

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 2

EXCISE Appeal No. 10685 of 2020-SM

[Arising out of Order-in-Appeal No AHM-EXCUS-002-APP-023-20-21 dated 21.08.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II]

Bajaj Foods Limited

444, Ashwamegh Estate, Opp. M.N. Desai Petrol
Pump, Village : Changodar, Taluka : Sanand
Ahmedabad, Gujarat

.... Appellant

VERSUS

C.C.E & S T-Ahmedabad-II

Custom House, First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat -380009

.... Respondent

APPEARANCE :

Shri RR Dave, Consultant for the Appellant
Shri P. Ganesan, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 21.07.2025

DATE OF DECISION: 21.11.2025

FINAL ORDER NO. 11361/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the Order-in-Appeal No. AHM-EXCUS-002-APP-023-20-21 dated 21.08.2020 through which learned Commissioner (Appeals) has upheld the Order-in-Original and rejected the appeal filed by the appellant.

2. The facts of the case are that the appellant had filed a refund claim for an amount of Rs.9,49,792/- on 04.07.2019 on the ground that they had paid Service Tax amount of Rs.9,49,792/-, on Reverse Charge Mechanism on the

basis of Audit Objection on different services received by them which were covered under the definition of "input services" under the Cenvat Credit Rules, 2004 and that on implementation of GST with effect from 01.07.2017, they were not in a position to take Service Tax credit of the said amount paid under Reverse Charge Mechanism as there were no provisions for availing such service tax credit under new GST Regime after 01.07.2017 and there is no scope to claim the same under 'Trans' under Section 140 of the CGST Act, 2017. Since they have no other option, they filed the said refund claim under section 11B of Central Excise Act, 1944.

2.1 On scrutiny, the claim was found to be not proper and hence liable for rejection, on the grounds that;

(i) the claim filed by the appellant does not fall under the categories of cases for which refund is applicable under the erstwhile Service Tax Rules;

(ii) the said amount with interest and penalty was paid by them in compliance of audit observation which was closed on the basis of such payment;

(iii) the appellant has not supported their refund claim with any legal provision which enable refund of service tax paid after 01.07.2017 under Section 11 B of Central Excise Act, 1944.

Therefore, a show cause notice dated 12.07.2019 was issued to them which was decided by the adjudicating authority vide the Order-in-Original wherein he rejected the entire claim of refund of the appellant by observing that the refund claim preferred by the appellant is not covered by provisions of refund under erstwhile Service Tax Rules or Section 11B of the Central Excise Act, 1944 or Section 142(5) of the CGST Act, 2007 as claimed by the

appellant and that the amount has been paid against liability that has arisen on account of audit of the records of the appellant and therefore, the amount paid by them in the case has to be treated as arrears of tax and hence the same is not available as input tax credit in view of the provisions of Section 142(8)(a) of the CGST Act, 2017 and once it is declared as not admissible as credit, the question of refund of such amount under transitional provision does not arise.

3. Being aggrieved with the Order-in-Original passed by Dy. Commissioner, CGST and Central Excise, Ahmedabad North, the appellant filed appeal before Commissioner (Appeals). Learned Commissioner (Appeals) upheld the Order-in-Original dated 03.10.2019 and rejected the appeal filed by the appellant. Feeling aggrieved with the Order-in-Appeal dated 17.08.2020 passed by learned Commissioner (Appeals), the present appeal has been filed before this Tribunal.

4. Learned Consultant for the appellant submitted that in the present case, the payment of service tax was made under Reverse Charge Mechanism after 01.07.2017. Prior to 01.07.2017, under the old tax regime of Excise or Service Tax the duty or tax paid or credit available under Cenvat Credit Rules, 2004, the service recipient paying service tax under Reverse Charge Mechanism is eligible to claim credit. Therefore, in the present case, the service tax so paid under Reverse Charge Mechanism is available as credit to the appellant prior to 01.07.2017.

4.1 Learned Consultant for the appellant also submitted that from 01.07.2017, under the new tax regime of GST, the provisions of Section 142(3) of the CGST Act, 2017 provide that 'every claim for refund filed by any person before, on or after appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under existing

law and eventually accruing to him shall be paid in cash". Accordingly, the appellant has filed the refund of service tax paid after 01.07.2017 under Reverse Charge Mechanism therefore, refund cannot be rejected only on the ground that it does not fall under situation described in Section 11B of the Central Excise Act, 1944. Therefore, the impugned order is not sustainable in the eyes of law. Learned Consultant prayed that impugned order passed by learned Commissioner (Appeals) and the Adjudicating Authority may be set-aside and the appeal may be allowed.

5. learned AR for the department reiterates the findings of the impugned order dated 17.08.2020 passed by learned Commissioner (Appeals) and submits that the impugned order has been passed in accordance with the provisions of Central Excise Act, 1944 and CGST Act, 2017. He prays that the impugned order passed by Commissioner (Appeals) may be upheld and the appeal may be rejected.

