



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



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइलसंख्या/  
Appeal / File No.  
V2/19/BVR/2019

मूल आदेश सं /  
O.I.O. No.  
R-61/2018-19

दिनांक/  
Date:  
25/02/2019

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

**BHV-EXCUS-000-APP-224-2019**

आदेश का दिनांक

/ 16.09.2019  
Date of Order:

जारी करने की तारीख /  
Date of issue:

17.09.2019

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
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 :-

M/s.Beyond Fabchem, Plot No. 126/1, GIDC,, Chitra, Bhavnagar.Gujarat

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर 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 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन 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 परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa 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 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 मांग , ब्याज की मांग 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 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 अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 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 (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग , ब्याज की मांग 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 सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक 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 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 अपीलीय प्राधिकरण (सेस्टेट) 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से 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) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से 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 पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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-35B 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 से 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 छुट (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 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण 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 साक्ष्य 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 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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 should refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

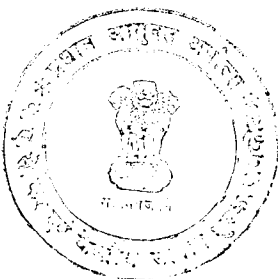


**:: ORDER IN APPEAL ::**

M/s Beyond Fabchem, Plot No. 126/1, GIDC, Chitra, Bhavnagar (Gujarat) (hereinafter referred to as "appellant") filed this appeal against Order-In-Original No. R-61/2018-19 dated 25.02.2019 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (hereinafter referred to as "adjudicating authority").

2. The brief facts of the case are that appellant had claimed refund of central excise duty paid by them on their finished products namely, "Rubberized Textile Fabrics" classified under CETSH 5906 1000 and cleared the goods on payment of Central Excise duty by availing benefit of Notification No. 01/2011-CE, dated 01.03.2011, as amended. The appellant had filed refund claims on the ground that the appellant had made a remark as they were claiming change in classification, hence duty paid under protest in respect of their products falling under CETSH 5906 1000 in the remarks column of relevant ER-1 returns from August-2014 onwards. The appellant was served show causes notices for rejection of their refund claims. The said notices were decided by the adjudicating authority vide OIO No. R-405/Refund/15-16 dated 15.01.2016 and R-406/Refund/15-16 dated 18.01.2016 and R-372/Refund/2016-17 dated 28.03.2017 and rejected the refund claims. Being aggrieved, appellant preferred appeals which were decided by the Commissioner (Appeals) vide OIA No. BHV-EXCUS-000-APPELLANT-277-278-16-17 dated 31.03.2017/ 10.04.2017 by way of remand to decide the matter afresh in respect of OIO No. R-405/Refund/15-16 dated 15.01.2016 and R-406/Refund/15-16 dated 18.01.2016. The adjudicating authority in *de novo* proceedings vide OIO No. 1 & 2/EXCISE/DEMAND/18-19, dated 25.04.2018 held that refund claims were rightly rejected vide OIO No. R-405/Refund/15-16 dated 15.01.2016 and R-406/Refund/15-16 dated 18.01.2016. Being aggrieved by the said order, the appellant preferred an appeal which was decided by the Commissioner (Appeals) vide OIA No. BHV-EXCUS-000-APP-121-to 126- 2019 dated 24.05.2019 setting aside the order of the adjudicating authority and allowed the appeals with consequential relief, if any.

As regards the appeal against the OIO No. R-372/Refund/2016-17 dated 28.03.2017, Commissioner (Appeals) vide OIA No. BHV-EXCUS-000-APP-194-2017-18 dated 06.03.2018, allowed the appeal and held that appellant is eligible for refund claim of Rs. 16,67,666/- claimed for the period from June-2015 to Nov. 2016.



Subsequently, adjudicating authority has sanctioned the refund claims as under;

Sr No.	Refund amount sanctioned (Rs)	Period	Refund sanctioned vide order (Order-in-Original)	Refund sanctioned in pursuance of OIA passed by the Commissioner(Appeals)
1	64,987/-	August 2014	R-14/Refund/2018-19, dated 23.05.2018	BHV-EXCUS-000-APP-159-2017-18 dated 09.03.2018
2	6,89,605/-	Sept. 2014 to May 2015	R-27/Refund/2018-19, dated 31.05.2018	BHV-EXCUS-000-APP-157-158-2017-18 dated 09.03.2018
3	16,67,666/-	June-2015 to Nov.-2016	R-26/Refund/2018-19, dated 31.05.2018	BHV-EXCUS-000-APP-194-2017-18 dated 06.03.2018

Thereafter, the appellant filed letter dated 27.07.2018 to the adjudicating authority for the interest on the refund claims sanctioned as detailed above.

The adjudicating authority vide impugned order sanctioned the interest of Rs. 1,20,620/- for the refund claim of Rs. 16,67,666/- sanctioned vide OIO No. R-26/Refund/2018-19, dated 31.05.2018 but rejected the interest claim on the refund sanctioned for Rs. 64,987 (sanctioned vide OIO No. R-14/Refund/18-19) and also rejected the interest claim on the refund sanctioned for Rs. 6,89,605/- (sanctioned vide OIO No. R-27/Refund/18-19) on the grounds that the appellant has not preferred the appeals and matter has attained finality.

