



:: प्रधान आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद

शुल्क::

O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL
EXCISE,



सत्यमेव जयते

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 :- DIN-20200964SX00008W050D

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/33/RAJ/2020	20/REF/2019-20	20/02/2020

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

RAJ-EXCUS-000-APP-102-2020

आदेश का दिनांक / 25.09.2020 जारी करने की तारीख / 28.09.2020
Date of Order: Date of issue:

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Principal 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 Appellant & Respondent :-

M/s. Falcon Pumps Pvt. Ltd., Survey No. 39/4, Vavdi Industrial Area, Behind Hotel Krishna Park,
Gondal Road, NH27, Post Vavdi, Rajkot-360004

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 असारवा 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 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 demanded/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 नियमवाली, 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. 1,000/- 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/-.

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. 1,000/- 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/-.

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- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतुक 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, जहाँ 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 (न. 2), 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 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साध्य 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.
(vii) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पढी 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 Appellate 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.
(viii) यथासंशोधित 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 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.
(ix) 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.
(x) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से 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. Falcon Pumps Pvt. Ltd., Survey No. 39/4, Vavdi Industrial Area, Behind Hotel Krishna Park, Gondal Road, NH27, Post Vavdi - 360004 (hereinafter referred to as "appellant") filed appeal No. V2/33/RAJ/2020 against Refund Order No. 20/REF/2019-20, 20.02.2020 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST and Central Excise Division, Rajkot-II (hereinafter referred to as 'refund sanctioning authority').

2. The brief facts of the case are that during the course of audit of the records of the appellant by the CERA Team, it was observed that the appellant had not paid service tax on the remuneration paid to directors of the company. Therefore, appellant was issued a show cause notices under proviso of Section 73(1) of the Finance Act, 1994. The adjudicating authority dropped proceedings initiated under the SCN. Department had preferred an appeal against the said OIO before the Commissioner (Appeals), Central Excise, Rajkot. The said OIO was set aside by the Commissioner (Appeals) vide OIA No. RAJ-EXCUS-000-APP-350-2017-18 dated 27/28.03.2018 and allowed the appeal filed by the department. The appellant preferred an appeal against the said OIA before CESTAT, Ahmedabad which is pending till date.

2.1 The department had issued periodical show cause notice to the tune of Rs. 52,53,868/- and said SCN was confirmed by adjudicating authority vide OIO No. 13/ADC/RKC/18-19 dated 26.12.2018. Being aggrieved by the said order appellant had preferred an appeal before the Commissioner (Appeals), Rajkot. The appellant had deposited @7.5% amount of Rs. 3,94,041/- as provided under Section 35F of the Central Excise Act, 1944 as made applicable to the Service Tax vide Section 83 of the Finance Act, 1994. The said amount was paid by the way of debit from electronic credit ledger maintained under the CGST Act, 2017 in view of the CESTAT decision in the case of M/s. Dell International Services India Pvt. Ltd. V.s. Commissioner of Central Tax, Bangalore – 2019-TIOL-286-CESTAT-BANG. The payment of said amount as pre-deposit was also mentioned in column no. 4(B)(2) of GSTR 3B for the month of February – 2019.

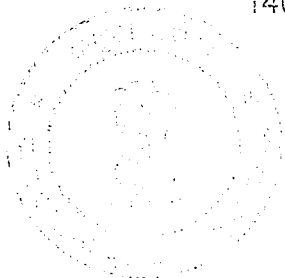
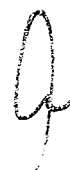
2.2 The Commissioner (Appeals), Rajkot had allowed the appeal filed by the appellant and set aside the Order-in-Original vide Order-in-Appeal No. RAJ-EXCUS-000-APP-175-2019 dated 22.10.2019. Consequent upon the said OIA, the appellant had made an application for refund vide letter dated 04.01.2020 for Rs. 3,94,041/- @ 7.5% of Service Tax liability from the balance lying in CGST Credit

Register maintained manually as well as Electronic Mode under the CGST Act, 2017 and also mentioned in column No. 4(B(2)) of GSTR-3B for the month of February while preferring an appeal before the Commissioner (Appeals), Central Excise, Rajkot as provided under Section 35F of the Central Excise Act, 1944 as made applicable to the Service Tax matters vide Section 83 of the Finance Act, 1944. The refund sanctioning authority vide impugned order rejected the refund claim on the ground that the application filed seeking refund of pre-deposit is not eligible for refund under any appropriate section of CGST Act, 2017.

