



::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
	V2/172 to 174,177/GDM/2017	ST/137 to 140/2017-18	21.04.2017

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

KCH-EXCUS-000-APP-060-TO-063-2018-19

आदेश का दिनांक /
Date of Order: **06.06.2018**

जारी करने की तारीख /
Date of issue:

11.06.2018

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 Trading Ltd., Shop No. 17, S.No. 910/22,,Anjar Bhachau State Highway,
Vill: Versamedi, Tal: Anjar Dist: Kutch- 370 110**

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 बनाए 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) 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.5,000/-, 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 प्रामाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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- (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 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, बशर्ते 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 हैं
(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 अंश से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहां 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 पदों 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, notwithstanding 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 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 present four appeals have been filed by M/s. Welspun Tradings Ltd., Shop No. 17, Survey No. 910, P 22, Anjar-Bhachau State Highway, Varsamedi, Anjar, Kutch Gujarat-370 110 (*hereinafter referred to as "the appellant"*) against Letter F No. V/41/06 to 09/Refund/ 2017-18 (*hereinafter referred to as "impugned order"*) in respect of four claims of interest on refund sanctioned under four Orders-in-Original as shown hereinbelow, issued by the Assistant Commissioner, Service Tax Division, Gandhidham-Kutch (*hereinafter referred to as "the adjudicating authority"*).

TABLE-A

Sr. No.	Appeal No.	Order-In-Original No./Date	Amount of refund of Service Tax involved/rejected (Rs.)	Interest Amt Claimed by the Appellant
1	V2/172/GDM/2017	ST/139/2017-18 21.04.2017	dtd. 233683	89704
2	V2/173/GDM/2017	ST/137/2017-18 21.04.2017	dtd. 192792	57552
3	V2/174/GDM/2017	ST/138/2017-18 21.04.2017	dtd. 218471	64152
4	V2/177/GDM/2017	ST/140/2017-18 21.04.2017	dtd. 379650	80347

2. Since the issue in all above mentioned four appeals filed by the appellant is common, the same are taken up together for disposal under this common order.

3. The brief facts of the case are that in the first round of litigation, the appellant had filed refund claims for refund of Service Tax, under Notification No. 17/2009-ST dated 07.07.2009 as amended. Which were decided by the Deputy Commissioner, Service Tax Division, Rajkot vide Orders-in-Original No.(i) 230/ST/REF/2012 dated 30.04.2012, (ii) 231/ST/REF/2012 dated 30.04.2012, (iii) 232/ST/REF/2012 dated 30.04.2012 and (iv) 249/ST/REF/2012 dated 17.05.2012 and rejected the refund claims of refund of Service Tax. However, the appellant filed appeals against aforesaid Orders-in-Originals and the then Commissioner (Appeals-I), Central Excise, Rajkot vide Order-in-Appeal No.RJT-EXCUS-000-APP-266 to 269-13-14 dated 21.06.2013



remanded the cases back to the adjudicating authority with direction to decide the issues in the light of his findings. In pursuance of the said OIA, adjudicating authority has decided the cases but again rejected the refund claims of the appellant on the ground that the appellant failed to comply with the mandatory & statutory requirements under the aforesaid notification. In the next round of Appeal proceedings, the matter was decided by then Commissioner (Appeal) vide OIA No. KCH-EXCUS-000-APP- 049 to 052/ 16-17 dated 25.11.2016 and refund was granted as per details in Table A at Para 1 above. However, Appellant now filed claim for Interest on delayed refund against four refund orders. Adjudicating Authority vide the impugned order rejected claim of interest by way of returning it without going into merit.

4. Being aggrieved with the impugned decision, the appellant preferred the present appeals mainly on the following grounds:-

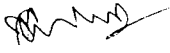
(i) Appellant had specifically requested for sanction of refund along with interest in their letter after to OIA No. KCH-EXCUS-000-APP-049 to 052/ 16-17 dated 25.11.16.

(ii) It is mis-conceived premise that since the order by which the refund had been sanctioned under Section 11B did not direct payment of interest, no interest was payable. As per Section 11BB, interest is payable to the Applicant of the refund if refund is not sanctioned within three months from date of receipt of the refund application made under Section 11B(1); that as per Section 11B, interest is automatic and mandatory when refund is delayed; that unlike Section 11B(2), where the statute provides that Assistant Commissioner/ Dy., Commissioner on being satisfied that the whole or a part of the duty and interest paid on such duty is refundable, he may make an order accordingly,; in Section 11BB there is no discretion whatsoever that is vested with any authority to sanction or otherwise reject the grant of interest on delayed refund; that contention in the impugned order that there is a lack of pleading for interest, is untenable, illegal and contrary to the statute.

