



::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन / 2nd Floor, Central Excise, Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot -- 360001



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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश नं / O.D. No.	दिनांक / Date
	V2/36 /GDM/2016 <i>28557 र 28558</i>	Refund/CCRS/17/2015-16	14.03.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

KCH-EXCUS-000-APP-006-2017-18

आदेश दिनांक / Date of Order:	29.05.2017	जारी करने की तारीख / Date of issue:	31.05.2017
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श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)

ग अपा आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जयनगर / गंधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित /
 Arising out of above mentioned O/D issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :-

घ **अपीलकर्ता/ प्रतिवादी का नाम एवं पता / Name & Address of the Appellant/ Respondent :-**
M/s. Adani Wilmar Ltd., Village : Dhruh, Taluka : Mundra - Kutchchh, . .

इस आदेश(अपील) से स्वयंसेवक कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील टावर कर सकता है/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) शीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है / Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal fees to:-
- (i) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों शीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, पुरम, नई दिल्ली, को की जाती चाहिए / The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बतल गए अपीलों के अलावा शेष सभी अपीलों शीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेन्टल हॉस्पिटल कंपाउंड, मेघानी नगर, अहमदाबाद-380016, को की जाती चाहिए / To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि हजार की राशि और जमाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो बकाशा: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवंटन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर अधिनियम, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (जहां से एक प्रति प्रमाणित होती चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि हजार की राशि और जमाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो बकाशा: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवंटन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत टैक्स की नवीं अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उपरोक्त में एक प्रति प्रामाणिक होनी चाहिए) और आयुक्त द्वारा संश्लेषक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलवीत न्यायाधिकरण को आवेदन टैक्स करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवीत प्राधिकरण (सेवाटैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलवीत प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवाकर का मूल्य के 10 प्रतिशत (10%), जब मूल्य एवं न्यूनतम विवक्षित है, या न्यूनतम, जब केवल न्यूनतम विवक्षित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित देय राशि इस कस्टोडियन एकाउंट में अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मूल्य किए गए शुल्क" में निम्न शामिल है
 - (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनवैट जमा की गयी गयी राशि
 - (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंश में पूर्व किसी अपीलवीत प्राधिकारी के समक्ष विचारणीय स्थिति अर्थात् अपील को लागू नहीं होये।

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) भारत सरकार को पुनरीक्षण आवेदन
Revision application to Government of India:
 इस आदेश की पुनरीक्षण प्राधिकार विम्बलितिकृत मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतक के अंतर्गत अर्ज संप्रति, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त विभाग, राजस्व विभाग, चौथी इंजिन, जीवन टैप भवन, सार्व जमी, नई दिल्ली-110001 को किया जाता चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से बाहर गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक माल गृह से दूसरे माल गृह परामर्श के दौरान, या किसी माल गृह में या माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी माल गृह में माल के नुकसान के कारण हो। / In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भी नई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty

(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इन्पूटी क्रेडिट इन अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई जायें अथवा सम्भावित पर या बट में पारित किए गये हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघर्ष के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावती के साथ-साथ के तौर पर TR-6 की प्रति संलग्न की जानी 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 O.I.O. 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.

(vi) पुनरीक्षण आवेदन के साथ विम्बलितिकृत निर्धारित शुल्क की अदावती की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इस से किया जाना चाहिए। इस प्रत्येक के होने हुए भी की निम्न पद्धि कार्य हो करने के लिए वयाप्तिकृत अपीलवीत न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 100/- for each

(E) वयाप्तिकृत न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवीत न्यायाधिकरण (कार्य विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / 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.

