NATION TAX MARKET

: : आयुक्त (अपील्स) 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

रजिस्टर्डडाकए.डी. द्वारा :- **DIN- 20230364SX000000EF18**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	GAPPL/COM/STP/1019/2023	**21/REF/2019-20**	**20-02-2020**

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

RAJ-EXCUS-000-APP-078-2023

आदेश का दिनांक / Date of Order:	**27.03.2023**	जारी करने की तारीख / Date of issue:	**28.03.2023**

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 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. Falcon Pumps Pvt Ltd, Survey No. 39/4, Vavdi Industrial Area, Behind Hotel Krishna Park, Gondal Road, NH 27,, Post Vavdi-360004.

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 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 असावा 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 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,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 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" मे 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 होगे।/
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 समायावधि 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 पढ़ी 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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 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

अपील आदेश /ORDER-IN-APPEAL

M/s Falcon Pumps Pvt. Ltd., Survey No. 39/4, Vavdi Industrial Area, Behind Hotel Krishna Park, Gondal Road, NH 27, Post Vavdi, Rajkot-360004 (*hereinafter referred to as* appellant) has filed appeal against Order-in-Original No.21/REF/2019-20 dated 20.02.2020 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, Central GST, Division, Rajkot-II (*hereinafter referred to as* 'adjudicating authority').

2. Facts of the case, in brief, are that a demand of Service Tax of Rs.52,53,868/- was confirmed against the appellant against which the appellant filed appeal before Commissioner (Appeals). While filing appeal the appellant deposited an amount of Rs.3,94,041/- under Section 35F of the Central Excise Act, 1944 by debit from electronic credit ledger maintained under the CGST Act, 2017. The Commissioner (Appeals) has set aside the demand vide Order-in-Appeal dated 22.10.2019. Thereafter the appellant filed refund of Rs.3,94,041/- pre-deposited at the time of filing appeal under Section 35F of the Central Excise Act, 1944. The refund sanctioning authority rejected the said refund claim on the ground that the application for refund of pre-deposit is not eligible under any appropriate section of CGST Act, 2017.

3. Being aggrieved, the appellant filed appeal wherein they, *inter alia,* submitted that;

(i) Before rejecting the refund, the adjudicating authority was supposed to issue show cause notice stating grounds on which refund of pre-deposit is liable to be rejected and was also supposed to hear appellant in person.

(ii) As per provision of Section 35F of the Central Excise Act, 1944, it was mandatory to make pre-deposit as per saving clause under Section 173 read with Section 174(2)(f) of CGST Act, 2017. Prior to 01.07.2017 it was also permissible to make payment of pre-deposit from balance lying in Cenvat Credit account and with effect from 01.07.2017 under GST era as per the decision of CESTAT in the case of *M/s Dell International Services India Pvt. Ltd. Vs Commissioner of Central Tax, Bangalore-2019-TIOL-286-CESTAT-BANG.*, once it was liable to make pre-deposit and as per CESTAT's above decision under CGST Act, 2017 and rules made thereunder, it cannot be disputed while sanction of refund. The refund of such pre-deposit has to be governed under erstwhile circulars Nos. 275/37/2K-CX dated 02.01.2002, 802/35/2004-CX dated 08.12.2004, 984/08/20141053/2/2017-CX dated 10.03.2017. At the time of implementation of Goods & Service Tax, unutilized balance lying in Cenvat Credit Register was also allowed to transfer in the Electronic Credit Ledger under Section 140 of the CGST Act, 2017.

(iii) The provisions of Section 142(3) of the CGST Act, 2017 specifically provides that every claim of refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat Credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually, accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B Of the Central Excise Act, 1944.

(iv) The refund sanctioning authority has wrongly interpreted Circular No. 58/32/2018-GST dated 04.09.2018 and Circular No. 42/16/2018-GST dated 13.04.2018 and given contradictory findings, inadvertently instead of Rule 142(2) Of CGST Rules, 2017, Section 142(2) of the CGST Act, 2017 was referred for the DRC-3 but not as an authority for making an application for refund. It cannot have any relevance with the mode of payment i.e. making of payment of pre-deposit by debiting from Electronic Credit Register under the CGST Act, 2017 especially when same is permissible as per CBIC Circulars read with CESTAT decision. The pre-deposit was paid from Input Tax Credit lying in Electronic Credit Ledger and it does not cease to be pre-deposit. Refund of such amount have to be sanctioned and paid in cash only under Section 142(3) of the CGST Act, 2017 considering the payment made from Electronic Credit Ledger at par with Cenvat Credit Register maintained under erstwhile Cenvat Credit Rules.

