



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20210664SX000000B98E

क	अपील / फाइलसंख्या/ Appeal / File No.	मूलआदेशसं / OIONo.	दिनांक/ Date
	V2/106/RAJ/2020	25/Ref/2019-20	20.04.2020

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

**RAJ-EXCUS-000-APP-026-2021**

आदेश का दिनांक / Date of Order:	<b>24.06.2021</b>	जारी करने की तारीख / Date of issue:	<b>25.06.2021</b>
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श्री अखिलेश कुमार, आयुक्त (अपील्स), 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 उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s. Goldcoin Foam Pvt. Ltd Survey No. 118, Rameshwar Industrial Area, Veraval (Shapar), District Rajkot.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की, पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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/- रुपये 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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/- रुपये 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/-.



- (ii) 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 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.
- (iii) 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 अपीक्षित 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 आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 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 (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 OIQ 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, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed 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](http://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](http://www.cbec.gov.in)



:: ORDER-IN-APPEAL ::

M/s. Goldcoin Foam Pvt. Ltd., Veraval (Shapar), District: Rajkot (hereinafter referred to as "appellant") has filed Appeal No. V2/106/RAJ/2020 against Order-in-Original No. 25/Ref/2019-20 dated 20.4.2020 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central GST Division, Rajkot-II (hereinafter referred to as "refund sanctioning authority").

2. The facts of the case, in brief, are that an offence case was booked against the Appellant for clandestine removal of goods. On culmination of investigation, Show Cause Notice dated 22.9.2014 was issued to the Appellant, which was adjudicated vide Order-in-Original dated 31.12.2015, wherein the adjudicating authority confiscated the goods and gave the appellant an option to redeem the same on payment of redemption fine of Rs. 6,00,000/- under Rule 25 of the Central Excise Rules, 2002 and imposed penalty of Rs. 2,50,000/- under Rule 25 ibid and also imposed penalty of Rs. 50,000/- upon Director of the Appellant firm under Rule 26 ibid.

2.1 Being aggrieved, the Appellant filed appeal before the Commissioner (Appeals), Rajkot who vide his Order-in-Appeal dated 17.3.2017 reduced redemption fine to Rs. 1,50,000/- and penalty to Rs. 62,750/-. The Appellant paid Rs. 1,50,000/- towards fine and Rs. 43,750/- towards penalty on 31.3.2017. The Appellant had made pre-deposit of Rs. 18,750/- on 2.2.2016 while filing appeal before the Commissioner (Appeals), Rajkot. The Appellant thereafter filed appeal before the Hon'ble CESTAT, Ahmedabad, who vide its Order dated 29.12.2017 allowed the appeal.

2.2 The Appellant filed refund application for an amount of Rs. 2,20,500/- on 5.3.2018, which was sanctioned to them vide Refund Order dated 4.6.2018. The Appellant challenged the said Order before the Commissioner (Appeals), Rajkot, for non - payment of interest on pre-deposit amount, who dismissed the appeal on the grounds that neither the Appellant had claimed interest nor it was rejected by the refund sanctioning authority.

2.3 The Appellant filed claim for interest for an amount of Rs. 17,349/- under Section 35FF of the Central Excise Act, 1944 on entire amount of Rs. 2,20,500/- deposited by them during litigation. The refund sanctioning authority sanctioned interest of Rs. 3,689/- on that portion of amount which was required to be deposited by the Appellant under Section 35F of the Act and rejected the





claim of interest on amount paid over and above amount stipulated under Section 35F *ibid*, in pursuance of Board's Circular No. 948/8/2014-CX dated 16.9.2014.

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 under Section 35FF of the Act.

(ii) They had paid reduced fine and penalty amount ordered by the Commissioner (Appeals), Rajkot vide Order dated 17.03.2017 and filed appeal with CESTAT and since they had already paid the said amount, they were not required to pay further pre-deposit at the time of filing of appeal with CESTAT. Therefore, they had filed the refund claim of the said amount and not the amount of Pre-deposit. Whereas adjudicating authority on their own calculated deemed amount of pre-deposit and calculated the interest on the said deemed amount however, there is no such instruction or clarification for this type of calculation. Even if the criteria for payment of interest adopted by the adjudicating authority is considered, then also amount of fine imposed by original authority is Rs. 6,00,000/- and 17.5 % (10% + 7.5) of deposit comes to Rs.1,05,000/-. Hence, interest is required to be paid on 1,05,000/- but not of 10% of amount credited Rs.1,50,000/- towards redemption fine. Even before CESTAT, they had shown amount in dispute is Rs. 6,00,000/- towards Redemption fine. It is requested to direct the original adjudicating authority to pay differential amount of interest on the amount of Rs.1,50,000/(-) 15,000/- = 1,35,000/- or at least on 1,05,000/(-) 15,000/= Rs. 90,000/- from the date deposit to the date of sanction and relied upon case law of M/s Indu Nissan Oxo Chem Industries Ltd reported at 2016-TIOL-3093-CESTAT-AHM wherein it is held that interest is payable at the appropriate rate notified under section 11BB of Central Excise Act, 1944 on the amount from the date of its appropriation as claimed by the Appellant, till the date of payment of the said amount.

