



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



सत्यमेव जयते

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश नं / O.I.O No	दिनांक / Date
	V2/210 /RAJ/2016	V.27/(18)271/Rebate/2013-14	22.06.2016

263

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

RAJ-EXCUS-000-APP-006-2017-18

आदेश का दिनांक / Date of Order:	27.04.2017	जारी करने की तारीख / Date of issue:	02.05.2017
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श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)

ग अगर आयुक्त समुक्त आयुक्त/उप-आयुक्त/सहायक आयुक्त, केंद्रीय उत्पाद शुल्क सेवाकार, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्तित जारी मूल आदेश से सुक्ति /

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. Indian Oil Corporation Ltd., Ahmedabad Aviation Fuel Station, Civil Airport, Near Cargo Office, Ahmedabad

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त अधिकारी / 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) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत 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) इतिहास मुद्रांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, बेंगलूर बंकिंग 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 परिच्छेद 1(a) में बतलाने पर अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठ, जी-20, न्यू मेन्टल हॉस्पिटल कंपाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी 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) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केंद्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए फॉर्म EA-3 को चार प्रतियों में देने किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की श्रेणी, स्टाज की श्रेणी और लगाया गया दुर्गमता, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील 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 अपील न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा कराया 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 demands/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) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत 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 प्रामाणिक होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की श्रेणी, स्टाज की श्रेणी और लगाया गया दुर्गमता, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील 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 अपील न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा कराया 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 दंड की गयी अपील, सेवाकर विधायकता, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रार S.T.-7 में की जा सकेगी एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्याय आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (उनमें से एक प्रति पञ्जाब/हिमाचल प्रदेश) और आवृत्तों द्वारा सहायक आयुक्त अध्याय आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलवीच न्यायाधिकरण को आवेदन दाने करने का निर्देश देने वाले आदेश की प्रति की 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) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवीच प्राधिकरण (सेस्टाट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विधायक अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलवीच प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
 - (ii) धारा 11 डी के अंतर्गत रकम
 - (iii) सेल्वेट जमा की गयी गयी राशि
 - (iv) सेल्वेट जमा विधायकता के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के अंतर्गत विधायक (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलवीच प्राधिकारी के समक्ष विरासदीय स्थगन 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 प्राधिकार विभागाधिकृत मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम प्रांतिक के अंतर्गत उद्यम अधिनियम, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जवाहर टाउन, नया 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.

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 मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने में भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या भंडारण में मात्र के परामर्श के दौरान, किसी कारखाने या किसी भंडार 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 गरी गई केन्द्रीय उत्पाद शुल्क के छुट (डिबेट) 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रांतिकों के तहत मान्य की गई है और ऐसे आदेश जो अनुवृत्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लाठीख अथवा समकालिक पर या बट 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 प्रार S.T.8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) विधायकता, 2001, के नियम 9 के अंतर्गत विनिश्चित है, इस आदेश के संशोधन 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 अदायगी के 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 निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहां संलग्न रकम एक लाख रुपये या उससे कम है 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 दंड से किया जाना चाहिए। इस लघु के होते हुए भी की निम्न परी कार्य से बचने के लिए पञ्जाब/हिमाचल प्रदेश अपीलवीच प्राधिकरण 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 Appellate 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) पञ्जाब/हिमाचल प्रदेश न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट जमा 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) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवीच न्यायाधिकरण (कार्य विधि) विधायकता, 1982 में उचित एवं अन्य संबंधित मामलों को सम्मिलित 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 अपीलवीच प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रांतिकों के लिए, अपीलवीच 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. Indian Oil Corporation, Airport Terminal Manager, Aviation Fuel Station, SVP International Airport, Ahmedabad (hereinafter referred to as "**the appellant**") had filed the present appeal against the Letter/Order F.No. V.27 (18) 271/Rebate/2013-14/639 dated 22.06.2016 (hereinafter referred to as "**the impugned order**"), passed by the Maritime Commissioner, Central Excise, Rajkot (hereinafter referred to as the '**lower adjudicating authority**'); 263