3. Aggrieved, the appellant preferred the present appeal on the following grounds, inter alia, contending that,

(i) The impugned order passed by adjudicating authority is ex-facie illegal, totally erroneous and perverse and liable to be set aside. Before rejecting refund of pre-deposit, the adjudicating authority was supposed to issue show cause notice stating grounds on which refund of pre-deposit is liable to be rejected and was also supposed to hear appellant in person. Therefore, impugned order is liable to set aside.

(ii) As per the provision of Section 35F of the Central Excise Act, 1944 as made applicable to the Service Tax vide Section 83 of the Finance Act, 1944, it was mandatory on its part to make pre-deposit for entering its appeal filed on 28.02.2019 under the said provisions as per saving clause under Section 173 read with Section 174(2)(f) of the Central Goods and Service Tax Act, 2017. Prior to 01.07.2017 it was also permissible to make payment of pre-deposit from balance lying in Cenvat Credit account and with effect from 01.07.2017 under GST era as per the decision of CESTAT in the case of M/s. Dell International Services India Pvt. Ltd. V.s. Commissioner of Central Tax, Bangalore – 2019-TIOL-286-CESTAT-BANG., once it was liable to make pre-deposit and as per CESTAT's above decision under CGST Act, 2017 and rules made thereunder, it cannot be disputed while sanction of refund. The refund of such pre-deposit and it has to be governed under erstwhile circulars Nos. 275/37/2K-CX dated 02.01.2002, 802/35/2004-CX dated 08.12.2004, 984/08/2014-1053/2/2017-CX dated 10.03.2017. At the time of implementation of Goods & Service Tax, unutilized balance lying in Cenvat Credit Register was also allowed to transfer in the Electronic Credit Ledger under Section 140 of the CGST Act, 2017.



(iii) The provisions of Section 142(3) of the CGST Act, 2017 specifically provides that every claim of refund filed by any person before, on or after the appointment day, for refund of any amount of Cenvat Credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually, accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944.

(iv) The refund sanctioning authority has wrongly interpreted Circular No. 58/32/2018-GST dated 04.09.2018 and Circular No. 42/16/2018-GST dated 13.04.2018 and given contradictory findings, inadvertently instead of Rule 142(2) of CGST Rules, 2017, Section 142(2) of the CGST Act, 2017 was referred for the DRC-3 but not as an authority for making an application for refund. It cannot have any relevance with the mode of payment i.e. making of payment of pre-deposit by debiting from Electronic Credit Register under the CGST Act, 2017 especially when same is permissible as per CBIC Circulars read with CESTAT decision. The pre-deposit was paid from Input Tax Credit lying in Electronic Credit Ledger it does not cease to be pre-deposit, refund of such amount have to be sanctioned and paid in cash only under Section 142(3) of the CGST Act, 2017 considering the payment made from Electronic Credit Ledger at par with Cenvat Credit Register maintained under erstwhile Cenvat Credit Rules.

4. Personal hearing in the matter was attended by Shri P.D.Rachchh, Advocate on 10.07.2020, who reiterated the grounds of appeal and requested to consider their grounds of appeal and allow the appeal on merit.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 3,94,041/- is correct, legal and proper or not.

6. The undisputed facts of the case are that the Appellant had deposited @7.5% amount of Rs. 3,94,041/- as provided under Section 35F of the Central Excise Act, as made applicable to the Service Tax vide Section 83 of the Finance Act, 1944. The said amount was paid by the way of debit from electronic credit ledger maintained under the CGST Act, 2017 in view of the CESTAT decision in the case of M/s. Dell International Services India Pvt. Ltd. V.s. Commissioner of Central Tax, Bangalore – 2019-TIOL-286-CESTAT-BANG. The payment of said

amount as pre-deposit was also mentioned in column no. 4(B)(2) of GSTR 3B for the month of June – 2019.

