
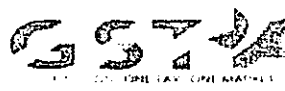


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

F.No:- V.15/15-61/OA/2018/Denovo

आदेश की तारीख/Date of Order : - 27.01.2021
जारी करने की तारीख/Date of Issue :- 28.01.2021

DIN No.-20210164WT000000FDAB

द्वारा पारित/Passed by:-

एम. एल.मीणा / *M.L.Meena*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 37/ADC/2020-21/MLM

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(71) उक्त अपील की प्रति।

(72) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

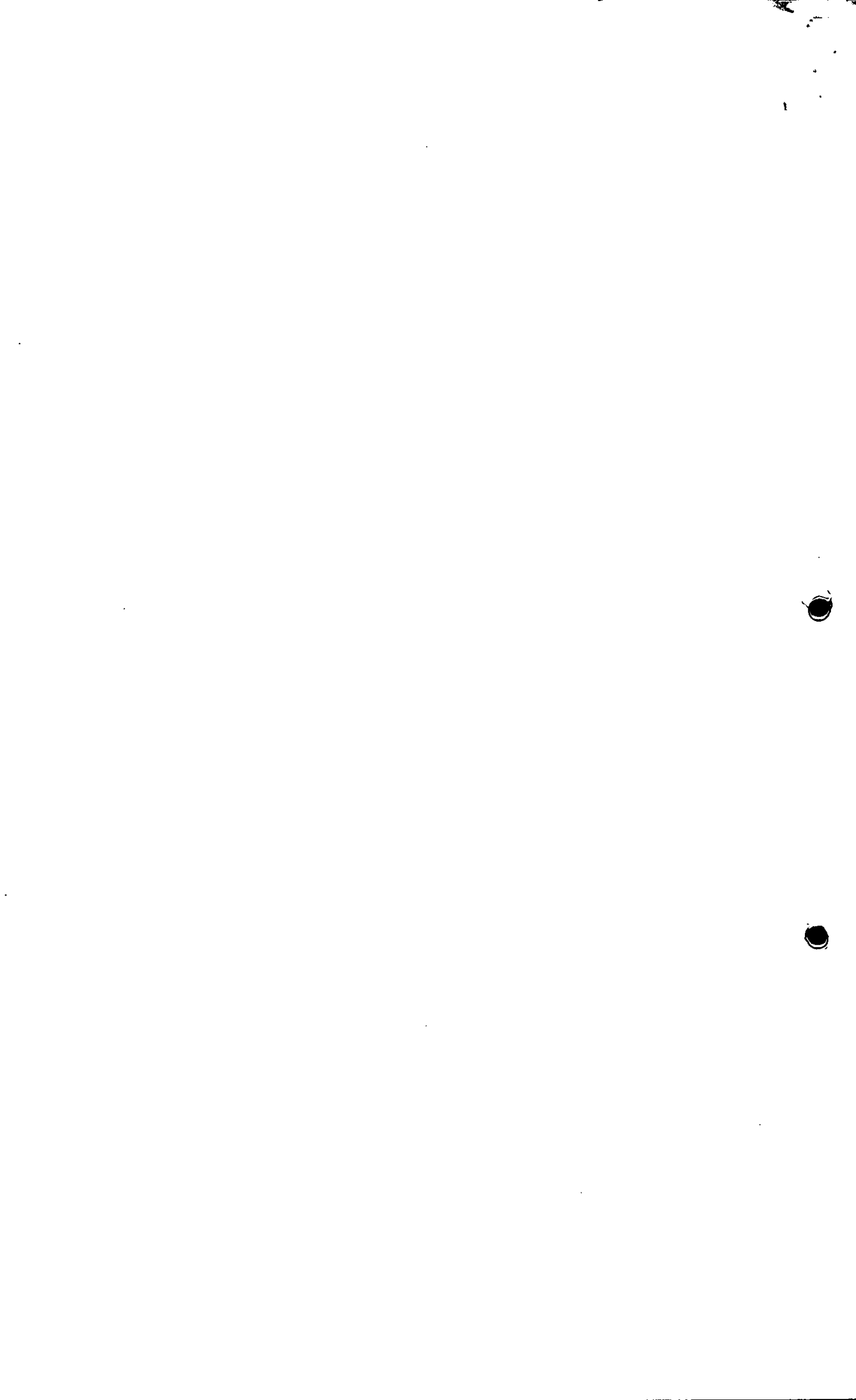
(71) Copy of accompanied Appeal.