2. The facts of the case are that, the appellant had filed the rebate (refund) claim on 19.12.2006 before the lower adjudicating authority. The deficiency memo was communicated to the appellant vide letter dated 26.12.2006 which was complied by the appellant vide their letter dated 13.01.2007. SCN has been issued to the appellant on 27.02.2007 which was decided and the claim was rejected by lower adjudicating authority on 03.10.2007, on the ground that they have failed to follow the procedure prescribed under Rule 18 of the Central Excise Rules, 2002 readwith Notification No. 40/2001-CE(NT) dated 26.06.2001 as amended. Being aggrieved by the then Order-In-Original issued by the lower adjudicating authority, the appellant filed the appeal before the then Commissioner (Appeals), Rajkot which was rejected vide OIA No. 73/2008/Commr (A)/Raj dated 26/27.03.2008 Thereafter, the appellant filed a Revision Application (R.A.) before the Government of India which was also rejected vide Order No. 1668/10-CX dated 02.11.2010 passed by the Joint Secretary to the Government of India. Thereafter, Special Civil Application No. 12703 of 2011 was filed by the appellant before the High Court of Gujarat. The High Court vide Order dated 15.12.2011 set aside the Order of the Revision Authority with a direction to decide the matter afresh. Subsequently, the Revision Authority remanded back the case to original authority vide Order No. 738/2012-CX dated 06.07.2012. Consequent upon the Order of RA, the lower adjudicating authority sanctioned the rebate claim vide Rebate Order No. 01/2014-15 dated 01.04.2014, but rejected the claim of interest. Being aggrieved by the then Order-In-Original issued by the lower adjudicating authority, the appellant filed the appeal before the then Commissioner (Appeals), Rajkot which was allowed vide OIA No. RJT-Excus-000-APP-205-14-15 dated 26.09.2014. The lower adjudicating authority vide impugned order granted the interest on delayed refunds for the period from 25.01.2013 to 31.03.2014.

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

- (i) Any subsequent documents called for by the lower adjudicating authority for processing the refund claim subsequent to remand orders, cannot be made ground for non-payment of interest from three months from the initial date of filing of complete ①

refund claim. They are entitled for interest from three months of filing of complete refund application on 02.08.2007 i.e. from 02.11.2007 to 31.03.2014.

(ii) The initial refund application of Rs. 18,34,210/- for the duty paid ATF supplied to foreign going aircrafts was filed on 20.12.2006. The deficiency memo was issued and the refund claim was re-submitted on 13.01.2007 alongwith supporting documents. Revised refund claim were submitted on 02.08.2007 alongwith revised refund claim amount worked out @ 15degree C basis with CA certification, certification of excise duty payment by RIL, Jamnagar by reliance and Excise Range-IV, Jamnagar Office for period of Jan-2006 to March-2006, Certification by Chartered Accountant establishing the clear correlation of the product based on the transaction flow submitted vide letter dated 11.06.2007, Original and duplicate copies of Customs certified ARE-1s, copies of customs certified shipping bills, self attested ADR copies, relevant RIL excise invoice copies as per each ADR and self attested copies of invoices issued by IOC to Air India.

(iii) During subsequent proceedings, the appellant vide their letter dated 05.09.2012 submitted original (blue) copies of all the 54 ARE-1 for which original (white) and (yellow) copies were already submitted on 02.08.2007. Therefore on 02.08.2007 itself the complete refund claim was submitted. No fresh or further supporting documents were submitted during 2012.

(iv) The present proceedings carried out during 2012-13 were subsequent to High Court's/Joint Secretary's orders and by any stretch of imagination the date 25.12.2012 cannot be considered as a date of filing of complete refund application when all documents were submitted on 02.08.2007 and were available with the department for sanction of the refund claim. The Commissioner (Appeals-I) relying on various judgment/decision of the higher forums on the issue vide OIA No. RJT-Excus-000-APP-205-14-15 dated 26.09.2014 allowed the appeal filed by the appellants with consequential relief., the appellant are entitled for interest w.e.f. 02.11.2007 and not from 25.01.2013 when no fresh documents have been submitted by the appellants.

