



रजिस्टर्ड डाक ए.डी.द्वारा :-

अपील फाइल नम्बर
Appeal File No.
V2/14/BVR/2019

मूल आदेश सं /
O.I.O. No.
29/R/2018-19

दिनांक /
Date:
31/1/2019

अपील आदेश नम्बर (Order-In-Appeal No.):

BHV-EXCUS-000-APP-225-2019

आदेश का दिनांक /
Date of Order:

16.09.2019

जागी 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

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जागी मूल आदेश से मुजित: /

Against the above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner,
Central Excise/ST / GST, Rajkot/Jamnagar/Gandhidham .

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

M/s. Shriji Krupa Exports, Plot No. 2401/2402, GIDC, Phase-IV, Wadhwan City, Gujarat-363035

इस आदेश अर्थात् इस आदेश का अन्तर्गत निम्नलिखित तरिके में उपयुक्त प्राधिकरण / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
This Order/ Appeal may be filed by this Order-in-Appeal may file an appeal to the appropriate authority in
the following way.

(i) 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 अग्रह 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:-

(ii) अर्थात् विशेष मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, अरुणपुरम, 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.

(iii) उपरोक्त परिच्छेद 1(a) में बतलाया गया अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) का पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमानी भवन अमर्वा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd 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 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 मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय 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 महायुक्त 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 (स्टैंड ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपये 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/-.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 6(1) के तहत निर्धारित फॉर्म S.T.5 में चार प्रतियों में की जा सकती है एवं उसमें एक प्रति जिसमें आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें। इनमें से एक प्रति प्रमाणित होनी चाहिए। और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय 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 महायुक्त 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 (स्टैंड ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपये 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) विन अधिनियम, 1994 की धारा 8E की उप-धाराओं (1) एवं (2A) के अंतर्गत पूर्व की गयी अपील, मेवाकर नियमावली, 2001, के नियम 9 (2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जाने वाली एक प्रतिलिखित आवेदन, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रत्येक क्षेत्रीय प्रशासन और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ मेवाकर, को अपील न्यायाधिकरण को आवेदन प्रस्तुत करने के लिए अपील आदेश की प्रति की साथ में संलग्न करनी होगी)।
The appeal under sub section (2) and (2A) of section 8E of 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 (Regional) (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 मेवाकर अधिनियम अधिनियम, 1994 के अधिनियमों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35एफ के अंतर्गत, जो की विनीय अधिनियम, 1994 की धारा 35E के अंतर्गत मेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थ प्राधिकरण में अपील करने समय उत्पाद शुल्क/मेवाकर का प्रमाण देना प्रशिक्षण (1) (1) जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, यद्यपि कि इस धारा के अंतर्गत जमा कि जमा करणी अपेक्षित देय राशि इस करोंड रूप में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं मेवाकर के अंतर्गत "मांग विवाद शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत राशि
(ii) मन्वेट जमा की गयी गई राशि
(iii) मन्वेट जमा नियमावली के नियम 10 के अंतर्गत देय राशि
- यद्यपि यह कि इस धारा के प्रावधान विधि, 1994 अधिनियम 1994 के आरंभ से पूर्व किमी अपीलार्थ प्राधिकरण के समक्ष विचारार्थ स्थापन अर्थात् 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 Central Credit taken;
(iii) amount payable under Rules of the Central 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 परन्तु के अंतर्गत अथवा मन्वेट भारत सरकार, पुनरीक्षण आवेदन ईकाई, विन संसदधर, राजपथ विभाग, चौकी मंडल, जीवर दीप अवन, समद 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, Rajapath Deen Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following cases, governed by first proviso to sub-section (1) of Section 35B under:
यदि माल के किमी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किमी 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 presentation of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (निवृत्त) के मामले में जो भारत के बाहर किमी राष्ट्र या क्षेत्र को निर्यात की गई है।
In case of rebate of duty of excise on goods exported to any country or territory outside India or 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 to Nepal or Bhutan, without payment of duty.
(iv) मुनिश्चिन्त उत्पाद के उत्पादन शुल्क के भुगतान के लिए को पूर्ण अर्थात् इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और जमा आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (1994) 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 संघर्ष के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। यह है की केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 34-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के वीर 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 को जाननी चाहिए।
जहां संलग्न राशि एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न राशि 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 कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस नथ्य के होते हुए भी की लिखा पट्टी कार्य से वचने के लिए यथास्थिति अपीलार्थ प्राधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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 it excising Rs. 100/- for each.
(E) यथास्थिति न्यायालय शुल्क अधिनियम, 1975 के अनुबन्धी-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 2.50 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 मेवाकर अधिनियम अधिनियम, 1994 के अधिनियमों के अंतर्गत अपील नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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 अपीलार्थ प्राधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थ 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 ::

