



::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 / 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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-DIN- 20200964SX00001T410F

क	अपील / फाइल संख्या/ Appeal /File No	मूल आदेश सं / O.I.O. No	दिनांक/ Date
	V2/03/BVR/2020	V/18-03/Ref-Sachdeva/2019-20	14-01-2020

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

BHV-EXCUS-000-APP-043-2020

आदेश का दिनांक / Date of Order:	26.08.2020	जारी करने की तारीख / Date of issue:	02.09.2020
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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 में मूजित: /
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 Sachdeva Steel Products, 508/1, GIDC-II, Sihor, Dist.-Bhavnagar

इस आदेश (अपील) में 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 विन 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 में सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली भवन अमर्वा अहमदाबाद- 380016 को 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) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गए 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, रुपा 5 लाख या उससे कम 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 रजिस्ट्रार के नाम में किसी भी मार्बजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 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, विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसमें एक प्रति के साथ 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, रुपा 5 लाख या उससे कम 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा 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 रजिस्ट्रार के नाम में किसी भी मार्बजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म 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 (उत्तम में 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 Form S.T.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 (मेम्बेट) 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 करने 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, वरन् कि इस धारा के अंतर्गत जमा कि. जाने वाली अपेक्षित देय राशि दम करोंड रुपय 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
- वरन् यह कि इस धारा के प्रावधान वित्तीय (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान 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 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामला में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ममद 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 में 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 छूट (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 क्रेडिट क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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 उत्पाद 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 मूल रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि मूल 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 चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य में वचन 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-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.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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 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 Sachdeva Steel Products, 508/1, GIDC-II, Sihor, Dist.-Bhavnagar (hereinafter referred to as **"the Appellant"**) filed Appeal No. V2/3/BVR/2020 against Order-in-Original No. R-14/2019-20 dated 23.12.2019 (hereinafter referred to as **'impugned order'**) passed by the Asst. Commissioner, Central GST & Central Excise, Division, Bhavnagar-I (hereinafter referred to as **'refund sanctioning authority'**).

2. The brief facts of the case are that the appellant had earlier filed a refund claim amounting to Rs. 28,97,178/- vide letter dated 29.11.2014 in pursuance of Hon'ble High Court of Gujarat, Ahmedabad's Oral judgment dated 27.08.2014 in Tax Appeal No. 56 to 74 of 2005, wherein the appeal filed by the appellant was allowed. Therefore, the appellant requested the refund sanctioning authority to refund them the pre-deposit amount of Rs. 28,97,178/-. The refund sanctioning authority sanctioned the refund vide OIO No. R-209/Refund/15-16 dated 28.07.2015 after appropriating the duty confirmed amount under OIO No. 65 to 88/BVR/JC/2005 dated 30.12.2005 and 159 to 169/D/Excise/2011-12 dated 25.01.2012 and ordered that the remaining amount of Rs. 2,00,000/- had lapsed in light of Circular no. 326/42/97-CX dated 25.07.1997. After filing appeals, the said amount of Rs. 2,00,000/- was also sanctioned on 15.02.2018.

2.1 The appellant vide refund application dated 02.04.2019 requested the refund sanctioning authority to refund the amount of Rs. 26,97,178/- which was appropriated against refund sanction order dated 28.07.2015. The refund sanctioning authority sanctioned an amount of Rs. 23,34,328/- vide the impugned order and rejected an amount of Rs. 3,62,850/-. The refund sanctioning authority did not sanction interest on the aforesaid amount.

3. Aggrieved, the Appellant has preferred appeal, *inter-alia*, on the following grounds:-

(i) That the refund sanctioning authority has ignored the provision of Section 35FF of the Central Excise Act, 1944 (hereinafter referred to as



'the Act') as well as the instructions at para 5.1 of the Board vide Circular no. 984/08/2014-CX dated 16.09.2014.

(ii) That the refund sanctioning authority has not denied the payment of interest on the refund amount as no such finding has been recorded in the impugned order; that the same might have remained while sanctioning the refund claim.

3.2 The appellant filed a miscellaneous application for condonation of delay and submitted that they could not file the appeal within 60 days due to the nationwide lockdown to prevent the pandemic Covid-19 from 25.03.2020 to 31.05.2020; that they received the impugned OIO on 17.03.2020 and filed the present appeal 25 days late i.e on 10.06.2020 and hence prayed to condone delay of 25 days.

4. Shri Sarju Mehta, C.A appeared on behalf of the appellant in hearing conducted on 01.07.2020 in virtual mode through video conferencing with prior consent of the appellant. He reiterated the submissions of appeal memo and also produced additional submissions dated 01.07.2020 through email for consideration.

