



::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 :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/1 /EA2/GDM/2018-19	LTU/MUM/CX/GLT-8/R- 77/2016-17	31.01.2017

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

KCH-EXCUS-000-APP-081-2018-19

आदेश का दिनांक / 18.07.2018 जारी करने की तारीख / 19.07.2018
Date of Order: Date of issue:

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-
M/s. Welspun Corporation Ltd. Survey No. 659 & 665, Village-Versamedi, Taluka-Anjar,
Dist: Kutch-370110

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:-

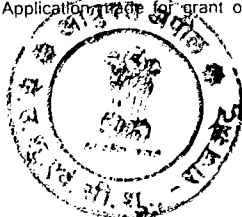
(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi 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, 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) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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/-.

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- (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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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
- बशर्ते 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 होंगे। /
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 इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद 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 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 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 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 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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 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 ::

The Commissioner, Central Excise & Service Tax, Large Taxpayer's Unit, Mumbai (hereinafter referred to as 'department') filed present appeal against Order-in-Original No. LTU/MUM/CX/GLT-8/R-77/2016-17 dated 31.01.2017 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central Excise & Service Tax, LTU, Mumbai (hereinafter referred to as 'lower adjudicating authority') in the matter of M/s. Welsupn Corporation Limited, Survey No. 659 & 665, Village Versamedi, Tal. Anjar, District – Kutch – 370 110 (hereinafter referred to as the 'respondent'). The appeal has been received in terms of CBEC Circular No. 1056/5/2017-CX dated 29.6.2017 read with Notification No. 2/2017-Central Tax dated 19.6.2017.

2. The brief facts of the case are that Respondent, a Large Tax Payers Unit had filed claim for refund of Rs. 1,06,00,018/- of central excise duty paid by them on their final products cleared to their Mandya Plant due to non-production of desired Certificate for claiming exemption from Central Excise duty by the ultimate Customer whereas they were eligible to remove intermediate goods without payment of Central Excise duty in terms of Rule 12BB(1) of Central Excise Rules, 2002 (hereinafter referred to as the 'Rules'). The lower adjudicating authority vide impugned order sanctioned the refund claim.

3. Being aggrieved with the impugned order, the department preferred appeal, *inter-alia*, on the ground that three basic principle for claiming refund under Section 11B of the Central Excise Act, 1944 as enunciated by the Hon'ble Supreme Court in the case of Mafatlal Industries reported as 1997 (89) ELT 247 SC are whether the tax was collected 'without authority of law' or whether the tax was paid under 'mistake of law' or the principles of Restitution (Unjust enrichment); that Central Excise duty paid by Respondent did not fall within the ambit of 'without authority of law' or 'mistake of law', therefore, the lower adjudicating authority has erred in sanctioning refund under Section 11B of the Act to respondent by way of credit of cenvat account; that Rule 12BB of the Rules did not envisage



refund of Terminal Central Excise duty to supplier unit, in case, the Central Excise duty is paid on final product by recipient unit, therefore, impugned order sanctioning refund claim is incorrect on this ground also.

4. Respondent submitted Memorandum of Cross Objections, inter-alia, stating that the appeal filed by the department is based on a misconceived premise that Rule 12BB is not binding and payment of Central Excise duty on intermediate products was not under 'mistake of law' or 'without authority of law', so as to be refundable; that contention of the department is manifestly incorrect and untenable inasmuch as the Apex Court in the case of Mafatlal Industries reported as 1997 (89) ELT 247 (SC) did not hold that refund claim was entertainable only in three situations mentioned by the department in Appeal Memorandum; that Section 11B of the Act does not qualify the entitlement to refund to any particular situation or circumstance alone; that even if it is assumed that refund can be granted only in three situations as contended by the department, Central Excise duty paid by Respondent was under 'mistake of law' and is liable to be refunded; that option to remove intermediate goods without payment of Central Excise duty under Rule 12BB of the Rules lies with Large Taxpayer Unit; that in the present case intermediate goods were initially cleared on payment of duty since their Mandya unit (recipient unit) was going to clear the final products under excise exemption for a water supply project, however, due to non-availability of excise exemption certificate final products were cleared on payment of duty; that recipient unit reversed cenvat credit availed by them and not utilized for payment of central excise duty on final products.

5. Personal Hearing in the matter was attended to by S/Shri Vishal Agarwal, Advocate, Dinesh Kalantri, Vice-President – Indirect Taxation & EXIM and Ms. Manya Bhardwaj, Advocate on behalf of appellant and they reiterated their submissions under Memorandum of Cross Objections; that they also submitted written submissions to say that they paid Central Excise duty under mistake of law and Central Excise duty is required to be refunded if levied in excess and/or if not payable, which is the case here;

that Central Excise duty paid taken as credit was reversed in the same month by their Mandya unit and hence has never been passed on to any other person as has correctly been held in the impugned order; that refund of duty can't be hold to be limited to only three situations as attempted to be made in the Grounds of Appeal; that Central Excise duty paid in excess for whatever reason if required to be refunded under Section 11B of the Act as has been done by the impugned order in this case.

FINDINGS: -

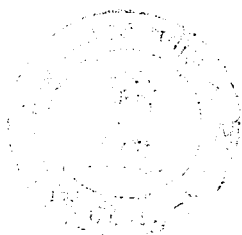
6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum filed by the department, Memorandum of Cross Objections and submissions made by Respondent during the personal hearing. The issue to be decided is whether the impugned order, in the facts and circumstances of the case, sanctioning refund of Central Excise duty paid on removal of intermediate goods by Large Taxpayer Unit to their another registered premises in terms of Rule 12BB (1) of the Rules, is correct, legal and proper or not.