(G) उच्च अपीलवीत प्राधिकारी को अपील दाखिल करने में संबंधित सामग्री, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलवीत विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

M/s. Adani Wilmar Limited, Vill. Dhrub, Tal. Mundra, Dist. Kutch (hereinafter referred to as "the appellant") had filed the present appeal against the Order-In-Original No. Refund/CCR5/17/2015-16 dated 14.03.2016 (hereinafter referred to as "**the impugned order**"), passed by the Assistant Commissioner, Central Excise Division, Bhuj (hereinafter referred to as the '**lower adjudicating authority**');

2. The facts of the case are that, the proceedings were initiated against the appellant for recovery of cenvat credit availed by them on the inputs as well as intermediate/finished goods lying in stock on 01.03.2005 when their final products becomes exempted from payment of central excise duty in terms of Noti.No. 4/2005-CE dated 01.03.2005. The appellant have paid the applicable amount of duty alongwith interest under protest. Subsequently, the demands were confirmed vide two Order-In-Originals No. 01/Commissioner/2007 dated 15.01.2007 and No. 02/ADC/2007 dated 19.01.2007 under which the amount of Rs. 87.62.563/- and Rs. 44,91,403/- paid by the appellant has been appropriated against amount of cenvat credit and interest thereon. The appellant preferred appeal before Hon'ble CESTAT, Ahmedabad against Order-In-Original No. 01/Commissioner/2007 dated 15.01.2007 and have also preferred appeal before Commissioner (Appeals), Central Excise, Rajkot against Order-In-Original No. 02/ADC/2007 dated 19.01.2007. The Commissioner (Appeals), Central Excise, Rajkot vide Order-In-Appeal No. 159/2007/Commr.(A)/Raj dated 23.07.2007 dismissed the appeal filed by the appellant. The appellant also preferred appeal before CESTAT, Ahmedabad against the said Order-In-Appeal. The Hon'ble CESTAT, Ahmedabad vide common Order No. A/11400-11401/2015 dated 14.07.2015, relying upon the decision of larger bench of the Tribunal in the case of M/s. HMT Ltd. allowed the appeals filed by the appellant against Order-In-Original No. 01/Commissioner/2007 dated 15.01.2007 and Order-In-Appeal No. 159/2007/Commr.(A)/Raj dated 23.07.2007. Consequent to the Tribunal's Order, the appellant filed the refund claims of on 15.12.2015 before the lower adjudicating authority to grant refund of the said amount. The Lower adjudicating authority vide impugned order observed that the appellant did not reverse the available cenvat credit of Rs. 19,732/- lying in balance as on 01.03.2005 and accordingly adjusted the said amount from the refund amount.

3. Being aggrieved with the impugned order, the appellant have preferred the present appeal on the following grounds:-

(i) It is submitted that when the refund of deposit amount is sanctioned under the impugned order and when the deposits were made pending appeal, it was necessary to grant interest under Section 35FF. The wordings of the section clearly indicate that the



interest is mandatory and even without claim by the appellant, has to be sanctioned.

(ii) Without prejudice to the above, it is submitted that the lower adjudicating authority has deducted the cenvat credit balance from the amount of refund. It is submitted that when any product is exempted all unutilized balance of cenvat credit pertaining to inputs of that finished goods, lying in balance on the very first day of exemption needs to be reversed. However, it is not so for balance against inputs related to other dutiable finished goods. In the appellant's case, when the demand was confirmed vide Order-In-Originals against impugned ineligible cenvat credit, paid under protest, the amount proposed to be reversed was already finalized and at that time balance of credit, eligible against inputs, to be used exclusively in production of dutiable product, was not proposed to be reversed but was left to be allowed for carried forward. The amount paid under protest was against the amount of so called ineligible credit only, and the balance allowed to be carried forward was against eligible credit only, hence both the amounts being different, one should not be deducted from refund amount.

4. Personal Hearing in the matter was held on 21.02.2017. Shri S.J. Vyas, Advocate attended the same on behalf of the appellant and reiterated the contents of the Appeal Memorandums and submitted that adjustment made without confirmed demand and interest not paid for refund.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandums and the submissions of the appellant, made orally as well as in writing during the course of personal hearing. *The limited issues to be decided in the present appeal are that (i) whether interest on the amount paid during the proceedings initiated against the appellant, is payable under Section 35FF of the Central Excise Act, 1944 at the time of refund arose as a result of order passed by appellate tribunal and (ii) whether the adjustment of the amount made from the sanctioned refund amount, is legal, proper and correct or otherwise.*

6. I find that the appellant has contended that the amount deposited by them were made pending appeal and therefore it was necessary to grant interest under Section 35FF. Therefore, it would be relevant to refer the relevant provisions of Central Excise Act, as it was prevailing at the material time.

