



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240164SW0000017194

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/CEXP/235/2023   172-76
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-199/23-24 and 21.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. WS03/Mafatlal Shah/RFD/07/2022-23 dated 03.02.2023 passed by The The Deputy Commissioner, CGST Division-IV, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri. Mafatlal Harkhchand Shah, 78/80, 2 <sup>nd</sup> Floor, Ghandi Building, C.P. Tank Road, Mumbai -400004

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 जानी चाहिए :-

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 :-

(क) 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।

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.

(ख) 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 हैं।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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 वों समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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.

(2) 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.

(3) 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.

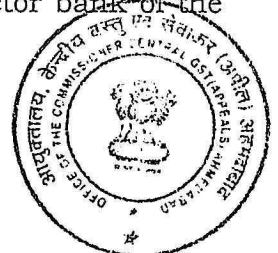
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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।

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 above para.

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 शुल्क अधिनियम 1970 यथा संशोधित 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 का न्यायालय 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) 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।

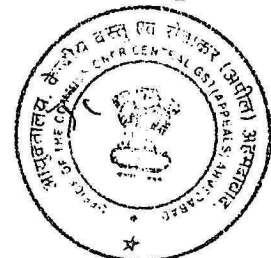
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER-IN-APPEAL**

The present appeal has been filed by Shri Mafatlal Harkhchand Shah, 78/80, 2<sup>nd</sup> Floor, Ghandi Building, C.P. Tank Road, Mumbai-400 004 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. WS03/MAFATLALSHAH /RFD/07/2022-23 dated 03.02.2023 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*") rejecting a refund claim for Rs. 14,40,497.60/-

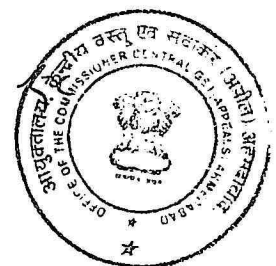
2. Briefly stated, the facts of the case are that based on an investigation conducted by the DGCEI against M/s Shriram Tubes Pvt. Ltd. Ahmedabad, a Show Cause Notice (in short 'SCN') F.No. DGCEI/AZU/12(4)40/2006-07 dated 26.10.2007 was issued against them proposing demand of central excise duty along with interest and penalties and also proposing penalties on the Directors of M/s Shriram Tubes Pvt. Ltd. among which the Appellant were also a noticee being a director of the said firm. The said SCN was adjudicated by the Commissioner of Central Excise, Ahmedabad-I vide Order-in-Original No.3/ Commissioner/RKS/AHD-/2010 dated 03.02.2010, wherein he had confirmed the proposals in the SCN and imposed a penalty of Rs, 2,50,00,000/- on the Appellant. Being aggrieved by the order, the Appellant had filed an appeal before the Hon'ble CESTAT Ahmedabad and vide its order dated 04.04.2011 granted waiver of pre-deposit and stay against recovery in relation to the said OIO dated 03.02.2010 subject to condition of pre-deposit an amount of Rs. 2 crores within a period of 12 weeks by the main noticee M/s. Shriram Tubes Pvt. Ltd. The Hon'ble CESTAT later vide order dated 8.12.2011 in (Appeal No. E642/2010) filed by M/s. Shriram Tubes Pvt. Ltd. dismissed the appeal for non-compliance, though the appeal filed by the Appellant as a co-appellant was not dismissed nor was the stay order dismissed. However Gujarat High Court vide order dated 06.09.2019 in SCA No. 8519 of 2013 directed CESTAT to restore the appeal on the ground that the department



