



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(  
**Office of the Commissioner,**  
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
**Central GST, Appeal Commissioner-**  
**Ahmedabad**



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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DIN- 20220264SW000000E9DE

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/CEXP/392/2021 -Appeal-O/o Commr-CGST-Appl-Ahmedabad /6469-53
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-67/2021-22  
दिनांक Date : 24.02.2022 जारी करने की तारीख Date of Issue : 25.02.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. 37/ADC/2020-21/MLM dated 28.01.2021, passed by the  
Additional Commissioner, CGST & C. Ex., Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** M/s. Bajaj Foods Ltd., 444 Ashwamegh Estate, Opp: MN Desai Petrol Pump,  
Changodar, Dist: Ahmedabad.

**Respondent-** The Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

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 पूर्वोक्त 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, 4<sup>th</sup> 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 मामलों 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 ड्यूटी क्रेडिट 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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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 अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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 (सिस्टेंट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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. Registrar 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 आदेश 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 है।

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 Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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.

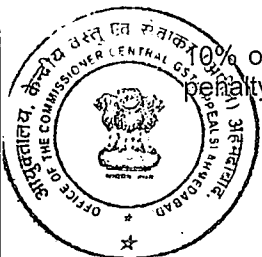
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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."

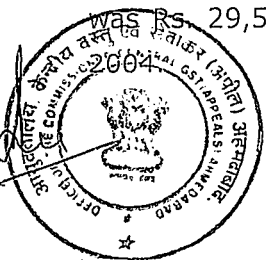


**ORDER-IN-APPEAL**

1. This order arises out of an appeal filed by M/s. Bajaj Foods Ltd, 444, Ashwamegh Estate, Opp. M.N. Desai Petrol Pump, Changodar, Dist-Ahmedabad (hereinafter referred to as '*appellant*') against Order in Original No. 37/ADC/2020-21/MLM dated 28.01.2021 (hereinafter referred to as '*the impugned order*') passed by the Additional Commissioner, CGST & Central Excise, Commissionerate:Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant was engaged in the manufacturing of "Peanut Butter" falling under CETH 15179020 of the Central Excise Tariff Act, 1985. The appellant had obtained permission in terms of Notification No. 21/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 from the Assistant Commissioner of Central Excise, Division-IV, erstwhile Ahmedabad-II Commissionerate. During scrutiny of ER-1 Returns for the period from August, 2010 to July, 2011, it was noticed that the appellant had wrongly availed Cenvat Credit of Rs. 29,55,530/- on inputs, packing materials and input services used in the manufacture of their final product viz. "Peanut Butter", which was unconditionally exempted as per Notification No. 3/2006-CE dated 01.03.2006 and accordingly, they appeared to have contravened the provisions of Rule 6(1) of the Cenvat Credit Rules, 2004.

2.1 Accordingly, the appellant was issued a Show Cause Notice No. V.15/15-39/OA/2011 dated 06.09.2011 for denial and recovery of wrongly availed Cenvat Credit amounting to Rs. 29,55,530/- from them, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 alongwith interest under the provisions of Rule 14 of the Central Credit Rules, 2004 readwith Section 11AB of the Central Excise Act, 1944. It was also proposed to impose Penalty on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004. The said SCN was adjudicated by the Additional Commissioner, Central Excise, erstwhile Ahmedabad-II Commissionerate (hereinafter referred to as '*the original adjudicating authority*') vide OIO No. 11/ADC/2012/AS dated 31.01.2012 (hereinafter referred to as '*the original adjudication order*') wherein (i) The Cenvat Credit amount of Rs. 29,55,530/- was disallowed and it was ordered for recovery in terms of Rule 14 of the Cenvat Credit Rules, 2004; alongwith interest under Section 11AB of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004; and Penalty of Rs. 29,55,530/- imposed under Rule 15(1) of the Cenvat Credit Rules,



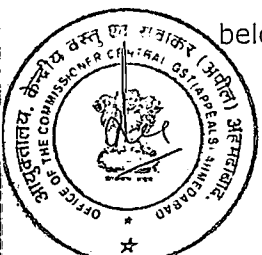
2.2 The appeal filed by the appellant against the original adjudication order was decided by the Commissioner (Appeal-I), erstwhile Central Excise, Ahmedabad (hereinafter referred as 'the original appellate authority') vide OIA No. 236/2012 (Ahd-II) CE/AK/Commr(A)/Ahd issued on 21.06.2012 (hereinafter referred as 'the original appellate order'), wherein the original adjudication order was upheld to the extent that "the Cenvat Credit of Rs. 29,55,530/- is disallowed and is to be reversed by the appellant" and the rest of the original adjudication order regarding interest and penalty was set aside.