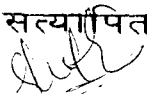
6.1 The refund sanctioning authority rejected the refund claim on the ground that refund of Electronic Credit Ledger under Section 35F of Central Excise Act, 1944, as made applicable to the Service Tax vide Section 83 of the Finance Act, 1944 cannot be sanctioned in cash as there is no provision under CGST Act, 2017 for sanctioning refund of pre-deposit of amount debited from electronic credit ledger.

6.2 The Appellant contended that as per Section 173 read with Section 174(2)(f) of the CGST Act, 2017, it was mandatory on its part to make pre-deposit for entertaining its appeal filed on 24.07.2019, accordingly it had made payment of pre-deposit from ITC and prior to 01.07.2017 it was also permissible to make payment of pre-deposit from balance lying in Cenvat Credit Account and Section 142(3) of the CGST Act, 2017 specifically provides that every claim of refund of any amount of Cenvat Credit, duty, tax, interest or any other amount paid under the existing law and any amount eventually, accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of Central Excise Act, 1944.

7. I find that the Appellant had made payment of pre-deposit from Electronic Credit Ledger and prior to 01.07.2017 it was also permissible to make payment of pre-deposit from balance lying in Cenvat Credit Account in light of the decision of CESTAT in the case of M/s. Dell International Services India Pvt. Ltd. V.s. Commissioner of Central Tax, Bangalore – 2019-TIOL-286-CESTAT-BANG. Regarding the plea of the appellant to grant them refund of pre-deposit paid by them through Electronic Credit Ledger under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, I find that the Appellant is not eligible for refund under Section 11B of the Central Excise Act, 1944 for the simple reason that even before 1.7.2017 when the Central Excise Act, 1944 was in force, there was no provision to grant refund in cash for pre-deposit paid by way of debiting Cenvat Credit Account under Section 11B ibid, and such pre-deposit was restored in Cenvat Credit Accounts only. When refund was not permissible in existing law prior to 1.7.2017, then there is no question of granting refund in cash for pre-deposit paid by way of debiting Electronic Credit Ledger after 1.7.2017. The refund claim filed under Section 11B of the Central Excise Act, 1944 is, thus, not maintainable. For this reason,

I discard this plea of the Appellant as devoid of merit. As regards applicability of the provisions of Section 142(3) of the Central GST Act, 2017, I find that Section 142(3) *ibid* states that the refund filed before, on or after 1.7.2017, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944. These provisions clearly envisage that for getting a refund of eligible credit, the Appellant should follow the procedure of existing law prescribed and any amount eventually accruing to him shall be paid in cash. As discussed by me in para supra, the provisions of erstwhile Central Excise Act, 1944, did not allow the refund in cash in respect of such pre-deposit paid by way of debiting Cenvat Credit. Thus, refund claim is also not maintainable under Section 142(3) of the Central GST Act, 2017. However, payment of pre-deposit by the Appellant is not under dispute. The Appellant is, therefore eligible to avail credit of Rs. 3,94,041/- in their Electronic Credit Ledger.

8. In view of above, I uphold the impugned order and reject the appeal.
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the Appellant is disposed off as above.

सत्यापित

संजय शेट
अधीक्षक (अपील)


(GOPI NATH)
Commissioner (Appeals)

By RPAD

M/s. Falcon Pumps Pvt. Ltd., Survey No. 39/4, Vavdi Industrial Area, Behind Hotel Krishna Park, Gondal Road, NH27, Post Vavdi, Rajkot - 360004	मे फाल्कन पम्प्स प्रा ली सर्वे नंबर 39/4, वावडी इंडस्ट्रियल एरिया, होटेल क्रिष्णा पार्क के पीछे, गोंडल रोड, एनएच 27, पोस्ट वावडी, राजकोट
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प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-2 मण्डल, राजकोट, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

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