5. I find that the appellant has filed an application for condonation of delay of 25 days in filing the appeal for the reason that their offices were closed due to the nationwide lockdown to prevent the pandemic Covid-19 from 25.03.2020 to 31.05.2020.

5.1 I note that the Ministry of Law and Justice (Legislative Department), New Delhi vide Ordinance no. 2 of 2020 dated 31.03.2020 in view of the outbreak of COVID-19 announced various relief measures by extending the deadlines for complying with certain obligations under Customs, Central Excise and Service Tax legislation that would otherwise fall between '20th March, 2020 to 29th June, 2020' to 30th June, 2020. The obligations include filing of appeals.

5.2 In the instant case, I find that the appeal has been filed by the appellant on 10.06.2020. The Government of India vide the above referred Ordinance dated 31.03.2020 has extended the timelines for filing of appeals upto 30.06.2020. Thus, I find that the appellant has filed the



appeals within the timelines extended. Therefore, I condone the delay in filing the appeal and proceed to decide the appeal on merits.

6. 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 appellant is eligible for interest on the refund amount of Rs. 23,34,328/- or not.

7. On going through the records, I find that the Appellant is engaged in the manufacture of rolled products of iron and steel i.e CTD Bars/Rounds/Rods etc. falling under Chapter 72 of the First Schedule to the CETA, 1985. The appellant had availed the benefit of deemed credit of Rs. 26,97,178/- under the Order No. TS/36/94-TRU dated 01.03.1994 during the period from April-1994 to November-1994. Consequent to the order dated 27.08.2014 of the Hon'ble High Court of Gujarat, the appellant requested the refund sanctioning authority to refund them the pre-deposit amount of Rs. 28,97,178/-. The refund was sanctioned vide OIO No. R-209/Refund/15-16 dated 28.07.2015 after adjusting the duty confirmed amount under OIO No. 65 to 88/BVR/JC/2005 dated 30.12.2005 and 159 to 169/D/Excise/2011-12 dated 25.01.2012 and ordered that the remaining amount of Rs. 2,00,000/- had lapsed in light of Circular no. 326/42/97-CX dated 25.07.1997. After filing appeals, the said amount of Rs. 2,00,000/- was sanctioned on 15.02.2018.

7.1 Thereafter, the appellant filed an appeal before the Hon'ble CESTAT against OIO No. 159 to 169/D/Excise/2011-12 dated 25.01.2012. The CESTAT vide Order No. A/12184-12196/18 dated 22.10.2018 allowed the appeal by way of remand and directed the Adjudicating authority to re-quantify the demand in terms of Tribunal's Order no. CI/3072-31117/01-WZB dated 09.10.2001.

7.2 Thus, the appellant vide their application dated 02.04.2019 requested the refund sanctioning authority to refund the amount of Rs. 26,97,178/- that was sanctioned vide OIO No. R-209/Refund/15-16 dated 28.07.2015 after appropriating the said amount against the amount of duty confirmed under OIO no. 65 to 88/BVR/JC/2005 dated 30.12.2005 and OIO No. 159 to 169/D/Excise/2011-12 dated



25.01.2012.

7.3 The refund sanctioning authority rejected an amount of Rs. 3,62,850/- (adjusted against OIO no. 65 to 88/BVR/JC/2005 dated 30.12.2005) as the appellant lost the case before the CESTAT and an appeal has been filed by them is pending decision before the Hon'ble High Court of Gujarat. The refund sanctioning authority sanctioned the remaining amount of Rs. 23,34,328/- consequent upon the judgment of the CESTAT Order dated 22.10.2018 and OIO dated 28.07.2015. The said refund was sanctioned subject to the condition that the appellant made payment towards the OIO No. 159 to 169/D/Excise/2011-12 dated 25.01.2012 under the SVLDRS Scheme. As the said amount was paid by the appellant, SVLDRS-4 was issued in all the cases, therefore no recovery proceedings were pending against the appellant. Therefore, the appellant has filed the present appeal for grant of interest on the said refund amount.

8. I find that the appellant has contended that the amount of Rs. 23,34,328/- which was adjusted against the refunds due to them should be treated as pre-deposit and interest should be paid on it.

8.1 I find that the refund sanctioning authority vide the impugned order has sanctioned an amount of Rs. 23,34,328/-. The said refund is the amount that was adjusted against the demands confirmed under some other orders and sanctioned vide Order dated 28.07.2015.

8.2 Now, the question before me is whether the aforesaid amount of Rs. 23,34,328/- can be treated as pre-deposit or not. Before I proceed with the case, I consider it appropriate that the relevant provisions of the law and the Circulars of the Board on the subject are considered.

Section 35F of the Central Excise Act, 1944 relating to deposit pending appeal reads as under :

Section 35F. Deposit of certain percentage of duty demanded or penalty imposed before filling appeal. -

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, -



(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

Explanation - For the purposes of this section "duty demanded" shall include, -

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.