2.3 Thereafter, appeal filed by the appellant as well as the department against the original appellate order has been decided by the Hon'ble CESTAT, Ahmedabad vide Order No. A/10171-10172/2017 dated 19.01.2018, as briefly reproduced here under:

- (i) *Therefore, following the said precedent, applicable to the facts and circumstances of the present case for recovery of erroneous credit availed, the findings recorded in the impugned order is upheld and the Appeal filed by the Appellant/Assessee being devoid of merit is dismissed;*
- (ii) *Therefore, to ascertain reversal of the same amount which they are required to reverse being disallowed by the Id. Commissioner (Appeals), the matter needs to be remanded to the adjudicating authority for the purpose of verification;*
- (iii) *As far as interest on the Cenvat Credit availed is concerned, I find that the Id. Commissioner (Appeals) while confirming the demand of Rs. 29,55,530/- observed that the Appellant had exported the exempted goods under claim of Rebate of the duty paid on inputs and the present credit on inputs are maintained in their RG-23 A Part-II account, is only for the purpose of claiming rebate on inputs used in the manufacture of finished goods exported against rebate claim. Thus, in these circumstances, I find justification in the order of the Id. Commissioner (Appeals) in setting aside the penalty and interest.*

2.4 The appellant has also filed Tax Appeal No. 1121 of 2018 before the Hon'ble High Court of Gujarat against the Order of CESTAT, Ahmedabad which is pending as on date.

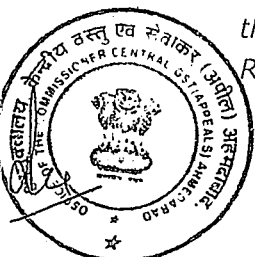
3. Thereafter, the matter was again taken up by the adjudicating authority for denovo consideration, in terms of the Order No. A/10171-10172/2017 dated 19.01.2018 issued by Hon'ble CESTAT, Ahmedabad. He decided the matter vide issuance of impugned order, as briefly reproduced below:



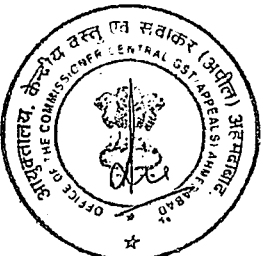
- (i) The appellant have been disallowed Cenvat Credit of Rs. 29,55,530/- and ordered to recover from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944. An amount of Rs. 21,15,123/- already reversed by the appellant, has been appropriated towards the said demand of wrongly availed Cenvat Credit.
- (ii) The appellant has been ordered to pay/reverse the remaining amount of wrongly availed Cenvat Credit amounting to Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Rules, 1944 as applicable during the relevant period (August 2010 to July 2011)
- (iii) The appellant has also been ordered to pay interest on the amount of Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.
- (iv) Penalty of Rs. 8,40,407/- has also been imposed on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004.

4. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds, which are as reproduced herebelow:

- (i) The adjudicating authority has travel beyond the scope of the Government Policy regarding permitting the credit of excise duty paid on inputs by the manufacturer under the provisions of Cenvat Credit Rules, 2004. The basic object of the scheme was not considered by the adjudicating authority and disallowed the credit taken on input, packing materials and consumables, consumed in final product exported by the appellant.
- (ii) It was repeatedly submitted to the adjudicating authority that their entire production of final product viz. Peanut Butter is exported and therefore the credit of excise duty paid on Inputs, Packing Material and Consumable is admissible under the provisions of Rule 6(6) of Cenvat Credit Rules, 2004 which has not taken into consideration.
- (iii) The adjudicating authority has prevented himself in reading sub rule (2) and sub rule (3) of Rule 6 of Cenvat Credit Rules, 2004. In the present case, as the final product is exempted by virtue of Notification No. 03/2006-CE dated 01.03.2006, the provision of sub-rule (2) and (3) of Rule 6 of Cenvat Credit Rules, 2004 needs to be read simultaneously and therefore it can be hold that the credit on input consumed in exempted goods is not allowable if the manufacturer followed the procedure of sub-rule (2) or (3) of Rule 6 of Cenvat Credit Rules, 2004.



- (iv) On going through the Notification No. 21/2004-CE(NT) dated 06.09.2004, it is understood that the duty paid on the quantity of input consumed in the quantity of final product exported can be claimed as rebate and as per para 1.2 of part-V of Chapter 8 of CBEC Excise Manual, it is verified the word "Export Goods" which covered dutiable or exempted as well as non-excisable goods.
- (v) The adjudicating authority has not maintained the precedence of law, as it is not justified to decide the matter which remanded back by the Hon'ble CESTAT, Ahmedabad on the ground that the Hon'ble High Court has not granted stay on operation of CESTAT Order No. 10171-10172/2017 dated 19.01.2018. As the matter is remanded back by the CESTAT against which Tax Appeal filed by the appellant before the Hon'ble High Court challenging the admissibility of Cenvat Credit which is the matter of interpretation of the Cenvat Credit Rules, 2004; obviously stay is not required at all and recovery of Cenvat Credit of Rs. 8,40,407/- can be recovered after finalization of Tax Appeal by Hon'ble High Court of Gujarat.
- (vi) The adjudicating authority has while acting on the direction of the Hon'ble CESTAT not think fit to provide an opportunity to the appellant to assist for verification of Cenvat Credit as directed by Hon'ble CESTAT, hence, it is violation of natural justice.
- (vii) The appellant would like to submit a copy of letter dated 10.09.2012 addressed to the Commissioner (Appeals-1), Central Excise, Ahmedabad wherein the details of debit of Cenvat Credit of Rs. 29,55,530/- during the period from 01.08.2010 to 31.07.2011 is intimated. However, the Commissioner (Appeals) has not taken into account debit details furnished vide aforesaid letter and partially allowed the appeal.
- (viii) It can be seen that during the period from August, 2010 to July, 2011, the credit availed by the appellant, is no way in any manner, be utilized for any purpose and therefore the interest confirmed under Rule 14 of Cenvat Credit Rules, 2004 is not sustainable in law.
- (ix) In the present case, the dispute is relating to the admissibility of Cenvat Credit of duty paid on input, packing material and consumables used in the manufacture of exempted final product which have been exported. The penalty is not imposable where



*the issued is related to the interpretation of the act and rules made thereunder.*

4.1 The appellant has also submitted additional submission vide their letter dated 12.11.2021, wherein the contentions have been made, as reproduced below:

- (i) *Any tax/duty paid on export goods or inputs, packing materials and consumables used in the production of export goods (excisable or non-excisable or exempted) shall not be a part of element of price/value/cost of export goods, therefore, denial of rebate of duty paid on export goods or an inputs, packing material and consumables, is in violation of the provisions of Constitution of India. In the present case, the department has granted permission as well as sanctioned the refund/rebate of duty paid on Inputs/Packing materials and Consumables used in export goods in terms of Notification No. 21/2004-CE(NT) dated 06.09.2004. Even though, as insisted by the department, the reversal of Cenvat Credit of duty has been made by the appellant 'Under Protest', intimated vide letter dated 05.03.2012, the present demand confirmed in Impugned Order is not sustainable in law. The Interest and Penalty imposed under the impugned order is also not sustainable.*
- (ii) *In the present case, appeal against the impugned order under which the adjudicating authority has disposed off the Show Cause Notice No. V.15/15-39/OA/2011 dated 06.09.2011. Accordingly, the appellant observed that the adjudication order has been issued after a period of Ten Years and Four months from the date of issuance of SCN and hence, the adjudicating authority has not followed the provisions of Section 11A(10) of the Central Excise Act, 1944.*
- (iii) *In the present case, the appellant has, as insisted by the department, debited/reversed the credit of Rs. 21,15,123/- from the Credit Account Register, out of which amount of Rs. 18,58,289/- being an amount of Rebate already sanctioned in terms of Notification No. 21/2004-CE(NT) dated 06.09.2004. Therefore, it appears that the said amount of Rs. 18,58,289/- which is illegally recovered from the appellant though the said amount is an amount of Excise duty involved in the quantity of inputs, packing materials and consumables used in goods exported under the procedures prescribed under Notification No. 21/2004-CE(NT) dated 06.09.2004. Hence, the said amount of Rs. 18,58,289/- is required to be refunded to the appellant Suo-Moto without fail.*





