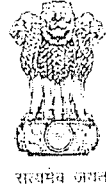




::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल,जी एस टी 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

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/
Appeal / File No.
V2/162/BVR/2018-19

मूल आदेश सं /
O.I.O. No.
09/AC/BVR-2/MC/2018-19-Refund

दिनांक/
Date:
4/17/2018

ख अपीलआदेशसंख्या(Order-In-Appeal No.):

BHV-EXCUS-000-APP-167-2019

आदेश का दिनांक / 19.06.2019 जारी करने की तारीख / 19.06.2019
Date of Order: Date of issue:

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-

Shri. Bharat M. Sheth Survey No. 268/1, Bhavnagar- Rajkot Highway, Sihor- 364240, Dist:
BhavnagarBhavnagar.

इस आदेश(अपील) से व्याज्यत काइ व्याक्त नेन्रालोखित तरीक म उपयुक्त प्राोधेकरां / प्राोधेकरण क समक्ष अपील दायर कर सकता हे।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) मीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील,केन्द्रीय 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) वार्गीकरणमल्यांकनसेमम्बन्धितसभीमामलेसीमाशुल्क,केन्द्रीयउत्पादनशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणकीविशेषपीठ,वेस्टब्लॉकनं2,आर.के.पुरम,नईदिल्ली, कोकीजानीचाहिए।/
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 बताया गए अपीलों के अलावा शेष सभी अपीलें मीमा शुल्क,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट)की पश्चिम क्षेत्रीय पीठको,द्वितीय तल, ब्रह्ममाली भवन असावा अहमदाबाद- 380016को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग,व्याज की माँग और लगाया गया जुर्माना, 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/- 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 रजिस्टार 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 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी 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 माँग,व्याज की माँग और लगाया गया जुर्माना, 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/- 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 रजिस्टार 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 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 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 दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा प्राप्ति आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज 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 For 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 अपीलीय प्राधिकरण (सेस्टट) के प्रति अपीलों 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 अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जान वाली अपेक्षित देय राशि दम् कराड रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) मेनवेट जमा की की गई गलत राशि
(iii) मेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (मं- 2) अधिनियम 2014 के आरंभ में पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।
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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मंसद मार्ग, 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-35E ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह में दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल 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 माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिवेट) 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 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 छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रपण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्यम 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 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।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रूपये 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, उपर्युक्त ढंग में किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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) यथामंशोधित 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-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाना 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 अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी 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. Bharat M. Sheth, Plot No. 619, B-2, Geeta Chowk, Jain Derasar Road, Bhavnagar (*hereinafter referred to as "the appellant"*) has filed present appeal against Order-in-Original No. 09/AC/BVR-2/MC/2018-19-Refund 17.04.2018 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, CGST, Bhavnagar-2 Division, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*):-

2. The brief facts of the case are that M/s. Samundra Alloys Pvt. Ltd., Plot No. 32, Ship Breaking Yard, District – Bhavnagar (*hereinafter referred to as "the unit"*) was engaged in the process of obtaining goods and materials by breaking ships, boats and other floating structures, which amounted to manufacture in terms of Note-9 of Section-XV of the first Schedule to the Central Excise Tariff Act,1985 (*hereinafter referred to as "CETA"*) and was registered with the Central Excise Department and had been availing Cenvat credit under the provisions of Cenvat Credit Rules, 2004 (*hereinafter referred to as "the CCR"*). Shri Manish Bansal, Director of the unit was alleged to have clandestinely cleared the excisable goods and evaded payment of Central Excise duty. The appellant was broker, through whom clandestinely goods were allegedly cleared by the unit.