has been able to recover amount of Rs. 2.61 crores by auctioning the company's property and so M/s Shriram Tubes may now not be asked to deposit any further amount towards pre-deposit. Further, CESTAT vide Order No. M/11416-1143/2018 dated 23.08.2018 directed the appellant as co-appellant/ applicant to pre-deposit 7.5% of the amount of penalty, which was later waived vide order dated 05.11.2019. During the pendency of the appeal before the CESTAT the department had initiated action for recovery of the confirmed dues from the appellant consequent to which an amount of Rs. 14,40,497.60 was recovered directly from the Savings and Fixed Deposit Accounts of the Appellant maintained at Bank of Baroda, vide a Pay Order vide Bank of Baroda letter No. GULALW/2016-17/OPS dated 02.02.2017 for the said amount issued by the said Bank as per the direction received from the department. During the pendency of appeals filed before the Hon'ble CESTAT against the above said OIO dated 03.02.2010, the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (in short SVLDRS) came to be announced by the Government of India. The main noticee M/s Shriram Tubes Pvt. Ltd. and the co-noticees in the case, including the appellant, opted for settlement of the dispute in the case under the said Scheme, SVLDRS, and they were issued a Discharge Certificate in Form No. SVLDRS-4 No. L29022SV301219 dated 29.02.2020 for full and final settlement of tax dues in the case. The appellant further submits that their settlement of the case through SVLDRS will not and cannot debar them from claiming the aforesaid refund in view of proviso to Section 124 of the Finance (No.2) Act, 2019, which stipulates that a declarant shall not be entitled to refund, only if it is a case of pre-deposit or deposit already paid exceeds the amount payable by the declarant. Subsequently, the appellant had made an application dated 29.06.2020 requesting for returning of the amount of Rs. 14,40,497.60 which had been recovered by the department from the Bank Accounts of the appellant. The appellant has stated that the said amount was neither a pre-deposit nor any deposit paid by the



appellant in relation to the Order-in-Original dated 03.02.2010 but it was an amount that had been arbitrarily, coercively and illegally recovered from his Bank Accounts by the department during the pendency of the stay order. The above application for refund was followed up by the appellant by different letters, the last among them being letter dated 29.05.2021 addressed to the Principal Commissioner, CGST & Central Excise Ahmedabad South. The issuing authority in reply to the appellant's letter dated 29.05.2021 addressed to the Principal Commissioner, rejected the claim for refund on the grounds that (i) no supporting documentary evidence were submitted along with the above letter dated 29.05.2021 (ii) the amount for which refund is claimed was recovered on 02.02.2017 under Section 11 of Central Excise Act, 1944 against penalty of Rs.2.5 Crores imposed upon the director of the company and it is seen that against the said recovery, no recourse to the appropriate Appeal proceedings under Section 35 of the Central Excise Act, 1944 have been taken and (ii) in the declaration filed under the SVLDRS, the amount of Rs.14,40,497.60 was also declared as pre-deposit made during the pending proceedings and hence with the issuance of SVLDRS-4, the matter has attained finality and no further action can be initiated in the matter. Commissioner (Appeal) vides OIA No. AHM-EXCUS-001/APP-039/2022-23 dated 13.07.2022 set aside the impugned decision of the Assistant Commissioner, Central GST, Division-III, Ahmedabad South and remanded the matter with a direction to decide the matter after following principle of natural justice and considering the submissions of the claimant i.e. Refund claim cannot be rejected without issue of notice. Pursuant to the above OIA passed by the Hon'ble Commissioner (Appeals) the appellant filed a refund claim, in response to which the appellant received a SCN bearing No. WS03/Mafatlal/RFD-05/22-23 dated 14.11.2022 rejecting the refund claim. After due course of law the Assistant Commissioner rejected the claim vide OIO No. WS03/MAFATLALSHAH/RFD/07/2022-213 dated 03.02.2023.



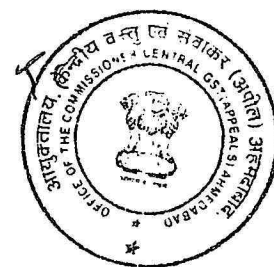
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