(iii) Its is settled position in law in catena of judgments that the liability to pay interest is automatic and not dependent upon any determination by the adjudicating authority; that where for sanctioning a claim of refund under Section 11B of the Central Excise Act, a determination for the eligibility to refund by the proper officer is required, there is no requirement of such a determination for grant of interest on delayed refund under Section 11b of the Act; that grant of interest on delayed refund is statutory and flows automatically

in terms of the provisions of Section 11BB of the Act once entitlement to refund is established. Appellant relied upon CBEC Circular No. 670/61/2002-Cx dated 1.10.2002 and also relied upon following citations:

- a. M/s. Ranbaxy Laboratories Ltd- 2011(273) ELT 3 (SDC)
- b. M/s. Humdard (Waqf) Laboratories- 2016(333) ELT 193 (SC0)
- c. M/s. Tine Yuan India P Ltd- 206(336) ELT 52 (Bom)
- d. M/s. Tata Chemicals- 2016(334) ELT A53(Guj)
- e. M/s. Siddhant Chemicals- 2014(307) ELT 44(All)
- f. M/s. Kanhai Ram Thekedar- 2005(185) ELT 3 (SC)
- g. M/s. Manisha Pharma Plast P Ltd- 2007 (208) ELT 213 (Tri-Mum).

(iv) Appellant is entitled to interest on delayed sanction of its refund from the end of three months of the date of its refund application till the date of the refund.; there is no (and neither can there be) any stipulation in law that the order by which the refund is sanctioned should have stipulated for payment of interest also; that claiming interest by them was due to default of department in discharging a statutory obligation; that an order directing payment of interest, which is automatic and mandatory, cannot be construed as a re-adjudication of the order by which refund/ rebate had been sanctioned. 

(v) Impugned order is based on a misconceived premise that Appellant ought to have filed an appeal against the order by which refund had been sanctioned to them, of appellant was aggrieved with that order of refund; that a true and correct reading of Section 11B, reproduced herein below, would show that the reference to interest in Section 11B is qua the refund of interest on duty that has been paid and not the interest payable fore delay in grant of refund and hence impugned order is premised on this misreading of Section 11B.

5. Personal hearing in the matter was attended by Shri Surendra Mehta, Associate Vice President and Shri Atul Nagrecha, Dy. Manager of the Appellant who reiterated their grounds of appeal; also submitted that refund was payable by divisional A.C./ D.C. in the very first stage which was denied; that commissioner (Appeals) ordered to sanction refund vide OIA dated 25.11.2016; that they filed refund claim along with interest vide their letter dated 27.02.2017; that refund was granted on 21.4.2017 without interest; that hey again claimed interest vide their letter dated 10.7.2017, which was incorrectly denied vide letter dated 3.8.2017; that they are eligible for interest.

FINDINGS

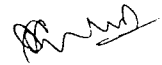
6. I have carefully gone through the facts of the case, the impugned order and submissions made by the appellant in grounds of appeal as well as written submission & during the course of personal hearing. I find that the issue involved is whether adjudicating authority was correct in rejecting interest on delayed refund or not.

7. I find that appellant has contested their claim of interest on delayed refund under Section 11BB of the Act which reads as under:-

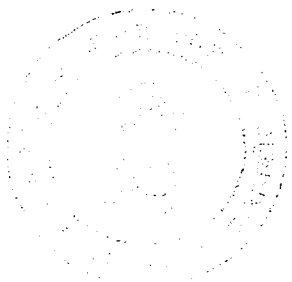
SECTION [11BB. Interest on delayed refunds. — *If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at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

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

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



7.1 As per Section 11BB of the Act, interest is to be paid on refund amount in cases where refund is paid beyond three months from the date of receipt of application for refund. I find that consequent to issuance of OIA No. KCH-EXCUS-000-APP-049 to 052/ 16-17 dated 25.11.16, the appellant had filed four refund applications on 01.3.2017 and refund was sanctioned by the adjudicating



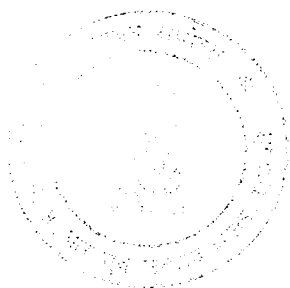
authority on 21.04.2017 in all four cases as per Table A in Para 1 above. I also find that the appellant in their refund application letter dated 27.02.2017 had requested for sanction of refund along with interest under Section 11BB relying upon Board's Circular No.670/61/2002-CX dated 1.10.2002. Therefore, the ground of the adjudicating authority that appellant had not claimed for interest is factually incorrect. On admissibility of Interest on delayed refund, I find that payment of interest does not depend on the claim by the applicant and Section 11BB lays down automatic payment of interest on delayed refund. The words and phrases used in Section 11BB read as "...there shall be paid to that applicant interest at such rate,...." . Thus, payment of interest is non discretionary and in fact, is automatic. Section 11BB stipulates that if any duty is refunded under sub-section (2) of Section 11B to any applicant after three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act, the applicant shall be paid interest at the notified rate on such duty from the date immediately after the expiry of three months from the date of receipt of the application till the date of refund of such duty. The entitlement of the applicant, once the requisite conditions have been fulfilled, is a mandate of the statute. I further find that the appellant's claim is also supported by the clarification issued by CBEC vide Circular No. 670/61/2002-Cx dated 1.10.2002 and also by the Hon'ble Supreme Court's decision in the case of M/s. Ranbaxy Laboratories Ltd reported as 2011(273) ELT (SC). I also find that the Hon'ble High Court of Gujarat in the case of M/s. Kamkshi Tradeexim(India) P Ltd reported as 2017 (351) ELT 102(Guj) has held as under:-

