सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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DIN NO. : **20221164SW000000DDEC**

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/558/2022 /H733 - 37
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-003-APP-ADC-60/2022-23, dtd 14.11.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका ,संयुक्त आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	15.11.2022
(ङ)	Arising out of Order-In-Original No. 09/C.Ex/OA/NRM/2020-21 dated 29.01.2021 issued by the Assistant Commissioner, CGST & C.Ex., Division- Himmatnagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Torneto Foods International Pvt. Ltd., (GSTIN – 24AAFCT5447C2ZI) Address : Block No.506, At & Post Virpur, Himmatnagar-Idar Highway, Himmatnagar, Dist. Sabarkantha, Gujarat – 383 001.

(A)	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.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying – (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeals to the appellate authority, the appellant may refer to the website www.cbic.gov.in.

ORDER-IN-APPEAL

Brief Facts of the Case :-

M/s. Torneto Foods International Pvt. Ltd., Block No. 506, At & Post Virpur, Himmatnagar-Idar Highway, Himmatnagar, Dist. Sabarkaantha, Gujarat-383001 [GST Registration No. 24AAFCT5447C2ZI] (hereinafter referred to as *'the appellant'*) has filed the present appeal on 11-02-2022 against ORDER-IN-ORIGINAL No. 09/C.Ex./OA/NRM/2020-21 dated 29.01.2021 (hereinafter referred to as the *'impugned order'*) passed by the Assistant Commissioner, CGST & C. Ex., Division-Himmatnagar, Commissionerate-Gandhinagar (hereinafter referred to as the *'adjudicating authority'*) wherein the *'adjudicating authority'* has confirmed the demand of wrongly carried forward Credit of capital goods amounting to Rs.47,71,042/-, in Table 6(A) of TRAN-1, under Section 73 of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017, ordered for recovery of interest under Section 50 of the CGST Act, 2017 and imposed penalty of Rs.47,71,042/- under Section 122 of CGST Act, 2017.

2. The issue in brief is that the appellant filed form GST TRAN-1, and claimed the transitional credit of capital goods amounting to Rs.51,78,100/- in Table 6(A) of TRAN-1. A show Cause Notice under F. No. IV/HMT/Torneto FI Pvt.Ltd./SCN/Tran-1/2020-21 dated 15.06.2020 was issued to the appellant wherein demanded the transitional credit of capital goods of Rs.47,71,042/- considering it as in-eligible. As same was in-eligible under the existing law i.e. Central Excise Law. The said demand was confirmed vide impugned order, as detailed in para 1 above.

3. Being aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following grounds:

3.1. The impugned order is not in keeping with the principles of equity, justice and law; that the impugned order has been passed in clear breach of principles of natural justice. The adjudicating authority was not justified in expecting and insisting presence of the appellant or representative of the appellant during the COVID-19 pandemic period;

3.2 The impugned order has not been uploaded on GST portal. It has been sent through email to the appellant. However, sending of order through email is not prescribed under the GST Statute and thus it is required to be considered as good as non-service of order. Under sub-rule 5 of Rule 142 it

is prescribed that any order is required to be served to an assessee by way of uploading on GST Portal i.e. uploading electronically. Sending of order through email cannot be equated with uploading electronically. So, the service of order through email is illegal and subsequent recovery of dues based on such order is also illegal. They gain direct support from two decisions - In the case of ***Gujarat State Petronet Ltd. Vs. UOI – SCA No.15607/2019 Dt:05/03/2020 : 2020 – VIL – 426 - GUJ,*** Honourable Gujarat High Court has held that manual service of order to assessee is not proper.. Similarly in the case of ***Shri Shyam Baba Edible Oils Vs. The Chief Commissioner – WP No.16131/2020 Dt:19/11/2020 : 2020 – VIL – 567 – MP,*** Honourable Madhya Pradesh High Court has expressed similar view wherein the SCN and subsequent order, both were sent through email. Honourable MP High Court quashed and set aside the SCN and order granting liberty to initiate fresh proceedings following the procedure prescribed under the Statute.

