

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)108 /A-II/2015-16 / 1765 to 1769
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-088 -16-17
दिनांक Date : 26.08.2016 जारी करने की तारीख Date of Issue 07/09/16
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित
Arising out of Order-in-Original No SD-02/REF-148/DRM/2015-16 Dated 21.10.2015
Issued by Assistant Commissioner, Div-II, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Torrent Pharmaceutical Ltd Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

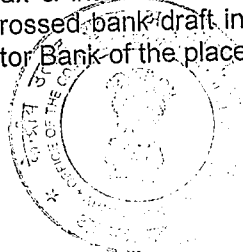
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या उससे कम है वहाँ रूपे 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 5 लाख या 50 लाख तक हो तो रूपे 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपे 50 लाख या उससे ज्यादा है वहाँ रूपे 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



C. Jibe

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

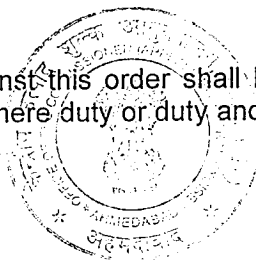
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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

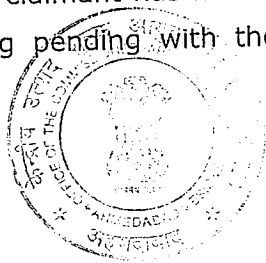
1. This order arises out of the appeal filed by M/s Torrent Pharmaceuticals Ltd, Torrent House, Off Ashram Road, Navrangpura, Ahmedabad 380009 (hereinafter referred to as 'the appellant') against the Refund OIO No. SD-02/Ref-148/DRM/2015-16 dated 21.10.2015 issued from F.No.SD-02/Ref-100/2012-13 (hereinafter referred to as 'the impugned letter') passed by the Assistant Commissioner, Service Tax, Division II, Ahmedabad (hereinafter referred to as 'the sanctioning authority') on 21.10.2015

2. The relevant facts of the case are that the appellant had filed a refund claim on 11.1.2013 with the Assistant Commissioner, Service Tax, Division-II, Ahmedabad of the Service Tax of Rs. 7,32,84,917/-paid under protest by them for the period April-2007 to June 2012 on remittance paid by them to their foreign branches towards foreign distributor expense. Said tax was paid in view of inquiries conducted by DGCEI. The claimant was issued the letter F.No.SD-02/ Ref-100/2012-13 dated 31.1.2013 by the Asst. Commissioner C.Ex. Whereby it was informed to claimant that the said claim can not be processed as DGCEI SCN dated 23.10.2012 is pending for adjudication. The claimant had filed an appeal against the said letter dated 31.1.2013 before the Commissioner (Appeals), which was subsequently decided vide Order In Appeal No. AHM-SVTAX-000-APP-274-13-14 dated 13.12.2013, wherein the Commissioner (Appeals) remanded back the case to the original adjudicating authority with the following observations:-

"In view of the above discussion, I am of the opinion that the adjudicating authority has erred by not disposing the refund applications on merits. Since the adjudicating authority has not dealt with the merits of the refund applications, I am constrained to set aside the impugned letter and remand the case to the sanctioning authority again with directions to dispose the refund applications on merits of the case by passing a speaking order on all relevant issues in accordance with law and after giving the party a reasonable opportunity of being heard."

3. In the mean time DGCEI SCN dated 23.10.2012 was adjudicated vide Order In Original No. STC/58/COMMR/12-13 dated 27.12.2013 wherein all demand was confirmed.

4. The issue was again taken up, as a matter of remand proceedings and after giving an opportunity of Personal hearing, the adjudicating authority was of the finding that the issue involved under the claim has not reached finality as the appeal is pending before Honorable CESTAT against the Order In Original No. STC/58/COMMR/12-13 dated 27.12.2013, that the taxability issued with respect to the Service Tax paid by the claimant has not been finally decided and settled, that the impending appeal being pending with the higher appellate authority forum



CESTAT, WZB, Ahmedabad, adjudicating authority was not in a position to decide the case on merits. Based on the above observations broadly, the refund claim was again rejected under the order F.No.SD-02/Ref-204/NT/2013-14 dated 31.3.2014.

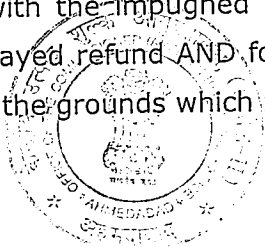
5. Simultaneously in parallel proceedings CESTAT Ahmedabad vide order No. A/11932/2014 dated 12.11.2014 in appeal no. ST/11154/2014 on 16.09.2014 held that appellant were liable to pay service tax within normal period of limitation only and extended period can not be invoked. Accordingly refund of duty paid for extended period i.e. Oct 2010 to June 2012 comes to Rs. 2,43,34,398/- and interest of Rs. 1,33,42,529/- (Total Rs. 3,76,76,927/-).