(v) In support their contentions, the appellants rely on the following case-laws:-

- State Bank of India – 2014 (34) STR 579 (Tri.-Mum.)
- Ranbaxy Laboratories Limited – 2011 (273) ELT 3 (SC)
- Pfizer Products India P. Ltd. – 2015 (324) ELT 259 (Kar.)
- Reliance Industries Limited – 2015 (317) ELT 621 (Tri.-Ahmd.)
- Hamdarf (WAQF) Laboratories – 2016 (333) ELT 193 (SC)
- Tata Chemicals Ltd – 2016 (334) ELT A53 (Guj.)
- VBC Industries Ltd – 2008 (225) ELT 375

(vi) The Lower adjudicating authority vide OIO No. 01/2014-15 dated 01.04.2014 sanctioned the refund claim. The findings recorded at Para 21.1 and 21.2 of the said OIO establishes the fact that the required documents for processing the refund claim were submitted by the appellants during 2006-07 and the refund would have been sanctioned to them during 2007 itself. The Asstt. Commissioner, Customs, Air Cargo Complex, Ahmedabad vide his letter dated 23.08.2007 confirmed the genuineness of the documents submitted on 02.08.2007. However, the refund was rejected on 03.10.2007 on alleged procedural infractions/non submission of original documents, which were condonable lapses as per settled law. Even, in the instant case, the Hon'ble High Court has recorded that *its refund claim should not be defeated on the ground of some procedural infraction or the documents not being supplied in the original at the outset.*

(vii) Without prejudice to the above, the appellant further submitted that, in any case, they are entitled for interest from three months from the date of the Order of the Hon'ble High Court of Gujarat i.e. from 21.03.2012, since the issue had attained finality. In case of their another unit, the Commissioner (Appeals) Mumbai vide OIA No. YDB/57-58/M-I/2011 dated 08.08.2011 has allowed the appeal for claim of interest on delayed refund. In support of their contention, the appellant relied on following case-laws:-

- Nino Chaka (P) Ltd. [2009 (240) ELT 253 (Tri-Del)]
- Interscape [2010 (252) ELT 440 (Tri-Bang)]
- Galaxy Entertainment Corpn.Ltd. [2010(259) ELT 427 (Tri.-Mum)]
- Teelco Gujarat Ltd. [2009 (233) ELT 541 (Tri.-Ahmd.)]

(viii) Since the interest due to them from 02.11.2007 has not been granted and is denied once again, they are entitled for interest on interest as well. In support, the appellant placed reliance on following decisions.

- Sandvik Asia Ltd. – 2006 (196) ELT 257
- Pfizer Products India Pvt. Ltd. – 2015 (324) ELT 259 (Kar.)
- VBC Industries Ltd. – 2008 (225) ELT 375
- Munch Food Products Ltd. – 2015 (325) ELT 31 (Del.)

4. Personal Hearing in the matter was held on 15/22.03.2017. Shri Pankaj Mahindra, Assistant Manager (Finance), Western Region and Shri P.K. Ray, Asstt. Manager (Finance), Aviation Fuel Station, Ahmedabad, Authorized Representatives of the appellant attended the same and reiterated the contents of the Appeal Memorandums and submitted chronological list of events and submitted that interest should be paid from 90 days after 02.08.2007 i.e. 02.11.2007.

5. I have carefully gone through the facts of the case, the impugned orders, appeal memorandums and the submissions of the appellant, made orally as well as in writing during the course of personal hearing. *The limited issue to be decided in the present appeal is from which date the interest under Section 11BB of Central Excise Act, 1944 was required to be granted to the appellant, when the refund claims were sanctioned by the lower adjudicating authority, after the prescribed period.* 262

