आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
सत्यमेव जयते
07926305065- टेलेफैक्स07926305136

DIN: 20221164SW000081818C

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/751/2021-APPEAL /5448-52

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-67/2022-23**
दिनाँक Date : **24-11-2022** जारी करने की तारीख Date of Issue 28.11.2022

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **05/AC/D/20221-22/KMV** दिनाँक: **31.08.2021**, issued by Assistant Commissioner, Division-IV, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s NPM Machinery Pvt. Ltd.,
   Block No. 252, Opp. Jackson Press Road,
   B/H Sigma jaminator, Changodar,
   Ahmedabad-382213

2. Respondent
   The Assistant Commissioner, CGST,Division-IV, Ahmedabad North , 2nd Floor, Gokuldham Arcade,Sarkhej-Sanand, Ahmedabad - 382210

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।
Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. NPM Machinery Pvt. Ltd., Block No. 252, Opp. Jackson Press Road, B/h Sigma Jaminator, Changodar, Ahmedabad – 382213 (hereinafter referred to as "the appellant") against Order-in-Original Number 05/AC/D/2021-22/KMV dated 31.08.2021 issued on 22.09.2021 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST & Central Excise, Division IV, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the fact of the case is that the appellant is engaged in manufacturing of excisable goods i.e. Pharmaceutical Machinery & Spares having Central Excise Registration No. AAECN0459REM001 and also having Service Tax Registration No. AAECN0459RSD001. During the course of audit of the records of the appellant, it was noticed that the appellant has availed total credit of Rs. 4,42,043/- vide RG-23 A Pt-II, Entry S.No. 37 dated 22.04.2016, for the amount which has been paid vide Challan dated 06.07.2013, paid by them on RCM basis on receiving the services of commission agent situated abroad. The credit availed by them appeard to be not admissible as per third proviso to Rule 4(1) of the Cenvat Credit Rules, 2004, as the same is taken after period of one year.

2.1 Subsequently, the appellant was issued a Show Cause Notice F.No. VI//I(b)-129/IA/AP-38/C-VI/2019-20 dated 04.06.2020, which was adjudicated vide the impugned order by the adjudicating authority and the demand of wrongly availed and utilized Cenvat Credit of Rs. 4,42,043/- was confirmed under provisions of Section 11A(4) of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 along with Interest under the provisions of Section 11AA of the Central Excise Act, 1944 read with the provisions of Rule 14(1)(ii) of the Cenvat Credit Rules, 2004. Further Penalty of Rs. 4,42,043/- was also imposed on the appellant under the provisions of Section 11AC of the Central Excise Act, 1944 read with the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004.

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

- The Assistant Commissioner has not dealt with the submissions made before him. Thus, the order is clearly non-reasoned and non-speaking and in clear violation of the principles of natural justice.

- The appellant had relied upon order of the Hon'ble Tribunal in the case of M/s. Neon News P. Ltd. In the said order the Hon'ble Court had dropped the demand under identical facts. Hence the same is a binding precedent and was required to be followed. However, the Asst. Commissioner has strangely not dealt with the said order in his order. There can not be a reason for not following judicial precedent.

- The issue is directly covered by the Judgment of the Hon'ble Apex Court in the case of M/s. Raghuvar (India) Ltd. In the said case also the Hon'ble Apex Court has clearly held that any law or stipulation prescribing period of limitation to do or not to do a thing after expiry of period so stipulated has the consequence of creation or destruction of rights and therefore must be specifically enacted and prescribed thereof. It is not for the courts to import specific period of limitation by implication where there is really none. It is further held that there was no period of limitation under Rule 57I at the time of taking credit and limitation of 6 months introduced with effect from 05.10.1988 would be applicable prospectively. The amendment has not been given retrospective effect, which indicate that subsequent amendment should have no impact on the construction to be placed on provisions as it existed before amendment. Here in the present case also, the amendment has not been given retrospective effect and hence the amendment is applicable only prospectively and hence the order denying credit on the basis of amendment is bad in law and requires to be quashed.

- The aforesaid ratio is consistently followed by various Higher Authorities. The Hon'ble Allahabad High Court in the case of M/s Ram Swarup Electricals Ltd., Hon'ble Punjab & Haryana High Court in the case of M/s Industrial Cables and Hon'ble Tribunal in the case of M/s Neon News P Ltd have followed the ratio and all these judgments were relied before the Adjudicating Authority. However, he has not even bothered to comment on the same. It is submitted that the issue is no more res integra in view of aforesaid judgments. Hence also order passed without considering aforesaid binding precedents is passed in violation of principles of natural justice and hence also the order is required to be quashed.