(72) Copies of the decision or, one of which at least shall be certified copy, the

Order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

कारण बताओ सूचना/ Show Cause Notice No.V.15/15-39/OA/2011 dated 06.09.2011
Against M/s. Bajaj Foods Ltd, 444, Ashwamegh Estate, Opp: M.N.Desai Petrol Pump,
Changodar, Dist-Ahmedabad.





Brief Facts of the Case:

M/s. Bajaj Foods Ltd, 444, Ashwamegh Estate, Opp: M.N.Desai Petrol Pump, Changodar, Dist-Ahmedabad, holding Central Excise No.AAACB6184DXM001 (herein after referred to as 'M/s Bajaj' for the sake of brevity) is engaged in the manufacturing of "Peanut Butter" falling under Chapter 15179020 of the Central Excise Tariff Act, 1985. The said assessee was clearing the goods for home consumption as well as for export.

2. M/s Bajaj 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, Ahmedabad - II (now Ahmedabad North Commissionerate).

3. During scrutiny of ER-1 Returns for the period from August-2010 to July-2011 filed by the assessee, it was noticed that M/s Bajaj had availed Cenvat Credit on inputs, packing materials and input services amounting to Rs.29,55,530/- even though the product "Peanut Butter" was unconditionally exempted vide Sr.No.11 of Notification No.3/2006-CE dated 01.03.2006-CE dated 01.03.2006. Therefore, the Cenvat Credit on inputs, packing materials and input services used in the manufacture of the said final products can not be allowed as per Rule 6(1) of the Cenvat Credit Rules, 2004. M/s Bajaj had therefore contravened the provisions of Rule 6(1) of the Cenvat Credit Rules, 2004.

4. In view of the above, Show Cause Notice No.V.15/15-39/OA/2011 dated 06.09.2011 was issued to M/s.Bajaj Foods Ltd, 444, Ashwamegh Industrial Estate, -Bavla Highway, Tal. Sanand, Dist-Ahmedabad asking them to show cause to the Joint Commissioner, Central Excise, Ahmedabad-II, vide as to way:

- (i) The Cenvat Credit wrongly availed on inputs, packing materials and input services, amounting to Rs.29,55,530/- should not be recovered 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.
- (ii) Interest at appropriate rate should not be recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.
- (iii) Penalty should not be imposed on them under Rule 15(1) of the Cenvat Credit Rules, 2004

5. The above mentioned Show Cause Notice was adjudicated by the Additional Commissioner, Central Excise, Ahmedabad-II vide Order-in-Original No.11/ADC/2012/AS dated 31.01.2012 wherein he passed the following orders-

Disallowed the wrongly availed Cenvat Credit of Rs.29,55,530/- and ordered recovery of Rs.29,55,530/- in terms of Rule 14 of the Cenvat Credit Rules, 2004.

Ordered to recover interest on the wrongly availed Cenvat Credit of Rs.29,55,530/- under Section 11AB of the Central Excise Act, 1944, under Rule 14 of Cenvat Credit Rules, 2004.



- (iii) Imposed a penalty of Rs.29,55,530/- on the said assessee under Rule 15(1) of the Cenvat Credit Rules, 2004.

6. Aggrieved with the Order-in-original, the assessee filed an appeal before Commissioner(A), Central Excise, Ahmedabad who vide Order-in-Appeal No. 236/2012 (Ahd-II)/CE/AK/Commr(A)/Ahd dated 21.09.2012 dismissed the appeal on the grounds that the Credit on input was not admissible and needed to be reversed. However, the Commissioner (A) set aside the demand of interest and penalty.