3.3 The appellant was availing benefit of Notification No. 1/2011-Central Excise, dated 01/03/2011 further amended by Notification No. 16/2012-Central Excise, dated 17/03/2012 whereby paying duty at 2% ad valorem; that Notification No. 1/2011-Central Excise, dated 01/03/2011 contained a proviso which read as under:

> **"Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or tax on input services has been taken under the provisions of the CENVAT Credit Rules, 2004."**

The aforementioned proviso was further amended vide Notification No. 35/2015-Central Excise, dated 17/07/2015. The original and subsequently amended proviso gives the understanding that CENVAT Credit in relation to Capital Goods was neither restricted nor intended to be restricted. The CENVAT Credit which was intended to be restricted is in relation to inputs and input services and admittedly Capital Goods do not fall under either inputs or under input services. So, even after payment of duty at 2% ad valorem, the appellant stood entitled to avail and utilise CENVAT Credit in relation to purchase of Capital Goods. Thus the appellant was entitled and rightly availed CENVAT Credit of Capital Goods and it has not committed any illegality in carrying forward of such Credit in TRAN-1 under the GST Act.

3.4 Without prejudice to any of the submissions above, for the sake of arguments assuming without admitting that as alleged by the adjudicating authority, there was no CENVAT Credit facility available to the appellant as it was paying 2% ad valorem duty availing benefit of Notification No. 1/2011-Central Excise dated 01/03/2011 presuming that it to be manufacture of exempted goods. Even in such presumption, Rule 6(4) of the CENVAT Credit Rules, 2004 (CCR) allows credit on purchase of Capital Goods even though the same are used in manufacture of exempted goods. Vide Notification No. 13/2016-Central Excise (N.T.) date 01/03/2016, sub-rule 4 of rule 6 of CCR stood amended and the aforesaid amendment makes it clear that there is a provision for granting of CENVAT Credit of capital goods inspite of their use in manufacture of exempted goods. By virtue of this amendment, the CENVAT Credit availability is differed for two years but it does not disentitle the eligibility of CENVAT Credit. In other words, an assessee who is engaged in manufacture of exempted goods, is eligible and entitled to claim, avail and utilise CENVAT Credit in relation to purchase of Capital Goods used in manufacture of exempted goods after two years from the date of installation of such Capital Goods. Thus, the restriction, if any, is only for the period of two years and no further; that in the present case of the appellant, assuming that appellant is engaged in manufacture of exempted goods, though appellant does not believe the same as it is paying duty 2% ad valorem and that is also a duty under the CEA, but assuming that it is availment of exemption then also by virtue of sub-rule 4 of Rule 6 of CCR, the appellant continues to remain entitled to claim and avail CENVAT Credit of Capital Goods and utilise the same after two years from the date of installation of such Capital Goods.

3.5 Admittedly, the appellant has carried forward such CENVAT Credit on purchase of Capital Goods from Central Excise to GST by way of filing TRAN-1. So, as per above provision and as per understanding of the appellant, it has not committed any illegality in claiming, availing and utilising such CENVAT Credit in relation to Capital Goods. The restriction by way of proviso to Section 140 (2) of the CGST Act can in no way construed to come in way of appellant claiming, availing and utilising the CENVAT Credit in relation to Capital Goods because neither CEA nor CCR disentitles appellant in claiming such credit and it cannot be construed at such credit is inadmissible under the CEA and/or CCR. The deferment of two years cannot be equated with or construed as inadmissibility.

3.6 In view of above submissions and provisions of law, the allegations made by the learned Assistant Commissioner in SCN and in turn in impugned order, have no legs to stand on. Thus, the appellant was entitled and appellant had rightly availed CENVAT Credit of Capital Goods and it has not committed any illegality in carrying forward of such Credit in TRAN-1 under the GST Act. The impugned SCN and in turn the impugned order deserves to be quashed and set aside.

3.7 The levy of interest is unwarranted in light of facts and circumstances of the case. Imposition of interest on the dues arising because of unwarranted levy of tax is bad and illegal in view of decision of Honourable Supreme Court in the case of M/s. Maruti Wire Industries Pvt. Ltd. Vs. Sales Tax Officer, First Circle, Mattancherry and Others – 122 STC 410 (SC) and decision of Honourable Central Sales Tax Appellate Authority in the case of M/s. Prabhat Solvent Extraction Industries Pvt. Ltd. – Appeal No. 346/CST/2009 Dt:-06/08/2010.