- It is submitted that the impugned letter dated 03.02.2023 issued by the learned Assistant Commissioner is ex-facie untenable and unsustainable in law and is liable to be set aside. The appellant says and submits that the learned Assistant Commissioner has failed to appreciate that the said amount which had been sought as refund from the Department was not an amount of duty but had been arbitrarily recovered from the appellant, though the appellants appeal was granted stay by the Hon'ble CESTAT, Ahmedabad and as such the said recovery had been ex-facie bad in law and as such the said refund was required to be paid to the appellant.
- The appellant says and submits that the issue in the present case relates to recovery of amount of Rs. 14,40,497.60 which was arbitrarily done by Department when the appellants own proceedings were the stayed by the Hon'ble CESTAT, Ahmedabad Bench and as such the forceful and arbitrary recovery of the said amount was improper and beyond the provisions of law and as such was required to be returned back by the Department to the appellant.
- The appellant says and submits that the learned Assistant Commissioner had in respect of the impugned claim raised certain objections as mentioned at para 18 of the statement of facts, to which a detailed reply had been submitted by the appellant in response to the show cause notice and at the time of personal hearing, which established that the amount which was arbitrarily recovered from the bank account was required to be returned to the appellant alongwith applicable interest rate, however, the learned Assistant Commissioner adopted a



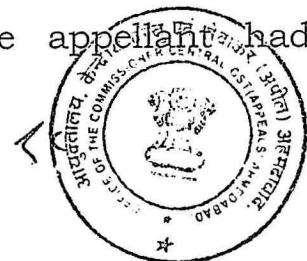
dubious method to reject the claim made by the appellant and thereby deprived the appellant of the righteous amount that was overdue to him. The appellant in support of his claim, wishes to make the following submissions, so as to ensure that justice is made to him and the refund is allowed to him along with consequential relief.

- Further, the appellant says and submits that the learned Assistant Commissioner had while issuing the show cause notice brought out the facts of the case in para 2 of the SCN, wherein he has specifically brought out each and every fact. The appellants says and submits that the learned Assistant Commissioner has at point 2(vi) of the SCN, himself had pointed out that the Assistant Commissioner had vide letter dated 23.01.2017 to Bank of withdrawal of amount of Rs. 14,40,497.60 from the appellants savings / fixed Deposit accounts to the Government exchequer vide pay order dated 02.02.2017 of Bank of Baroda.
- The appellant says and submits that further at para 2(v) of the impugned SCN pointed out that CESTAT vide order dated 23.08.2018 directed the appellant to pre-deposit 7.5% of the amount of penalty, which was later waived by the order of Hon'ble CESTAT, Ahmedabad order dated 5.11.2019.
- The appellant says and submits that two point arises at this juncture, firstly, under which authority the Assistant Commissioner withdraw Rs. 14,40,497.60 arbitrarily and illegally from the account of the appellant when the matter was already stayed by the Hon'ble CESTAT on 23.01.2017 that is the day, on which the recovery from the appellant was already stayed by Hon'ble CESTAT, Ahmedabad. Secondly, when the Assistant Commissioner had come to know on 5.11.2019 that the pre-deposit of 7.5% was waived, then why did the Assistant Commissioner did not return back the amount that was withdrawn from the appellants account forcefully and without any authority of law.





- The appellant says and submits that all the above facts were known to the learned Assistant Commissioner at the time of deciding the present claim, however, he rejected the claim for unnecessary reason, Creating an Onerous situation for the appellant intentionally and rejected the claim for dubious reasons. Thus, the entire OIO rejecting the claim becomes is ex-facie bad in law and is required to be sett a side on these grounds alone.
- The appellant says and submits that the issue relates to refund or returning back of an amount of Rs. 14,40,497.60 which had been forcefully and arbitrarily withdrawn from the bank account of the appellant, when the appeal related to personal penalty was pending before the Hon'ble CESTAT, Ahmedabad Bench and as such the action on the part of the Assistant Commissioner at the relevant time to forcefully encase amount of Rs. 14,40,497.60 was arbitrary and without any authority of law.
- Thus, the appellant says and submits that the said amount of Rs. 14,40,497.60 was required to be returned to the appellant by the Department on its own, without waiting for the appellant to request to return the amount along with interest. The appellant further says and submits that the reason for rejecting the refund claim by the learned Assistant Commissioner was not proper and legal in view of the following submissions.
- The appellant says and submits that the first reason assigned by the learned Assistant Commissioner to reject the refund claim was that he straightaway observed that it is a settled law by various decisions by judicial forums up to the Hon'ble Supreme Court in respect of refund claims that the claimant of refund has to substantiate 3 conditions i.e. eligibility of refund, application for refund claim within time limit of one year and no unjust enrichment, and accordingly at para 7 of the impugned OIO he observed that the appellant had not



submitted any documentary evidence to substantiate that any of these conditions and have not submitted any documents and accordingly he has observed that it is not possible to consider request for refund of total amount of Rs. 14,40,497.60.

