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**(2021) 12 CESTAT CK 0029**

**Customs, Excise And Service Tax Appellate Ahmedabad**

**Case No:** Excise Appeal No. 10411, 10412, 10413, 10414 Of 2019

Cadila Healthcare Ltd

APPELLANT

Vs

C.C.E. And

S.T.-Vadodara-ii

RESPONDENT

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**Date of Decision:** Dec. 7, 2021

**Acts Referred:**

Central Excise Act, 1944 " Section 35F

**Citation:** (2021) 12 CESTAT CK 0029

**Hon'ble Judges:** Ramesh Nair, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

1. The brief facts of the case is that the appellant's refund claim though sanctioned but same was appropriated against the liabilities covered by

another order-in-original No. 22-29/GC/OP/DIV-II/ANK/DEM/SRT-II/2014 dated 25.06.2014. The appeal against the order in original dated

25.06.2014 was pending at the time of appropriation. There was a dispute about mandatory pre-deposit required under Section 35F in respect of

appeal pending before the Commissioner (Appeals) inasmuch as the appellant have paid the pre-deposit amount through cenvat credit account

whereas as per the learned Commissioner (Appeals) the amount should be paid in cash and the same has been intimated by a letter to the appellant.

The appellant against the said letter F. No. V-2(ST)VAD-APP-II/SRT/II/2014-15 dated 28.11.2014 filed appeal before this Tribunal.

2. This Tribunal vide Order No. A/11247/2018 dated 14.06.2018 dismissed the appeal of the appellants on the ground that the letter issued by the

Commissioner Central Excise, Customs and Service Tax (Appeals), Surat-II Commissionerate vide his letter F. No. V-2(ST)VAD-APP-

II/SRT/II/2014-15 dated 28.11.2014 is to be taken as regular order, and therefore, non filing of the appeal against the same would go against the

appellant. The appellant being aggrieved by the said order dated 28.11.2014 approached the Hon'ble High Court Gujarat under Civil Application

No. 1981 of 2018, the Hon'ble High Court vide order dated 26.06.2018 with regard to issue of pre-deposit quashed the communication of

Commissioner (Appeals) dated 21.08.2014 and 28.11.2014 and held that the pre-deposit made by the appellant by availing cenvat credit shall be

accepted for the purpose of Section 35F of the Central Excise Act and directed the learned Commissioner (Appeals) to hear the matter on merit.

Since the refund claim was appropriated against demand which was pending before the Commissioner (Appeals), the appellant claimed the interest on

refund for delayed period i.e. from the date of sanction of refund till the date of payment of refund. The adjudicating authority has rejected the claim

of interest vide order in original on the ground that at the time of sanction of refund and appropriation thereof, there was a confirmed demand. Being

aggrieved by the orders-in-original, the appellants filed appeal before the Commissioner (Appeals) who vide impugned order, upheld the order of the

original authority and rejected the claim of the appellant. Therefore, the present appeal.

3. Shri Mitesh Jain, Learned Chartered Accountant, appearing on behalf the appellant submits that when the refund was appropriated against the

demand, the said demand matter was subjudice before the Commissioner (Appeals). In the said appeal the appellant had made payment through

cenvat account, the same was disputed by the Commissioner (Appeals). Subsequently, when the issue of pre-deposit has been resolved in favour of

the appellant by the Hon'ble Gujarat High Court, the appellant was entitled for the refund and the appropriation made by the department was

incorrect. Therefore, the appellant is entitled for the interest on said refund from the date of sanction and appropriation thereof till date of payment of refund.

4. Shri Rajesh Parekh, learned Superintendent (Authorized Representative) appearing on behalf of the Revenue submits that since the appellant had

not made the pre-deposit and there was no stay, there was a clear demand which was recoverable therefore, the appropriation of refund against the

said demand was legal and correct. Hence, there is no question of interest payment on the refund amount.

5. I have carefully considered the submission made by both the sides and perused the records.

6. I find that there is chequered history of the entire case however, the case can be decided brief. I find that the refund of the appellant was

appropriated against the confirmed demand. The said confirmed demand order was under challenge in appeal before the Commissioner (Appeals).

The dispute was that whether the appellant's payment of pre-deposit through cenvat account is legal and correct for entertaining the appeal. The

Commissioner (Appeals) was of the view that the appellant was supposed to make pre-deposit payment in cash. This issue has been taken to the

Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court vide order dated 26.06.2018 in Civil Application No. 1981 of 2018 held that the

appellant's payment of pre-deposit through cenvat in appeal filed before the Commissioner (Appeals) is acceptable. With this order, the appeal

filed before Commissioner (Appeals) along with the pre-deposit, the demand amount of the said case could not have been adjusted against the

sanctioned refund, therefore, the refund ought to have been paid on the date of sanction itself. Since the refund was payable on the date of sanction,

the appellant is entitled for the interest from the date of sanction till the date of payment of refund amount. Accordingly, the impugned orders are set

aside. Appeals are allowed with consequential relief, in accordance with law.

(Pronounced in the open court on 07.12.2021)