



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 : 20230464SW0000111A53

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/493/2022
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-03/2023-24
दिनांक Date : 19-04-2023 जारी करने की तारीख Date of Issue 24.04.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. Div-III/RFD/Pre-GST/AC/06/2020-21 दिनांक: 20.10.2022 passed by
Assistant Commissioner, CGST, Division-III, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Meghmani Industries Ltd, Unit II,
Plot No. 27, Phase-I, GIDC,
Vatva Industrial Estate, Vatva,
Ahmedabad - 382445

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 :

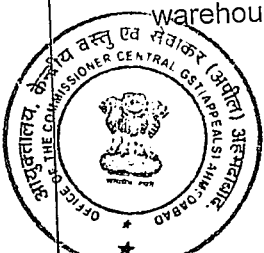
Revision application to Government of India:

(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 हों।

- (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।

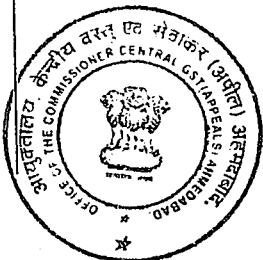
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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



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

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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.

17प 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इप लिया गलत सेनवैट क्रेडिट की राशि;
बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

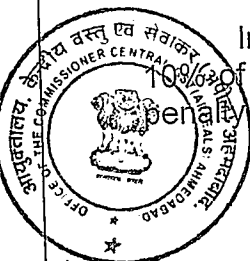
⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

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:

- (cxlviii) amount determined under Section 11 D;
(cxlix) amount of erroneous Cenvat Credit taken;
(cl) 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."

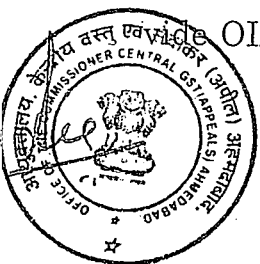
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Meghmani Industries Limited, Unit II, Plot No. 27, Phase-I, GIDC, Vatva Industrial Estate, Vatva, Ahmedabad - 382 445 (hereinafter referred to as the "appellant") against Order in Original No. Div-III/RFD/Pre-GST/AC/06/2020-21 dated 20.10.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division-III, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant had filed two rebate claims under Section 11B of the Central Excise Act, 1944 on 14.03.2013 for Rs. 1,44,200/- and Rs. 5,33,025/- in respect of the goods exported by them on 24.02.2012. The last date for filing the rebate claims in terms of the provisions of Section 11B of the Central Excise Act, 1944 was 23.02.2013. However, the appellant filed the rebate claims on 14.03.2013. Therefore, the appellant were issued two Show Cause Notices both dated 09.04.2012 proposing to reject the rebate claims filed by them. The SCNs were adjudicated vide OIO No.MP/1486/DC/2013-Reb and MP/1487/DC/2013-Reb both dated 04.06.2013 and the rebate claims filed by the appellant were rejected.

2.1 Being aggrieved, the appellant filed appeals before the Commissioner (Appeals), Ahmedabad, who vide OIA No. 52-53/2013(Ahd-D)CE/AJK/Commr(A)/Ahd dated 10.10.2013 upheld the OIOs dated 04.06.2013 and rejected the appeals filed by the appellant. Being aggrieved, the appellants filed Revision Application before the Revision Authority, Government of India, Mumbai, who vide Order No. 197/2021-CX(WZ)/ASRA/MUMBAI dated 12.05.2021 remanded the case back to the adjudicating authority to decide the case afresh after due verification of the documents.

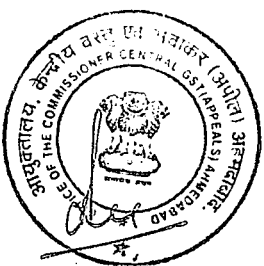
2.2 In the remand proceedings, the rebate claims were rejected vide OIO No. Div-III/RFD/Pre-GST/AC/06/2020-21 dated 12.08.2021. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM-EXCUS-001-APP-044/2022-23 dated 08.09.2022 set aside



the OIO dated 12.08.2021 and allowed the appeal by way of remand. In the remand proceedings, the rebate claims filed by the appellant were sanctioned by the adjudicating authority vide the impugned order.

3. Being aggrieved with the impugned order passed by the adjudicating authority not sanctioning interest, the appellant have preferred the present appeal on the following grounds :

- i. The adjudicating authority choose to disobey the direction given by the Revisionary Authority and Commissioner (Appeal and acted in complete defiance of the order of these authorities to decide the matter with consequential relief and not granted refund with interest for delayed period.
- ii. The adjudicating authority ignored the demand of interest on late payment of rebate claim for almost ten years despite knowing the fact that it is upheld by the Revisionary Authority.
- iii. The Revisionary Authority had in his Order dated 12.05.2021 held that since the applications were initially filed within the stipulate time i.e. 09.04.2012, the same are to be treated as filed in time. The applications are to be decided on merit in accordance with law treating the same as filed in time.
- iv. The refund was to be granted within three months from the date of application in terms of Section 11B of the Central Excise Act, 1944 and any delay beyond the period, they are entitled to interest from the date of expiry of three months from the date of application. Therefore, they are entitled to claim interest from 09.07.2012 to the date of refund i.e. 20.10.2022 as held by the Revisionary Authority.
- v. The adjudicating authority while sanctioning the rebate claim vide the impugned order, erred in not granting consequential relief and, thus, violated the order of the Revisionary Authority, who had upheld the interest on delayed refund by ordering consequential relief.
- vi. They are also statutorily eligible for interest as provided under Section 11BB of the Central Excise Act, 1944 and upheld by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. UOI - 2011 (273) ELT 3 (SC).



vii. Therefore, the adjudicating authority committed a grave error of law by not granting and paying interest on delayed refund.

