CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

EXCISE Appeal No. 10117 of 2024-SM

[Arising out of Order-in-Appeal No. VAD-EXCUS-002-APP-228-2023-24 dated 20.09.2023 passed by Commissioner (Appeals) CGST & Central Excise, Vadodara]

M/s. Faizan Texturising .... **Appellant**
Unit-II, Plot No. 1705/A, GIDC Estate, Ankleshwar,
Distt. Bharuch - 393002

VERSUS

Commissioner, CGST & Central Excise, Vadodara .... **Respondent**
First Floor, Annex, GST Bhavan, Race Course Circle,
Vadodara-390 007 Gujarat

APPEARANCE :

Shri Rahul Gajera, Advocate for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 23.01.2026
DATE OF DECISION: 29.01.2026

FINAL ORDER NO. 10052/2026

DR. AJAYA KRISHNA VISHVESHA :

This appeal has been preferred by the appellant aggrieved by the impugned Order-in-Appeal No. VAD-EXCUS-002-APP-228-2023-24 dated 20.09.2023 passed by Commissioner (Appeals), CGST & Central Excise, Vadodara.

2. The facts of the case in brief are that two Show Cause Notices dated 31.03.2008 and 07.04.2008 were issued to the appellant and both the Show Cause Notices were confirmed vide Orders-in-Original dated 10.03.2014. Aggrieved with this Order-in-Original dated 10.03.2014, the appellant filed appeal before the Tribunal and the Bench vide order dated 07.07.2015 remanded the matter for re-adjudication. In de-novo proceedings, the Adjudicating Authority again confirmed the demand of both the Show Cause

Notices vide Orders-in-Original dated 29.12.2016. The appellant again preferred appeal before the Tribunal and the Tribunal vide Final Order No. A/10320-10323/2022 and A/10324-10327/2022 both dated 11.04.2022 set-aside both the impugned orders and allowed the appeals with consequential relief. Accordingly, the appellant vide letter dated 26.07.2022 filed a refund application of deposit amount of Rs. 28,60,546/- which included pre-deposit of Rs. 5,94,000/-. The appellant submitted xerox copies of challans, Orders of the Tribunal with their refund claim. However, as per verification by the Range Officer, Range-II, Division IX, Ankleshwar, the refund of pre-deposit of Rs. 5,82,000/- was sanctioned. Refund of Rs. 3,27,153/- which was paid voluntary by the appellant and appropriated by the Adjudicating Authority vide Order-in-Original dated 29.12.2016 was also sanctioned. The remaining amount of Rs. 19,51,393/- was not sanctioned as the Range Superintendent vide his letter dated 08.08.2022 reported that due to non-legibility of the TR-6 challans, the payment made by the appellant in respect of the said challans cannot be ascertained. The department also approached Bank of Baroda, Surat and Ankleshwar, vide letter dated 29.08.2022 to ascertain the genuineness of the challans from their record. The Bank of Baroda informed that such records are not available with them as the period of retention of record for TDS/Challans/ various returns, submitted to tax authorities is 10 years only. On the basis of the reply of Bank of Baroda, the Adjudicating Authority entertained a view that they are not sure whether the payments made by the appellant are in respect of the present case or otherwise. Accordingly, out of total claim of Rs. 28,60,546/- only Rs. 9,09,153/- was sanctioned and the remaining claim of Rs. 19,51,393/- was rejected by the Adjudicating Authority under Section 11B of the Central Excise Act, 1944. Interest on the refund amount, as claimed by the appellant under Section 35FF of the Central Excise Act, 1944 was also not sanctioned. Aggrieved with the said order passed by learned Adjudicating Authority, the appellant filed appeal before the learned Commissioner (Appeals).

2.1 The learned Commissioner (Appeals), considering the CESTAT order, Circular No. 984/02/2014-CX dated 16.08.2014 and the provisions of Section 11BB of the Central Excise Act, 1944 allowed the refund claim partly for Rs. 18,04,031/- (Rs. 15,04,031/- + Rs. 3,00,000/-) alongwith interest. As the refund of Rs. 9,09,153/- was already sanctioned to the appellant, the remaining amount of Rs. 8,94,878/- was allowed to the appellant with applicable interest. Since the learned Commissioner (Appeals) has allowed the refund only partly, the appellant has filed the present appeal before this Bench.

3. Shri Rahul Gajera, learned Counsel for the appellant submitted that the appellant filed refund application for Rs. 28,60,546/- (including Rs. 5,94,000/- as pre-deposit). The Commissioner (Appeals) has allowed the refund claim partly for an amount of Rs. 18,04,031/- (i.e. Rs. 9,09,153/- already sanctioned by the original adjudicating authority and Rs. 8,94,878/- sanctioned by the Commissioner (Appeals). The Commissioner (Appeals) has denied/ rejected the refund of balance amount of Rs. 10,56,515/- alongwith interest without any proper ground. Learned Counsel for the appellant submits that the learned Commissioner (Appeals) has erred in considering that only pre-deposit equivalent to 7.5% of the amount deposited in the appeal is eligible for refund and not the entire amount so deposited which is otherwise not disputed and settled by this Tribunal vide order dated 11.04.2022. He prays that the impugned order may be set-aside and the appeal may be allowed by sanctioning the balance amount of refund.

