



सत्यमेव जयते

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

**By SPEED POST**

DIN:- 20240464SW00008186E0

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4648/2023 / 3272-76
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-350/2023-24 and 28.03.2024
(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	08.04.2024
(ङ)	Arising out of Order-In-Original No. 02/AC/Div-I/Ref/HKB/2023-24 dated 12.04.2023 passed by The Assistant Commissioner, CGST, Division-I, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Ahmedabad Municipal Corporation, Sardar Patel Bhavan, Banapith, Ahmedabad - 380001

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:**

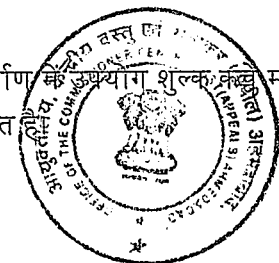
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 के उपयोग शुल्क के माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित



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 वो 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 होती रूपये 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.

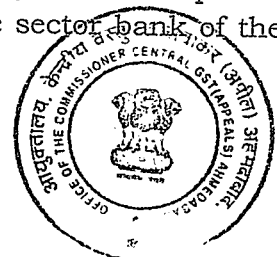
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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।

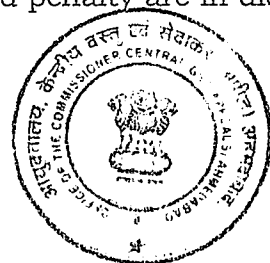
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



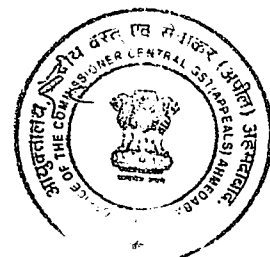
## ORDER IN APPEAL

The present appeal has been filed by M/s Ahmedabad Municipal Corporation, Sardar Patel Bhavan, Danapith, Ahmedabad-380001(hereinafter referred to as the “*appellant*”) against Order in Original No. 02/AC/Div.I/Ref/HKB/23-24 dated 12.04.2023 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division-I, Ahmedabad South (hereinafter referred to as “*adjudicating authority*”) rejecting interest on the sanctioned refund of Rs. 80,77,514/-.

2. The facts of the case are that the appellant, having service tax registration no. AAALA0024CST005, sought a refund of Rs. 80,55,965/- on 31-01-2023 with interest, following an Order-in-Appeal passed by the Commissioner (Appeals), Ahmedabad vide OIA No. AHM-EXCUS-001-APP-125/2022-23 dated 10-01-2023, directing a remand to the adjudicating authority to reconsider the matter with all relevant facts and documents.

2.1 The appellant engaged in providing taxable services such as Selling of Space or Time Slots for Advertisement, Renting of Immovable Property, and Mandap Keeper, received a Show Cause Notice demanding service tax amounting to Rs. 51,79,281/- for the period F.Y. 2008-09 to F.Y. 2012-13. After adjudication, a demand for service tax was confirmed along with interest and penalty. The appellant appealed, resulting in a remand back to the adjudicating authority. In the subsequent proceedings, a reduced demand of service tax amounting to Rs. 17,03,582/- was confirmed along with penalties. The appellant then filed a refund claim, which was initially rejected due to non-submission of payment documents. However, on appeal, the Commissioner (Appeals) set aside the rejection and allowed the appeal by way of remand for further consideration.

2.2 In pursuance to the Order in appeal the adjudicating



authority granted the refund, however while granting the refund, the adjudicating authority did not grant interest on refund amount u/s 35FF of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 from the date of payment till the date of refund. The adjudicating authority also adjusted and appropriated the amount of penalty of Rs. 1,70,358/- and Rs. 10,000/- u/s 76 and Section 77(2) respectively.

