

::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शत्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल जी एस टी भवन / 2rd Floor, GSTBhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,



राजकोट / Raikot — 360 001

Tele Fax No. 0281 - 2477952/2441142Email: commrappl3-cexamd@nic.in

रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20221264SX0000444D69

अपील / फाइलसंख्य/ क Appeal /File No.

V2/18/RAJ/2022

मूलआदेशसं / OIO No.

दिनांक/

Date

Refund (Rebate) Order No.

31-12-2021

142/2020-21

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

RAJ-EXCUS-000-APP-373-2022

आदेश का दिनांक /

जारी करने की तारीख /

Date of Order:

29.11.2022

Date of issue:

02,12,2022

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

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

अपर आयुक्ता/ संयुक्त आयुक्ता/ उपायुक्ता/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्का/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरतिखित जारी मूल आदेश से सुजित: /

'Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

M/s. Gokul Auto Industries, Rajkot-Jamnagar Highway, Targhadi-360110, Tal. Paddhari, Dist-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.

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 हैं ।/ (A)

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:-

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.

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 ॥ (ii)

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- I(a) above

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपन्न EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- 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 रिजर किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थमन आदेश (स्टे ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/ (iii)

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/-.

अपीलीय न्यापाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रमंत्र 8,7:-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न कर (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित अमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भूगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिज़स्तार के नाम से किसी भी सार्वाजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट 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 decompanied by a copy of the order appealed against (one of which shall be certified copy) and should be ecompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of the state of the 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 five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fitty 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 attuated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

(i)

(B)

वपीला

वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) (i) 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 शुल्का सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न

commissioner of Central Excise / Service Tax to file the appeal before the Appellate Tribunal.

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 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, बंशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न ही। (ii)

केन्द्रीय उत्पाद शुल्क एवं सेवकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है धारा ११ डी के अंतर्गत रकम सेनवेट जमा की ली गई गुलत राशि

(ii)

सेनदेट जमा नियमावली के नियम ६ के अंतर्गत देय रकम (iii)

ू बंशर्ते 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॥

विचारधीन स्थान अज़ी 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.

भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणधानिका निम्नलिखित मामली में केदीय 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 Delhi110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection [1] of Section-35B ibid: (C)

यदि माल के किसी नकसान के मामले में, जहां नकसान किसी माल को किसी कारखाने से भंडार गृह के पारगुमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगुमन 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।!
În 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 (i)

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। I 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. (ii)

- यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outsideIndia export to Nepal or Bhutan, without payment of duty. (iii)-
- 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 (न 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।!

 Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (iv)
- उपरोक्त आवेदन की दो प्रतियां प्रयत्न 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 निधारित 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. (v)
- पुनरीक्षण आवेदन के साथ निम्नलिखत निर्धारित शुल्क की अद्वायमी 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.
- यदि इस आदेश में कई मूल आदेशों का समावेश हैं तो प्रत्येक मूल आदेश के लिए शुल्क का भूगतान उपर्युक्त ढूंग से किया जाना चाहिये। इस तथ्य के होंचे हुए भी को लिखा पढ़ी कार्य से बचने के लिए यंशीस्थित अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers various numbers of order- in Original, fee for each O.I.Q. should be paid in the aforesaid manner, notwithstanding the fact that the one application 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. (D)
- यधासंशोधित न्यायालय शुक्क अधिनियम, 1975, के अनुसूची-। के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुक्क टिकिट लेगा 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. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों को 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. (F)

उच्च अपीलीय प्राधिकारी को अपील द्वाखिल 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

इत अपील

(G)

अपील आदेश /ORDER-IN-APPEAL

M/s Gokul Auto Industries, Rajkot-Jamnagar Highway, Targhadi-360 110, Dist. Rajkot has filed appeal No. V2/18/RAJ/2022 against Order-in-Original No. Refund (Rebate) 142/2021-22 dated 31.12.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central Excise & CGST, Division Rajkot-I (hereinafter referred to as 'the adjudicating authority')

