



सत्यमेव जयते

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



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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DIN- 20220364SW0000000F16

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स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/404/2021 -Appeal-O/o Commr-CGST-Appl-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-73/2021-22**
दिनांक Date : **28.02.2022** जारी करने की तारीख Date of Issue : **02.03.2022**
- आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **17/JC/D/2020-21/JS** dated **04.02.2021**, passed by the
Joint Commissioner, Div-IV, CGST & C. Ex., Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
- Appellant-** M/s. Bajaj Plot No. 450, Ashwamegh Estate, Opp: MN Desai Petrol Pump,
Changodar, Dist: Ahmedabad-382210.
- Respondent-** The Joint Commissioner, Central GST & Central Excise, Div-IV, 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 का 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।

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 हों।

(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 दिनोंक 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 (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. 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 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 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।

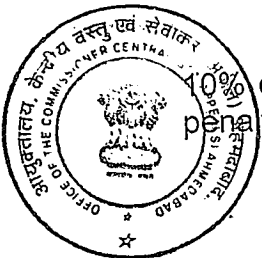
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

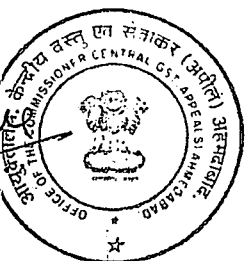
1. This order arises out of an appeal filed by M/s. Bajaj Herbals Pvt. Ltd., Plot No. 450, Ashwamegh Estate, Opp. M.N. Desai Petrol Pump, Changodar, Dist-Ahmedabad (hereinafter referred to as 'appellant') against Order in Original No. 17/JC/D/2020-21/JS dated 04.02.2021 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, CGST, Division-IV, Commissionerate:Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant was holding Central Excise Registration No. AACCB6654JXM001 and was engaged in the manufacture of excisable goods viz. Hair Oil, Hair Cream, Hair Dye Powder, Toothpaste, Handwash Liquid, Beauty Fairness Cream, Petroleum Jelly, Hair Conditioner/Shampoo, Talcum Powder etc., falling under Chapter 33 of the Central Excise Tariff Act, 1985. The appellant was also availing the facility of CENVAT credit of duty paid on the inputs and capital goods under Cenvat Credit Rules, 2004.

2.1 The appellant vide their letter dated 01.05.2012 informed the Jurisdictional Range Superintendent that there was an incidence of fire occurred in their premises on 30.04.2012 which caused some damages to their stocks, finished goods and building. On verification of the ER-1 returns for the month of September, 2012 filed by the appellant with the information provided vide their abovementioned letter dated 11.05.2012, it was observed by the officers that the appellant has not paid the Central Excise duty on the finished goods destroyed in fire accident though they were debited from stock account in the month of September, 2012.

2.2 Further, on verification of the daily stock account as on 30.04.2012 (the date of fire accident) maintained by the appellant with the worksheet as well as details submitted in the monthly ER-1 return for the month of September, 2012, it was observed that excess quantity of Amla Hair Oil, Coconut Hair Oil and Cool Hair Oil totally valued at Rs. 7,14,042/- had been shown as debited in the name of fire accident with an intention to evade Central Excise duty on such quantity which was not destroyed but cleared without payment of applicable duty amounting to Rs. 88,256/-.

2.3 Thereafter, the appellant had also filed an application dated 22.04.2013 for remission of Excise duty amount of Rs. 22,71,034/- on the finished goods destroyed in fire accident on 30.04.2012 with the



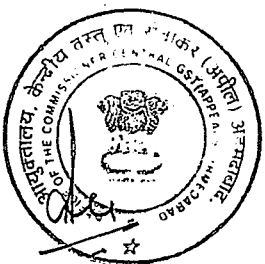
Commissioner, Central Excise, erstwhile Ahmedabad-II under Rule 21 of the Central Excise Rules, 2002.

2.4 Further, it appeared that since the goods were manufactured by the appellant, the same became excisable goods and were liable for payment of Central Excise duty. Accordingly, the appellant was issued a Show Cause Notice No. V.33/15-43/OA/2013 dated 29.04.2013 demanding Central Excise duty of (i) Rs. 22,71,034/- as well as (ii) Rs. 88,256/-, under Section 11A(1) of the Central Excise Act, 1944, alongwith interest under Section 11AA of the Central Excise Act, 1944. It was also proposed to impose Penalty on the appellant under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944. The said SCN was adjudicated by the adjudicating authority vide issuance of impugned order, as briefly reproduced herebelow:

- (i) He confirmed the demand of Central Excise Duty of Rs. 22,71,034/- and ordered to be recovered from the appellant under Section 11A(1) of the Central Excise Act, 1944;
- (ii) He also confirmed the demand of Central Excise Duty of Rs. 88,256/- from the appellant under Section 11A(1) of the Central Excise Act, 1944. Since the said amount has already been paid by the appellant, the same has been appropriated against the said demand.
- (iii) He also ordered to recover the interest from the appellant, on the amounts confirmed as per Sr. No. (i) and Sr. No. (ii) above, under Section 11AA of Central Excise Act, 1944.
- (iv) He also imposed penalty of Rs. 23,59,290/- [Rs. 22,71,034/- + Rs. 88,256/-] under Rule 25 of CER, 2002 read with Section 11AC of Central Excise Act, 1944 on the appellant.