- The appellant says and submits that the foremost reason for rejecting the refund claim is baseless and illogical as he had never sought any document for considering the application as the appellant had submitted all the documents with the claim and there was no further need for any document to decide the claim. And, if any such document was required by the learned Assistant Commissioner, then, the same should be communicated to the appellant in the show cause notice or have been at the time of personal hearing, which was not done. This, itself evidences that the learned Assistant Commissioner had without any logical reasoning, rejected the claim, simply because he did not warranted to sanction the refund claim to the appellant.
- The appellant further says and submits that the learned Assistant Commissioner has further at para 8 discussed the provisions of mandatory pre-deposits required for filing Assistant the appeal and procedure of obtaining refund. However, it is difficult to understand as to why he has discussed the said provisions in the instant case, as there was no requirement of mandatory pre-deposits in the instant case as the appeal had been filed by the appellant well before the new guidelines for mandatory pre-deposit were notified in 2014. Hence, the discussion on the provisions of new Section 35F and 35FF of the Central Excise Act, 1944 have no relevance, in the instant appeal and as such the said part of the impugned OIO is illogical and the consideration of the same for deciding the present claim was futile attempt by the learned Assistant Commissioner and as such the same is



required to be discarded at the time of deciding the present appeal.

- The appellant further says and submits that the learned Assistant Commissioner jumped to para 10 of the impugned OIO, where he has discussed the provisions of SVLDRS, 2019. Further, the appellant says and submits that while discussing the provisions of SVLDRS, 2019, the learned Assistant Commissioner has observed that where an amount has been made as a pre-deposit, then in such case the declarant shall not be entitled to refund of pre deposit.
- The appellant says and submits that it is difficult to understand as to why he has discussed the provisions of Section 124(2) of the Finance Act (No. 2) Act, 2019, when the issue does not relate to refund of pre-deposit and the issue related to refund of amount arbitrarily recovered by the Department without any legality. Furthermore, the learned Assistant Commissioner has given no findings on the provisions of Section 124(2) of the Act ibid after discussing the provisions in the instant case. Thus, discussing the provisions of section 124 (2) of the Finance Act, 2019 by the learned Assistant Commissioner in the instant case is nothing but an futile attempt to conclude the findings portion and as such the same do not have any relevance in the instant case and as such the same requires to be discarded at the time of deciding the present appeal.
- The appellant says and submits that the learned Assistant Commissioner has lastly resorted to his observations that the amount of Rs. 14,40,497.60 was recovered against penalty amount of Rs. 2,50,00,000/- imposed vide OIO No. 03/COMMR/RKS/Ahd-I/ 2010 dated 03.02.2010, by the then jurisdictional Assistant Commissioner on 02.02.2017, and it appears that the first refund for the same was filed on 31.12.2020 which appears to be time barred in view of Section 11B of the Central Excise Act, 1944.