- 2. Briefly stated the facts of the case are that the appellant filed a refund claim of redemption fine paid amounting to Rs.10,00,000/-. The adjudicating authority, by the impugned order, rejected the refund claim on the ground that the said amount was paid under SVLDRS, 2019 and there is no provision of refund of any amount which has been already paid under SVLDRS, 2019.
- 3.1 Being aggrieved, appellant filed the present appeal wherein they, inter alia, submitted that the application for refund was filed in terms of erstwhile circulars, including Circular No.1053/2/2017-CX dated 10.03.2017 for refund of predeposit in view of the saving clause viz. Section 142 of CGST Act, 2017 and not under Section 11B of the Central Excise Act, 1944.
- 3.2 The appellant submitted that Principal Commissioner while passing the order dated 29.03.2016 had given option to pay fine in lieu of confiscation within a period of 30 days from the receipt of order, but the appellant has not exercised the option before or after preferring an appeal before CESTAT till the department pressurized for entertaining its declaration under SVLDRS, 2019.
- 3.3 The appellant submitted that they have paid the fine when the designated committee opined that the declaration filed will be entertained only when the redemption fine amount is paid and the appellant had paid the amount under compulsion. The appellant submitted that payment of fine was not under SVLDRS, nor was it part of the said scheme. As per the decision of Hon'ble High Court in the Special Civil Application No.21744 of 2019 in the case of M/s Synpol Products Pvt. Ltd., title of confiscated goods automatically shifted to the appellant without payment of fine once the amount payable under the SVLDRS is paid. On being decided by Hon'ble High Court about fine not payable under SVLDRS, 2019 the appellant filed the refund application and it amounts to challenge only of decision of committee to pay finc.
- 3.4 The appellant submitted that since the matter had attained finality under SVLDRS, 2019 and amount was not payable under the scheme and relief was activisible as per Hon'ble High Court decision supra, the department is duty



bound to refund the amount. The appellant contended that it is erroneous to observe that the said judgment did not include any comment regarding the cases where the redemption fine has already been paid and discharge certificate (Form No.SVLDRS-4) has been issued.

- 3.5 The appellant submitted that the declaration was under the category of litigation' and sub-category 'appeal pending' and not under the 'amount in arrear' and therefore, neither the amount of duty nor the redemption fine was in arrears. According to the judgment of Hon'ble High Court of Gujarat appellant was liable neither to pay redemption fine to become eligible to file declaration under SVLDRS, 2019 nor to include the amount of redemption fine in calculation of arrears as per Section 121(c)of the SVLDRS, 2019.
- 3.6 The appellant submitted that refund of redemption fine is fully covered under Section 142 of the CGST Act, 2017 in as much as an application for refund of pre-deposit of the amount is made in view of the various instruction/circulars. They contended that though it is not disputed in the impugned notice that the amount of fine paid cannot be considered as deposit or pre-deposit, the same cannot be disputed by travelling beyond the scope of show cause notice. The appellant submitted that the dispute amount of redemption fine was paid only when their appeal was pending before CESTAT that too at the behest and under pressure of the department to entertain their declaration.
- Chartered Accountants Devashti Sejpal and Shivani Rayjada appeared for 4. personal hearing on 10.11.2022 and reiterated the submissions made in the appeal. They submitted that their application for SVLDRS,2019 was not being admitted by department as they had claimed waiver of redemption fine also. Due to this, they were forced to pay the redemption fine and thereafter their application was admitted and they were allowed benefit of duty and penalty only. However, as they were eligible for benefit of redemption fine waiver and the same was paid just to avoid rejection of their entire application, they filed a refund claim subsequently in view of the Hon'ble Gujarat High Court judgment dated 27.02.2020 in case of M/s Synpol Products Pvt Ltd, wherein it was clearly mentioned in paragraph 12 that the order would apply to all the similarly situated declarants. Therefore, their refund claim has been wrongly rejected by the adjudicating authority. They requested to set aside the order-in-original passed by the adjudicating authority and allow refund of redemption fine due to them.
- 5. I have carefully gone through the facts of the case, the impugned order and the submissions made in the appeal memorandum as well at the time of personal hearing. The contentious issue involved in the present appeal is





whether the appellant is entitled to refund of amount paid by them as fine in lieu of confiscation on the insistence of the department to avail the benefit of SVLDRS, 2019 or otherwise.