6. Again appellant filled appeal to Commissioner (Appeals) on 29.05.2014 against the order F.No.SD-02/Ref-204/NT/2013-14 dated 31.3.2014. Personal Hearing in the matter was held on 22.1.2015, wherein Ms. Madhu Jain, Advocate and Mr. Tejas Shah appeared on behalf of the appellant and pleaded that amount paid were under protest during investigations, hence shall be treated as deposit and will never be hit by Section 11B. Commissioner (Appeals) decided the appeal vide OIA AHM-SVTAX-000-APP-211-14-15 dated 11.03.2015 whereby the case was remanded back to the original adjudicating authority for processing the refund claim in light of the dictum under the CESTAT order under Section 11B of CEA 1944.

7. Appellant filed appeal with CESTAT as the Commissioner appeal in his order OIA AHM-SVTAX-000-APP-211-14-15 dated 11/12.03.2015 has not considered the submission made by Appellant that the amount claimed as refund should be allowed independently by considering it as "deposit" and not "duty" without any application of Section 11B of CEA 1944.

8. Where as in remand case [remanded vide OIA AHM-SVTAX-000-APP-211-14-15 dated 11/12.03.2015] during the course of hearing with the Asst. Commissioner it was argued that payment made be treated as deposit made by them to government as it is not in nature of duty and hence 11B provisions are not applicable them. In OIO No. SD-02/REF-148/DRM/2015-16 dated 21.10.2015 it was adjudicated that present claim be treated under 11B of CEA 1944 as made applicable vide Section 83 of FA 1994 and sanctioned the refund claim of Rs. 3,76,76,927/- (2,43,34,398/- duty + 1,33,42,529/- interest) out of total amount of Rs. 7,32,84,917/- (5,43,49,833/- duty+ 1,89,35084/- interest for delayed payment of duty) claimed on 23.10.2012. No interest is granted for delayed refund.

9. Being aggrieved with the impugned order, the appellant filed an appeal claiming the interest on delayed refund AND for considering the payment made as "deposit" and not "duty" on the grounds which mentioned as under:-



(i) While granting refund of Rs.3,76,76,927/- under impugned order, the Adjudicating Authority have not made the payment of interest, which they are entitled to in view of Section 11BB of the Central Excise Act, 1944 for the period commencing three months from filing of claim. As per Central Excise Law, the refund of duty is required to be sanctioned within three months from the date of submission of application, failing which the interest is required to be paid to the assessee. Further, the Law directs that interest is statutory payment and the authority should have ordered for the same for which there is no need to make the formal request to claim interest.

(ii) As per law, refund is to be sanctioned within three months from the date of receipt of Refund claim. But when the refund amount is sanctioned without the element of interest, then the provisions of law is very clear that it is responsibility of the department to pay the interest too.

(iii) Payment made is in nature of "deposit" and not "duty" hence section 11B is not applicable for refund of amount paid.

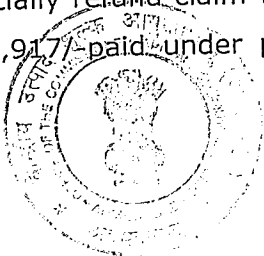
10. Personal Hearing in the matter was held on 30.06.2016, wherein Ms. Madhu Jain, Advocate and Mr. Tejas Shah appeared on behalf of the appellant and reiterated the contents of the appeal memorandum in both the appeals V2(ST)108 , 109 (2V2(ST)52/A-II/2016-17) being similar in nature..

11. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and oral submissions made by the appellant at the time of personal hearing.

12. I find that in the case before me the appeal has been filed on 08.12.2015 after receipt of the impugned order on 21.10.2015 by the appellant. As per the provisions of Section-85 (3) of the Finance Act, 1994 as amended vide the Finance Act, 2012 made effective from 28.05.2012, an appeal was required to be presented before the Commissioner, Central Excise (Appeals) within two months from the date of receipt of the impugned order. I find that there is a delay in filing the appeal.

13. The appellant with this present appeal against the impugned order, has pleaded for the interest under the provisions of Section 11BB of the Central Excise Act, 1944. Moreover it is pleaded that present refund is out of purview of 11B as the payment made is in nature of "deposit" and not in nature "duty"

14. The moot point for decision before me is that whether the appellant is eligible for the interest under the provisions of Section 11BB of the Central Excise Act,. I find that initially refund claim was filed on 23.10.2012 in respect of Service Tax of Rs. 7,32,84,917/- paid under protest by them for the period April-2007 to June



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2012 on remittance paid by them to their foreign branches. Said tax was paid in view of inquires conducted by DGCEI.