3.8 The levy of penalty is completely unwarranted, unjustified, too excessive, illegal and bad in law. The issue involved is the issue of interpretation of provisions of Statute. The learned authority has not alleged that appellant had intentionally avoided or evaded payment of duty by claiming CENVAT Credit of capital goods and no *mens rea* has been established. By no stretch of imagination it can be presumed that appellant had any intention to evade tax. In the circumstances, the levy of penalty is completely unjustified and too excessive in view of facts and circumstances of the case. In this connection reference may be made to the decision of Honourable Supreme Court in the case of M/s. Hindustan Steel Ltd. Vs. State of Orissa – 25 STC 211 (SC) and E.I.D. Parry (I) ltd. Vs. Assistant Commissioner of Commercial Taxes and Another – 117 STC 457 (SC). It may kindly be noted that the decision of Honourable Supreme Court in the case of M/s. Hindustan Steel Ltd. (as above cited) is a decision of Three Judge Bench decision – wherein Honourable Apex Court has held that - Penalty would not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest. Further the reference can also be made to another decision of Honourable Apex Court in the case of Commissioner of Sales Tax, U.P. Vs. Sanjiv Fabrics – CA No. 2344-2347/2004 Dt:-10/09/2010 wherein Honourable Apex Court has specifically said that *mens rea* is the most important ingredient and a precondition for before levying penalty, and if no *mens rea* is established then penalty cannot be levied. Reliance can also be

placed upon principle laid down in the decision of Honourable Supreme Court in the case of M/s. Sri Krishna Electricals – 23 VST 249 (SC) wherein Honourable Apex Court has held that – Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealers' turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside.

3.9 In view of above, the disallowance/reversal of CENVAT Credit in relation to Capital Goods is improper, unjustified and illegal. The appellant was entitled and appellant had rightly availed CENVAT Credit of Capital Goods and it has not committed any illegality in carrying forward of such Credit in TRAN-1 under the GST Act. The impugned SCN and impugned order imposing additional liability by way of reversal of CENVAT Credit and consequent imposition of interest and penalty deserves to be quashed and set aside.

PERSONAL HEARING :

4. Personal hearing was held on dated 07.09.2022. Shri Nishant C. Shukla, Advocate and authorized representative appeared on behalf of the appellant. At the time of personal hearing, further time of three days was granted to submit any further submissions the appellant thus submitted written submission dated 09.09.2022 reiterating the above submissions along with copy of judgment relied upon. He also placed his reliance upon a recent decision of New Delhi Principal Bench of CESTAT in the case of **M/s. K K Spun India Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, Indore**– Excise Appeal No. 51293/2019 date 12/07/2022 wherein to some extent similar controversy was involved and it has been categorically held by Honourable Tribunal that payment of duty ad valorem is dutiable transaction and it cannot be considered to have been transacted in exempted goods. So, appellant therein was held to be correct/right in availing Cenvat Credit of duty paid on purchases of Capital Goods.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the appellant was served with a communication dated 13/01/2022 issued by Superintendent, Central GST, AR-I, Himmatnagar whereby appellant was informed about the impugned order dated 29/01/2021 wherein outstanding demand of ₹. 47,71,042/- was confirmed. The said impugned order was not uploaded in the GST portal as prescribed under sub-rule 5 of rule 142 of the CGST Rules, but was sent through Email. It

was only after 13/01/2022, when notice of recovery served to the appellant, appellant came to know about the impugned order that the same has been sent through email. So, communication of the impugned order may be considered on 13/01/2022.

In this regard I find it relevant to go through the statutory provisions of Section 107 of the CGST Act, 2017 which is reproduced here in below:

> *"Sec.107. Appeals to Appellate Authority. —(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*
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> .....
>
> *(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."*

Accordingly, as per Section 107 (1) of CGST Act, 2017, the appellant was required to file appeal within 3 months from the date of communication of the said order. Further, as per Section 107(4) ibid, the appellate authority has powers to condone delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown. Thus, the total time limit available to the appellant for filing of appeal is four months from the date of communication of order. In this regard, the appellant in their grounds of appeal contended that the impugned order was sent through Email and considered communicated to them only on dated 13.01.2022 due to reason that they came to know about the impugned order only when they received the recovery notice from the jurisdiction Superintendent of Central GST.