- 6. The appellant, in the present appeal, has mainly argued that as per SVLDRS, 2019 redemption fine was not payable but there was full waiver from fine and they were forced to pay the same by the department for getting their application under SVLDRS, 2019 admitted. They have relied upon the decision of Hon'ble High Court in Special Civil Application No.21744 of 2019 in the case of M/s Synpol Products Pvt Ltd. The appellant contented that as per the order of Hon'ble High Court no fine was payable and they are entitled for refund of fine paid by them. However, I find that the contention of the appellant is fallacious as Hon'ble High Court in the said order only said that as per Section 125 of the Scheme a declarant cannot be made ineligible to file a declaration for non-payment of redemption fine. On the contrary, Hon'ble High Court has held that, the declarant is required to include redemption fine as part of the duty demanded, so as to calculate the amount in arrears as per Section 121(c) of the Scheme. Paragraph 10 of the said order reads as under:
 - 10. In view of the above facts and situation, when the respondents had issued show cause notice demanding excise duty together with confiscation of the goods in terms of Rule 25(a) and (d) of the Central Excise Rules, 2002 and redemption fine in lieu of confiscation under Rules 25 as goods were not available for confiscation, it is clear that by issuing the show cause notice, the respondent has invoked Rule 25 of the Central Excise Rules, 2002 for levy of redemption fine in lieu of confiscation as goods which were sought to be confiscated were not available for confiscation. Therefore, the levy of the redemption fine equivalent to demand of central excise duty under Rule 25 of the Central Excise Rules, 2002 would be an amount in arrears as defined in Section 121(c) of the Scheme along with the amount of duty which is recoverable as arrears of duty under indirect tax enactment. Therefore, the test which is required to be applied to ascertain what is the amount in arrears as per the Scheme, it would include both the amount of duty as well as amount of redemption fine which is required to be recovered from the taxpayers. The amount of redemption fine cannot be treated separately than the amount of the duty under the Scheme. Therefore, the interpretation made by the Board in the communication dated 20-12-2019 in order to consider the declaration made by the declarant, the payment of redemption fine is prerequisite, is not tenable in law, because as per-Section 125 of the Scheme a declarant cannot be made ineligible to file a declaration for non-payment of redemption fine.

 Moreover, the declarant is required to include redemption fine as part of the duty demanded, so as to calculate the amount in arrears as per Section 121(c) of the Scheme.

In the above order, Hon'ble High Court, in lucid language, held that declarant is required to include redemption fine as part of the duty demanded. As such, the contention raised by the appellant in the present appeal, that as per Hon'ble High Court's order no redemption fine was payable, is incongruous and the amount of fine paid by the appeal is to be considered as part of duty payable. Further, as per SVLDRS, 2019 any excess amount paid is not refundable. Section 130 (2) of the Finance (No.2) Act, 2019 reads as under:

"(2) In case any pre-deposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the

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difference shall not be refunded."

Thus, it is crystal clear that the amount of redemption fine paid by the appellant is part of duty payable and they were required to include the redemption fine in the amount of duty payable in their declaration. Since the amount of redemption fine paid is part of duty and the case is settled under SVLDRS, 2019, the excess payment made, if any, is not refundable as per Section 130(2) of the Finance (No.2) Act, 2019. Accordingly, I hold that the adjudicating authority has correctly rejected the refund claim.

- 7. In view of above discussions, I do not find any infirmity in the order by which adjudicating authority and accordingly, I reject the appeal filed by the appellant.
- ८. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 8. The appeal filed by the Appellant is disposed off as above

सत्यापित / Attested

bulk

Superintendent Central GST (Appeals) Raikot (शिव प्रताप सिंह/ SHIV PRATAP SINGH) आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में,
M/s गोकुल ऑटो इंडस्ट्रीज़
राजकोट-जामनगर हाइवे
तरघड़ी-360 110, राजकोट.

To

M/s Gokul Auto Industries, Rajkot-Jamnagar Highway, Targhadi-360 110, Dist. Rajkot

प्रतिलिपि:-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।

 प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेत्।

3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल राजकोट-। को आवश्यक कार्यवाही हेतु। ﴿) गार्ड फ़ाइल।