Section 35F: Deposit, pending appeal, of duty demanded or penalty levied:

"Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this section unless the person desirous of appealing



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against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or penalty levied

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

Provided further that within thirty days from the date of its filing."

In view of the above provisions, it transpires that the person desirous of appealing against decision or order passed by the adjudicating authority, shall pending the appeal, deposit with the adjudicating authority the duty demanded or penalty levied provided the appellate authorities may dispense with such deposit subject to such conditions as he or it may deem fit. I also observe that Section 35FF of the Act, as it was prevailing at the material time, mandates to grant interest in such cases where the amount so ordered to be pre-deposited is required to be refunded is not refunded within three months from the date of communication of such order to the adjudicating authority.

7. In the present case, the appellant has paid the amount during proceedings of the matter and prior to confirmation of demand and much before the appeal against the orders passed by the adjudicating authorities confirming the demand. Therefore the same cannot be considered as amount paid, pending the appeal within the meaning of Section 35F of the Act. Further in terms of Section 35FF of the Act, the refund of amount pre-deposited under Section 35F is to be granted within three months from the date of communication of the order passed by the appellate authority or the appellate tribunal, as the case may be, failing to which interest is to be granted. In the present case, the refund claimed by the appellant has been sanctioned within three months of refund application as the appellant claimed for refund amount on 15.12.2015 and refund amount has been sanctioned/granted by the lower adjudicating authority on 14.03.2016. I also find that Hon'ble Apex Court in the case of M/s. Ranbaxy Laboratories Limited reported at 2011 (273) ELT 3 SC, categorically held as under:-

Interest on delayed refund - Interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiring of period of three months from the date of receipt of application under Section 11B(1) *ibid* and not from the date of order of refund or Appellate Order allowing such refund - Explanation to proviso to Section 11BB *ibid* introduces a deeming fiction that where order for refund is not made by Asstt. Commissioner/Dy. Commissioner, but by Appellate Authority, such appellate order shall be deemed to be an order under Section 11B(2) *ibid* - This explanation does not postpone the date from which interest becomes payable to under Section 11BB *ibid* - It is manifest from the provision of Section 11B of Central Excise Act, 1944.

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In view of the above discussions, I find that the argument made by the appellant to grant interest from the date of deposit of amount is not tenable.

8. As regard to the plea of the appellant that the adjustment of amount of Rs. 19,732/- at the time of granting refund is illegal as the said amount lying in their cenvat credit account for balance against inputs related to other dutiable finished goods, which was left to be allowed for carried forward. It has also been contended that the adjustment made without any confirmed demand. At the same time, I find that the appellant has not provided any details of manufacture of other dutiable finished goods. Therefore, the issue cannot be decided at this juncture. The adjudicating authority being fact finding authority is therefore directed to examine the above argument made by the appellant and decide the matter afresh after following the principles of natural justice.

9. In view of the above facts, discussions and findings, while rejecting the appeal of the appellant so far as it relates to claim for interest of amount paid during the proceedings initiated against them, allow the appeal of the appellant to the extent of adjustment of amount made under the impugned order, by way of remand.

10. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the appellant stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By Speed Post

To,
M/s. Adani Wilmar Limited,
Vill. Dhruh, Tal. Mundra,
District - Kutch

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise & Service Tax, Gandhidham.
3. The Assistant Commissioner, Central Excise Division, Bhuj.
4. The Superintendent, Central Excise, Range- III, Bhuj.
5. PA to the Commissioner (Appeals- III), Central Excise, Ahmedabad.
6. Guard File.

RECORDS OF PERSONAL HEARING BEFORE THE
COMMISSIONER (APPEALS-III), RAJKOT

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F. NO. V2/36/GDM/2016

DATE: 21.02.2017

NAME OF THE APPELLANT / RESPONDENT :

M/s. Adani Wilmar Ltd, Mundra

NAME OF THE REPRESENTATIVE:

S.J. Vyas, (Advocate)

SK-1-17

Let. Adv. reiterated the G.O.A. Admitted-made
w/o confirmed demand & interest not paid on
refund.

Ughar
24/2/17

SK-1-17