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

- The impugned order to the extent of adjustment of penalty of Rs.1,70,358/ u/s 76 and Rs. 10,000/- u/s 77(2) is incorrect and not tenable. Once tax and interest is paid in full and the subject matter is pending before the Tribunal, recovery cannot be made in respect of penalty.
- Interest on refund amount of Rs.78,97,156/- shall be granted from the date of payment (17/07/2018) till the date of refund (19/05/2023) under section 35FF of the Central Excise Act, 1944 along with interest on amount adjusted against refund of Rs. 1,70,358/- and Rs. 10,000/- from the date of payment (17/07/2018) till the date of actual refund under section 35FF of the Central Excise Act, 1944.
- The appellant rely on following legal decisions supporting interest payment u/s 35FF of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994: 1) Hasmukh Tobacco Products Versus Commissioner of Central Excise & ST, Ahmedabad vide Final order No. A/10235- 10236/2023.
- M/s Shri Nakoda Ispat Limited Versus Commissioner of Customs, Central Excise & Central Goods and Service Tax, Raipur with M/s Anant Dave Versus Commissioner of Customs, Central Excise &

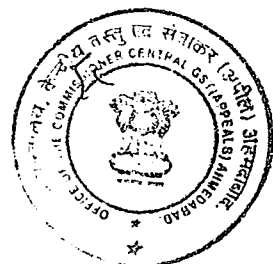


4. Shri Tushar Shah appeared for PH on behalf of the appellant on 18.03.2024. He reiterated the contents of the written submission and requested to allow the appeal.

5. I have carefully gone through the case, submission made in the appeal memorandum and submissions made during the course of personal hearing and relevant orders. I find that the appellant in the instant case is claiming interest on the amount of refund Rs. 78,97,156/- from the date of payment i.e. 17.07.2018 till the date of refund i.e. 19.05.2023 under section 35FF of the Central Excise Act, 1944 along with interest on the amount adjusted against refund of Rs. 1,70,358/- and Rs. 10,000/- from the date of payment i.e. 17.07.2018 till the date of actual refund under section 35FF of the Central Excise Act, 1944. The issue before me to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, rejecting the interest on sanctioned refund of Rs. 80,77,514/- (Rs. 78,97,156/- + Rs. 170358/- + Rs. 10000/-) in terms of Section 35FF of Central Excise Act, 1944, in the facts and circumstance of the case, is legal and proper or otherwise.

6. I find that the appellant claimed interest on refund amount under Section 35FF of the Central Excise Act, 1944. Regarding the interest on refund amount and adjusted amount towards penalties under Section 35FF of the Central Excise Act, 1944, the adjudicating authority at para 16 of the impugned order has observed as under:

*16. the claimant has paid the service tax and interest against the OIO and filed appeal but the claimant has not paid any amount as pre-deposit under Section 35F of Central Excise Act, 1944. Therefore, I find that the appellant is not eligible for interest under Section 35FF of Central Excise Act, 1944.*

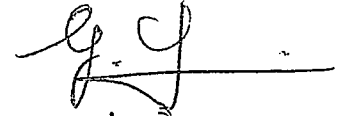


6.1 Upon reviewing the appellant's submission and available records, it is evident that the amount claimed as refund was not paid as pre-deposit under Section 35F of the Central Excise Act, 1944. The payment was made against the confirmed demand. Hence, interest is not applicable under Section 35FF of the Central Excise Act, 1944.

7. Accordingly, the impugned order is upheld.

8. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

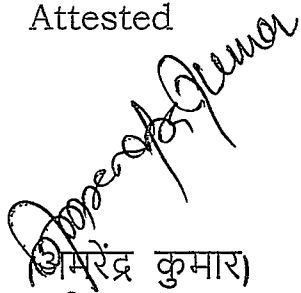


ज्ञानचंद जैन  
आयुक्त (अपील्स)

Date : 28.03.2024



Attested



अनंद कुमार  
अधीक्षक (अपील्स)  
सी.जी.एस.टी, अहमदाबाद

**By RPAD / SPEED POST**

To,  
M/s Ahmedabad Municipal Corporation,  
Sardar Patel Bhavan,  
Danapith, Ahmedabad-380001

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Principal Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, Central GST Division-I,  
Ahmedabad South
- 4) The Supdt. (Appeal), CGST, Ahmedabad South  
( For uploading the OIA)
- ✓ 5) Guard File
- 6) PA file