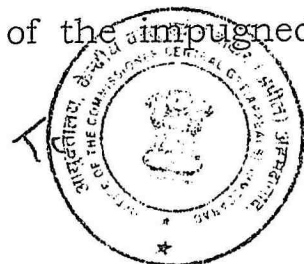


- The appellant says and submits that learned Assistant Commissioner could not find any other plausible reason to reject the request for returning the amount by the appellant, he illogically resorted to the grounds of limitation. However, he has failed to place on record that how the claim was time barred, when he has failed to examine the provisions of Section 11B of the Central Excise Act, 1944.
- The appellant says and submits that though Hon'ble CESTAT, Ahmedabad Bench had granted unconditional stay to the appellant in the appeal filed by them before Hon'ble CESTAT, Ahmedabad Bench against penalty amount of Rs. 2,50,00,000/- imposed vide O10 No. 03/COMMR/ RKS/Ahd-I/2010 dated 03.02.2010, the Assistant Commissioner, Central Excise & GST, Division II, Ahmedabad South ignored the above legal facts and in excess of his powers proceeded to recover the amount lying in the Bank account of the appellant and proceeded to issue letter F. NO. DIV-II/Arrears/ Shriram / 2016-17 dated 23.01.2017 addressed to Dy. General manager/ Asst. General Manager, Bank of Baroda, Ahmedabad and accordingly an amount of Rs. 14,40,497.60 had been forcefully withdrawn the following amount from the appellants 3 saving/ fixed deposit accounts to the Government exchequer by issuing pay order vide Bank of Baroda letter No. GULALW/2016-17/OPS dated 2.2.2017.
- The appellant says and submits that though Hon ble CESTAT, Ahmedabad Bench had granted unconditional stay to the appellant in the appeal filed by them before Hon'ble CESTAT, Ahmedabad Bench against penalty amount of Rs. 2,50,00,000/- imposed vide OIO No. 03/COMMR/ RKS/Ahd-I/2010 dated 03.02.2010, the Assistant Commissioner, Central Excise & GST, Division II, Ahmedabad South ignored the above legal facts and in excess of his powers proceeded to recover the amount lying in the Bank account of the appellant and proceeded to issue letter F. NO. DIV-II/Arrears/ Shriram /



2016-17 dated 23.01.2017 addressed to Dy. General manager/ Asst. General Manager, Bank of Baroda, Ahmedabad and accordingly an amount of Rs. 14,40,497.60 had been forcefully withdrawn the following amount from the appellants 3 saving/ fixed deposit accounts to the Government exchequer by issuing pay order vide Bank of Baroda letter No. GULALW/2016-17/OPS dated 2.2.2017. Details of the same are furnished be the case though SVLDRS, the appellant cannot be debarred from claiming the aforesaid refund in view of proviso to section 124 of the Finance (No.2) Act, 2019, according to which a declarant shall not be entitled to refund, only if it is a case of pre-deposit or deposit already paid exceeds the amount payable by the declarant. However, the appellants case does not fall under the above proviso as the aforesaid amount of Rs. 14,40,497.60 was neither a pre-deposit nor any deposit paid by him but it was an amount that had been arbitrarily, illegally and coercively recovered from the Bank accounts of the appellant by the Department during the pendency of the stay order. Moreover, the Hon'ble CESTAT'S stay order (SUPRA) clearly brings on record that the appellant was neither required to make any pre-deposit nor had he paid any deposit in relation to the aforesaid Order-in Original dated 03.02.2010.

- The appellant further says and submits that he had informed all the above facts to the learned Assistant Commissioner vide his reply to the show cause notice issued by the learned Assistant Commissioner, however, he had ignored all the above facts and arbitrarily proceeded to decide the claim as if he was totally unaware about the facts of the case, thus, resulting in rejecting the claim by passing a cryptic and dubious order. The impugned OIO is therefore baseless and has been passed without application of mind.
- The appellant further says and submits that the learned adjudicating authority has at para 8 of the impugned OIO



Visited the contents of Circular No. 984/08/2014-CX dated 18.09.2014, according to which the appellant has to pay an amount of pre-deposit at the time of filing of appeal and that Section 35FF of the Central Excise Act, 1944 provides for refund along with interest on the amount of pre deposit.