6. On going through the case records, I observe that the facts of the case were that the appellant had initially filed the rebate (refund) claim on 19.12.2006 before the lower adjudicating authority. Upon issuance of SCN dated 27.02.2007, the appellant had submitted copies of some of the documents in order to establish the due exportation of goods. The claim was rejected by lower adjudicating authority on 03.10.2007 as the appellant have not complied with the mandatory and substantive conditions of Rule 18 of the Central Excise Rules, 2002 readwith Notification No. 40/2001-CE (NT) dated 26.06.2001, as amended, for the reasons:- (i) that the appellant has not submitted original duty paying documents; (ii) no ARE-1/Shipping Bill were prepared at the time of refuelling of the aircraft; (iii) there is no correlation between the duty paid goods cleared from the manufacturer's premises and those supplied to foreign run aircrafts; (iv) the appellant mentioned rebate claim authority as the Asstt. Commissioner, C.Ex. Dn. I, Ahmedabad-II, however claimed rebate from C.Ex. Dn., Jamnagar; (v) the shipping bills submitted by the appellant lateron did not bear numbers; (vi) the ARE-1s have not been prepared and signed by the manufacturer- M/s. Reliance Industries Limited, from whose premises the subjected goods cleared on payment of duty; and (vii) the goods were not directly exported from the premises of the manufacturer and thereby condition No. 2(i) of the Notification No. 40/2001-CE(NT) has not been followed. The appellant had preferred appeals against the said Order before Commissioner (Appeals), Central Excise, Rajkot, however the appeal has been dismissed. The appeal before Joint Secretary, R.A., CBEC, New Delhi also came to be dismissed. Subsequently, the appellant preferred SCA before Hon'ble High Court of Gujarat. The Hon'ble High Court passed the order dated 15.12.2011, as under.

10. Being a question of fact which would require examination of bulky materials, it would not be appropriate on our part to scan through such documents and to make our final conclusive remarks on the rival contentions. However, we are of the opinion that present is a case where the petitioner's case should be reexamined by the revisional authority. If on availability of evidence on record, it is established that the petitioner has fulfilled the mandatory and substantive requirement of the Rules and the notification, its refund claim should not be defeated on the ground of some procedural infraction or the documents not being supplied in the original at the outset. In other words, on the basis of available and reliable documents and the materials on record, if the petitioner is in a

position to establish before the Revisional Authority that the excise duty though exempt was paid wrongly, surely its refund claim should be granted.

11. With the above observations, the order passed by the Revisional Authority is set aside. For the purpose of reconsideration, the issue is placed back before the Revisional Authority. The Revision of the petitioner shall be decided afresh bearing in mind the observations made hereinabove and after considering the submissions of both sides. The petition is disposed of accordingly.

From the above ruling of Hon'ble High Court of Gujarat, it could be seen that the Hon'ble Court has not made final conclusive remarks on the contentions of the appellant, but by exercising the exclusive powers, condoned the procedural requirement and referred the matter back to Revisional Authority with direction that if the appellant succeed in establishing that they have fulfilled the mandatory and substantive requirement of the Rules and the notification, some of the procedural infraction or the documents not being supplied in the original cannot defeat the refund claim.

7. Consequently, in terms of the directives contained in the High Court's Order, the appellant vide their letter dated 25.10.2012 submitted co-relation statement indicating the duty paid character of the goods and its due exportation out of India in order to meet with mandatory and substantive requirement of the Central Excise Rules, 2002 and the Notification issued thereunder. The refund claim has been sanctioned for the revised amount by the lower adjudicating authority vide Order-In-Original dated 01.04.2014. However, he has denied the interest on delayed refunds. Being aggrieved with the said order, the appellant preferred appeal before Commissioner (Appeals), Central Excise, Rajkot who allowed their appeal by observing as under:-

10. Notwithstanding above, I also observe that the Joint Secretary (Revision Application), GOI, MOF, DOR, New Delhi, vide Order No. 02-04/14-CX dated 01.01.2014 issued on 06.01.2014, had held as follows:

"Regarding payment of interest for delayed payment of rebate claim, Government notes that respondent though filed claim within one year but the complete claim alongwith requisite documents as pointed out in deficiency memo were filed only on 18.04.11. So the interest is admissible only after a period of 3 months from the said date of 18.4.11. As per Section 11BB, the interest liability will arise only when the rebate claims complete in all respect is not decided within 3 months."