7. I would like to reproduce Rule 12BB(1) of the Rules, which reads as under:-

RULE 12BB. Procedure and facilities for large taxpayer. –

Notwithstanding anything contained in these rules, the following procedure shall apply to a large taxpayer. — (1) A large taxpayer may remove excisable goods, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil (hereinafter referred to as the intermediate goods), without payment of duties of excise, under the cover of a transfer challan or invoice, from any of his registered premises, (hereinafter referred to as the sender premises) where such goods are produced, manufactured or warehoused to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of such other excisable goods (hereinafter referred to as the subject goods) in recipient premises subject to condition that -

(a) the subject goods are manufactured or produced using the said intermediate goods and cleared on payment of appropriate duties of excise leviable thereon within a period of six months,



from the date of receipt of the intermediate goods in the recipient premises; or

(b) the subject goods are manufactured or produced using the said intermediate goods and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the intermediate goods in the recipient premises,

and that any other conditions prescribed by the [Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be], large tax payer unit in this regard are satisfied.

Explanation 1. —

Provided that if the subject goods manufactured or produced using the said intermediate goods are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months, duties of excise payable on such intermediate goods shall be paid by the recipient premises with interest in the manner and rate specified under [section 11AA] of the Act.

Illustration. —

Provided further that if any duty of excise is payable on such intermediate goods and if the said duty is not payable on such subject goods, the said duty of excise as equivalent to the total amount payable on such intermediate goods along with interest under [section 11AA] of the Act shall be paid by the recipient premises.

Illustration. —

Explanation 2. — :

(Emphasis supplied)

7.1 In view of above, I find that a large taxpayer unit may remove excisable goods/intermediate goods from their one premises to their another premises without payment of Central Excise duty for further use in manufacture of excisable goods/final products provided the intermediate goods so cleared are used in manufacture of final products by recipient units and removed such final products within six months from the date of receipt of such intermediate goods on payment of central excise duty.

7.2 In the present appeal, the department has contended that Central Excise duty paid by Respondent did not fall within the ambit of 'without authority of law' or 'mistake of law', therefore, the lower adjudicating



authority has erred in sanctioning refund under Section 11B of the Act. I also find that the circumstances which lead to refund claim are that Respondent unit had cleared intermediate goods on payment of Central Excise duty in terms of Purchase Order which provided for production of a Certificate for claiming Central Excise duty exemption on the final product. Since the purchase order was modified later on due to non-production of Central Excise duty exemption certificate by the ultimate consumer, the final products cleared on payment of Central Excise duty. It is also a fact that recipient unit of Respondent initially availed Cenvat credit of duty paid by supplier unit of Respondent but reversed the said cenvat credit in same month which deemed as non availment of cenvat credit as per settled legal position. The observance of the conditions of Rule 12BB (1) of the Rules has not been disputed by the department as Respondent had sufficiently proved that intermediate goods were used in manufacture of final products within six months from the receipt of such intermediate goods. In the face of the above facts and circumstances, I am of the considered view that Respondent is eligible to claim refund of Central Excise duty paid by them on intermediate goods cleared to their another registered premises and Section 11B of the Act does not prescribe any situation for filing of refund claim. In the present case, Respondent has paid Central Excise duty on removal of intermediate goods due to erroneous determination of relevant facts and hence, filing of refund claim. Hence, I am of the considered view that the lower adjudicating authority has correctly sanctioned the refund in favour of Respondent.

7.3 The department has also contended that Rule 12BB of the Rules does not envisage refund of Terminal Central Excise duty to supplier unit, as in the case, the Central Excise duty is paid on the final product by recipient unit. I find that the argument of the department is not tenable as in the present case, the said recipient unit had cleared the final products on payment of central excise duty, which is not under dispute. I also find that Central Excise duty paid by the respondent on intermediate goods cleared to the registered premises, which was otherwise exempted under Rule 12BB of the Rules and hence, is liable to be refunded.

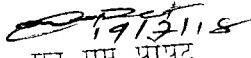
7.4 As regard to doctrine of unjust enrichment, I find that the Respondent has submitted Certificate dated 27.1.2017 of Chartered Accountant certifying that incidence of Central Excise duty of Rs. 1,06,00,018/- claimed for refund has not been passed on directly or indirectly to any other person. Therefore, I find no infirmity in the impugned order sanctioning refund claim of Central Excise duty paid by supplier unit on intermediate goods to their another registered premises under Rule 12BB(1) of the Rules, which cleared final products after using such intermediate goods and removed the same on payment of Central Excise duty.


8. In view of above, I uphold the impugned order and reject appeal filed by the department.

९. विभाग द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the department is disposed off as above.

सत्यापित,


एन. एम. पोपट
अधीक्षक (अपील्स)


(कुमार संतोष)
आयुक्त (अपील्स)

By RPAD

To,

(i)	The Commissioner, CGST & Central Excise, Gandhidham (Kutch)	(i)	आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम (कच्छ)
(ii)	M/s. Welsupn Corporation Limited, Survey No. 659 & 665, Village Versamedi, Tal. Anjar, District – Kutch – 370 110	(ii)	मे. वेलस्पून कार्पोरेशन लिमिटेड, सर्वे न. ६५९ एवं ६६५, विल्लेज – वर्षामेड़ी, तालुका – अंजार, डिस्ट्रिक्ट – कच्छ – ३७० ११०

Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Deputy Commissioner, CGST & Central Excise, Anjar-Bhachau Division, Gandhidham.
- ✓) Guard File.

