

	:आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in	

DIN20221164SX0000616371

क अपील / फाइल संख्या /
 Appeal / File No.
 V2/8/BVR/2022

मूल आदेश सं /
 O.I.O. No.
 R-19/2021-22

दिनांक / Date
 01-Dec-22

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

BHV-EXCUS-000-APP-082-2022

आदेश का दिनांक /

Date of Order:

11.11.2022

जारी करने की तारीख /

Date of issue: 29.11.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा 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. Vijay Steels, 206, Chokhawala Chamber, Lokhand Bazar, Bhavnagar. 364001

इस आदेश (अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 मुद्दाओं से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद 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 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, न्याज 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 रजिस्ट्रार 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, न्याज 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 रजिस्ट्रार 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 fee of Rs. 1000/- 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 Asst. Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती 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 रुपये से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 बी के अंतर्गत रकम
(ii) सेनबेट जमा की सी गई बसत राशि
(iii) सेनबेट 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 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 प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन् दीप भवन, संसद भवन, 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, जहाँ 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 क्यूटी केडीटी 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 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ 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 चाहिए। इस तथ्य के होते हुए भी की लिखा पत्री कार्य से बचने के लिए क्यास्थिति 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 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 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-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Vijay Steels, Plot No. 207-209, GIDC-II, Sihor, Bhavnagar-364240 (hereinafter referred to as 'the Appellant') has filed present Appeal No. V2/8/BVR/2022 against the Order-in-Original No. R-19/2021-22 dated 12.01.2022 (herein after referred to "the impugned order") passed by the Assistant Commissioner, Central GST Division, Bhavnagar-I (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of rolled products of iron and steel i.e. CTD bars/rounds/rods etc. falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant were availing deemed credit @ Rs. 920/- per MT on ingots and re-rollable materials obtained from breaking of ship, boats and floating vessels, falling Chapter 72.30 and 73.27 in terms of Government of India's Order No. TS/36/94-TRU dated 01.03.1994 issued under Rule 57G(2) of the erstwhile Central Excise Rules, 1944 and claimant is holding Central Excise Registration No. AABFV6595QXM001.

2.1 On scrutiny of RT-12 returns for the months from December-1994 to January, 1995, it was observed that the Appellant has wrongly taken deemed Modvat Credit to the tune of Rs. 15,38,779/- which was resulted in the Show Cause Notice for recovery/ reversing deemed modvat credit on the grounds that (i) the Government of India's Order No. TS/36/94-TRU dated 01.03.1994 was issued under the provisions of Rule 57G of the Central Excise Rules, 1944 (ii) with effect from 01.03.1994, chapter 72.30 and 73.27 were omitted from the CETA, 1985, therefore, there did not exist any documents evidencing the payment of duty on such re-rollable materials that on account of omission of above chapter heading the inputs received were not coming under the purview of Notification No. 5/94-CE(NT) dated 01.03.1994 issued under Rule 57-A, (iii) the inputs received by the claimant had not suffered any Central Excise duty. Therefore, the deemed credit was not available.

2.2 The adjudicating authority vide Order-in-Original No. 65 to 88/BVR/JC/2005 dated 17.01.2006 disallowed the deemed modvat credit and confirmed the demands on the grounds that their clearance value had exceeded Rs. 75 lakhs during the year 1994-95 and they were not entitled for deemed modvat credit. Being aggrieved with OIO dated 17.01.2006, the Appellant preferred an appeal before Commissioner (Appeals), Central Excise Ahmedabad



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who vide Order-In-Appeal No. 84 to 95/2006(BVR)CE/AV/Comr(A-IV)/Ahd dated 24.08.2006 uphold the OIO dated 17.01.2006 and rejected the appeal. Further, being aggrieved by the OIA dated 24.08.2006, the Appellant filed appeal before Hon'ble Tribunal, Ahmedabad who vide Stay Order No. S/134 to 147/WZB/A'bad/06 dated 14.11.2006 directed to deposit 50% of the confirmed demand of duty of Rs. 15,38,779/- within eight weeks. Accordingly, the Appellant deposited the 50% Rs. 7,69,390/- vide debiting from the Cenvat Credit Account input tax credit vide RG-23 G Pt.II, Entry No. 504 dated 12.01.2007. Hon'ble Tribunal vide Order No. A/2325 to 2333/AHD/WZB/07 dated 27.08.2007 has rejected the appeal filed by the Appellant.

2.3 Being aggrieved by the order dated 27.08.2007 of Tribunal, the Appellant filed appeal before Hon'ble High Court of Gujarat who vide its oral order dated 15.09.2021 set aside the order dated 27.08.2007 passed by the Hon'ble Tribunal and allowed the appeal filed by the Appellant. The said order dated 15.09.2021 passed by the Hon'ble High Court has been accepted by the Department and hence the refund of Rs. 7,69,390/- arose.

2.4 Moreover, the following sanctioned refunds were appropriated against the Government outstanding dues:

Sr. No.	Sanctioned Refund OIO No. & Date	Sanctioned Refund amount which was appropriated	Sanctioned Refund amount appropriated against OIO No.
1.	R-208/Refund/15-16 dated 28.07.2015	4,00,000/-	65 to 88/BVR/JC/2005 dated 30.12.2005 & 52 to 68/D/Excise/2011-12 dated 15.12.2011
2.	Refund Order dated 04.05.2017	12,000/-	65 to 88/BVR/JC/2005 dated 30.12.2005
3.	R-53/Refund/2018-19 dated 28.11.2018	4,78,698/-	65 to 88/BVR/JC/2005 dated 30.12.2005
Total Amount Appropriated		8,90,698/-	

2.5 Based on above, the Appellant vide their letter dated 16.10.2021 requested to sanction the refund claim for Rs. 16,68,949/- and pay alongwith interest. The adjudicating authority vide his impugned order sanctioned the refund claim of Rs. 16,60,088/- (Rs. 7,69,390/- pre-deposit + Rs. 8,90,698/- adjusted refunds) and rejected the refund claim of Rs.8,861/-.