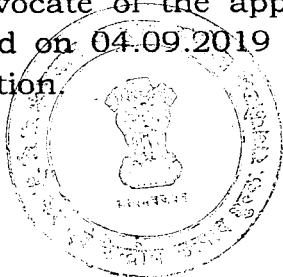
M/s Shrijikrupa Exports, Plot No. 2401/2402, GIDC, Phase-IV, Wadhwan City-363035 (hereinafter referred to as '**the appellant**') filed the present appeal against OIO No. 29/R/2018-19 dated 31.01.2019 (hereinafter referred to as the '**impugned order**') passed by the Assistant Commissioner, GST & Central Excise, Division, Surendranagar (hereinafter referred to as the '**adjudicating authority**').

2. The brief facts of the case are that the appellant is a 100% Export Oriented Unit engaged in manufacturing of sanitary and bathroom fittings classifiable under Chapter 39. 73, 74 & 79 of the tariff of the schedule to the Central Excise Tariff Act. They procured the materials without payment of duty from M/s Rajhans Impex Pvt. Ltd. under cover of various invoices during the period from May-2013 to August-2013. The said supplier did not pass on the duty liability on the appellant with an intention to avail Terminal Excise duty refund from the appropriate authority. The appellant availed cenvat credit under Cenvat credit Rules, 2004. The appellant had initially filed a refund claim of Rs. 11,33,798/- on 31.03.2014 under Rule 5 of the Cenvat Credit Rules, 2004 (herein after referred to as CCR) read with Notification No. 27/2012-CE(NT) dated 18.06.2012. Show Cause Notice dated 30.06.2014 was issued to the appellant alleging to restrict refund claim to the extent of Rs. 4,38,342/- as refund of Rs. 6,95,456/- was liable for rejection on the ground that the appellant had wrongly availed cenvat credit of Rs. 7,01,307/- on the basis of invalid documents i.e debit notes. The sanctioning authority had rejected the refund of Rs. 6,95,456/- vide order dated 13.10.2014 which was challenged before the Commissioner (Appeals), who vide OIA No. BHV-EXCUS-000-APP-017-15-16 dated 17.06.2015 rejected the appeal. The appellant then filed an appeal before the Hon'ble CESTAT, Ahmedabad which vide order dated 5.9.2017 remanded the matter to the Commissioner(Appeals) who allowed the appeal filed by the appellant. Therefore, the appellant filed a refund claim of Rs. 6,95,456/-. The adjudicating authority vide OIO No. 29/R/2018-19 dated 31.01.2019 sanctioned the refund claim of Rs. 6,95,456/- under provision of Rule 5 of the Cenvat Credit Rules, 2004 read with Section 11B of the Central Excise Act, 1944 and rejected the interest on the amount of refund sanctioned.

3. Being aggrieved, the appellant filed the present appeal on the following grounds:

(i) that the adjudicating authority vide the impugned order sanctioned the refund of the amount rejected under refund order dated 13.10.2014 but has rejected the claim of interest on the ground that the refund is sanctioned within the period of three months from the date of order of the Commissioner(Appeals) dated 01.10.2018. That, it is settled law that the interest is payable on expiry of three months from the date of filing of refund claim. The appellant requested to pay interest on the amount of refund claimed from the date of filing of refund claim i.e 31.03.2014.

