आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक्स07926305136

DIN : **20221264SW000000F63D**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/270/2022 /5462-23

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-098/2022-23**
दिनाँक Date : **14-12-2022** जारी करने की तारीख Date of Issue 15.12.2022

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

ग Arising out of OIO No. **35/DC/Div-I/BK/2021-22** दिनाँक: **25.01.2022** passed by Deputy Commissioner, CGST, Division I, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Ashima Limited
Texcellence Complex, Nr. Anupam Cinema,
Khokhara, Ahmedabad - 380021

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 हानिकार खाने 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 मे 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 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 दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 होत 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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

(68) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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:

(ccv) amount determined under Section 11 D;
(ccvi) amount of erroneous Cenvat Credit taken;
(ccvii) 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. Ashima Limited, Texcellence Complex, Near Anupam Cinema, Khokhra, Ahmedabad – 380 021 (hereinafter referred to as the "appellant") against Order in Original No. 35/DC/Div-I/BK/2021-22 dated 25.01.2022 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, Division – I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AACCA2750LXM001 and engaged in the manufacture of Cotton Yarn, Grey Fabrics and other excisable goods falling under Chapter 52 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant filed an application for refund for an amount of Rs.53,46,085/- on 26.10.2021 in respect of the credit of Additional Duties of Excise (Textile and Textile Articles) (hereinafter referred to as ADE), which was reflected in their Excise returns for the period of June, 2017. The refund claim was filed on the grounds that they were unable to utilize the said credit. The appellant had carried forward the credit amounting to Rs.53,46,085/-, lying in balance as on 30.06.2017, to the GST regime through Tran-1 filed by them. However, in terms of the CGST Amendment Act, 2018 and Circular No.58/32/2018-GST dated 04.09.2018, the appellant reversed the said amount through GSTR-3B of August, 2018 and informed the jurisdictional SGST office vide their letter dated 01.10.2018 that the reversal was made under protest.

2.1 The appellant submitted that they had lost the credit lying in balance as the same was made available in the GST regime and that in terms of Section 174(2) (C) of the CGST Act, 2017 and Gujarat State Goods and Services Act, 2017, they could not be deprived of their right in availing the credit merely for the fact that the said credit was not allowed to be transferred to the GST regime.

2.2 It appeared that the appellant had been claiming exemption in terms of Notification No.30/2004-CE dated 09.07.2004 and they had continued showing the cenvat credit balance of ADE in their ER-1 returns, despite the same

having lapsed in terms of Rule 11(3) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004), after having opted for exemption in terms of the said Notification. Though the cenvat credit was not eligible to be carried forward in GST, the appellant carried forward the same irregularly which resulted in irregular claiming of ITC amounting to Rs.53,46,085/-.

2.3 As per Rule 11(3) of the CCR, 2004, a manufacturer or producer of a final product shall be required to pay an amount equivalent to the cenvat credit, if any, taken by him in respect of input received for use in manufacture of the said final product and lying in stock or process or is contained in the final product lying in stock, if he opts for exemption. It appeared that the credit in balance, after opting for exemption under the said Notification, would automatically lapse in terms of Rule 11(3)(ii) of the CCR, 2004 and there was no cenvat credit available to the appellant to carry forward till 30.06.2017 after they had opted for exemption in terms of the said Notification. Therefore, the appellant was not entitled to carry forward the cenvat credit, as transitional credit with effect from 01.07.2017, as the credit had already lapsed. In terms of Section 140 (1)(i) of the CGST Act, 2017, only the eligible credit can be carried forward.

2.4 Further, the appellant had reversed the ITC in the month of August, 2018 and thereafter filed their refund claim on 26.10.2021. The appellant had initially reversed the credit under protest, but subsequently vide letter dated 09.08.2021 they had asked that the payment be considered as finally paid. It, therefore, appeared that the claim was also liable to be rejected on limitation of time, in terms of Section 54(1) of the CGST Act, 2017.