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

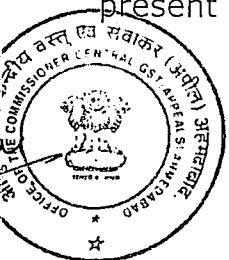
- (i) *An application for remission of duty was made by them under Rule 21 of Central Excise Rules, 2002, which has been rejected by the Commissioner of Central Excise, erstwhile Ahmedabad-II vide Order in Original No. AHM-EXCUS-002-COMMR-017-2019-20 dated 13.01.2020. They had preferred an appeal against the said Order before the Hon'ble CESTAT, Ahmedabad on 24.02.2020 which is still under consideration and accordingly, the issue of remission of duty is still not attained finality. Hence, the Show Cause Notice decided by the impugned order in the present case, is not legal.*



- (ii) *As per Central Excise law, the duty of Excise is leviable only at the time of removal of goods from the factory in terms of Rule 4 of Central Excise Rules, 2002 though the levy of Excise duty is chargeable under Section 3 of the Central Excise Act, 1944 on the goods manufactured and produced in India. In the present case, since the finished goods was not removed from the factory premise but destroyed in fire accident, the recovery of excise duty of Rs. 22,71,034/- confirmed vide impugned order is not legal and sustainable in law.*
- (iii) *The conclusion of the adjudicating authority at Para-13.3 of the impugned order holding that "The fire was not cause naturally, but was avoidable accident and the fire took place on account of negligence which could have been avoided. The goods under reference were finished in nature and were meant to be cleared and thus chargeable to excise duty", is appeared to be prejudice one on the ground that the appellant has submitted all the relevant records/documents to prove that necessary precautionary measures have been taken to avoid fire accident in the factory, to the Commissioner, CGST & C. Excise, Ahmedabad-North on 02.01.2018.*
- (iv) *The appellant has relied upon Order No. VAD-EXCUS-001-COM-47-18-19 dated 30.03.2019 passed by the Commissioner of CGST & Central Excise, Vadodara, wherein the remission in granted to the Applicant subject to condition that the claimant first reverse the Cenvat Credit amount involved in raw material contained in the quantity of finished goods destroyed in the fire accident alongwith interest as applicable. In the present case, though the said Order was put forth before the Commissioner, CGST & C. Excise, Ahmedabad-North, but not considered. Therefore, under the circumstances and fact that the adjudicating authority has not maintained the precedence of law, the impugned order is deserved to be set aside.*

4. 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.

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



- (i) *Whether the demand of Central Excise Duty of Rs. 22,71,034/- confirmed against the appellant, in respect of the finished goods destroyed in the fire, as stated by them and ordered to be recovered from them under Section 11A(1) of the Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944, is legally correct or otherwise?*
- (ii) *Whether the Penalty of Rs. 22,71,034/- imposed on the appellant under Rule 25 of Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944, is legally correct or otherwise?*

6. It is observed that the adjudicating authority has confirmed the demand of Central Excise Duty of Rs. 88,256/- on the grounds that the goods were not destroyed in the fire accident but was cleared without payment of duty. The appellant had already debited an amount of Rs. 88,256/-, which has also been appropriated by the adjudicating authority towards the demand confirmed against the appellant. The appellant has not contested the confirmation of demand on this ground in appeal memorandum. Accordingly, I do not find any reason to intervene in the impugned order passed by the adjudicating authority to the extent of confirmation of demand of Rs. 88,256/- and it's recovery under Section 11A(1) of the Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944; and Penalty of Rs. 88,256/- imposed under Rule 25 of Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944. The impugned order is upheld as uncontested.

7. As regards the demand of Central Excise Duty of Rs. 22,71,034/- confirmed against the appellant vide impugned order, it is undisputed fact, as per the information provided by the appellant vide their letter dated 11.05.2012 to the Jurisdictional Central Excise Officer as well as the ER-1 return for the month of September, 2012 filed by them, that the appellant had not paid the Central Excise duty on the finished goods destroyed in fire though they were debited from stock account in the month of September, 2012.