2.1 The officers of the Directorate General of Central Excise Intelligence (*hereinafter referred to as "DGCEI"*) gathered intelligence indicating that some ship breaking units of Alang/Sosiya were engaged in large scale evasion of Central Excise duty by way of clandestine removal of plates to the Rolling Mills; diversion of goods, undervaluation of goods etc. and that most of such illicit activities were being carried out by the Ship Breakers with support of some brokers, who were obtaining orders from different Rolling Mills and Furnace units and many times were getting the material dispatched through some Transporters without Central Excise invoices and without payment of Central Excise duty. These brokers were also procuring orders from Furnace Units and Registered Dealers for supply of Cenvatable invoices without any physical supply of goods. DGCEI conducted coordinated search at the premises of brokers at Bhavnagar and recovered several incriminating documents substantiating the intelligence. Another round of search operation was conducted at transporters, whose documents were available on the records of recipient furnace units, premises of various Ship Breaking Units and Rolling Mills. A search operation was also conducted at the residence cum office premises of Shri Bharat Sheth and other



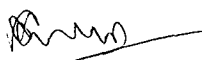


brokers and incriminating documents were recovered. The investigation revealed that the unit had clandestinely cleared the excisable goods and fraudulently passed on cenvat credit without physical supply of the excisable goods with active help of the Director of the unit and the appellant.

2.3 The above investigation led to issuance of Show Cause Notice No. V.73/03-05/D/Rural/14-15 dated 06.05.2014 demanding recovery of Central Excise duty of Rs. 1,79,452/- from the unit under proviso to Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") along with interest under Section 11AA of the Act and for imposition of penalty under Section 11AC(1)(a) of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as "the Rules"), imposition of personal penalty on the Director of the unit and the appellant under Rule 26(1) and Rule 26(2) of the Rules. The said SCN was adjudicated by the lower adjudicating authority vide OIO No. AC/JND/14/2015 dated 10.04.2015 confirming Central Excise duty of Rs. 1,79,452/- along with interest and imposed penalties on the unit and Director of the unit and imposed penalties of Rs. 1,79,452/- and Rs. 2,02,337/- (total Rs. 3,81,789/-) on the appellant under Rule 26(1) and Rule 26(2) of the Rules respectively. Being aggrieved with the OIO No. AC/JND/14/2015 dated 10.04.2015, the appellant preferred appeal before the Commissioner (Appeals), Rajkot who vide OIA No. BHV-EXCUS-000-APP-126-to-128-15-16 dated 22.03.2016 reduced penalty from Rs. 3,81,789/- to Rs. 95,000/-. The appellant preferred appeal before the Hon'ble CESTAT, Ahmedabad against the said OIA dated 22.03.2016 and the Hon'ble CESTAT, Ahmedabad vide Order No. A/13877-13931/2017 dated 28.12.2017 remanded the case back to the original adjudicating authority. Accordingly, the appellant filed refund application for refund of pre-deposit along with interest. The lower adjudicating authority vide impugned order has sanctioned Rs. 28,634/- being refund of pre-deposit along with interest of Rs. 4,768/- (total Rs. 33,402/-), however, the lower adjudicating authority had appropriated the said amount of Rs. 33,402/- towards outstanding government dues confirmed vide OIO No. 62/AC/Rural/BVR/RR/2016-17 dated 30.03.2017 under Section 11 of the Act.

3. Being aggrieved with the impugned order, the appellant preferred appeal, *inter-alia*, on the following grounds:

- (i) the action of the lower adjudicating authority for recovery of Rs. 33,402/- by adjusting such paid up amount under Section 35F of the Act is not correct.





(ii) the Hon'ble CESTAT has reduced the penalty and remanded back to the lower adjudicating authority for following the principles of natural justice. In view of this, the lower adjudicating authority has wrongly and without authority of law adjusted the said amount against recovery pending against some other case.

4. Personal hearing was granted to the appellant, who waived PH vide letter dated 20.04.2019 and made written submissions stating that the sanctioned amount of mandatory pre-deposit made under Section 35F of the Act cannot be adjusted against such outstanding dues, which is on account of other case which is sub-judice.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order and written submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order, in the facts and circumstances of this case, adjusting sanctioned refund of pre-deposit against outstanding dues in some other case sub-judice is correct or otherwise.