3. The appellant was, subsequently, issued a Show Cause Notice bearing No. V/15-1060/Div.-I/Ashima Ltd./2021-22 dated 15.12.2021 wherein it was proposed to reject the refund claim on the grounds of limitation as well as on the grounds that the appellant were not eligible for the cenvat credit in terms of Rule 11(3)(ii) of the CCR, 2004.

4. The SCN was adjudicated vide the impugned order wherein the refund claim of the appellant was rejected.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The adjudicating authority ought to have considered that Notification No.31/2004-CE exempting all goods from ADE was introduced w.e.f 09.07.2004 and Rule 11(3) of the CCR, 2004 was introduced w.e.f. 01.03.2007 vide Notification No. 10/2007-CE (NT) dated 01.03.2007. Therefore, there was no provision as on 09.07.2004 which required reversal of the unutilized cenvat credit of ADE.

ii. Rule 11(3) of the CCR, 2004 was introduced prospectively and not retrospectively. Therefore, there cannot be made reversal of cenvat credit in 2007 which was eligible and availed by them upto 2004.

iii. Reliance is placed upon the judgment in the case of CCE, Pune Vs. Dai Ichi Karkaria Ltd. – 1999 (112) ELT 353 (SC); Chairman Railway Board Vs. C.R. Rangadhamaiah – (1997) 6 SCC 623.

iv. The adjudicating authority has erred in not considering the settled position in law that cenvat credit once lawfully availed is indefeasible. Therefore, once credit is availed, there is no legal basis to deny them their accrued right to utilize the same for payment of output taxes.

v. They had claimed cenvat credit of ADE upto 09.07.2004 and carried forward the same till June, 2017 by showing it in their returns. The department has never raised any query nor issued SCN about the irregularity of the cenvat credit balance carried forward by them.

vi. They had regularly filed their returns and co-operated with the department during Audit. Therefore, there is no mis-declaration or omission of facts on their part. The adjudicating authority erred in raising the query regarding irregularity when the refund claim was filed in respect of the unutilized credit.

vii. The adjudicating authority erred in expanding the scope of adjudication in the refund application filed by them by going into the issue of eligibility of cenvat credit. In case there as nay issue regarding eligibility of cenvat credit, separate mechanism have been provided for adjudicating the same. Therefore, the issue of eligibility of cenvat credit cannot be raised at the time of filing of refund claim.

viii. Section 174 (2) (c) of the CGST Act, 2017 provides the right accrued under the earlier regime will not be abandoned.

ix. On a conjoint reading of Section 174 (2) (c) and Section 140 of the CGST Act, 2017, it is patent that they have a right to avail cenvat credit which accrued under the erstwhile regime. Since they cannot claim the said credit in GST regime due to CGST Amendment Act, 2018, they are entitled for refund.

x. The refund claim is not barred by limitation. Relevant date in the case of disputed refund application is the residual entry i.e. the date of payment of tax. In the present case, there was a retrospective amendment under the CGST Act and they had reversed the cenvat credit of ADE under protest and the same was intimated to the department vide letter dated 01.10.2018. Subsequently, they had vide letter dated 09.08.2021 requested the reversal as per amended Section 140 of the CGST Act. Accordingly, the effective date of payment of tax is 09.08.2021. Therefore, two years should be counted from 09.08.2021 and not from any other date.

xi. Considering the date of payment as 09.08.2021, the due date of filing refund claim is 09.08.2023 and, therefore, the refund claim filed on 29.10.2021 is within time limit specified under Section 54 of the CGST Act.

xii. Even if it is assumed that the date of payment is not 09.08.2021 but the date of amendment made vide CGST Amendment Act, 2018 (introduced on 30.08.2018) or the reversal made in Form GSTR-3B i.e. September, 2018, two years needs to be calculated from September, 2018, which is September, 2020. But due to COVID-19 pandemic they were not able to file refund claim and as held by the Hon'ble Supreme Court vide order dated 27.04.2021 and 23.09.2021, for the period of limitation, the period from 15.03.2020 till 28.02.2022 shall stand excluded. The refund claim filed by them on 29.10.2021 is within the time limit as per the extension of time limits given by the Hon'ble Supreme Court.

