: : आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा करऔर 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 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN – 20210564SX000000B736

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	V2/9/BVR/2020	1/R/2020-21	17.7.2020

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

BHV-EXCUS-000-APP-002-2021

आदेश का दिनांक / Date of Order: **24.05.2021** जारी करने की तारीख / Date of issue: **27.05.2021**

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपयुक्तलिखित 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. Vasuki Pottery Works, Vasuki Plots, Thangadh, District Surendranagar.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 निम्नलिखि+त 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 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 क्रमश: 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 सार्वजिनक 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 क्रमश: 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 सार्वजिनक 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/-.

(i) वित्त अधिनियम,1994की 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 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
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 क्रेडीट 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 है।/
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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 आदेशो 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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगी 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 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. Vasuki Pottery Works, Thangadh (hereinafter referred to as "appellant") has filed Appeal No. V2/9/BVR/2020 against Order-in-Original No. 1/R/2020-21 dated 17.7.2020 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST Division, Surendranagar, Bhavnagar Commissionerate (hereinafter referred to as "refund sanctioning authority").

2. The facts of the case, in brief, are that demand Show Cause Notices were issued to the Appellant for non compliance of the condition of Notification No. 1/93-CE dated 28.2.1993. The Show Cause Notices were adjudicated vide Order-in-Original dated 13.10.1997 wherein Central Excise duty of Rs. 7,43,954/- was confirmed. Being aggrieved, the Appellant filed appeal before the Commissioner (Appeals), Rajkot which was dismissed vide Order-in-Appeal dated 10.9.1999 for non compliance of the provisions of Section 35F of the Central Excise Act, 1944 (hereinafter referred to as 'Act'). The Appellant filed appeal before the Hon'ble CESTAT, Ahmedabad who vide its Order dated 28.9.2006 remanded the matter to the Commissioner (Appeals), Rajkot.

2.1 In de-novo proceedings, the then Commissioner (Appeals), Rajkot dismissed the appeal. The Appellant filed appeal before the Hon'ble CESTAT, Ahmedabad who vide its order dated 20.11.2014 remanded the matter to the adjudicating authority. In de-novo adjudication, the demand was confirmed vide Order-in-Original dated 27.2.2017. The Appellant filed appeal before the Commissioner (Appeals), Rajkot who vide his Order-in-Appeal dated 17.7.2018 remanded the matter to the adjudicating authority.

2.2. In de novo proceedings, the adjudicating authority partially confirmed duty demand of Rs. 3,20,282/- and dropped the demand of Rs. 4,23,672/- vide Order-in-Original dated 12.7.2019. The Appellant filed appeal before the Commissioner (Appeals), Rajkot but later withdrew the appeals and opted for Sabka Vishwas (legacy Dispute Resolution) Scheme, 2019 and requested to set off pre-deposit of Rs. 65,000/- deposited on 12.6.2007 in compliance of CESTAT order dated 9.5.2007. The SVLDRS Committee considered only Rs. 31,382/- against confirmed dues. The Appellant filed claim for refund of remaining pre-deposit amount of Rs. 33,618/-, which was sanctioned under Section 11B of the Act read with Section 35F of the Act vide the impugned order.

3. Being aggrieved, the Appellant has preferred the present appeal, *inter alia*, on the grounds that,

(i) The impugned order is not correct, legal and proper to the extent of non sanctioning / paying interest on the pre-deposit amount from the date of payment of pre-deposit to date of sanction of refund amount.

(ii) That refund under Section 11B is required to be sanctioned along with interest. The adjudicating authority failed to adhere to time line prescribed under the law and relied upon case law of Easter Coils Pvt Ltd wherein it is held that the Government authority cannot be held to be privileged person in refunding the same without interest.

(iii) That provisions of Section 35FF of the Act has been amended with effect from 6.8.2014 to provide for interest on delayed refund of pre-deposit amount from the date of pre-deposit made till date of refund as against the earlier provisions where interest was payable only if pre-deposit was not refunded within 3 months from the date of communication of order of the appellate authority. Hence, they are eligible for interest from the date of payment of pre-deposit to date of actual sanction of refund.