- The appellant says and submits that the issue does not pertain to pre-deposit made by the appellant but is related to appropriation of balances in bank accounts of the appellant by the Department, when the matter was already granted stay by the Hon'ble CESTAT. Thus, the said observations of the learned adjudicating authority are baseless, inappropriate, based on assumptions and presumptions and beyond the authority of law and as such the said observations being irrelevant in the instant case are required to be discarded in interest of justice.
- The appellant further says and submits that the learned adjudicating authority has also observed the provisions of Section 124(2) of the Finance Act, 2019 which deals with the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and observed that the said amount of Rs. 14,40,497.60 was also declared as pre-deposit.
- The appellant says and submits that it is difficult to understand that how the learned Assistant Commissioner has reached to the conclusion and has assumed that the amount of Rs. 14,40,497.60 which transferred from the appellants account without any arbitrary direction of any judicial forum can be considered as pre deposit, especially when the appellant had provided a copy of SVLDRS 1 and SVLDRS 4, wherein it has been nowhere been shown that the amount was declared as a pre-deposit by the appellant. Thus, the learned adjudicating authority has decided the entire claim on the basis of wrong facts and also placing the wrong facts on record by recording the said facts at para 10 of the impugned OIO,



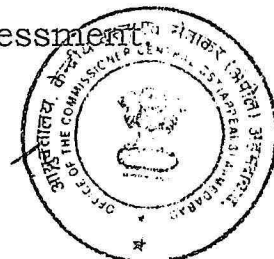
which shows that either the refund claim has been decided without application of mind or with an ill intention.

➤ The appellant says and submits that from all the above submissions, it is established that the learned Assistant Commissioner has arbitrarily rejected the refund claim, without considering any of the submissions made by the appellant. Thus, the impugned OIO is ex facie bad in law in as much as the same has been arbitrarily issued without considering the facts of the case and as such the impugned Communication is erroneous and bad in law. The appellant in view of the above submissions submit that the refund claim has been arbitrarily rejected without going in the facts of the case and as such the appellant pray that the impugned OIO dated 03.02.2023 rejecting the claim may be set aside in interest of justice and refund of Rs. 14,40,497.60 may be granted to the appellant with consequential reliefs.

4. Personal hearing in the case was held on 18-10-2023. Shri Anil Gidwani, Advocate, appeared for personal hearing on behalf of the appellant and reiterated the contents of written submissions and requested to allow their appeal.

5. I have carefully gone through the facts of the case and submission made in the Appeal Memorandum, the submission made at the time of personal hearing.

6. I have perused para 7 of the impugned OIO, wherein the adjudicating authority has placed reliance on the order of the Hon'ble Supreme Court of India in the case of 2019(368)E.L.T.216(S.C.)-ITC Ltd. vs. CCE vide which it is laid down that "Refund claim cannot be entertained unless the order of assessment or self assessment is modified in accordance with law by taking recourse to the appropriate proceedings" in order to be eligible for claiming any refund. The observation is not sustainable as the ground of refund is not related to assessment.



7. The observation of adjudicating authority at the para 11 of the OIO that the claimant has declared Rs. 14,40,497/- as pre-deposit in declaration filed under SVLDRS scheme is factually incorrect as both in SVLDRS-I and SVLDRS-4 the amount in column pre-deposit/any other deposit mentioned is zero.

8. I agree with the contention of the appellant that the mandatory deposit provision introduced in 2014 is not applicable to the current case as it is of prior period.

9. Accordingly, in view of the foregoing discussions and finding, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and allow the appeal with consequential relief.

10. 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.

*J.C.J.*  
21.12.23

ज्ञानचंद जैन  
आयुक्त (अपील्स)

Date : 21.12.2023

Attested  
*[Signature]*

(अमरेंद्र कुमार)  
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद



**By RPAD / SPEED POST**

To,  
Shri Mafatlal Harkhchand Shah,  
78/80, 2<sup>nd</sup> Floor, Ghandi Building,  
C.P. Tank Road, Mumbai-400 004.

Appellant



**By RPAD / SPEED POST**

To,

Shri Mafatlal Harkhchand Shah,  
78/80, 2<sup>nd</sup> Floor, Ghandi Building,  
C.P. Tank Road, Mumbai-400 004.

Appellant

The Assistant Commissioner,  
Central GST, Division-III,  
Ahmedabad South.

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2. The Commissioner, CGST, Ahmedabad South
3. The Assistant Commissioner, Central GST, Division-III, Ahmedabad South.
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
- ✓ 5. Guard File
6. PA file