xiii. The adjudicating authority has held that as per Para 5 of Circular No. 157/13/2021-GST dated 20.07.2021, the extension of limitation is not applicable to refund applications. It is submitted that the interpretation of the order of the Hon'ble Supreme Court by the adjudicating authority is illogical and defies the intention of the Suo Moto Petition taken by the Apex Court.

xiv. In Saiher Chain Consulting Pvt. Ltd. Vs. UOI and Ors. – 2022 (1) TMI 494 (Bombay High Court), it was held that the order of the Hon'ble Supreme Court is also applicable to refund applications. Similar view was taken in the case of GNC Infra LLP Vs. Assistant Commissioner (Circle) – 2021 (11) TMI 973 – Madras High Court and Interproductee Virtual Labs Pvt. Ltd. Vs. UOI & Ors.- 2022 (2) TMI 660- Bombay High Court.

6. Personal Hearing in the case was held on 07.12.2022. Shri Amit Laddha, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He submitted copies of judicial pronouncements as well as legal provisions as part of written submission during the hearing.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issue before me for decision is whether the impugned order rejecting the refund claimed amounting to Rs.53,46,085/-, in the facts and circumstances of the case, is legal and proper or otherwise.

8. It is observed that the issue has originated on account of exemption granted vide Notification No.31/2004-CE dated 09.07.2004. The Government had vide the said Notification exempted all goods falling within the Schedule to the Additional Duties of Excise (Textiles and Textiles Articles) Act, 1978 from the whole of the duty of excise leviable under the said Act. As a result, the appellant, who was a manufacturer of goods falling under Chapter 52 of the First Schedule of the Central Excise Tariff Act, 1985, was exempted from payment of ADE in respect of the goods manufactured and cleared by them. The appellant was availing the cenvat credit in respect of the ADE paid on the inputs procured by them.

8.1 Subsequently, on 11.10.2004, the appellant had filed an application for refund of the cenvat credit of ADE amounting to Rs.53,41,089/- lying in balance on the grounds that they are not in a position to utilize the same. However, the refund claim filed by the appellant was rejected vide OIO No. 47/AC/Ref/2005

dated 26.04.2005. The appellant thereafter continued carrying the cenvat credit of ADE in balance and reported the same in the ER-1 returns filed by them.

8.2 Subsequently, the CCR, 2004 were amended vide Notification No.10/2007-CE (NT) dated 01.03.2007 and Rule 11 (3) was inserted. The said Rule 11 (3) is reproduced below :

> "(3)A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,-
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> (i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or
>
> (ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."

8.3 In terms of the said Rule 11 (3) of the CCR, 2004 a manufacturer, opting for exemption, was required to pay an amount equivalent to the cenvat credit taken in respect of the inputs in stock or contained in the finished products in stock. As per Rule 11 (3) (ii) the balance cenvat credit after such payment would lapse.

8.4 It is observed that the appellant continued to carry the cenvat credit of ADE in balance in their records and in the ER-1 returns filed by them from time to time. Consequent to the introduction of GST w.e.f. 01.07.2017, the appellant filed Tran-1 for transfer of cenvat credit in balance and the same included the cenvat credit of ADE. However, in view of the CGST Amendment Act, 2018, ADE was not eligible credit and therefore, the appellant reversed the cenvat credit attributable to ADE and thereafter filed claim of refund.

9. The adjudicating authority has rejected the claim of the appellant on the grounds of limitation as well as on merits. On the issue of limitation, it is seen that the appellant was issued SCN proposing to reject the refund claim on the grounds of limitation in terms of Section 54 (1) of the CGST Act, 2017. However, it is observed that the appellant had filed 'Application for refund of

excise duty'. Therefore, the claim would be governed by the provisions of Section 11B of the Central Excise Act, 1944 and not under Section 54 (1) of the CGST Act, 2017. Since, the provisions of Section 54 of the CGST Act, 2017 have been invoked, I am constrained to limit myself in examining whether the application for refund filed by the appellant is barred by limitation or otherwise in terms of Section 54 of the CGST Act, 2017. The said Section 54 of the CGST Act, 2017 stipulates that application for refund is to be made before expiry of two years from the relevant date and relevant date in the instant case would be the date of payment of tax i.e. the date of reversal of credit by the appellant.