4. Shri Paresh Sheth, Advocate of the appellant appeared for the personal hearing in the matter fixed on 04.09.2019 and reiterated the submission of appeal memo for consideration.



a

5. I have gone through the records of the case, the impugned order, the grounds of appeal and written submission filed by the appellant and records of personal hearing. The limited issue to be decided in the present issue is whether interest is payable on the amount of refund claimed by the appellant from the date of refund claimed by the appellant or from the date of duty ordered to be refunded.

6. Before evaluating the rival contentions, I would like to refer to the relevant provisions of the Section 11B and Section 11BB of the Act which deals with claims for refund of duty. Relevant portion thereof reads as under:

“11B. Claim for refund of 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 Excise and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to ---

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;



A

- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

- (4)
- (5)

Section 11BB, provisions, reads thus :

"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 or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall



A

be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

7. It is clear from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB states that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Therefore, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

In this regard, I draw my support from the Hon'ble Supreme Court's judgment in the case of (i) M/s Ranbaxy Laboratories Ltd. Vs Union of India decided on 21.10.2011 (ii) Union of India Vs Shreeji Colour Chem Industries decided on 15.09.2008.

8. I also find that the issue stands concluded in decision of the High Court of Rajasthan in the case of M/s J.K. Cement Works Vs Asst. Commissioner of Central Excise & Customs decided on 10.02.2001 as reported in 2004(170) E.L.T.4(Raj.)

"21. The perusal of Section 11B goes to show that it prescribed a period within which the amount of refund can be claimed by the applicant. It also prescribes three months from the date of application as the period



Q

*within which such refund is to be paid. Consequence of not paying refund within three months of making such application under Section 11B is that the **Revenue becomes liable to pay interest on amount of refund with effect from the expiry of three months from the date of application until date of actual payment. The liability to pay interest is not tagged with decision to pay interest but in case it is ultimately found to be payable liability is with effect from expiry of three months of the date of receipt of application required to be made under Section 11B(1).** The rate of interest is to be prescribed by the Board and the interest is payable with effect from the date commencing from the expiry of three months from the date of receipt of such application till the refund of such duty.*

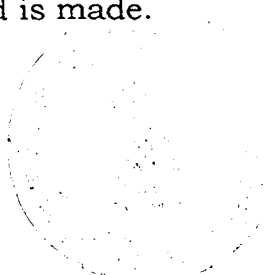
33. A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determination the liability to pay interest is not the determination under sub-section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund **but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant.**

37. Interest has been made payable with effect from the expiry of three months from the date of application made under Section 11B(1), in case where refund is required to be paid to such applicant as per orders passed under Section 11B(2). The making of application is not linked with adjudication about excess payment but is linked with payment of Duty.”

[Emphasis supplied]

9. Thus, it is evident from a bare reading of the above Section and decisions that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund.

10. In view of the above analysis, the liability of the adjudicating authority to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.



11. In view of my discussions as above, I allow the appeal filed by the appellant.

Gopi Nath
16/9/15

(Gopi Nath)
Commissioner (Appeals)

A 15/9/15

अम्बा अय्यर
Amba Ayyar
अधीक्षक
Superintendent

By Regd. Post AD

To,

M/s Shrijikrupa Exports, Plot No. 2401/2402, GIDC, Phase-IV, Wadhwan City-363035	मे. श्रीजीकृपा एक्स्पॉर्ट्स, प्लॉट नो. २४०१/२४०२, जी. आई. डी. सी., फेस-IV वढवान शहर-३६३०३५
---	--

Copy to:

- 1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Bhavnagar.
- 3) The Deputy Commissioner, CGST & Central Excise, Division, Surendranagar.
- 4) Guard file. — *Guard file*