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

- (i) that the adjudicating authority has sanctioned the refund claimed but not allowed interest on late payment of such refund.
- (ii) that the adjudicating authority erred in rejecting the interest claim that appellant has not objected /appealed against the order in original without refereeing the facts that the said order was appealed.

4. Hearing was attended by Shri Paresh Sheth, Advocate and Shri Vijay Sonani, partner of the appellant who reiterated the submissions of appeal



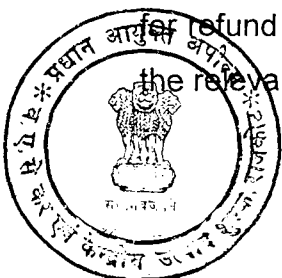
memorandum and submitted copy of the OIO No.1 & 2/Excise/Demand/18-19, dated 25.04.2018 and OIA No. BHV-EXCUS-000-APP-121 to 126 -2019 dated 24.05.2019/27.05.2019 passed by the Commissioner (Appeals) on the subject matter for consideration.

5. I have carefully gone through the facts of the case, the impugned order, the appellate orders passed in the matter, written as well as oral submissions made by the Appellant. The issue to be decided in the present appeal is whether the interest, on the refund claims sanctioned, rejected by the adjudicating authority is proper and legally correct.

6. I find from the records/ documents submitted by the appellant that appellant vide application dated 27.07.2018 claimed for payment of interest towards their refund claims sanctioned vide Order-in-Original No. R-14/Refund/18-19, dated 23.05.2018, R-26/Refund/18-19, dated 31.05.2018 and R-27/Refund/18-19, dated 31.05.2018.

7. I find that the adjudicating authority vide impugned order, has sanctioned the interest amounting to Rs. 1,20,620/- of the refund claim sanctioned vide Order-in-Original No. R-26/Refund/18-19, dated 31.05.2018. Hence, I do not discuss the same. I further find that the adjudicating authority has rejected the interest of the refund claims sanctioned vide Order-in-Original No. R-14/Refund/18-19, dated 23.05.2018, and R-27/Refund/18-19, dated 31.05.2018 on the grounds that appellant had not challenged the Order-in-Original No. R-405/Refund/2015-16 and R-406/Refund/2015-16 vide which refunds claims were rejected. However, I find from the records that appellant had infact preferred the appeals against the said orders and which was decided by the Commissioner (Appeals) vide Order-in-Appeal No. BHV-EXCUS-000-APP-277 to 278-16-17 dated 31.03.2017/10.04.2017 by way of remand to the adjudicating authority. Hence the said findings of the adjudicating authority rejecting the interest on refund claims does not sustain.

8. Further, I find that since the refund claims have been sanctioned by the adjudicating authority vide Order-in-Original No. R-14/Refund/18-19, dated 23.05.2018, and R-27/Refund/18-19, dated 31.05.2018, the Appellant is also eligible for interest on delayed payment of refund. I find that as per Section 11BB of the Central Excise Act 1944, liability of the revenue to pay interest commences from the date of expiry of the three months from the date of receipts of application for refund under Section 11B(1) of the Act. For the ease of reference, I reproduce the relevant portion of the said Section.



Q

**SECTION [11B. Claim for refund of [duty and interest, if any, paid on such duty].** — (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [[in such form and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of [duty of excise and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such [duty and interest, if any, paid on such duty] had not been passed on by him to any other person :

**Provided** that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :]

[**Provided further that**] the limitation of [one year] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.

Further, I also reproduce the section 11BB of the Central Excise Act, 1944 pertains to interest on delayed refunds.

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

**Provided** that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

**Explanation.** - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [, National Tax Tribunal] or any court against an order of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise], under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal [National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.]

9. My views are also bolstered by the judgement pronounced by the Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories Ltd Vs. Union of India on 21<sup>st</sup> October 2011.



*Ar*

10. In view of above discussion and findings, I set aside the impugned order to the extent of the rejecting the interest, on the refund claims for Rs. 64,987/- and Rs. 6,89,605/- sanctioned vide Order-in-Original No. R-14/Refund/18-19, dated 23.05.2018, and R-27/Refund/18-19, dated 31.05.2018 respectively and order the adjudicating authority to sanction the interest of the said refund claims, at the applicable rate prevailing at the material time, to the appellant forthwith.

Attested.

J.S.N.

जे. एस. नागरेचा / J. S. Nagrecha  
अधीक्षक / Superintendent (A)

By R.P.A.D.

To,  
M/s Beyond Fabchem,  
Plot No. 126/1, GIDC,  
Chitra, Bhavnagar (Gujarat)

(Gopi Nath)  
Commissioner (Appeals)

Copy to:-

- 1) The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad, for kind information please.
- 2) The Commissioner, Central GST & Central Excise, Bhavnagar for information and necessary action.
- 3) The Assistant Commissioner, Central GST Division, Bhavnagar-I for necessary action.
- 4) Guard File.