9.1 It is observed that the appellant had reversed the credit in the month of September, 2018 under protest and subsequently, vide letter dated 09.08.2021, they requested the department to consider the payment as final. The appellant have contended that 09.08.2021 is to be considered as the relevant date of payment and the period of two years is to be computed accordingly. I do not find any merit in the contention of the appellant. The reversal was effectively made in September, 2018 and on 09.08.2021 only the protest lodged by them initially was withdrawn by them. Therefore, the date of payment would be September, 2018 and the two year period has to be computed accordingly.

9.2 Alternatively, the appellant have contended that even if the date of payment is considered to be September, 2018, the application for refund filed by them on 29.10.2021 would still be within the period of two years in view of the Order of the Hon'ble Supreme Court extending time limits for various purposes. Considering the prevailing COVID-19 pandemic, the Hon'ble Supreme Court had on 23.03.2020 extended the period of limitation in all proceedings w.e.f. 15.03.2020. The relaxation of the period of limitation was subsequently extended till 02.10.2021 vide Order dated 23.09.2021. Subsequently, the Hon'ble Supreme Court vide Order dated 10.01.2022 directed that the period from 15.0.2020 till 28.02.2022 shall stand excluded for the purposes of limitation. The adjudicating authority has at Para 25 of the impugned order relied upon Circular No. 157/13/2021-GST dated 20.07.2021 issued by the CBIC and held that the order of the Hon'ble Supreme Court is not applicable to the refund claim filed by the appellant.

9.3 The appellant have on the other hand relied upon the judgment in the case of Saiher Chain Consulting Pvt. Ltd. Vs. UOI and Ors. – 2022 (1) TMI 494 (Bombay High Court). In the said case, it was held by the Hon'ble High Court that :

> **"12.** It is not in dispute that the first and second refund applications were rejected on the ground of certain deficiencies in those applications filed by the Respondent No. 2. The third refund application, which was required to be filed within two years in accordance with the Circular [F.] No. 20/16/04/18-GST, dated 18th November, 2019, under Section 54(1) of the Central Goods and Services Tax Act, 2017. The limitation period fell between 15th March, 2020 and 2nd October, 2021, which period was excluded by the Hon'ble Supreme Court in all such proceedings irrespective of the limitation prescribed under the general law or Special Law whether condonable or not till further Order/s to be passed by the Hon'ble Supreme Court in those proceedings.
>
> **13.** The Hon'ble Supreme Court by Order dated 23rd September, 2021 in Misc. Application No. 665 of 2021 issued further directions that in computing the period of limitation in any Suit, Appeal, Application and or proceedings, the period from 15th March, 2020 till 2nd October, 2021 shall stand excluded. Consequently the balance period of limitation remaining as on 15th March, 2021, if any shall become available with effect from 3rd October, 2021. In view of the said Order dated 23rd March, 2020 and the judgment dated 23rd September, 2021 passed by the Hon'ble Supreme Court, the period of limitation falling between 15th March, 2020 and 2nd October, 2021 stood excluded. In our view also, the period of limitation prescribed in the said Circular under Section 54(1) also stood excluded.
>
> **14.** In our view, the Respondent No. 2 is also bound by the said Order dated 23rd March, 2020 and the Order dated 23rd September, 2021 and is require to exclude the period of limitation falling during the said period. Since the period of limitation for filing the third refund application fell between the said period 15th March, 2020 and 2nd October, 2021, the said period stood excluded. The third refund application filed by the Petitioner thus was within the period of limitation prescribed under the said Circular dated 18th November, 2019 read with Section 54(1) of the Central Goods and Services Tax Act, 2017. In our view, the impugned Order passed by the Respondent No. 2 is contrary to the Order passed by the Hon'ble Supreme Court and thus deserves to be quashed and set aside."