3. Being aggrieved by the impugned order not allowing the interest on refund amount, the Appellant preferred the present appeal contending, *inter-alia*, as



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under:

- (i) Hon'ble High Court vide order dated 15/24.09.2021 had allowed the Deemed Modvat Credit. They had maintained deemed modvat credit in the respective RG23 Pt. I & Pt. II/ Cenvat Credit Account (A-Pt-II) as the case may be required under Cenvat Credit Rules, 2004. The Department issued various show cause notices which were confirmed by the Department. The department sanctioned the refund amount of Rs. 16,60,088/- without due interest of Rs. 15,85,799/- which actually required to be paid to them since the said amount is nothing but in the nature of interest occurred due to late sanctioning of refund.
- (ii) They attached the worksheet showing the interest occurred on account of not considering the aspect of due interest amounting to Rs. 15,85,799/- taken on account of wrongful recovery of such deemed modvat credit. The adjudicating authority had grossly erred in not determining the due interest due thereon arise on account of Hon'ble High Court Order.
- (iii) They are entitled to get refund of interest right from issuance of show cause notice till the date of order dated 15/24.09.2021 passed by the Hon'ble High Court of Gujarat.

4. Personal hearing in the matter was fixed on 03.11.2022 which was attended by Shri N. K. Maru & Shri U. H. Qureshi, both Consultant and Shri M. L. Gupta, Partner of the Appellant. They reiterated the submissions therein and those in their appeal. They submitted that an amount of Rs. 8,861/- has been rejected on the Order-In-Original without any discussion. Also they had claimed interest on the refund due to them in terms of Hon'ble High Court order. They requested for time of one week to submit a few documents including a copy of their refund claim. Based on the same they requested to pass order for refund of the rejected amount of Rs. 8,861/- with interest on the total refund amount.

4.1 The Appellant vide their letter dated 07.11.2022 received on 14.11.2022 has submitted the submission and documents wherein they have reiterated their arguments as mentioned in the appeal memorandum. They have submitted copy of refund application alongwith all enclosures as mentioned as Annexure A to N to the refund application.

5. I have carefully gone through the facts of the case, the impugned order and the Appeal Memorandum filed by the Appellant. The issue to be decided in the case is whether the Appellant is eligible for the interest on refund amount of



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Rs. 16,60,088/- or not.

6. On perusal of the records, I find that the Appellant deposited 50% amount i.e. Rs. 7,69,390/- by debiting from Cenvat Credit Account vide RG-23 G Pt.II Entry No. 504 dated 12.01.2007 out of total confirmed demand of Rs. 15,38,779/-. Further, the Refunds of Rs. 8,90,698/- sanctioned vide two refund orders were also adjusted against the outstanding dues pending from the Appellant. Therefore, the total refund claim comes to Rs. 16,60,088/- which has already been sanctioned by the adjudicating authority to the Appellant. However, the Appellant requested for interest on the said refund claim from the date of debit in their various RG23 accounts.

7. I find that first part of pre-deposit of 50% amount of Rs. 7,69,390/- by debiting from Cenvat Credit Account vide RG-23 G Pt.II Entry No. 504 dated 12.01.2007 based on stay order dated 14.11.2006 of Hon'ble CESTAT. The interest on this portion is governed by Section 35FF as stood at the material time. The same is as under:

Section 35FF of the Excise Act (as was prevalent prior to August 6, 2014):

"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."

Therefore, the Appellant is liable for interest after expiry of three months from the date of communication of the order of Hon'ble High Court and not from the date of deposit/debit. Hence, the claim of the Appellant that they are entitled for interest on refund from 12.07.2007 to 12.01.2022 is misconceived. The Appellant are eligible for applicable interest after expiry of three months from the date of communication of High Court order dated 15.09.2021 to the Department upto the date of sanction of refund vide impugned order and not from the date of payment/debit of pre-deposit.

8. With respect to interest of refunds which were adjusted against the refund orders as mentioned at Para 2.4 supra, the Appellant contested that they are

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entitled for refund from the date of reversal/debit from the Cenvat Credit Account. I find that they are entitled for interest on refund adjusted against government dues from the date of passing respective refund orders viz. R-208/Refund/15-16 dated 28.07.2015, Refund Order dated 04.05.2017 and Refund Order No. R-53/Refund/2018-19 dated 28.11.2018 to the date of final refund sanctioned vide impugned order dated 12.01.2022 only and not prior to that. Thus, the contention raised by the Appellant is slightly misplaced and not fully acceptable.

9. In view of the above discussions and findings, the appeal of the Appellant is partially allowed in terms of the findings in para 8 above and the impugned order is set aside to the extent of not sanctioning the interest.

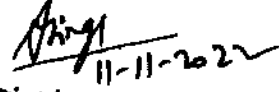
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित / Attested



Superintendent
Central GST (Appeals)
Rajkot


11-11-2022

(शिव प्रताप सिंह)/(Shiv Pratap Singh),
आयुक्त (अपील)/Commissioner (Appeals)

By RPAD

To, M/s. Vijay Steels, Plot No. 207-209,
GIDC-II; Sihor, Bhavnagar-364240

मेसर्स विजय स्टील्स, प्लॉट संख्या 207-209,
जी.आई.डी.सी. सिहोर, भावनगर- 364240।

प्रति:-

- 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) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।