6. I have heard the learned Consultant for the appellant and learned AR for the Revenue and perused the record.

6.1 I am of the view that learned Commissioner (Appeals) and the learned Adjudicating Authority have committed error in passing the impugned order dated 17.08.2020. I agree with the learned Consultant for the appellant that prior to 01.07.2017, under the old tax regime of Excise or Service Tax, the duty or tax paid or credit available under Cenvat Credit Rules, 2004, the service recipient paying service tax under Reverse Charge Mechanism is eligible to claim credit. Therefore, in the present case, the service tax so paid under Reverse Charge Mechanism is available as credit to the appellant prior to 01.07.2017.

6.2 I also agree with learned Consultant for the appellant that under new tax regime of GST, as per the provisions of Section 142(3) of CGST Act, 2017 the refund claim of service tax paid after 01.07.2017 by the appellant under Reverse Charge Mechanism, should not have been rejected on the ground that it does not fall under the situation described in Section 11B of the Central Excise Act, 1944. I also agree with the learned Consultant for the appellant that the Order-in-Original passed by Adjudicating Authority and Order-in-Appeal passed by learned Commissioner (Appeals) are not sustainable in the eyes of law.

6.3 It is pertinent to mention here that in **Lifecell International Pvt. Limited vs. Commissioner of GST & Central Excise, Chennai – 2022 (66) GSTL 446 (Tri. Chennai)**- it has been held that if service tax paid by the appellant under Reverse Charge Mechanism but no service was provided as contract got cancelled, limitation provided in Section 11B(1) of Central Excise Act, 1944 was not applicable in view of Section 142(5) of Central Goods and Service Tax Act, 2017. In the said decision, it has also been held that when the contract has been annulled at a much later date, appellant cannot be expected to file refund claim within one year from the date of payment of service tax. Department cannot retain any amount which is not collected/ paid under authority of law. Further, limitation provided in Section 11B(1) of Central Excise Act, 1944 is not applicable in view of Section 142(5) of Central Goods and Service Tax Act, 2017 and the refund was not time-barred.

6.4 Further, in **Assistant Commissioner of GST & Central Excise, Puducherry-II vs. Ganges International Pvt. Limited – 2023 (68) GSTL 134 (Mad.)** - the Hon'ble Madras High Court has held that service

tax for pre-GST period from April 2017 to June 2017 was paid belatedly. Assessee was entitled to avail Cenvat credit of service tax already paid but was unable to claim same due to coming into effect of GST Act from 01.07.2017. GST Authorities should consider Assessee's refund claim under Section 142 of Central Goods and Service Tax Act, 2017 based on available material and dispose the appeal on merits after affording opportunity of hearing to the assessee.

6.5 Further, in the case of **New Age Laminators Pvt. Limited vs. CCE, GST, Alwar – 2022 (381) ELT 88 (Tri. Del.)**- where the appellant having failed to fulfil their export obligations within prescribed time-limit, paid Customs duty i.e. BCD, CVD, SAD and Cess for Central Excise regime, in GST regime under advance authorization scheme. As there was no provision in GST to avail input credit of the duties paid for regularization of bonafide default under advance authorization, appellant filed refund claim but the same was rejected. The Tribunal held that credit of CVD and SAD was no longer available under GST regime, which was however available under erstwhile regime of Central Excise prior to 30.06.2017. Hence, the appellant is entitled to refund under the provision of Section 142(3) and (6) of Central Goods and Service Tax Act, 2017.

6.6 In **Thermax Limited vs. Union of India – 2019(32) GSTL 60 (Guj.)** – where the duty paid inputs were procured by petitioner and goods manufactured in SEZ were physically exported on payment of excise duty which was not required to be paid, it was held that duty paid erroneously cannot be called duty of excise and not rebatable under Rule 18 of Central Excise Rules, 2002. However, duty paid by the petitioner held to be treated as voluntary deposit. Amount of duty so paid was held refundable to the

petitioner in cash in terms of Section 142 (3) of Central Goods and Service Tax Act, 2017.

7. In view of the law laid down in the above decided cases and in view of the above discussion, I have come to the conclusion that learned Commissioner (Appeals) has erred in passing the impugned order dated 17.08.2020 and in rejecting the appeal of the appellant. I am also of the view that Order-in-Original passed by the learned Adjudicating Authority and the impugned Order-in-Appeal dated 17.08.2020 are not sustainable and are liable to be set-aside and the appeal is liable to be allowed by way of remand to the Adjudicating Authority to decide the matter *de-novo* in the light of the above observations in the body of the order and principles of law laid down by Hon'ble Courts as mentioned above.

8. Consequently, the appeal is allowed in the above terms.

(Order pronounced in the open court 21.11.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)