9.4 A similar view was taken in the case of GNC Infra LLP Vs. Assistant Commissioner (Circle) – 2021 (11) TMI 973 – Madras High Court and Interproductee Virtual Labs Pvt. Ltd. Vs. UOI & Ors.- 2022 (2) TMI 660-Bombay High Court.

9.5 It is observed that the appellant had filed the claim for refund on 29.10.2021. Applying the exclusion period in terms of the Order of the Hon'ble Supreme Court, it is apparent that the application for refund is within the period of two years from September, 2018 and, therefore, the same is not barred by limitation.

10. On merits of the claim for refund, it is observed that the adjudicating authority has held at Para 29 of the impugned order that "*After the claimant had opted for the benefit of absolute exemption under Notfn No. 30/2004-CE, the credit of Rs.53,46,085/- had already lapsed in the same year. There was no question to keep it in balance till 30.6.2017. The said balance itself had wrongly been carried forward in their returns till 30.6.2017. As the CENVAT credit had already lapsed, the claimant was not eligible to carry it forward in the existing regime. Therefore, on merits too, the CENVAT credit carried forward by the claimant as on 1.7.2017 was ineligible, in terms of the provisions of Rule 11 (3) (ii) of the CENVAT Rules.*"

10.1 The appellant have contended that as on 09.07.2004, there was no provision which required reversal of unutilized cenvat credit of ADE and that Rule 11 (3) of the CCR, 2004 was introduced prospectively and not retrospectively. In this regard, it is observed that in terms of Rule 11 (3) of the CCR, 2004, a manufacturer, opting for exemption, was required to pay an amount equivalent to the cenvat credit taken in respect of the inputs in stock or contained in the finished products in stock. As per Rule 11 (3) (ii) the balance cenvat credit after such payment would lapse. In the instant case, it is observed that the appellant had opted for exemption under Notification No. 31/2004-CE dated 09.07.2004. Therefore, the appellant were not required to pay any amount in terms of sub-rule (i) of Rule 11 (3) of the CCR, 2004. However, sub-rule (ii) of Rule 11 (3) of the CCR, 2004 expressly and specifically provides that the cenvat credit lying in balance shall lapse. Therefore, the cenvat credit of ADE lying in balance as on 09.07.2004 would automatically lapse in view of the provisions of Rule 11 (3) (ii) of the CCR, 2004. Hence, the question of carrying forward in balance of cenvat credit, which has already lapsed, does not arise and act of carrying forward the cenvat credit of ADE in balance by the appellant does not have the sanctity of law. And once the credit has lapsed, the question of carrying forward the same to GST regime or granting refund of the lapsed credit does not arise. In view thereof, I do not find any merit in the contention of the appellant in this regard and, accordingly, I uphold the impugned order rejecting the claim for refund of cevnat credit of ADE on merits.

11. It is also observed that the appellant had sought refund of the cenvat credit of ADE lying in balance vide refund application dated 11.10.2004 and the same was rejected vide OIO No. 47/AC/Ref/2005 dated 26.04.2005. The appellant have apparently not challenged the rejection of the refund of cenvat credit and continued to carry the cenvat credit balance in their records as well as in the ER-1 returns filed by them. As the order rejecting the claim for refund was not challenged or appealed against by the appellant, the same had attained finality. Therefore, the appellant cannot now come forward again and seek refund of the same cenvat credit of ADE without challenging the earlier order or rejection.

12. In view of the facts discussed herein above, I hold uphold the impugned order and reject the appeal filed by the appellant.

13. अपीलकर्ता 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.

14th December, 20

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 14.12.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Ashima Limited, — Appellant
Texcellence Complex,
Near Anupam Cinema,
Khokhra, Ahmedabad – 380 021

The Deputy Commissioner, — Respondent
CGST, Division- I,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.

3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.