7. Aggrieved with the Order-in-Appeal passed by the Commissioner (A), both M/s Bajaj and the Department filed appeal before CESTAT, Ahmedabad. The Hon'ble CESTAT, decided both the Appeals i.e Appeal No.E/945/2012 & E/10060/2013 vide order No.A/10171-10172/2017 dated 19.01.2018. Hon'ble CESTAT in its order held as under:

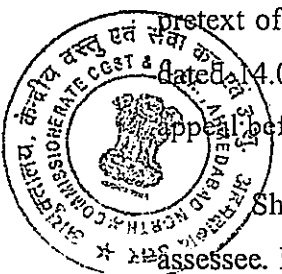
- a. *the findings recorded in the impugned order is upheld and the Appeal filed by the Appellant / Assessee being devoid of merit is dismissed.*
- b. *to ascertain reversal of the same amount which they are required to reverse being disallowed by the ld. Commissioner (Appeals), the matter needs to be remanded to the adjudicating authority for the purpose of verification.*
- c. *As far as interest on the CENVAT credit availed is concerned I find that the ld. 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 ld. Commissioner (Appeals) in setting aside the penalty and interests.*

8. M/s. Bajaj have filed Tax Appeal No.1121 of 2018 with the Hon'ble High Court of Gujarat against the order of CESTAT, Ahmedabad. The same is pending as on day.

Personal Hearing:

9. Personal hearing in this case was fixed on 14.07.2020, 18.08.2020, 22.09.2020, 11.06.2020 and 30.12.2020. M/s Bajaj or its representative did not attend personal hearing on the pretext of Covid-19 even though virtual mode of hearing was offered. Further, vide their letter dated 14.07.2020 and 17.08.2020, they requested to postpone the proceedings in view of their appeal before the Hon'ble High Court of Gujarat against the aforesaid CESTAT order.

Shri R.R.Dave, Consultant appeared for the hearing on 30.12.2020 on behalf of the assessee. During the course of Personal Hearing he stated that their appeal against the CESTAT Order was pending before Hon'ble High Court of Gujarat and requested to keep the order



pending till the decision on the said appeal by the Hon'ble High Court. Further vide their letter dated 14.07.2020, they also requested to grant adjournment for three months.

Discussion and Findings:

10. I have carefully gone through the records of the case. I find that the Additional Commissioner, Central Excise, Ahmedabad-II (now Ahmedabad North Commissionerate) had vide Order-in-Original No. 11/ADC/2012-AS dated 31.01.2012 disallowed the Cenvat Credit to the tune of Rs.29,55,530/- and demanded interest on the said amount in terms of Section 11AB of the Central Excise Act, 1944 as applicable during the relevant period. A penalty of Rs.29,55,530/- was also imposed by him on M/s.Bajaj under Rule 15(1) of Cenvat Credit Rules, 2004.

Aggrieved with the said OIO, M/s Bajaj approached Commissioner (A), Ahmedabad. The Commissioner (A), Ahmedabad, upheld the Order-in-Original but quashed the interest and penalty vide OIA No.236/2012 (Ahd-II/CE/AK/Commr(A)/Ahd dated 21.09.2012). M/s.Bajaj filed appeal before CESTAT, Ahmedabad against the said Order-in-Appeal passed by the Commissioner(A). The Department also filed Appeal against the Order of Commr (A) before CESTAT, Ahmedabad on the ground that even though the Id. Commissioner (Appeals) has recorded in the impugned order that the Appellant had reversed the entire credit of Rs.29,55,530/- availed wrongly during August 2010 to July 2011, but in fact, M/s Bajaj had reversed CENVAT credit of Rs.21,15,123/-and the balance amount of Rs.8,40,407/- was yet to be reversed by them.

Hon'ble CESTAT vide order No.A/10171-10172/2018 dated 19.01.2018 upheld the Commissioner (A)'s order and remanded back the matter to the adjudicating authority for the purpose of verification of reversal of entire Cenvat Credit as was confirmed by the Commissioner (Appeals) in his above referred order. Further the Order No. A/10171-10172/2018 dated 19.01.2018 passed by Hon'ble CESTAT has been accepted by the Department.

10.1 On verification of the status of Tax Appeal No.1121 of 2018 filed by M/s.Bajaj available on Hon'ble Gujarat High Courts's website I find that no stay has been granted by the Hon'ble High Court on the appeal filed by M/s.Bajaj and therefore, I have no other option but to proceed with the the adjudication of the case.

11. I find the from the order of the Hon'ble CESTAT, Ahmedabad that the matter was remanded to the adjudicating authority for a limited purpose of verification of reversal of Rs.8,40,407/-. The relevant portion of the said order is produced herein below for reference:



7. From the record, I find that the Appellant-Assessee had reversed the credit 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 the duty paid on inputs and the present credit on inputs are maintained in their RG-23A Pt.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 ld. Commissioner(Appeals) in setting aside the penalty and interest. Appeals are disposed of as above. CO also stands disposed of."

