest at the prescribed rate from the date of making the deposit to the date of refund of the amount of Rs. 426,710/- paid as pre-deposit under Section 35FF of the Central Excise Act, 1944.



Accordingly, I allow the appeal filed by the appellant and directed the adjudicating authority to disburse interest within a month period from receipt of this order.

12. अपील कर्ता 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.

*12/08/23*  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

*Amend Kumar*  
Superintendent(Appeals),  
CGST, Ahmedabad



By RPAD / SPEED POST

To,  
M/s. Indian Institute of Management,  
Wing-5, Vikram Sarabhai Road,  
Vastrapur, Ahmedabad – 380015

Appellant

The Assistant Commissioner,  
CGST, Division-VI,  
Ahmedabad South

Respondent

Copy to :

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

- 5) Guard File
- 6) PA file