[Emphasis supplied]

Thus, pre-deposit means the deposit of amount of duty and penalty pending the disposal of an appeal. According to Section 35F of the Central Excise Act, 1944, any person desirous of appealing against the order, shall pending the appeal, deposit the duty demanded or penalty levied thereon. The pre-deposit is of duty and penalty and not of the interest, because interest has to be paid, for the delayed period. The right to appeal or filing of appeal itself does not waive the requirement of payment of pre-deposit and it must be paid unless it is waived or stayed.

Section 35FF w.e.f 06.08.2014 reads as under:

Section 35FF. Interest on delayed refund of amount deposited under Section 35F. -

Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there **shall be paid to the appellant interest** at such rate, not below five per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, **on such amount from the date of payment of the amount** till the date of refund of such amount :

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act.

(Emphasized in Bold, Italics for clarity)

Para 5.1 of the Board's Circular No. 984/08/2014-CX.5 dated 16th September, 2014 reads as under:

Refund of pre-deposit:

5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with **the interest** at the prescribed rate from the date of making the deposit to the date of refund in terms of **Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.**

8.3 On plain reading of Section 35FF, it is clear that whatever deposit was made shall be considered as pre-deposit and the refund of the same is governed by Section 35FF. Therefore, for deposit which is to be refunded shall be governed by Section 35FF. In view of the above statutory provisions and Board's Circular, I hold that the amount recovered by the refund sanctioning authority by adjustment against the refund has to be considered as a pre-deposit. In this regard, I rely upon the judgment of the Hon'ble CESTAT, Ahmedabad in the case of M/s Ispat Traders Vs Commissioner of Customs, Jamnagar, as reported in 2011 (263) E.L.T. 305 (Tri. - Ahmd.) wherein it has been held that –

“10. When we consider the provisions of Section 129E of the Act it becomes clear that when an appeal is filed against a decision or an order, the person who is filing the appeal shall deposit the duty and interest

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and the penalty levied pending appeal. Depositing the duty, interest and a penalty is a statutory obligation. Therefore the question of Commissioner (Appeals) or the Tribunal directing a person to make a pre-deposit pending appeal does not arise. What the appellate authority does is to examine whether the appellant is required to deposit full amount of duty, interest and penalty or not and in case of undue hardship, waive the requirement of such pre-deposit and where it is considered appropriate stay the recovery. The circulars issued by the Board also take the same view since when we go through the circular issued in 2002, the circular does not speak of pre-deposit made as per the directions of the appellate authority but makes it clear that the issue is relating to pre-deposit made during the pendency of appeal. **Therefore the observations of the Commissioner (Appeals) in his order in para 5.2(ii) that the amount recovered by the proper officer by adjustment cannot be considered as a pre-deposit but to be considered as a differential duty is not supported either by law or by the circulars issued by the Board. Therefore the amount recovered from the appellants by adjustment against the refunds has to be considered as pre-deposit made during the pendency of appeal.**

The Hon'ble Gujarat High Court on 13.9.2012 **dismissed** the Tax Appeal No. 630 of 2011 filed by the Deptt. and upheld the above decision of Hon'ble Tribunal (Commissioner Vs. Ispat Traders) as reported in 2013 (298) E.L.T. A111 (Guj.) as under-

“The Appellate Tribunal in its impugned order had held that amount recovered from the appellants by adjustment against the refunds has to be considered as pre-deposit made during the pendency of appeal.”

9. Once it is held the amount adjusted from the refund claim is pre-deposit, in view of the above statutory provisions, interest on the said amount is required to be paid by the refund sanctioning authority. However, I find that the interest issue is not disputed by the refund sanctioning authority inasmuch as the refund sanctioning authority has not discussed about it in the impugned order.

10. In view of the above, I order the refund sanctioning authority to pay interest on the amount of refund sanctioned with effect from date the amount is recovered from the appellant by adjustment against the refunds till the actual grant of refund. As such, I uphold the impugned order to the extent of sanctioning the refund claim and remand the same to the



original authority for deciding the issue of interest and the quantum of interest, in the light of decisions referred supra. The appeal is allowed by way of remand.

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

10.1 The appeal filed by the Appellant is disposed off as above.

सत्यापित,



विपुल नाथ

अधीक्षक (अपील्स)

(Gopi Nath) 26/8/2020
Commissioner(Appeals)

By R.P.A.D.

To,
**M/s Sachdeva Steel Products,
508/1, GIDC-II, Sihor, Dist.-Bhavnagar.**

प्रतिलिपि :-

- 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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल, भावनगर- I को आवश्यक कार्यवाही हेतु।
- 4) अधीक्षक, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रेनज-Sihor-2, भावनगर ।
- 5) गार्ड फाइल।