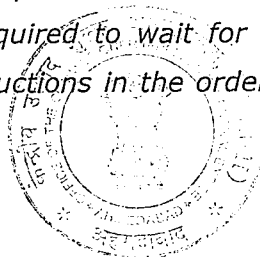
15. Original refund claim of Rs. 7,32,84,917/- was initially rejected as it was premature claim. Appellant appealed to Commissioner (Appeal) and in the mean time issue was decided vide CESTAT order dated 12.11.2014 wherein demand within limitation period was confirmed and demand for extended period was rejected. This has resulted into refund of earlier payment made of Rs. 3,76,76,927/-. The refund claim ultimately was sanctioned/granted vide impugned order dated 21.10.2015 but no interest was sanctioned. Moreover refund was held to be under Section 11B of CEA 1945. Thus, the appellant after relying on various judgments of the higher judiciaries, pleaded before me for (A) the interest for the period from the expiry of three months from the date of filing the refund claim to the date of sanction of refund/payment of refund AND pleaded for (B) considering the payment made as "deposit" and not "duty" i.e. refund not be treated as refund under Section 11B of CEA 1945.

16. I find that payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is governed by the provisions of Section 11BB of the Central Excise Act, 1944 made applicable to the service tax cases vide Section 83 of the Finance Act, 1994. Section 11BB *ibid* is reproduced as under for better appreciation of the issue in appeal.

"SECTION [Interest on delayed refunds. 11BB. — If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty"

17. Further, payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is a settled issue in pursuance to the various judgements passed by the higher judicial forums as well as being clarified by the CBEC also from time to time. The CBEC vide Circular No.670/61/2002-CX dated 01.10.2002 being relevant in this case, is *interalia* reproduced as under.

"In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest."

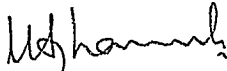


18. Further, I find that the issue in question is also decided by the higher judicial forums in the following judgments, wherein it is held that the interest should be paid from the expiry of three months from the date of receipt of refund application.

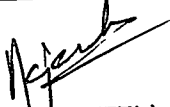
- J.K.cement Works V/s ACC- 2004(170) ELT 4 (Raj. H.C.)- Also maintained by S.C.-2005 (179) ELT A150 (S.C.)
- Kerala Chemicals & Protines Ltd.- 2007 (211) ELT 259- (Tri. Bang.)
- CEX,Pune-III V/s Movilex Irrigation Ltd.-2007 (207) ELT 617 (Tri. Mumbai)
- CCE V/s Reliance industries Ltd- 2010(259)ELT 356 (Guj HC)
- Ranbaxy Laboratories Vs. Union of India, 2011(273)ELT.3.(SC)

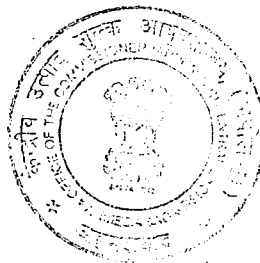
19. In view of above, I find force in the contention of the appellant and also reliance placed by the appellant in appeal, on various decisions/judgements of the higher judicial forums and the CBEC circulars issued in this regard being relevant to the issue, also support the contention of the appellant. Accordingly, I hold that the appellant is eligible of the interest at such rate for the time being fixed by the Central Government by Notification in the Official Gazette on such refund amount from the date immediately after the expiry of three months from the date of such application of refund till the date of refund of such service tax. However I find that date of PH was given on 27.02.2014 and 07.03.2014 by adjudicating authority but PH was not attended by appellant. The appellant attended next PH on 20.03.2014 and requested extension of time limit till 24.03.2014 to submit written submission which was submitted on 28.03.2014. Resultantly 08 days delay occurred on part of appellant. I hold that 08 days period is to be deducted from period entitled for interest payment.

20. The appeal filed by the appellant is thereby disposed off in above terms.


(UMA SHANKER)
COMMISSIONER (APPEALS-II)
CENTRAL EXCISE, AHMEDABAD

ATTESTED


(R.R.) PATEL)
SUPERINTENDENT (APPEALS-II),
CENTRAL EXCISE, AHMEDABAD.



By R.P.A.D.:

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Copy To:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Deputy Commissioner, Service Tax, Division-II, Ahmedabad.
- 5) The Assistant Commissioner (Systems), Service Tax(HQ), Ahmedabad.
- 6) The P.A. to Commissioner (Appeals-IV), Central Excise, Ahmedabad.
- ~~7) Guard File.~~