- The Asst. Commissioner has further held in para 12.6 that ratio laid down by the Hon'ble Tribunal in the case of M/s. SAIL is also not applicable. The Hon'ble Tribunal has held that when there is valid reason for not availing CENVAT immediately and the Credit is availed after pronouncement of Judgment by the Supreme Court, it cannot be held that the credit was not availed within limitation. Here in the present case also, the credit was not availed immediately as the Judgment of the Hon'ble Gujarat High Court in the case of M/s. Cadila was against the assessee. The service tax was deposited after pronouncement of Judgment by Hon'ble High Court. Hence as per the judgement the credit was not admissible. The High Court judgment was challenged before the Supreme Court by the M/s. Cadila. Hence the issue was pending before the Hon'ble Supreme Court. The Adj. Authority has incorrectly observed that the matter was not pending before any higher forum. The Punjab & Haryana High Court in the case of M/s Ambica Steel had decided matter pertaining to availability of CENVAT on Commission Agent's Service in favour of Assessee. Hence, there were two divergent view as far as issue is concerned. The Central Board vide Notification No. 2/2016 dated 03.02.2016 inserted explanation in rule 2(l) which allowed credit on Commission Agent's Services. Hence

matter being clarified by the Central Board, the credit was availed on 22.04.2016. Hence it is incorrectly observed in para 12.6 (c) of the impugned order that matter was not pending before Higher Forum.

- The Adjudicating Authority has further held in the impugned order that this period of more than 2 months after insertion of explanation is too long and this proves that the noticee had no plan to avail credit. In this regard firstly it is submitted that in the case of M/s SAIL, the credit was availed almost after a year from pronouncement of Judgment by the Supreme Court and the Hon'ble Tribunal, after considering above facts, has observed that it cannot be said that the credit was not availed within limitation. Hence the ratio is directly applicable to the facts of present case and the Adj. Authority has incorrectly distinguished the binding precedent. Hence also the order is required to be quashed. They further submitted that the appellants have recorded transaction in their excise records and have availed cenvat credit openly. They have filed their returns regularly. In such a condition it cannot be said that the appellants have suppressed any fact with malafide intention. Hence the notice issued invoking extended period is barred by limitation. Various Higher Authorities have held that once the transactions are recorded in statutory records and have been intimated to the department by filing returns, the demand issued invoking extended period is barred by limitation.

- They further submitted that when the notice is issued on the basis of transactions recorded in statutory records, 100% penalty under section11AC is not imposable. The order is required to be quashed on this ground also.

4. Personal hearing in the case was held on 23.11.2022. Shri Nirav Shah, Advocate, and Shri Chirag Patel, Authorised person, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum and submitted copies of judicial pronouncement in support of his contention.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The dispute involved in the present appeal relates to availment of Cenvat Credit after 1 year, which was held by the adjudicating authority to be in contravention of the provisions of third proviso of Rule 4(1) of the Cenvat Credit Rules, 2004.

6. I find that the adjudicating authority had confirmed the demand observing as under:

"(a) At the time of issuance of invoice under reference, CENVAT credit on Commission Agent's service was not available for utilization. Even, if it is presumed that Noticee was waiting for the judgment in the case of M/s. Cadila Healthcare Ltd. (though it was an afterthought), Hon'ble High Court of Gujarat ordered in favour of the revenue which also left no scope for them to avail the CENVAT credit.

(b) Secondly, case law provided here states that dispute pertaining to admissibility of credit is pending before the higher forum and credit is availed after the pronouncement of judgment by Hon'ble Supreme Court, it cannot be held that the credit was not availed within the limitation. In the present case, the case was not pending before the higher forum and no pronouncement was made by Hon'ble Supreme Court in this matter.

(c) It is beyond my understanding that without approaching higher forum by M/s. Cadila Healthcare Ltd. in the case of CENVAT Credit on Commission Agent's service, the Noticee was expecting the decision in their favor and therefore they waited for this clarification.

(d) The Noticee did not make any correspondence with the department with regard to availment of CENVAT credit in future. The same was came into notice only when the Audit team conducted audit. Moreover, Notification No. 02/2016-CE(NT) was issued on 03.02.2016 whereas the Noticee shown the said CENVAT credit on 22.04.2016 (approx.. 3 months later). This act of the Noticee proves that they had no plan to take CENVAT credit on the said Service but was an afterthought."