12. The jurisdictional Deputy Commissioner was vide letter F.No. V.15/15-61/OA/2018/Denovo dated 11.12.2018 and subsequent reminders thereof, asked to verify whether M/s Bajaj had reversed the credit of Rs.8,40,407/-. The Deputy Commissioner vide letter F.No.V.27-06/Div-IV/Adjn/Misc/19-20 dated 18.03.2020, informed that the said assessee had not reversed the amount of Rs.8,40,407/-. Scanned copy of the said letter is produced below:-

Government of India
 Ministry of Finance, Department of Revenue
 Office of the Deputy Commissioner
 Central GST & Central Excise, Division-IV
 Ahmedabad North
 2nd Floor, Gokuldhara Arcade,
 Sarkhej-Sanand Road, Ahmedabad - 382210
 Phone No. (02717) 238 200 Email- div7904@yahoo.co.in FAX- (02717) 238 202

F.NO. V/27-06/DIV-IV/ADJN/MISC/19-20 18.03.2020

To
 The Deputy Commissioner(O&A),
 CGST & CX, Ahmedabad North,
 Custom House, Navrangpura,
 Ahmedabad.

Sub: Intimation regarding outcome of examination of CESTAT order No. A/10171-10172/2018 dated 19.01.2018 passed against appeal No. E/10060/2013 filed by M/s. Bajaj Foods Ltd., Ahmedabad.

Please refer to your letter F.No. V.15/15-61/OA/2018/Denovo DATED 28.02.2020 on the above subject.

In this regard, the taxpayer vide letter dated 13.03.2020 (copy enclosed) has informed that they have filed the tax appeal No. 1121/2018 before Hon'ble High Court of Gujarat against the CESTAT Order No. A/10171-10172/2018 dated 19.01.2018.

The assessee has informed that they have reversed the CENVAT credit of Rs. 21,15,123/- and also requested to postpone the recovery of outstanding amount of Rs. 8,40,407/- till the disposal of Tax Appeal No. 1121/2018. Therefore it appears that they have not reversed the Cenvat credit of Rs. 8,40,407/-.

This is for your information please.

Encl.: As above.

(Adesh Kumar Jain)
 Dy. Commissioner Division-IV,
 CGST, Ahmedabad North.

Received on 22/07/20 at 11:30 am

12.1 M/s.Bajaj have vide letter dated 13.03.2020, addressed to the Superintendent of GST & Central Excise, Division-IV, Ahmedabad North, while confirming non-payment of Rs.8,40,407/- requested to postpone the recovery of Rs.8,40,407/- till the finalisation of Tax Appeal 1121/2018 filed by them. The letter dated 13.03.2020 of M/s Bajaj is scanned herein below for reference:



BAJAJ FOODS LTD.

Plot No. 10, Sector 10, Gandhinagar, Ahmedabad - 380 015
Gandhinagar, Ahmedabad - 380 015
Phone : +91 79 11122233
Fax : +91 79 11122233
E-mail : bajajfoods@bajajfoods.com
www.bajajfoods.com



Date: 13.03.2023.

To,
The Superintendent of Central GST & Central Excise,
Range-III,
Division IV,
Ahmedabad-North,
2nd Floor, Gokuldharus Arcade,
Sarathy-Sarand Road,
Ahmedabad - 382210

Dear Sir

Sub : Reversal of CENVAT Credit of Rs. 8,40,407/- in the light of CESTAT order No. A/10171-10172/2018 dated 19.01.2018-m/r

Kindly refer to your office letter No. F.No.AR-III/Div IV/Dasa, Ex-14, 2018 DT 20.06.2019

In this matter, it is to inform you that we have filed a Tax Appeal before Hon'ble High Court of Gujarat at Ahmedabad against the Order No. A/10171-10172/2018 dated 19.01.2018 of the CESTAT, WZB, Ahmedabad.

The Hon'ble High Court of Gujarat at Ahmedabad has admitted the Tax Appeal No. 1121 of 2018 on the following question of law

Follow us on: www.bajajgroup.com • Online buying: www.bajaj.com
Facebook: www.facebook.com/bajajgroup • Bajaj Store: www.bajajstore.com

(a) Whether the Tribunal is justified in holding reliance on Rule 6(1) of the Cenvat Credit Rules, 2004 without taking into consideration Rule 6(6) of the Cenvat Credit Rules, 2004?
(b) Whether the CESTAT is justified in denying the Cenvat credit to the appellant, ignoring the provisions of Rule 14 of the Central Excise Rules, 2002?