(iii) The adjudicating authority at Para No. 11 of impugned order erroneously held that for payment of interest on pre-deposit made by Shri Ashvinbhai Goganbhai Pansuriya, Director of M/s. Goldcoin Foam Pvt Ltd, separate refund application is required to be filed as the instant refund



*Handwritten signature*

claim relates to only M/s. Goldcoin Foam Pvt Ltd. The adjudicating authority failed to observe that interest on refund is automatic and should be sanctioned along with refund amount at the time of original application only. Further the same clarification also mentioned in Circular No. 984/8/2014 dated 16.9.2014.

4. Personal hearing was conducted in virtual mode through video conferencing on 25.5.2021. 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 interest sanctioned by the adjudicating authority under Section 35FF of the Act is correct, legal or proper or not.

6. On perusal of the records, I find that an offence case was booked against the Appellant for clandestine removal of goods and during the course of appellate proceedings, the Appellant had made payment towards pre-deposit amount as well as amount of fine and penalty upheld by the Commissioner (Appeals), Rajkot. On favourable order received from the CESTAT, Ahmedabad, the Appellant filed refund claim of fine and penalty paid by them, which was sanctioned. Subsequently, the Appellant filed claim for interest under Section 35FF on entire amount paid by them during litigation, from date of deposit of said amount to date of sanction of refund amount. The refund sanctioning authority considered that portion of amount which was required to be deposited by the Appellant under Section 35F of the Act for the purpose of calculating interest under Section 35FF and rejected the claim of interest on amount paid over and above amount stipulated under Section 35F *ibid*.

6.1 The Appellant has contended that amount of fine imposed by original adjudicating authority was Rs. 6,00,000/- and 17.5 % (10% + 7.5%) of pre-deposit of that amount comes to Rs.1,05,000/-. Hence, interest is required to be paid on 1,05,000/- and not @ 10% of Rs. 1,50,000/- paid towards redemption fine. The Appellant further contended that they had shown amount of disputed redemption fine before the CESTAT as Rs. 6,00,000/-, hence, they were eligible for interest on differential amount of Rs. 1,50,000 (-) 15,000 = 1,35,000/- or at least on 1,05,000 (-) 15,000 = Rs. 90,000/- from the date deposit to the date of sanction.



6.2 I find that the redemption fine of Rs. 6,00,000/- and penalty of Rs. 2,50,000/- were imposed upon the Appellant by the original adjudicating authority. These were reduced by the then Commissioner (Appeals), Rajkot to Rs. 1,50,000/- and Rs. 62,500/- respectively. Further, the Appellant had paid Rs. 18,750/- i.e. 7.5% of Rs. 2,50,000, as pre-deposit at the time of filing appeal before the Commissioner (Appeals). These facts are not under dispute. When the Appellant filed appeal before the Hon'ble CESTAT, they were required to pre-deposit amount @10% of disputed fine and penalty amount. Since, the Commissioner (Appeals) had reduced fine from Rs. 6,00,000/- to Rs. 1,50,000/- and penalty amount from Rs. 2,50,000/- to Rs. 62,500/-, the Appellant was required to pre-deposit amount @10% of disputed fine and penalty only and not on fine and penalty imposed by the original adjudicating authority. Thus, the adjudicating authority correctly considered Rs. 15,000/- and Rs. 18,750/- as pre-deposit amount for the purpose of sanctioning interest under Section 35FF of the Act by following Board's Circular No. 948/8/2014-CX dated 16.9.2014. I further find that these facts are clearly elaborated by the adjudicating authority in tabulated form at para 8.3 of the impugned order. In this backdrop of the factual position, the contention of the Appellant to consider disputed fine amount before CESTAT as Rs. 6,00,000/- and claiming interest on Rs. 1,05,000/- (@ 17.5% of Rs. 6,00,000/-) under Section 35FF of the Act is devoid of merit and I discard the same.

7. As regards contention raised for non - payment of interest to Director of the Appellant, I find that the present proceedings are limited to Appellant only and the Director of the Appellant is required to contest independently since the Director of the Appellant firm is a separate legal entity and the Appellant cannot raise issues pertaining to him in the present proceedings. I, therefore, do not find any infirmity in the stand taken by the adjudicating authority on this count and discard the contention of the Appellant as devoid of merit.

8. In view of above discussion and findings, I hold that the adjudicating authority has correctly sanctioned interest of Rs. 3,689/- under Section 35FF of the Act. I, therefore, uphold the impugned order and reject the appeal.

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

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



सत्यापित,

✓

विपुल शाह

अधीक्षक (आपील)

(Akhilesh Kumar)  
Commissioner (Appeals)

By RPAD

To, M/s Goldcoin Foam Pvt. Ltd Survey No. 118, Rameshwar Industrial Area, Veraval (Shapar), District Rajkot.	सेवा में, मे० गोल्डकोइन फोम प्राइवेट लिमिटेड, सर्वे न० 118, रामेश्वर इंडस्ट्रियल एरिया, वेरावल (शापर), जिल्ला राजकोट ।
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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, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-II मण्डल को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