4. Smt. Sunita Menon, Superintendent Learned AR for the department reiterated the findings of the impugned order. She submits that the learned Commissioner (Appeals) has correctly allowed the refund of Rs. 18,04,031/- related to the pre-deposit at the rate of 7.5% of the duty amount and personal penalty on the partner. She prayed that the appeal may be dismissed or may be remanded back to the learned Commissioner (Appeals).

5. I have heard both the sides and perused the appeal record. The issue to be decided in this appeal is whether the appellant is entitled to get refund of amount of deposit of Rs. 28,60,546/- or he could get a refund of only 7.5% of the amount involved in the appeal as held by the learned Commissioner (Appeals) in the impugned order.

5.1 These are the admitted facts of this case that two Show Cause Notices were issued to the appellant which were confirmed vide Order-in-Original dated 10.03.2014. The appellant preferred appeal before CESTAT and

CESTAT vide Final Order No. A/10320-10323/2022 and A/10324-10327/2022 both dated 11.04.2022, set-aside the impugned orders and allowed the appeals with consequential relief. Pursuant to the orders passed by CESTAT, the appellant filed a refund claim regarding deposit amount of Rs. 28,60,546 which included the pre-deposit of Rs. 5,94,000/-. The Adjudicating Authority partially sanctioned the refund claim and sanctioned refund of Rs. 9,09,153/- and rejected the refund claim of remaining amount of Rs. 19,51,353/- and interest on the amount. Aggrieved from the Order-in-Original, appeal was filed before the learned Commissioner (Appeals) who allowed the appeal partly and set-aside the impugned order. He allowed only partial refund of pre-deposit of Rs. 8,94,878/- with applicable interest. Feeling aggrieved from the impugned order, this appeal has been filed before this Tribunal.

5.2 I agree with the learned Counsel for the appellant that learned Commissioner (Appeals) was not justified to allow the refund application only regarding 7.5% of the amount involved in the appeal and not the entire amount so deposited for which there is no dispute. I agree with the learned Counsel for the appellant that the appellant was eligible for refund of entire amount of Rs. 28,60,546/- being the amount deposited by the appellant, alongwith interest.

5.3 I also agree with the submissions of the learned Counsel for the appellant that in Circular No. 984/08/2014-CX dated 16.09.2014, at para 7, it has been stated that "Attested xerox copy of the document evidencing payment of such deposit, addressed to the jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of amount deposited along with interest at the rate specified." The learned Counsel for the appellant has submitted that from the above mentioned para-7 of the Circular, it is clear that submission of original TR-6 challans is not mandatory for refund purpose. It has also been submitted in para 7.2 of the same Circular that record of pre-deposit made under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 should be maintained by the Commissionerate so as to facilitate seamless verification of deposits at the time of processing the refund claims. Therefore, the onus to maintain deposit records lies with the department and not with the appellant. If the appellant's bank no longer retains the record due to their retention policy of 10 years, it cannot be held against the appellant. The appellant has submitted self-attested xerox copies of relevant challans, self attested copy of the CESTAT order and the refund application, all of which clearly establish the entitlement to the refund alongwith applicable interest. Therefore, I am of the considered view that denial of refund solely on the ground that the bank records are unavailable is not legally sustainable especially when the department has failed to maintain or verify it with own records.

5.4 In view of above discussion, I have arrived at the conclusion that the learned Commissioner (Appeals) has erred in passing the impugned order and not allowing the full refund of the amount deposited by the appellant and only allowing the refund application partly. Therefore, the impugned order is not sustainable and is liable to be set-aside and the appeal is liable to be allowed.

6. Consequently, the appeal is allowed and the impugned order passed by learned Commissioner (Appeals) dated 20.09.2023 is set-aside. The refund application submitted by the appellant consequent to Final Order No. A/10320-10323/2022 and A/10324-10327/2022 both dated 11.04.2022 passed by CESTAT for refund of deposit amount of Rs. 28,60,546/- is allowed with applicable interest as provided under Section 35FF of the Central Excise Act, 1944. As the learned Commissioner has already sanctioned the refund of pre-deposit of Rs. 8,94,878/- with applicable interest under Section 35FF of the Central Excise Act, 1944 and interest at applicable rate on the refund of Rs. 9,09,153/- has already been sanctioned, the balance amount shall be refunded to the appellant along with applicable interest without any further delay.

(Order pronounced in the open court 29.01.2026*)*

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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