4. Personal hearing was conducted in virtual mode through video conferencing on 12.2.2021. Shri Rushi Upadhyay, C.A. appeared on behalf of the Appellant and reiterated the grounds of appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order, and grounds of appeal in the appeal memorandum. The issue to be decided in the present appeal is whether the Appellant is eligible for interest under Section 35FF of the Act or otherwise.

6. On going through the records, I find that the Appellant had deposited Rs. 65,000/- on 12.6.2007 under Section 35F of the Act, in pursuance of the directions of the Hon'ble CESTAT, Ahmedabad. After series of litigation, the matter was decided vide Order-in-Original dated 12.7.2019, wherein the adjudicating authority partially confirmed duty of Rs. 3,20,282/- and dropped the demand of Rs. 4,23,672/-. Though the Appellant filed appeal against said Order-in-Original dated 12.7.2019 but subsequently the same was withdrawn in view of their application filed under SVLDRS scheme which was accepted by the SVLDRS Committee. The pre-deposit amount of Rs. 65,000/- was partially adjusted against confirmed dues under SVLDRS and remaining amount of Rs. 33,618/- was refunded to the Appellant vide the impugned order.

6.1 The Appellant has challenged the impugned order on the grounds that the refund sanctioning authority erred in not sanctioning interest on delayed sanction of pre-deposit amount from the date of payment of pre-deposit to date of sanction of refund amount under Section 35FF of the Act amended with effect from 6.8.2014.

7. To examine whether the Appellant is eligible for interest on delayed sanction of pre-deposit amount from the date of payment of pre-deposit to date of sanction of refund amount under Section 35FF of the Act, it is pertinent to examine the provisions of Section 35FF ibid, as they stood at material time, as under:

> "35FF. Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or Tribunal, there shall be paid to the appellant interest at the rate specified in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

7.1 The above provisions of Section 35FF of the Act were amended on 6.8.2014 to read 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."

7.2 On going through the proviso to amended Section 35FF *supra*, it is clear that any amount deposited prior to 6.8.2014 will continue to be covered by the provisions of the unamended Section 35FF. In the present case, it is not disputed that the Appellant had deposited Rs. 65,000/- under Section 35F on 12.6.2007 and hence, unamended provisions of Section 35FF would be applicable. Thus, the claim of the Appellant to sanction them interest from date of payment of pre-deposit amount to date of refund of pre-deposit amount under amended provisions of Section 35FF is devoid of merit and I discard the same.

8. My views are supported by the Order passed by the Hon'ble CESTAT, Chennai in the case of Jeevan Diesels & Electricals Ltd. reported as 2019 (370) E.L.T. 1311 (Tri. - Chennai), wherein it has been held that,

> 5.1 I have considered the rival contentions and have gone through the documents/orders placed on record. First of all, there is no other 'Deposit' other than pre-deposit and hence the issue *per se*, is nothing but interest on pre-deposit. The date of pre-deposit is 27-7-2006, whereas the Final Order of this Court is dated 22-5-2017. Section 35FF came into the statute book in 2008 and the same was substituted w.e.f. 6-8-2014. Both the assessee as well as the Revenue have for once agree that Section 35FF applies; it is the case of the assessee that it is not claiming interest at the delayed refund, rather it is refund of 'deposit' with interest. When Section 35FF is invoked, either prior to or post - 2014, the only thing it talks of is the refund of the amount deposit, heading remains the same but for the application, with subtle difference. For the sake of convenience Section 35FF both prior to and post - 2014 amendment are extracted as under :-
>
> "Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F.
>
> 35FF. Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and ***such amount is not refunded within three months*** from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or Tribunal, there shall be ***paid to the appellant interest*** at the rate specified in Section 11BB after the ***expiry of three months*** from the date of communication of the order of the appellate authority, till the date of refund of such amount.
>
> (Emphasized in Bold, Italics for clarity)
>
> *W.E.F. 6-8-2014, S. 35FF as substituted :*
>
> 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)
>
> 5.2 Earlier, the interest was liable to be paid only in the case of delay beyond three months in granting the refund, whereas post 6-8-2014, the interest will have to be paid from the date of payment of the amount till the date of refund. There is no dispute between the assessee and the Revenue with regard to the fact that there is no delay in granting the refund w.e.f. 6-8-2014. Proviso to Section 35FF as extracted supra clearly mandates that the earlier provision of

Section 35FF shall apply to the amount deposited prior to the commencement of 2014 Act.