5. The appellant was granted opportunity for personal hearing on 12.11.2021 through video conferencing. Shri R. R. Dave, Consultant, appeared for hearing as authorised representative of the appellant. He reiterated the submissions made in Appeal Memorandum.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions alongwith additional submission made by the appellant at the time of hearing. The issues to be decided in the present appeal are as under:

- (i) *Whether the Cenvat Credit amount of Rs. 29,55,530/- disallowed and ordered to be recovered from the appellant, vide the impugned order and also appropriation of an amount of Rs. 21,15,123/- already reversed by the appellant towards wrongly availed Cenvat Credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944, is legally correct or otherwise?*
- (ii) *Whether the impugned order issued to the appellant to pay/reverse the remaining amount of wrongly availed Cenvat Credit amounting to Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944, is legally correct or otherwise?*
- (iii) *Whether the impugned order issued to the appellant to pay interest on the amount of Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944, is legally correct or otherwise?*
- (iv) *Whether the Penalty of Rs. 8,40,407/- imposed on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004, is legally correct or otherwise?*

7. As regards the issue of demand of Cenvat Credit amounting to Rs. 29,55,530/- for the period from August, 2010 to July, 2011 on inputs, packing materials and input services used in the manufacture of their final product viz. "Peanut Butter". [which was exempted vide Notification No. 3/2006-CE dated 01.03.2006], I find that 'the original adjudicating authority' vide 'the original adjudication order' disallowed the said amount and also ordered recovery thereof from the appellant in terms of Rule 14 of the Cenvat Credit Rules, 2004.

7.1 Further, on appeal preferred by the appellant against the 'original adjudication order', the 'original appellate authority' had vide 'original appellate order' upheld the 'original adjudication order' to the extent that the Cenvat Credit of Rs. 29,55,530/- is disallowed and also ordered to be reversed by the appellant.



7.2 Subsequently, on appeal filed by the appellant against the 'original appellate order' passed by the 'original appellate authority', Hon'ble CESTAT, Ahmedabad vide Order No. A/10171-10172/2017 dated 19.01.2018 held that:

*"5.....Therefore, following the said precedent, applicable to the facts and circumstances of the present case for recovery of erroneous credit availed, the findings recorded in the Impugned order is upheld and the Appeal filed by the Appellant-Assessee being devoid of merit is dismissed.*

*7. From the record, I find that the Appellant-Assessee had reversed the credit of Rs. 21,15,123/- and it is not clear whether they had reversed the credit of Rs. 8,40,407/-. Therefore, to ascertain reversal of the same amount which they are required to reverse being disallowed by the Id. Commissioner (Appeals), the matter needs to be remanded to the adjudicating authority for the purpose of verification....".*

7.3 It is pertinent to mention here that as per the facts mentioned in the impugned order, I find that the Tax Appeal No. 1121 of 2018 filed by the appellant is still pending for consideration before the Hon'ble High Court of Gujarat. Further, I find that the appellant has not made any submission that any stay has been granted by the Hon'ble High Court in the matter.