7.1 It is pertinent to mention that in case of manufactured goods, Central Excise duty is leviable thereon in terms of Section 3 of the Central Excise Act, 1944. Further, in terms of the statutory provisions of Section 5 of the Central Excise Act, 1944 readwith Rule 21 of the Central Excise Rules, 2002, the Remission of Central Excise Duty can be allowed by the proper officer relating in respect of such manufactured goods which are found deficient in quantity or destroyed due to natural causes. The relevant legal provisions are reproduced herebelow:



"Section 3: Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. -

(1) There shall be levied and collected in such manner as may be prescribed, -

(a) a duty of excise to be called the Central Value Added Tax (CENVAT), on all excisable goods (excluded goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);"

"Section 5: Remission of duty on goods found deficient in quantity. -

(1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity".

"Rule 21: Remission of duty.- Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:

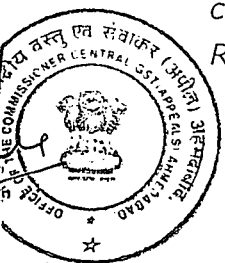
Provided that where such duty does not exceed ten thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner" , the expression " Superintendent of Central Excise" has been substituted:

Provided further that where such duty exceeds ten thousand rupees but does not exceed one lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner" , the expression " Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted:

Provided further that where such duty exceeds one lakh rupees but does not exceed five lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression " Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be, " has been substituted."

7.2 Further, I find that CBEC vide Circular No. 907/27/2009-CX dated 07.12.2009, has provided clarification as detailed below:

"2. The matter has been examined. Rule 3(5B) of the CENVAT Credit Rules, 2004, provides on the said input. As far as finished goods in concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. **Therefore, if the goods have been manufactured, in that case,**



a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods".

7.3 In the present case, it is observed that the application filed by the appellant for remission of Excise duty amount of Rs. 22,71,034/- leviable on the finished goods purportedly destroyed by fire, has been rejected by the Commissioner, CGST & CX, Ahmedabad North vide OIO No. AHM-EXCUS-002-COMMR-017-2019-20 dated 13.01.2020. Further, the appeal filed by the appellant against the said OIO dated 13.01.2020 with the Hon'ble CESTAT, Ahmedabad is still under consideration. However, the appellant has not made any submission or produced any such evidences showing that any kind of stay or such specific directions have been issued by Hon'ble CESTAT against the said decision.

7.4 In view of the legal provisions discussed above, I find that the demand of Central Excise Duty of Rs. 22,71,034/- confirmed by the adjudicating authority against the appellant vide impugned order, is as per the settled position of law and legally sustainable. Further, I do not find any merit in the contention of the appellant against the same and accordingly, I find it liable for rejection.

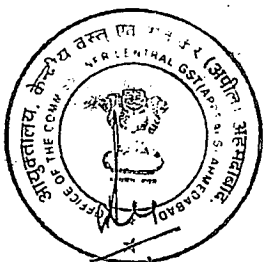
8. As regards the Penalty of an amount of Rs. 22,71,034/- imposed on the appellant by the adjudicating authority vide impugned order, under Rule 25 of Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944, I find it proper to examine the relevant provisions which are reproduced herebelow:

"Section 11AC: Penalty for short-levy or non-levy of duty in certain cases. -

(1) *The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-*

(a) *where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or rupees five thousand, whichever is higher :*

Provided *that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;*



(b) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined;”

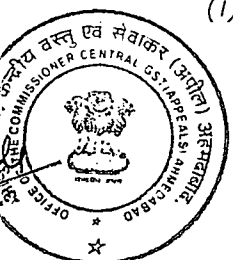
“Rule 25. Confiscation and penalty.- (1) Subject to the provisions of Section 11 AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -

- (a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
- (b) does not account for any excisable goods produced or manufactured or stored by him; or
- (c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or
- (d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,-

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer , as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or rupees ten thousand, whichever is greater”.

8.1 In the present case, it is observed that the demand of Central Excise duty of Rs. 22,71,034/- has been confirmed by the adjudicating authority vide the impugned order. Further, the application for remission of said duty of Rs. 22,71,034/- has been rejected by the Commissioner, CGST & CX, Ahmedabad North vide issuance of OIO No. AHM-EXCUS-002-COMMR-017-2019-20 dated 13.01.2020, on the following grounds:

- (i) From the observations of the forensic officer, it seems that the fire was not caused naturally, but was avoidable accident, but it is established



that in the present case the incident of fire was on account of the negligence which could have been avoided and hence, cannot be termed as accident and therefore, the remission of duty cannot be granted as sought by them.....It is obligatory on the part of the assessee claiming remission of duty on excisable goods should take proper precautions to avoid possible loss/damage of the goods, which in this case is not so.