5.3 The date of deposit is in 2006 which is prior to 2014 and therefore as per the above proviso the provision of Section 35FF before 2014 amendment shall alone apply, which discernably mandates the payment of interest only if there was a delay beyond three months. Going by the records, I find that there is also no dispute that based on the Final Order dated 22-5-2017 of this Court, the refund came to be sanctioned by the adjudicating authority vide order dated 21-6-2017, which is very much within the prescribed period of three months.

6. For the above reasons therefore, I am of the considered opinion that the Commissioner (Appeals) has applied correct law and therefore the same does not call for any interference. The appeal of the assessee is therefore dismissed.

8.1 I also rely on the Order passed by the Hon'ble CESTAT, Hyderabad in the case of Hindustan Agro Insecticides reported as 2019 (367) E.L.T. 669 (Tri. - Hyd.), wherein it has been held that,

"4. The appellant are manufacturers of micro-nutrients and a demand was raised on them and confirmed by the lower authorities. On appeal, CESTAT, Bangalore allowed their appeal with consequential relief. Prior to the order of the CESTAT, Bangalore, the appellant pre-deposited Rs. 10 lakhs in three installments between the period 20-9-2007 and 23-12-2009. Consequent upon the order of the CESTAT, Bangalore, the lower authority refunded the amount within three months from the date of the communication of the CESTAT's order. Prior to 6-8-2014, Section 35FF of the Central Excise Act required an interest as specified in Section 11BB to be paid for any amount of pre-deposit which has been refunded after a period of three months from the date of communication of the order of the appellate authority till the date of refund of such amount. With effect from 6-8-2014, this has been changed and an interest has been made payable at a rate not below 5% and not exceeding 36% 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 amount till the date of refund of such amount. It also has proviso that any amount deposited under this section prior to 2014 shall continue to be covered by the provisions of Section 35FF as it stood before commencement of the said Act. In this case, it is not in dispute that the amounts were deposited prior to 2004. It is also not in dispute that consequent upon the final order of the CESTAT, Bangalore the amounts were refunded to the appellant within three months from the date of communication of the order. The appellant seeks interest on the amount which has been refunded reckoning from the date of original deposit of the amount as has been made applicable with effect from 2014. Rejecting such a claim the lower authority did not sanction any interest and the appellant's appeal to the first appellate authority was rejected. Hence, this appeal.

5. I have considered the arguments made in the appeal memorandum and the relevant legal provisions. The proviso to amend Section 35FF makes it clear that in respect of any amounts pre-deposited prior to 6-8-2014 will continue to be covered by the provisions of the unamended Section 35FF. The unamended provisions provided for payment of interest only if the pre-deposit was not refunded within three months from the date of communication of the order of the appellate authority. Therefore, no interest is payable to the appellant in this case. The impugned order is correct and calls for no interference. Accordingly, the appeal is rejected and the impugned order is upheld."

9. Thus, after analyzing the facts of the case in backdrop of the legal provisions prevailing at material time as well as above case laws, I hold that the Appellant is not eligible for interest under Section 35FF of the Act.

10. In view of above, I uphold the impugned order and reject the appeal.

11. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the Appellant stand disposed off in above terms.

Akhilesh Kumar
24 May, 2021.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested

(V.T.SHAH)
Superintendent (Appeals)

By RPAD

To, M/s Vasuki Pottery Works Vasuki Plots, Thangadh, District Surendranagar.	सेवा में, मे॰ वासुकि पोटरी वर्क्स, वासुकि प्लोट्स, थानगढ़, जिल्ला सुरेन्द्रनगर ।

प्रतिलिपि :-

1) 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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, सुरेन्द्रनगर मण्डल को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।