4. The appeal was disposed of vide Order-in-Appeal No.RAJ-EXCUS-000-APP-102-20270 dated 25/28.09.2020. The said Order-in-Appeal was set aside by Hon'ble CESTAT vide Final Order No.A/11240-11241/2022 dated 11.10.2022 and remanded back to the Commissioner (Appeals). The department filed Miscellaneous Application for rectification of mistake, but the same was dismissed by Tribunal vide order dated 17.02.2023. Accordingly, the appeal was again taken up for disposal.

5. Advocate P.D.Rachchh, appeared for personal hearing on 13.03.2023 and submitted that the Order-in-Appeal dated 22.10.2019, based on which refund of pre-deposit was claimed, has not been challenged and has become final. Therefore, the pre-deposit amount has to be refunded and the same has not been disputed by the original authority also. The original authority has rejected the claim merely citing procedural reasons. The Commissioner (A) in the Order-in-Appeal dated 28.09.2020, though held the refund due by way of re-credit, has erroneously in the operative portion mentioned that impugned order is upheld and appeal is rejected. Therefore, Hon'ble Tribunal has remanded the matter for necessary rectification. He requested to allow the appeal and to issue fresh order of refund. He has submitted written submissions dated 11.03.2023 in

this regard. In the written submission, the appellant reiterated the submissions made in the personal hearing.

6. The present appeal has been remanded back by Hon'ble CESTAT vide Final Order No.A/11240-11241/2022 dated 11.10.2022 with the following directions:

> *"5. I find that there is no dispute that the appellant have made pre-deposit in terms of Section 35F for entertaining the appeal by the Commissioner (Appeals). The learned Commissioner (Appeals) also entertained the appeal on payment of 7.5% though the same was reversed in GST-ITC account. This clearly shows that the Commissioner (Appeals) has accepted the 7.5% reversal in GST-ITC as pre-deposit in terms of Section 35F. From the impugned order, the learned Commissioner (Appeals) also given clear finding at page No.36 in para 7 of Appeal No.E/10855/2020 and page 31 in para 7 of Appeal No.E/10853/2020 which is reproduced below:*
>
> > *"....However, payment of pre-deposit by the Appellant is not under dispute. The appellant is, therefore, eligible to avail credit of Rs.3,94,041/- in their Electronic Credit Ledger."*
> >
> > *".....However, payment of pre-deposit by the Appellant is not under dispute. The appellant is, therefore, eligible to avail credit of Rs.3,19,690/- in their Electronic Credit Ledger."*
>
> *6. Despite the above clear finding, the Commissioner (Appeals) has upheld the Order-in-Original and rejected the appeal which is contrary to his findings. Since the Commissioner (Appeals) has agreed that the appellant is eligible to avail the credit in their electronic credit ledger the appeal should not have been rejected, whereas the refund should have been allowed if not in cash, but atleast by way of credit in their electronic credit ledger. This is an apparent error in the order of the Commissioner which needs to be rectified. Accordingly, I set aside the impugned order and remand the matter to the Commissioner (Appeals) to give a clear order considering his own finding that the appellant is eligible to avail the credit in their electronic credit ledger. Appeal is allowed by way of remand."*

7. From the perusal of the above order of Hon'ble CESTAT, I find that the Tribunal has remanded back the matter to give a clear order considering the findings given in the Order-in-Appeal. My predecessor, at paragraph 7 of the Order-in-Appeal No.RAJ-EXCUS-000-APP-102-2020 dated 25/28.09.2020 has given findings as under:

> *"7. I find that the Appellant had made payment of pre-deposit from Electronic Credit Ledger and prior to 01.07.2017 it was also permissible to make payment of pre-deposit from balance lying in Cenvat Credit Account in light of the decision of CESTAT in the case of M/s Dell International Services India Pvt. Ltd Vs Commissioner of Central Tax, Bangalore-2019-TIOL-286-CESTAT-BANG. Regarding the plea of the appellant to grant them refund of pre-deposit paid by them through Electronic Credit Ledger under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017, I find that the appellant is not eligible for refund under Section 11B of the Central Excise Act,1944 for the simple reason that even before 1.7.2017 when the Central Excise Act,1944 was in force, there was no provision to grant refund in cash for pre-deposit paid by way of debiting Cenvat Credit Account under Section 11B ibid, and such pre-deposit was restored in Cenvat Credit Accounts only. When refund was not permissible in existing law prior to 01.07.2017, then there is no question of granting refund in cash for pre-deposit by way of debiting Electronic Credit Ledger after 01.07.2017. The refund claim filed under Section 11B of the Central Excise Act, 1944 is, thus, not maintainable. For this reason, I discard this plea of the Appellant as devoid of merit. As regards applicability of the provisions of Section 142(3) of the Central GST Act, 2017, I find that Section 142(3) ibid states that the refund filed before, on or after 01.07.2017, for refund of any amount of Cenvat Credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventual accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944. These provisions clearly envisage that for getting a refund of eligible credit, the Appellant should follow the procedure of existing law prescribed and any amount eventually accruing to him shall be paid in cash. As discussed by me in para supra, the provisions of erstwhile Central Excise Act, 1944 did not allow the refund in cash in respect of pre-deposit paid by way of debiting Cenvat credit. Thus, refund claim is also not maintainable under Section 142 (3) of the Central GST Act, 2017. However, payment of pre-deposit by the Appellant is not under dispute. The appellant is, therefore, eligible to avail credit of Rs.3,94,041/- in their Electronic Credit Ledger."*

8. As per the above findings, it is evident that though the claim of the appellant for granting refund in cash is rejected, it was categorically mentioned that the appellant is eligible to avail credit of Rs.3,94,041/- in their Electronic Credit Ledger. I observe that the finding, that the appellant is eligible to avail credit in electronic credit ledger, is not challenged by the department. On the other hand, Hon'ble Tribunal while disposing the Miscellaneous Application (RoM) No.10053 of 2023-SM vide Miscellaneous Order No.M/10065-10066/2023 dated 17.02.2023 observed as under:

> *"5. In my view, learned Commissioner (Appeals) should have disposed of the appeal maintaining the aforesaid observation and only for this limited purpose the matter was remanded to Commissioner (Appeals). It is also noted that during the hearing learned Authorised Representative also supported the order of the Commissioner (Appeals) recorded his submissions in para 3 of the order, is reproduced below:-*
>
> > *'3. Shri R.K. Agarwal, learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the learned Commissioner (Appeals) has allowed the credit of this pre-deposit amount in their electronic credit ledger, therefore, the appellant should not have any grievance. He also placed reliance on the decision of Division Bench of Allahabad Tribunal, order dated 23.08.2022, whereby it was held that pre-deposit cannot be made by way of debit in ITC.'*
>
> *It can be seen that this Tribunal has passed order strictly considering the Authorised Representative's submissions and also considering the observation made by learned Commissioner (Appeals) in the impugned order. I further observe that on merit also there should not be any objection to the appellant if the credit is allowed in their Electronic Credit Ledger."*

9. In view of the above, it is clear that the department also agreed that the appellant is eligible for refund by way of re-credit in electronic credit ledger. Accordingly, I set aside the impugned order and hold that the appellant is eligible for refund by way of re-credit in their electronic credit ledger.

१०. अपीलकरता 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

27-3-23

Superintendent
Central GST (Appeals)
Rajkot

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में मेसर्स फाल्कन पंप्स प्रा ली सर्वे नं ३९/४ , वावड़ी इंडस्ट्रियल एरिया , होटल क्रीष्ना पार्क के पीछे गोंडल रोड , राजकोट-360004	To M/s Falcon Pumps Pvt Ltd., Survey No.39/4, Vavdi Industrial Area, Behind Hotel Krishna Park, Gondal Road, Rajkot-360004

प्रतिलिपि :-

1) मुख्य आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद
2) प्रधान आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, राजकोट -II
4) गार्ड फ़ाइल।