Therefore the question of payment of Rs. 8,40,407/- does not arise on the ground that the total amount of Rs. 29,55,530/- being a duty of excise paid on Input and Packing Material consumed in the product namely PEANUT BUTTER exported; hence under the provisions of Rule 6 (6) of the Cenvat Credit Rules, 2004 the restriction provided under Rule 6 (1) of the Cenvat Credit Rules, 2004 is not applicable. therefore, though we have reversed Cenvat Credit of Rs. 21,15,123/- from the Cenvat Credit Account as per instruction of the Department but now as the matter lying with the Hon'ble of High Court of Gujarat, Ahmedabad the request for payment of Rs. 8,40,407/- vide above referred letter is not accepted and requested to postpone the recovery of the said amount till the finalisation of Tax Appeal No.1121/2018 under the principal of NATURAL JUSTICE.

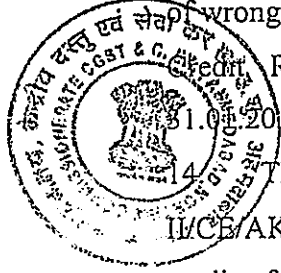
Yours Faithfully
Bajaj Food Ltd.,



13. In view of the above, I find that M/s.Bajaj Foods Ltd, have not paid/ reversed Rs.8,40,407/- and by virtue of the same not honoured the aforesaid Order of the Hon'ble CESTAT, Ahmedabad. Therefore, I hold that the assessee is liable to reverse the entire amount

wrongly availed Cenvat Credit to the tune of Rs.29,55,530/- in terms of Rule 14 of the Cenvat Rules, 2004 and as discussed in Order-in-Original No.11/ADC/2012-AS dated 31.08.2012.

The fact that Commissioner (Appeals) had in his order OIA No.236/2012 (Ahd-I/C/BAK/Commr(A)/Ahd dated 21.09.2012 held that the Appellant had reversed the entire credit of Rs.29,55,530/- availed wrongly during August 2010 to July 2011 clearly shows mis-




representation of facts by M/s Bajaj while the case was being heard by him. Therefore they are also liable to pay interest in terms of Rule 14 of the Cenvat Credit Rules, 2004. Also, Penalty in terms of Rule 15(1) of the Cenvat Credit Rules, 2004 is required to be imposed on them for misrepresenting the facts before Commissioner (Appeals).

15. In view of my discussion above, I pass the following orders:-

ORDER

- (i) I disallow the Cenvat Credit of Rs.29,55,530/- (Rupees twenty nine lakhs fifty five thousand five hundred and thirty only) and order to recover the same from M/s. Bajaj Foods Ltd, Ahmedabad under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944. As M/s Bajaj have already reversed the amount of Rs.21,15,123/-, I appropriate the same 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.
- (ii) I order M/s.Bajaj Foods Ltd, Ahmedabad to pay/reverse the remaining amount of wrongly availed Cenvat Credit amounting to Rs.8,40,407/- (Rupees eight lakhs forty thousand four hundred and seven only) under Rule 14 of 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) I order M/s.Bajaj Foods Ltd, Ahmedabad 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) I Impose a penalty of Rs.8,40,407/- (Rupees eight lakhs forty thousand four hundred and seven only) on M/s.Bajaj Foods Ltd, 444, Ashwamegh Estate, Opp: MN Desai Petrol Pump, Changodar,Dist, Ahmedabad under Rule 15(1) of the Cenvat Credit Rules, 2004.

The Show Cause Notice No.V.15/15-39/OA/2011 dated 06.09.2011 is accordingly disposed-of.


 (M. L. Meena)
 Additional Commissioner
 Central GST & Central Excise,
 Ahmedabad North
 Date : 28.01.2021

F.No.V.15/15-61/OA/2018/Denovo
By Registered AD/Speed Post

To

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



1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Deputy Commissioner, CGST and C.Ex.,Division-IV, Ahmedabad North.
3. The Superintendent Range-III, Division-IV, CGST & Central Excise Ahmedabad North.
4. The Guard File.