7.4 In view thereof, I find that the issue of demand of Cenvat Credit amounting to Rs. 29,55,530/- raised against the appellant towards wrong availment of Cenvat Credit on inputs, packing materials and input services used in the manufacture of their exempted final product has been decided against the appellant by the Hon'ble Tribunal and that the appellant are not entitled for the said credit amounting to Rs. 29,55,530/- which needs to be reversed by them. Further, considering the facts of the present case as discussed above, any reconsideration or review regarding the said issue is not within the scope of the Commissioner (Appeal) during the present appeal proceeding. Accordingly, the contention of the appellant made to the extent of entitlement of the said Cenvat Credit of Rs. 29,55,530/- are infructuous at this juncture.

7.5 Further, as per the facts mentioned at Para-12 and Para-13 of the impugned order, I find that the appellant have not reversed the remaining amount of Rs. 8, 40,407/-. The said facts have not been disputed by the appellant at any point of time. Accordingly, I find that the impugned order passed by the adjudicating authority to the extent of (i) disallowing the Cenvat Credit of Rs. 29,55,530/- and ordered to be recovered from the



appellant under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944; (ii) appropriating the amount of Rs. 21,15,123/- already reversed by the appellant, towards wrongly availed Cenvat Credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944; and (iii) order the appellant to pay/reverse the remaining amount of wrongly availed Cenvat Credit amounting to Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944, is legally correct as per law.

8. As regards the issue of interest, which have been ordered to be paid vide the impugned order on the amount of Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944 and the Penalty of Rs. 8,40,407/- imposed on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004, the findings of the 'original appellate authority' in the 'original appellate order' held, is briefly reproduced herebelow:

*"6.....and accordingly, I proceed to decide the case on merits.*

A....

B....

C. *Therefore in this case I find that even if the credit on inputs were taken, they could not have been utilized for payment of excise duty on the final product as the final product is exempted. I also find that the final products were exported under claim of rebate under Rule 18 of the CER, 2002, for which permission has been taken by the appellant from the Department.*

D. *I have also gone through the procedure prescribed under Notification No. 21/2004-CE(NT) and this rule stipulates that:*

.....

*Therefore in order to fulfil these conditions the appellant is required to maintain some records for verification and he has chosen the Cenvat Credit records to claim the rebate on the input used in the exported material.*

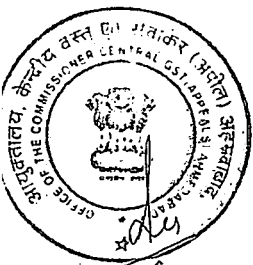
E....

F. *Therefore, I find that the applicants is debiting the amount claimed by them in the rebate claim, and this account is not been used for making any payment of Central Excise duty on final products for the purpose of Rule 2(4) of the CCR. Therefore.....*

G....

H. *As far as payment of interest is concerned, the issue has been dealt with by the Supreme Court in the case of M/s. Indo-Swift Laboratories reported in [2011 (265) ELT 3 (SC)] and discussed in detail by the Hon'ble High Court of Karnataka in the case of CCE, ST & LTU Bangalore Vs. Bill forge Pvt. Ltd., reported in [2012 (279) ELT 2009 (KAR)]. I quote the relevant para from Judgment of High Court order which are as follows:*

*"22.....It is only when the assessee had taken the credit, in other*



words by taking such credit, if he had not paid the duty which is legally due to the Government, the Government would have sustained loss to that extent. Then the liability to pay interest from the date of amount became due arises under Section 11AB, in order to compensate the Government which was deprived of the duty on the date it became due. Without the liability to pay duty, the liability to pay interest would not arise. The liability to pay interest would arise only when the duty is not paid on the due date. If duty is not payable, the liability to pay interest would not arise".