7. I also find that main contention of the appellant is that the amendment made in the Rule 4(1) of the Cenvat Credit Rules, 2014 has not been given retrospective effect and hence the amendment is applicable only prospectively. Hence, the order denying credit on the basis of amendment is bad in law and requires to be quashed. The appellant also contended that they were eligible for Cenvat credit immediately upon making payment to the Government, however, they did not avail the Cenvat credit as the department at the relevant point of time was of the view that aforesaid services are not cenvatable. The appellant awaited for some declaration from the department. The department subsequently clarified the matter by way of insertion of explanation in Rule 2(l) of the Cenvat Credit Rules, 2004 vide Notification No. 2/2016 dated 03.02.2016. The explanation clarified aforesaid services Cenvatable. Upon issuance of the notification, the appellant have availed Cenvat credit.

8. On the issue of taking credit beyond the prescribed one year period, I find that prior to introduction of 3rd proviso in Rule 4(1) of Cenvat Credit Rules, 2004 w.e.f. 01.09.2014, an assessee was entitled to take Cenvat credit at any time after receipt of the relevant document along with the goods specified therein. However, with effect from 01.09.2014, vide Notification No. 21/2014- Central Excise (NT) dated 11.07.2014, by introducing the 3rd proviso in Rule 4(1) of the Cenvat Credit Rules, 2004, it was provided as follows:

"Provided also that the manufacturer or the provider of output services shall not take Cenvat credit after six months of the date of issue of any of the documents specified in sub-rule (1) of Rule 9"

8.1 This provision was subsequently amended vide Notification No. 06/2015-CE(NT) dated 01.03.2015, wherein the time limit for availing of input has been increased from 6 months to one year from the date of issue of duty paying documents specified in rule 9(1).

8.2 The duty paying documents i.e. Challan in the present case, on which the credit was availed, were paid on 06.07.2013. Considering the date of Challan, there is no dispute that during the relevant period both the above notifications prescribing the time limit for taking credit were not in existence. Therefore, the appellant was not bound to take the credit within the period of one year as envisaged in the impugned order. Also, Hon'ble CESTAT Principal Bench, New Delhi, in the case of Sanghvi Marmo Pvt Ltd. reported in 2020 (33) G.S.T.L. 232 (Tri. - Del.) at para-3 held as under:

> *"I find that the said proviso has been introduced w.e.f. 1-9-2014 and there is no stipulation in the amending notification that the same shall apply retrospectively. Rules of interpretation provide that whenever any statute is newly added the same has got only prospective effect unless it is specifically provided in the amending statute or the amendment is by way of substitution of an existing provision mainly by way of clarification or removal of defects. Accordingly, I hold that the said proviso in Rule 4(1) of Cenvat Credit Rules has got only prospective effect. Accordingly, the appeal is allowed and it is held that the appellant has taken credit rightly on 20-1-2015 on the basis of Bill of Entry dated 22-5-2014. Appeal is allowed and the appellant is entitled to consequential benefits, in accordance with law."*

8.3 Similarly, Hon'ble CESTAT, West Zone Bench, Ahmedabad in the case of Essel Propack Ltd.- 2022 (379) E.L.T. 123 (Tri. - Ahmd.), at para-4, held that;

> *"I have carefully considered ..... The appellant have taken the credit in the month of July, 2013 in respect to the goods received during the period 2009-10 and 2010-11. During that period no time limit was prescribed for taking the credit Therefore, in my considered view the department cannot import the time limit which is not statutorily stipulated in the law. The time. limit has been prescribed by the Notification No. 21/2014-C.E.(N.T.) dated 11-7-2014 whereby the assessee is supposed to take the credit within 6 months/l year from the date of invoice. Considering this amendment for the past period this Tribunal has considered the similar issue wherein it was held that the invoice issued prior to date of Notification No. 21/2014-C.E. (N.T.) dated 11-7-2014 the Cenvat credit cannot be denied on the ground of limitation---"*

8.4 Thus relying on the above decisions, I find that when the merits of eligibility of Cenvat credit on the Challan in present case not questioned in the show cause notice itself, the credit cannot be denied to the appellant merely by importing the time limit which was not specified in the law.

9. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of recovery of Cenvat Credit of Rs. 4,42,043/-, is not legal and proper and deserve to be set aside. Since the demand of recovery of Cenvat credit is not sustainable on merits, I am not delving in to the aspect of limitation raised by the appellant. When the demand fails, there does not arise any question of charging interest or imposing penalty in the case.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है|
The appeal filed by the appellant stands disposed of in above terms.

(Akhilesh Kumar) 24th November 2022
Commissioner (Appeals)

Attested

(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date : 24.11.2022

By RPAD / SPEED POST

To,

M/s. NPM Machinery Pvt. Ltd., — Appellant
Block No. 252, Opp. Jackson Press Road,
B/h Sigma Jaminator, Changodar,
Ahmedabad – 382213

The Assistant Commissioner, — Respondent
CGST & Central Excise,
Division-IV, Ahmedabad North

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Assistant Commissioner, CGST, Division IV, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file