- (ii) *I find that the assessee has also failed to reverse the CENVAT credit of duty amount taken on the inputs used in manufacture of the finished goods destroyed in the fire. They also failed to pay the interest due on such duty.*

8.2 As per the facts available on records, the appellant had informed the Jurisdictional Range Superintendent vide their letter dated 01.05.2012 about the incidence of fire at their premises on 30.04.2012 and also vide letter dated 11.05.2012 had furnished the further details regarding finished goods/raw material/packing material destroyed in fire on 30.04.2012. Subsequently, the applicant had also filed an application dated 22.04.2013 for remission of Excise duty of Rs. 22,71,034/- involved in the finished goods destroyed in fire with the Commissioner, Central Excise, erstwhile Ahmedabad-II. Accordingly, the appellant was issued a Show Cause Notice No. V.33/15-43/OA/2013 dated 29.04.2013 demanding Central Excise duty of Rs. 22,71,034/- involved in the finished goods, claimed as destroyed in the said fire accident which has been subsequently, adjudicated vide the impugned order.

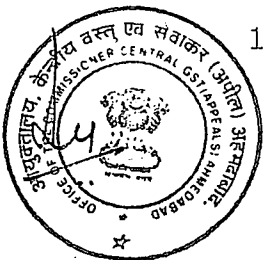
8.3 In the present case, it is observed that neither the Commissioner, CGST & CX, Ahmedabad North, while issuing OIO No. AHM-EXCUS-002-COMMR-017-2019-20 dated 13.01.2020, nor the adjudicating authority while issuing impugned order, has revealed any facts showing that there was an act of 'reason of fraud' or 'collusion' or any 'wilful mis-statement' or 'suppression of facts' by the appellant with an intent to evade the payment of Excise duty of Rs. 22,71,034/- confirmed in the impugned order. I find that the ingredients for imposing penalty equal to duty contained under clause 1(c) of Section 11AC of the Central Excise Act, 1944 is not present in this case. Accordingly, the penalty imposed on the appellant vide the impugned order, of an amount Rs. 22,71,034/- i.e. equal to the duty short/not paid, is not legally sustainable.



8.4 However, in the present case, it is also observed as per the fact available on record that the appellant has not paid Central Excise duty of Rs. 22,71,034/- on the finished goods purportedly destroyed in fire though debited from stock-account in the month of September, 2012 and accordingly they have not made correct assessment and contravened the provisions of Rule 8 in as much as they have not paid the duty in time with an intent to evade said payment of duty. Accordingly, I find that the said contravention rendered the appellant liable to penalty "not exceeding ten per cent of the duty so determined or rupees five thousand, whichever is higher", as per the provisions of Section 11AC (1) (a) of the Central Excise Act, 1944. Accordingly, I find it proper to reduce the penalty imposed on the appellant vide the impugned order to an amount of Rs. 2,27,104/- [@10% of the duty confirmed] and the impugned order is liable to be modified to that extent.

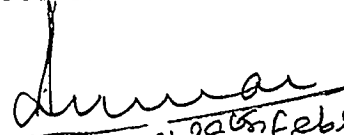
9. In view of the above, on careful consideration of the relevant legal provisions and submission made by the appellant, I pass the Order as per details given below:

- (i) I uphold the impugned order passed by the adjudicating authority to the extent of confirmation of demand of Rs. 88,256/- and its recovery under Section 11A(1) of the Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944; and Penalty of Rs. 88,256/- imposed under Rule 25 of Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944, as uncontested.
- (ii) I also uphold the impugned order passed by the adjudicating authority to the extent of confirmation of demand of Central Excise duty of Rs. 22,71,034/- under Section 11A(1) of the Central Excise Act, 1944, alongwith interest under Section 11AA of Central Excise Act, 1944. The appeal filed by the appellant is rejected to that extent
- (iii) I set aside the impugned order to the extent of Penalty imposed on the appellant under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944, in excess of an amount @ 10% of the duty confirmed of Rs. 22,71,034/-. The penalty amount is determined at Rs. 2,27,104/- under Section 11AC(1)(a) of the Central Excise Act, 1944. The impugned order is



modified to that extent and the appeal filed by the appellant is allowed to that extent.

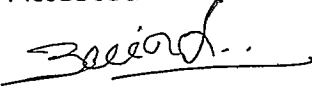
10. The appeal filed by the appellant stands disposed off in above terms.


28th February,
(Akhilesh Kumar) 2022.

Commissioner (Appeals)

Date: 28th February, 2022

Attested



(M.P. Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A. D

To,

M/s. Bajaj Herbals Pvt. Ltd.,
Plot No. 450, Ashwamegh Estate,
Opp. M.N. Desai Petrol Pump,
Changodar, Dist-Ahmedabad (382210)

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.
25. Guard file
6. PA File

