



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टै भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील संख्या / Appeal / File No.	मूल आदेश सं / O.O. No.	दिनांक / Date
	V2/73/GDM/2016	ST/377/2016-17	03.10.2016

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

KCH-EXCUS-000-APP-140-2017-18

आदेश का दिनांक / Date of Order:	18.12.2017	जारी करने की तारीख / Date of issue:	21.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अथवा आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्तित जारी मूल आदेश से सुझित /

Arising out of above mentioned OIO 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. Deep Construction Co.,Grinding Unit, Mani Complex, Office No. SF- 224, Plot No. 84, Sector-8,, Gandhidham (Kutch),.

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

(A) सीमा 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 lies to:-

(i) विशेष न्यायालय में सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी 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 पैराग्राफ 1(a) में बताए गए अपील के अलावा बीच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, दक्षिणीय तल, बहमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asawa 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) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गए फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉज, ब्याज की रॉज और बकाया राशि दर्शाना, रूप 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 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 रेकॉर्ड 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 आवेदन-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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रॉज, ब्याज की रॉज और बकाया राशि दर्शाना, रूप 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 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 रेकॉर्ड 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 आवेदन-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 fee 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 टॉर्न की राशि अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित एचर 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 की जायेंगी (जहाँ से एक प्रति प्रार्थित होती चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपील/न्यायाधिकारण को आवेदन टॉर्न 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 अपील/न्यायाधिकारण (सेनवेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील/न्यायाधिकारण से अपील करने समय उत्पाद शुल्क/सेवा कर साथ के 10 प्रतिशत (10%), जब मात्र एवं दुर्गोला विवादित है, या दुर्गोला, जब केवल दुर्गोला विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित टैय एंटी टैय कलेड एचर से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मान किए गए शुल्क' में निम्न शामिल है।
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की की गई राशि राशि
(iii) सेनवेट जमा नियमवली के नियम 6 के अंतर्गत टैय रकम
- बशर्त यह कि इस धारा के अंतर्गत वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत में पूर्व किसी अपील/न्यायाधिकारण के संसत विचारणीय प्रस्ताव नहीं एवं अपील को लागू नहीं होगी।
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 प्रक्रिया निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारक के अंतर्गत अंतर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टॉय भवन, संसद भवन, नई दिल्ली-110001, को किया जाना 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-35B ibid.
- (i) यदि मात्र में किसी नुकसान के मामले में, जहाँ नुकसान किसी मात्र को किसी कारखाने से अंतर गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह पारगमन के दौरान, या किसी अंतर गृह में या अंतर गृह में मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंतर गृह में मात्र के नुकसान के मामले में। / 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 मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र पर जारी गई केन्द्रीय उत्पाद शुल्क के छूट (विबेट) 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 on 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 मात्र निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिर्धारित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इमुटी केडेट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मात्र की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा अन्वयवधि पर या बाद में पारित किए गए 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 एचर सहाय EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघर्ष के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मात्र 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 अदायगी के संसत 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 OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Chalan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी 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 is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मात्र आदेशों का समावेश है तो प्रत्येक मात्र आदेश के लिए शुल्क का भुगतान, उपरोक्त इस में किया जाना चाहिए। इस तथ्य के होते हुए भी की निर्यात नहीं करके ले बचने के लिए क्या-किसी अपील/न्यायाधिकारण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) अन्वयवधि न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मात्र आदेश एवं संसत 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 अपील/न्यायाधिकारण (सर्वे 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 अपील/न्यायाधिकारण को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील/न्यायाधिकारण 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

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:: ORDER - IN - APPEAL ::

M/s. Deep Construction Co., Mani Complex, Office No. 224, 2nd Floor, Plot No. 84, Sector-8, Gandhidham (Kutch)-370201 (hereinafter referred to as "the appellant") filed this appeal, against Order-in-Original No. ST/377/2016-17 dated 03.10.2016 (hereinafter referred to as "the impugned letters") passed by the Assistant Commissioner, Service Tax Division, Gandhidham (hereinafter referred to as "the lower authority").