11. In view of the above legal position and relying on the aforesaid decisions, I hold that the appellant is entitled to interest on the amount of rebate paid to them after three months from the date of receipt of complete claim alongwith all requisite documents under the provisions of Section 11BB of the Central Excise Act, 1944.

8. The lower adjudicating authority thereafter vide impugned order allowed the interest claim of the appellant for the period from 25.01.2013 to 31.03.2014, by taking into consideration the letter dated 25.10.2012 through which the complete claim alongwith requisite documents in terms of the governing Notification has been submitted by the appellant. I also find that it is not the routine case of delayed refunds where the refund claim filed by the assessee and the adjudicating authority has delayed in granting the refund. This is a peculiarly situation where the appellant has not followed the mandatory and substantive requirement of the governing Notification as well as not followed the procedures prescribed under the said Notification initially and therefore the rebate claim could not be maintainable. The lower adjudicating authority, appellate authority or Revisionary authority has no such powers to relax the statutory requirement, which have been waived by Hon'ble High Court exercising special power which is out of the jurisdiction of the lower authorities. As per the directions of the Hon'ble High Court, the appellant has complied with the direction of Hon'ble High Court on 25.10.2012 and accordingly, the lower adjudicating authority has sanctioned the refund claim to the appellant.

9. I also find that initially the lower adjudicating authority vide OIO dated 03.10.2007 rejected the refund claim as the duty paid character of the goods and its due exportation was not conforming from the documents submitted by the appellant, which is mandatory and substantive requirement to grant rebate of duty paid on exportation of goods. The adjudicating authority has however also noticed other procedural infractions while passing the said decision. Therefore, the argument of the appellant that they have submitted complete documents vide their letter dated 02.08.2007 is not tenable at all. I find that in pursuance to the Hon'ble High Court's order dated 15.12.2011, the appellant through their letter dated 25.10.2012 has submitted the documents indicating clear co-relation between duty paid goods and its supplies to foreign run aircraft. Therefore as per the directives of the Hon'ble High Court of Gujarat, the claim becomes admissible in the eyes of law, only upon filing of the said documents. Thus, I hold that the appellant is entitled for interest after 03 months from the date of presentation of complete claim which they have done on 25.10.2012. The lower adjudicating authority has sanctioned the interest on delayed refund under Section 11BB of the Central Excise Act, 1944 for the period from 25.01.2013 to 31.03.2014. As discussed in foregoing paragraphs, statutory requirement is treated to be fulfilled on 25.10.2012 considering the compliance of the direction of Hon'ble High Court and hence, this day would be considered for the purpose of granting the interest. Therefore, I do not find any infirmity in the impugned order and uphold the same. The case laws relied upon by the appellant are distinguishable to the facts of the present case and therefore cannot be made



applicable. As regards to the appellant's argument to grant interest on interest amount since the interest due to them from 02.11.2007 has not been granted. In this regard, as held above, I observe that the interest is due to the appellant only after three months from the date of filing of complete documents which are mandatorily required to file rebate claim were submitted by the appellant only on 25.10.2012, they become entitled for claiming interest on delayed refunds from 25.01.2013 till the date of sanction, which was already granted to them under the impugned order. Therefore, the arguments of the appellant are not tenable.

238

10. In view of the above facts, discussions and findings, I uphold the impugned order and reject the appeal filed by the appellant.

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

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



(उमा शंकर)

आयुक्त (अपील्स - III)

By R.P.A.D.

To,
M/s. Indian Oil Corporation,
 Airport Terminal Manager,
 Aviation Fuel Station, SVP International Airport,
 Ahmedabad.

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Principal Commissioner, Customs and Central Excise, Rajkot.
3. The Maritime Commissioner, Central Excise H.Q., Rajkot.
4. The Superintendent, Central Excise, Range- IV, Jamnagar.
5. PA to the Commissioner (Appeals- III), Central Excise, Ahmedabad.
6. Guard File.