I .....In view of the above, I uphold the order to the extent that the Cenvat Credit of Rs. 29,55,530/- is disallowed and is to be reversed by the appellant. **Rest of the order regarding interest and penalty is set aside. Therefore I partially allow the appeal."**

8.1 Further, I find that Hon'ble CESTAT, Ahmedabad vide Order No. A/10171-10172/2017 dated 19.01.2018 held that:

"7. From the record, I find that the Appellant-Assessee had reversed the credit of Rs. 21,15,123/- and it is not clear whether they had reversed the credit of Rs. 8,40,407/-. Therefore, to ascertain reversal of the same amount which they are required to reverse being disallowed by the Id. Commissioner (Appeals), the matter needs to be remanded to the adjudicating authority for the purpose of verification. As far as Interest on the CENVAT credit availed is concerned I find that the Id. Commissioner (Appeals) while confirming the demand of Rs. 29,55,530/- observed that the Appellant had exported the exempted goods under claim of rebate of duty paid on Inputs and the present credit on Inputs are maintained in their RG-23 A Part II account, is only for the purpose of claiming rebate on Inputs used in the manufacture of finished goods exported against rebate claim. **Thus, in these circumstances, I find justification in the order of the Id. Commissioner (Appeals) in setting aside the penalty and Interests"**.

8.2 In view of the above, I find that the issue as regards the demand of Interest raised against the appellant vide the Show Cause Notice No. V.15/15-39/OA/2011 dated 06.09.2011 under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944 as well as the proposal for imposition of penalty on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004, in respect of the wrongly availed Cenvat Credit amounting to Rs. 29,55,530/-, has been concluded as set aside by the 'original appellate authority' vide the 'original appellate order' and the same has also been upheld by the Hon'ble CESTAT, Ahmedabad vide Order dated 19.01.2018.



8.3 Further, as per the facts mentioned at Para-7 of the Order No. A/10171-10172/2017 dated 19.01.2018, I find it very clear that the Hon'ble CESTAT, Ahmedabad has remanded the matter to the adjudicating authority for the purpose of verification to ascertain reversal of the same amount which the appellant are required to reverse being disallowed by the 'original appellate authority'. Accordingly, I find that any reconsideration or review in respect of the issue of demanding Interest or imposing Penalty on the appellant by the adjudicating authority, was not within his scope, while considering the remand back proceedings in terms of the directions of Hon'ble CESTAT, Ahmedabad vide Order dated 19.01.2018. Hence, I find that in the present case, the adjudicating authority has exceeded his scope and ordered the appellant for payment of interest on the amount of Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944 and also imposed penalty of Rs. 8,40,407/- on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004, vide the impugned order. Hence, the impugned order is not legally sustainable on merit to that extent and accordingly, needs to be set aside.

9. In view of the above, on careful consideration of the relevant legal provisions and submission made by the appellant, I pass the Order as per details given below:

- (i) I uphold the impugned order passed by the adjudicating authority, to the extent of (i) disallowing the Cenvat Credit of Rs. 29,55,530/- and ordered to be recovered the same from the appellant under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944; (ii) appropriating the amount of Rs. 21,15,123/- already reversed by the appellant, towards wrongly availed Cenvat Credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944; and (iii) order the appellant to pay/reverse the remaining amount of wrongly availed Cenvat Credit amounting to Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 and accordingly, the appeal filed by the appellant is rejected to that extent.
- (ii) I set aside the impugned order to the extent of Interest ordered to be paid by the appellant on the amount of Rs. 8,40,407/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944 and Penalty of Rs. 8,40,407/-



imposed on the appellant under Rule 15(1) of the Cenvat Credit Rules, 2004 and accordingly, the appeal filed by the appellant is allowed to that extent.

10. The appeal filed by the appellant stands disposed off in above terms.

*Arunal*  
*(Akhilesh Kumar)* 24<sup>th</sup> February, 2022..

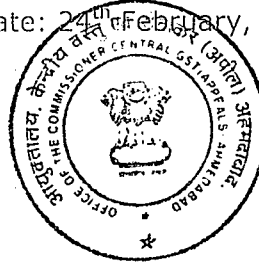
Commissioner (Appeals)

Date: 24<sup>th</sup> February, 2022

Attested

*Sisodiya*  
(M.P.Sisodiya)

Superintendent (Appeals)  
Central Excise, Ahmedabad



By Regd. Post A. D

To,  
M/s. Bajaj Foods Ltd,  
444, Ashwamegh Estate,  
Opp. M.N. Desai Petrol Pump,  
Changodar, Dist-Ahmedabad

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate: Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-IV, Commissionerate: Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate: Ahmedabad-North.
- ✓ 5. Guard file
6. PA File