6. I find that the appellant mainly argued that refund of pre-deposit, arising due to CESTAT order cannot be adjusted against some dues to be recovered in another case, which is sub-judice whereas the lower adjudicating authority had adjusted refund of Rs. 33,402/- (Refund of pre-deposit of Rs. 28,634/- + Interest Rs. 4,768/-) pre-deposited against OIO No. 62/AC/Rural/BVR/RR/2016-17 dated 30.03.2017 for filing appeal, as per Section 11 of the Act. I would like to reproduce Section 11 as under:

"SECTION 11. Recovery of sums due to Government. — (1) In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums may deduct or require any other Central Excise Officer or a proper officer referred to in section 142 of the Customs Act, 1962 (52 of 1962) to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in

(Signature)



which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue :

(Emphasis supplied)

7. It can be seen from the above that the central excise officer duly empowered by the Central Board of Excise and Customs to recover any sum due to the Government under the Act or of the rules made thereunder, may recover deducting that amount from any money owing to the person from whom such sum is recoverable. I find that Section 11 of the Act allows the empowered officers to adjust the refundable amount to recover sum due to the Government.

8. I also find that the appellant had filed appeal against OIO No. 62/AC/Rural/BVR/RR/2016-17 dated 30.03.2017 which was rejected vide OIA No. BHV-EXCUS-000-APP-280-TO-282-2017-18 dated 11.04.2018 and no appeal has been filed against the said OIA dated 11.04.2018. Thus, I find that it is not in dispute that OIO No. 62/AC/Rural/BVR/RR/2016-17 dated 30.03.2017 passed by the lower adjudicating authority has attained finality and amount of Rs. 6,34,723/- was due to be recovered from the appellant and hence, Rs. 33,402/- could be adjusted towards Rs. 6,34,723/- due to be paid by the appellant to the Central Government as demand confirmed vide OIO No. 62/AC/Rural/BVR/RR/2016-17 dated 30.03.2017 has attained finality. My this view is supported by the judgment of the Hon'ble CESTAT in the case of Pankaj Oxygen Ltd. reported as 2010 (253) ELT 666 (Tri.-Del.), relevant Paras are reproduced as under:

"12. It is pertinent to note that the records placed before me clearly justify the findings of facts arrived at by the lower authorities. It is a matter of record that the appellants availed the credit suo motu without waiting for sanction by the authority for necessary order in that regard. It is also a matter of record that amount of Rs. 3859/- was due and payable by the appellants to the Department in terms of Order-in-appeal No. 84/RPR-1/2005 dated 10-8-2005."

.....

"15. Section 11 of the said Act clearly empowers the Department to adjust the refundable amount towards amount due from the party. Once it is not in dispute that in terms of order dated 10-8-2005 passed in an appeal, an amount of Rs. 3859/- was due and payable by the appellants to the Department and the said dues were outstanding even on the date of the order of the refund, certainly the authority was justified in adjusting the said refundable amount towards the amount due from the appellants."

(Emphasis supplied)

[Handwritten signature]



8.1 Accordingly, I find that the impugned order passed by the lower adjudicating authority is correct, legal and proper.

9. In view of above, I uphold the impugned order and reject this appeal.

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

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

[Handwritten Signature]
17/6/19

[Handwritten Signature]
(कुमार सतोष) 18/6/19

प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To,

Shri Bharat M. Sheth, Plot No.619, B-2 Geetha Chowk, Jain Derasar Road, Bhavnagar	श्री भरत एम. शेठ, प्लॉट न. 619, B-2, गीता चौक, जैन देरासर रोड, भावनगर
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प्रति:

(१) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।

(२) आयुक्त, केन्द्रीय वस्तु व सेवा कर, भावनगर को आवश्यक कार्यवाही हेतु।

(३) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर मण्डल-II, भावनगर को आवश्यक कार्यवाही हेतु।

(४) गार्ड फ़ाइल



