

REGISTERED
SPEED POST



F.No.195/508/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..25/7/13

ORDER NO. 1057/13-Cx DATED 24-07-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35 EE of the
Central Excise Act, 1944 against the orders-in-appeal
No. 106/11 (Ahd.-II)/CE/CMC dated 31.03.2011
passed by Commissioner of Central Excise
(Appeals-I) Ahmedabad

APPLICANT : M/s Bajaj Food Ltd., Plot No.444, Ashwamegh
Estate, Village Changodar, Tal-Sanand, Distt.
Ahmedabad

RESPONDENT : Commissioner of Central Excise, Ahmedabad-II

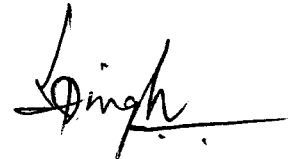
ORDER

This revision application is filed by M/s Bajaj Food Ltd., Plot No.444, Ashwamegh Estate, Village Changodar, Tal-Sanand, Distt. Ahmedabad – 382210 against the order-in-appeal No. 106/11 (Ahd.-II)/CE/CMC dated 31.03.2011 passed by Commissioner of Central Excise (Appeals-I) Ahmedabad with respect to order-in-original NO. 23/R/11 dated 07.01.2011 passed by ACCE Div.-IV Ahmedabad-II.

2. Brief facts of the case are that M/s Bajaj Food Ltd., Plot No.444, Ashwamegh Estate, Village Changodar, Tal-Sanand, Distt. Ahmedabad (hereinafter referred to as the said claimant) are engaged in the manufacture of Peanut Butter falling under Chapter 15179020 of the First Schedule to Central Excise Tariff Act, 1985 and holds Registration No. AAACB6184DXM001. They were availing Cenvat credit under Cenvat Credit Rules, 2004 of the inputs, packing materials consumed in their final products. They were earlier operating as 100% EOU and with effect from 01.07.2009, they ceased to be 100%EOU in terms of letter F.No. KASEZ/100%EOU/II/252/95/VOL-I/3620 by the Joint Development Commissioner, KASEZ, Kandla read with letter F.No. IV/SACER/33/AR-IV/03 dated 28.07.2009 issued by the ACCE, Div.-IV, Ahmedabad. Subsequently they have filed refund for Rs.32,394/- under Section 11 B(2) of Central Excise Act, 1944 for the month of July 2009 on 13.07.2010 in respect of un-utilized cenvat credit due to export of final products and there was no DTA sales of their final product. The said refund is claimed in respect of cenvat credit availed on quantity consumed in quantity of final products exported under Bond or under Letter of Understanding under Rule 19 of Central Excise Rules, 2004. It appeared that allowing of the refund claim in respect of unutilized cenvat credit of duty paid on inputs utilized in the manufacture of the goods cleared for export under Bond is governed under Rule 5 of Cenvat Credit Rules, 2004 read with Not. No.5/2006-CE (NT) dated 14.03.2006. The refund claim filed under the provisions of Rule 5 of Cenvat Credit Rules, 2004 read with Not. No. 5/2006-CE(NT) dated 14.03.2006 was rejected by the adjudicating authority.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

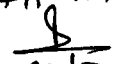
4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the various grounds claiming that refund of utilized cenvat credit is admissible to them under rule 5 of Cenvat Credit Rules, 2004.
5. Personal hearing was scheduled in this case on 5.3.13 & 27.6.13. Hearing held on 5.3.13 was attended by Shri R.R. Dave, Consultant on behalf of the applicant who reiterated the grounds of revision application.
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.
7. Government notes that in the instant case applicant's claim for refund of unutilized cenvat credit in terms of Rule 5 of Cenvat Credit Rules 2004 was rejected by original authority. Commissioner (Appeals) has upheld the said rejection of refund claim.
8. Government notes that the impugned order-in-appeal is not of the nature referred to in the first proviso to sub-section (1) of section 35 B of Central Excise Act 1944 and therefore as per provision of section 35 EE (1) of CEA 1944, no revision application lies before Central Government against said order-in-appeal . As such this revision application filed beyond jurisdiction is not maintainable. Applicant is at liberty to file appeal against impugned order-in-appeal before appropriate legal form i.e. CESTAT.
9. The revision application thus stands dismissed as non-maintainable for lack of jurisdiction.
10. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Bajaj Food Ltd.,
Plot No.444, Ashwamegh Estate,
Village Changodar, Tal-Sanand,
Ahmedabad – 382210

Att-entd.

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revenue)
Government of India

Order No.1057/13-Cx dated 24.07.2013

Copy to:

1. Commissioner of Central Excise Ahmedabad-II, Custom House, Navrangpura, Ahmedabad – 380009.
2. Commissioner of Central Excise (Appeals-I), Central Excise Bhavan, 7th Floor, Near Polytechnic, Ambawadi, Ahmedabad – 380015.
3. The Assisant Commissioner of Central Excise, Division-IV, Ahmedabad-II, Vidyalaya Chambers, Paldi Cross Roads, Ahmedabad – 380 009.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. Sharma)
OSD(Revision Application)