2. The brief facts of the case are that the DGCEI, Zonal Unit, Ahmedabad initiated inquiry in respect of payment of Service Tax made by the appellant during the month of June, 2007 and resumed various documents under the belief that the appellant has availed the benefit of Notification No. 15/2004-S.T. dated 10.09.2004 by claiming wrong rate of abatement of 67% from the gross amount charged from their clients without including the value of the material supplied free of cost by the clients. During the course of investigation, the appellant has paid the Service Tax of Rs. 31,04,975/- pending investigation. The Show Cause Notice F. No. DGCEI/AZU/12(4)13/2007-08 dated 12.05.2009 was issued to the appellant proposing demand of Service Tax of Rs. 1,02,14,702/- alongwith interest and penalty. The said Show Cause Notice was adjudicated by the Commissioner of Central Excise, Rajkot vide Order-In-Original No. 51/COMMR/2013 dated 30.03.2013/09.04.2013 wherein he confirmed the entire demand of Service Tax with interest and penalties. Being aggrieved with the said Order-In-Original, the appellant preferred appeal before Hon'ble CESTAT Ahmedabad who vide order No. A/10081/2014 dated 06.01.2014 allowed the appeal and set aside the Order-In-Original dated 30.03.2013/ 09.04.2013. The department has not accepted the said order of Hon'ble CESTAT Ahmedabad and filed Civil appeal No.10027 of 2014 before Hon'ble Supreme Court which is pending.

3. The appellant filed refund application dated 30.08.2016 before the lower adjudicating authority for amount of Rs. 31,04,975/- deposited during the course of investigation alongwith interest. The lower adjudicating authority vide impugned order sanctioned refund of Rs. 31,04,975/- but rejected refund claim of interest by relying upon the provisions of Section 35FF of the Central Excise Act, 1944.

4. Being aggrieved with the impugned order, the appellant preferred the



present appeal on the grounds that the lower adjudicating authority has not granted interest on refund issued to them; that the findings of the lower adjudicating authority are not justified and bad in law.

5. Personal hearing in the matter was held. Shri Abhishek P. Doshi, CA reiterated the grounds of appeal and stated that they claim interest on delayed refund sanctioned, which has not been sanctioned in the impugned order and submitted a written personal hearing submission as below:

5.1 In written submission filed during the course of personal hearing, the appellant stated that the lower adjudicating authority has allowed refund of service tax considering the payment made by the Appellant as pre-deposit under Section 35-F of the Act, however, interest on such refund has not been allowed on the ground that the provisions of Section 35FF as stood before the amendment by Finance Act, 2014 is applicable in this case and according to old section 35FF the appellant is not eligible for refund of interest under section 35FF of the Central Excise Act, 1944; that Section 35FF prior to amendment provided for interest from the expiry of 3 months from the date of service of order to the adjudicating authority, while the amended provisions of Section 35FF provides that the appellant will be eligible from the date of payment of tax to the date of refund; that the only difference between old and new provisions are period for which interest will be granted and neither old Section 35FF nor new Section 35FF provides for not granting of interest on refund of pre-deposits under Section 35F of the Act; that the lower adjudicating authority has considered the amount deposited as pre-deposit under Section 35F of the Act; the lower adjudicating authority held that the claimant is eligible for refund of tax under Section 35FF (old section) and not eligible for interest on such refund without giving any reasoning as to why the claimant is not eligible for interest on refund under Section 35FF while the section provides for interest on refund; they relied upon the judgments in the cases of Afcons Infrastructure Ltd reported as 2014 (49) Taxmann.com 79 (Delhi), Prempreet Textile Ind. Ltd reported as 2013 ST 17089 (Guj.) and LSE Securities Ltd reported as 2014 (49) taxmann.com 305 (Punjab & Haryana).