6. Now, even if it is considered that the said impugned order was sent through Email and thus communicated to the appellant 29.01.2021 i.e. on the date of impugned order dated 29.01.2021. The subject appeal was filed on dated 11.02.2022 against impugned order i.e. after a period of 12 months. Accordingly, considering the date of communication of Order on 29-01-2021, normal time period for filing of appeal in this case is on or before 29-4-2021 and extended time period falls on or before 29-5-2021. In this regard, I find that Hon'ble Supreme Court's vide its judgment dated 23-3-2020, taking suo motu cognizance of the situation arising due to Covid 19

pandemic, has extended the period of limitation prescribed under the Law with effect from 15-3-2020 till further Orders. Subsequently vide Order dated 27-4-2021, the Hon'ble Supreme Court has restored the Order dated 23-3-2020 thereby directing that the period (s) of limitations as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders from 15-3-2020. In pursuance to said decision, CBIC vide Circular No.157/13/2021-GST dated 20-7-2021 has also clarified that *appeals by tax payers/tax authorities against any quasi-judicial order, whether any appeal is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where a proceedings for revision or rectification of any order is required to be undertaken, the time limit for the same would stand extended as per the Hon'ble Supreme Court's Order. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27-4-2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various Courts against any quasi judicial order or where proceedings for revision or rectification of any order is required to be undertaken and is not applicable to any other proceedings under GST Laws.*

Further, the Hon'ble Supreme Court vide Order dated 10-1-2022 passed in MA No.21 of 2022 in suo motu writ petition No.3 of 2020, excluded the period from 15-3-2020 to 28-2-2022 from computing the period of limitation in filing appeals and also granted 90 days extension period from 1-3-2022 for filing appeals. Accordingly, by excluding the period from 15-3-2020 to 28-2-2022, the present appeal filed on 11.02.2022 is not hit by time limitation prescribed under Section 107 of CGST Act, 2017 and as per H'ble Supreme Court's order dated 10.01.2022.

7. Regarding merit of the case, in the subject case the credit of Capital Goods amounting to Rs.47,71,042/- was carried forward in TRAN-1. The appellant had filed TRAN-1 on 06.10.2017, in which they had shown unutilized Cenvat Credit in respect of capital goods carried forward to electronic credit ledger as Central Tax amounting to Rs. 51,78,100/- in terms of Section 140(1) of CGST Act, 2017. During verification of said TRAN-I, the jurisdictional GST authorities allegedly noticed that the said credit was inadmissible to them as the appellant has availed the benefit of Not. No. 01/2011-CE dated 01.03.2011, Sr. No. 14 wherein no cenvat credit facility is

available and accordingly SCN dated 15.06.2020 was issued. In reply to SCN, the appellant contended that in light of sub-rule 4 of Rule 6 of CCR, 2004, the capital goods credit in question stands available to them. Later, the inadmissible credit was lowered to the extent of Rs. 47,71,042/- and accordingly demand was raised vide the above referred Show Cause Notice. The said demand was confirmed vide impugned order dated 29.01.2021 including interest under Section 50 and penalty under Section 122 of CGST Act.

Now, to decide the appeal, the main issue to be decided is that whether the Cenvat Credit on Capital Goods was admissible to the appellant or otherwise. I find the appellant was manufacturing and clearing the goods classifiable under Chapter 20019000, 21069099 & 20052000 and was paying central excise duty @2% by availing the benefit of Notfn. No. 1/2011-CE dated 01.03.2011. I find that and in terms of Not. No. 1/2011-CE, the effective rate of duty was 1% on specified goods when no Cenvat credit availed on inputs or input services. The said notification was amended vide Notification No. 16/2012-C.E., dated 17-3-2012, wherein the effective rate of 1% was substituted by 2% with the same condition that the duty rate was 2% when no Cenvat credit availed on inputs or input services. Here, it was very clear that if the assessee avails the benefit of Notfn No. 1/2011-CE dated 01.03.2011 amended vide Notfn. No. 16/2012-CE dated 17.03.2012, the Cenvat credit on input and input services was not available. It nowhere mentions in the said notification that Cenvat Credit on Capital goods is not available. Thus, the notification does not restrict the availment of Cenvat Credit on Capital goods. However, to examine the eligibility of said credit, let me go through the provisions contained in Rule 6(4) of Cenvat Credit Rules, 2004. As per Rule 6(4) of Cenvat Credit Rules, 2004, no Cenvat credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services other than final products which are exempted based upon the value or quantity of clearances made. It simply mandates that no Cenvat credit can be allowed for capital goods used exclusively for manufacture of exempted goods. The 'EXEMPTED GOODS' is defined in Rule 2(d) of Cenvat Credit Rules, 2004 as under:

> *(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed.*

In terms of above definition, goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE dated 01.03.2011 is availed

Thus, in terms of Rule 6(4) of Cenvat Credit Rules, 2004, the Cenvat Credit on Capital goods is not allowed which are exclusively used in the manufacture of exempted goods. Here exempted goods include the goods on which benefit of Notfn. No. 1/2011-CE is availed. Thus, the plain reading of Rule 6(4) of CCR, 2004 suggests that Cenvat Credit on Capital goods is not allowed to the appellant, as they availed the benefit of Not. No. 1/2011-CE.

Now, let me examine the provisions of Rule 6(4) of CCR, 2004. I find that vide Notification No. 13/2016- Central Excise (N.T.), dated 01.03.2016, effective from 01.04.2016 New Delhi, the 1st March, 2016 [CENVAT Credit (Third Amendment) Rules, 2016], Rule 6(4) of CCR, 2004 reads as under: .

> *"No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year:*
>
> *Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods."*

In view of the above provision, it clear that there is a provision for granting of CENVAT Credit of capital goods inspite of their use in manufacture of exempted goods. By virtue of this amendment vide Notification No. 13/2016- Central Excise (N.T.), dated 01.03.2016, the CENVAT Credit availability is differed for two years. It does not say that CENVAT Credit is not eligible. In other words, an assessee who is engaged in manufacture of exempted goods, is eligible to avail and utilize CENVAT Credit in relation to purchase of Capital Goods used in manufacture of exempted goods after two years from the date of installation of such Capital Goods. Thus, I find that the restriction of availing the credit on capital goods is only for the period of two years from the date of commencement of the commercial production or provision of services, as the case may be, and where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods. The adjudicating authority has failed to examine this issue in impugned order. It also means that after two years from the date of commencement of the commercial production or date of installation of capital goods, the appellant can utilize the said credit. The appellant continues to remain entitled to claim and avail CENVAT Credit of Capital

Goods and utilize the same after two years from the date of commencement of the commercial production or date of installation of such Capital Goods. Considering the above legal provisions, if they were allowed to utilize the credit after two years means they were also eligible and allowed to carry forward their credit in TRAN-1 so as to allow them to utilize the credit in GST regime.

8. Considering the above, I am of the opinion that the adjudicating authority erred in confirming the demand of transitional credit of capital goods amounting to Rs. 47,71,042/- claimed in Table 6(A) of TRAN-1 in terms of Section 73 read with Rule 121 of CGST Act, 2017. As I am of the considered view that the impugned order is not sustainable in law, demand of interest under Section 50 and Penalty of Rs. 47,7,042/- under sub-section 1A of Section 122 of CGST Act, 2017 is clearly not warranted.

9. I allow the appeal and set aside the impugned order.

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

10. The appeal filed by the appellant is disposed of in above terms.

14/11/22

(Mihir Rayka)
Additional Commissioner (Appeals)
Date: 14.11.2022

Attested

15/11/2022

(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
M/s. Torneto Foods International Pvt. Ltd.,
Block No. 506, At & Post Virpur, Himatnagar-Idar Highway Road,
Himatnagar, Dist. Sabarkantha, Gujarat-383001.

Copy to :

1) The Principal Chief Commissioner, CGST, Ahmedabad Zone
2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
3) The Commissioner, CGST, Gandhinagar
4) The Assistant Commissioner, CGST, Division Himatnagar, Gandhinagar.
5) The Superintendent, CGST, Range I, Division Himatnagar, Gandhinagar
6) The Additional Commissioner, Central Tax (Systems), Gandhinagar
7) Guard File
8) PA file