"7. The sole question that arises for consideration in the present case is as regards the date from which the petitioners would be entitled to interest on delayed payment of rebate. The question as to whether the liability of the revenue 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 or on the expiry of the period from the date on which the order of refund is made, is no longer *res integra* and stands decided by the Supreme Court in the case of *Ranbaxy Laboratories Ltd. v. Union of India* (supra) wherein, the Court has held thus- :

"11. Section 11BB, the pivotal provision, reads thus:

.....
.....

"19. In view of the above analysis, our answer to the question formulated in para 1 supra is that the liability of the Revenue 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 the order of refund is made.”

8. Thus, the Supreme Court, in the above decision has clearly held that the liability of the Revenue 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 the order of refund is made. Under the circumstances, the contention advanced by the respondents that the orders sanctioning rebate having been passed and the amount having been paid within the time limited stipulated by the High Court in its judgment and order dated 18-2-2016 made in Special Civil Applications No. 14616 of 2015 and No. 14617 of 2015, the petitioners are not entitled to interest under Section 11BB of the Act, cannot be countenanced even for a moment. In the facts of the present case, initially the respondents had kept the rebate claims of the petitioners in abeyance, due to which the petitioners were constrained to approach this Court and with a view to obviate any further delay in deciding the application, in the light of the observations made in its judgment and order dated 18-2-2016 made in the above referred writ petitions, this Court had directed the concerned authority to decide the rebate applications within a period four months from the date of receipt of the said order. When the statute clearly provides that interest shall be payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11BB of the Act, merely because this Court had stipulated the period within which the concerned respondent should decide the application, the same would not operate in favour of the respondents and against the petitioner and curtail the statutory period prescribed under Section 11BB of the Act.

9. Moreover, it is settled legal position that an interpretation of any provision of law by the Supreme Court is the law of the land and the respondents are duty bound to respect and follow the same. When the Supreme Court way back on 21-10-2011 has, in the case of *Ranbaxy Laboratories Ltd. v. Union of India* (supra), held that interest shall be payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11BB of the Act and not on the expiry of the said period from the date on which the order or refund is made, the respondents cannot be heard to contend otherwise. The approach of the respondents, therefore, borders on being contumacious. In the opinion of this Court, if the respondent authorities duly follow the decisions of the Supreme Court and the jurisdictional High Courts, such unnecessary litigation could be obviated and precious judicial time of the Court would not be wasted and assessee like the petitioner would not be subjected to undue harassment without any justification. The respondent authorities are, therefore, not justified in refusing to grant interest on the rebate claims made by the petitioners in accordance with law laid down by the Supreme Court in *Ranbaxy Laboratories Ltd. v. Union of India* (supra) and hence, the petitions deserve to be allowed in terms of the relief prayed for by the petitioners.

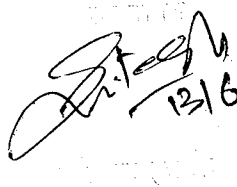
(Emphasis supplied)

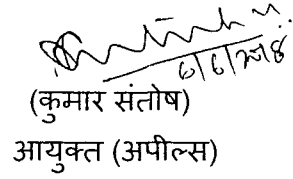


8. In view of above, I hold that the issue is no longer res-integra and the appellants are eligible for interest on delayed refund. I, therefore, set aside the impugned order and allow the present appeals to grant interest at applicable rate to the appellants for delayed refund within 30 days of the receipt of this order.

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

9. The appeals filed by the appellants stand disposed off in above terms.


12/6


(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Welspun Tradings Ltd., Shop No. 17, Survey No. 910, P 22, Anjar-Bhachau State Highway, Varsamedi, Anjar, Kutch Gujarat-370 110	मै. वेल्सपन ट्रेडिंग ली., शोप न. 17, सर्वे न. 910, पी-22, अंजार-भचाऊ सटेट हाईवे, वर्समेडि, अंजार, कच्छ-गुजरात-३७०११०
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Copy to:-

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, CGST & Central Excise, Kutch Commissionerate, Gandhidham.
- 3) The Deputy Commissioner, CGST & Central Excise Division, Anjar-Bhachau, Gandhidham.
- 4) Guard File.
- 5) V2/173/GDM/2017
- 6) V2/174/GDM/2017
- 7) V2/177/GDM/2017

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