FINDINGS:-

6. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submissions made by the appellant. The issue to be decided in the appeal is whether the appellant is eligible for interest on refund

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granted by the lower adjudicating authority or not.

7. It is undisputed fact that during the course of investigation made by DGCEI, Ahmedabad, the appellant had paid an amount of Rs. 31,04,975/- in which Show Cause Notice No. DGCEI/AZU/12(4)13/2007-08 dated 12.05.2009 was issued to the appellant. The said Show Cause Notice was decided vide Order-In-Original No. 51/COMMR/2013 dated 30.03.2013/ 09.04.2013 confirming the duty demanded in the Show Cause Notice, however, CESTAT, Ahmedabad vide Final order No. A/10081/2014 dated 06.01.2014 allowed appeal of the appellant and set aside Order-in-Original No. 51/COMMR/2013 dated 30.03.2013/ 09.04.2013. The appellant filed refund application on 30.08.2016 for refund of Service Tax under Section 35FF of the Central Excise Act, 1944 for the amount of Rs. 31,04,975/- paid during the investigation conducted by the DGCEI, Ahmedabad alongwith interest.

7.1 I find that the lower adjudicating authority has considered the amount deposited by the appellant during the investigation as pre-deposit as envisaged under Section 35F of the Central Excise Act, 1944 and consequently he granted refund of the said amount to the appellant. For granting interest on said refunded amount, the lower adjudicating authority relied upon the provisions of Section 35FF of the Central Excise Act, 1944 as stood prior to commencement of the Finance (No. 2) Act, 2014 and denied interest on the said refund amount. I find that the Central Board of Excise & Customs has issued Circular No. 984/08/2014-CX dated 16.09.2014 bearing F. No. 390/Budget/1/2012-JC clarifying certain issues. The relevant para of the said Circular is re-produced below:

3. Payment made during investigation:

3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35 F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

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3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection.

5. Refund of pre-deposit:

5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.

5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.

5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

5.6. It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 supra.

7.2 The above board circular clearly stipulates for refund alongwith interest to be paid in case of decision is in favour of the assessee irrespective of the fact that the Department has preferred appeal before higher appellate forum which has not been stayed otherwise. I therefore, hold that the appellant is eligible for interest.

7.3. I find that the CESTAT, Ahmedabad has issued final order on 06.01.2014 in favour of the appellant. At the material time, Section 35FF as it stood, would be relevant for governing the interest. For sake of clarity, the provisions of Section 35FF as it stood at the material time, is re-produced below:

Section 35FF. Interest on delayed refund of amount deposited under Section 35F. - Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

7.4 Further, the provisions of Section 35FF, as stood at the material time would apply in this case. My views get support from the proviso to Section 35FF after commencement of the Finance (No.2) Act, 2014 which reads as under:

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act.

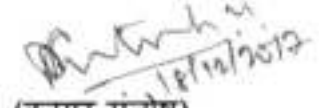
7.5 Therefore, the provisions of Section 35FF before commencement of the Finance (No.2) Act, 2014 would apply in the case on hand.

7.6 Hence, the appellant is eligible for interest at the rate specified in the Section 11BB after the expiry of three months from the date of communication of CESTAT order to the date of refund of such amount i.e. from 06.04.2014 to 26.09.2016. The judgments relied upon by the appellant are squarely applicable to facts of the present case as well.

8. In view of above facts and legal position, I set aside the impugned order rejecting interest on refund amount and allow the appeal.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the appellant stand disposed off in above terms.


(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Deep Construction Co., Mani Complex, Office No. 224, 2nd Floor, Plot No. 84, Sector-8, Gandhidham (Kutch)-370201

मेसर्स दीप कन्स्ट्रक्शन कंपनी, मणि कॉम्प्लेक्स, ऑफिस सं. २२४, दूसरा मजला, प्लॉट सं. ८४, सेक्टर-८, गांधीधाम (कच्छ) - ३७०२०१

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