4. Personal Hearing in the case was held on 22.02.2023. Shri Manohar Maheshwari, VP-Commercial, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the submissions made during the personal hearing and the materials available on records. The dispute involved in the present appeal relates to the non payment of interest on the delay in sanction and payment of rebate claim to the appellant.

6. It is observed that the impugned order was passed in the remand proceedings ordered vide OIA No. AHM-EXCUS-001-APP-044/2022-23 dated 26.08.2022 of the Commissioner (Appeals), Ahmedabad, the relevant part of the order is reproduced below :

“7. Since the directions contained in remand proceedings ordered in the case is not complied with, I find it proper that the matter should go back to adjudicating authority again to decide the case afresh on merits strictly in terms of the directions given by the Revision Authority/Government in the case”.

6.1 It is observed from the materials available on record that the appellant had, in the first round of litigation, upon rejection of their claim for rebate by both the adjudicating authority and the Commissioner (Appeals), approached the Revision Authority, Mumbai against OIA No. 52-53/2013(Ahd-I)CE/AK/Commr(A)/Ahd dated 10.10.2013 passed by the Commissioner (Appeals), Ahmedabad. The Revision Authority, had vide Order No. 197/2021-CX (WZ)/ASRA/Mumbai dated 12.05.2021, set aside the OIA dated 10.10.2013 passed by the Commissioner (Appeals), Ahmedabad and remanded the case back to the adjudicating authority. The Revision Application filed by the appellant was allowed with consequential relief. In his Order dated 12.05.2021, the Revision Authority held that :

“10. Applying the ratio of the afore said judgment, Government of holds that rebate claims filed by the Applicant are made within period of one year from the date of export. In the instant case the original date of filing of these claims i.e. on 09.04.2012, shall be taken as the date of submission of the original claims and subsequent applications are in continuation of the original claims and therefore are not barred by limitation under Section 11B of the Central Excise Act, 1944.

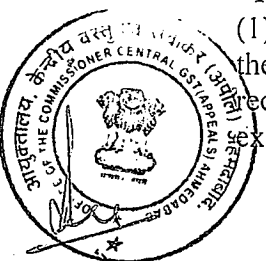


11. In view of the foregoing discussions, it is quite clear that time limitation is to be computed from the initial date of filing such applications as available in relevant office records. Government holds that, since the said applications are initially filed within stipulated time limit i.e. on 09.04.2012, the same are to be treated as filed in time. The applications are to be decided on merits in accordance with law as filed in time. In view of above position, case is required to be remanded back for fresh consideration.”

6.2 In compliance with the directions of the Revision Authority and the Commissioner (Appeals), Ahmedabad, the adjudicating authority decided the rebate claims filed by the appellant and held at Para 8 of the impugned order that the appellant had filed the rebate claims within one year from the date of export and, accordingly sanctioned the rebate claim to the appellant. However, the adjudicating authority did not sanction and pay interest on the delay in sanctioning of the rebate claims for which the appellant are in appeal before this authority.

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 rebate on 20.10.2022. 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 rebate, on expiry of three months from the date on which the refund claims were filed with the department till the date on which the rebate claim was sanctioned and paid to the appellant i.e. on 20.10.2022. 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. In the case of Ranbaxy Laboratories Ltd. Vs. UOI – 2011 (273) ELT 3 (SC), the Hon'ble Supreme Court had held that :

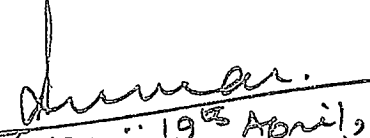
“15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.”



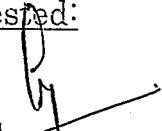
8. In view of the facts discussed herein above and by following the judgment of the Hon'ble Supreme Court in the Ranbaxy Laboratories Ltd. case supra, I am of the considered view that the appellant are entitled to interest under Section 11BB of the Central Excise Act, 1944. Accordingly, the appeal filed 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)
 Commissioner (Appeals)
 Date: 19.04.2023

Attested:


 (N.Suryanarayanan. Iyer)
 Assistant Commissioner (In situ),
 CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Meghmani Industries Limited, Unit II,
 Plot No. 27, Phase-I, GIDC,
 Vatva Industrial Estate,
 Vatva, Ahmedabad - 382 445

Appellant

The Assistant Commissioner,
 Division- III, CGST,
 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.
 - i. P.A. File.