

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH, COURT NO. 2

Central Excise Appeal No. 21739 of 2015

(Arising out of Order-in-Appeal No. 499/2014 dated 28.08.2014 passed by the Commissioner of Central Excise (Appeals - I), Bangalore.)

M/s. Hikal Ltd.,

Plot No. 82/A, KIADB Industrial Area,
Jigani, Anekal Taluk,
Bangalore – 562 106.

.....**Appellant(s)**

Versus

The Commissioner of Central Excise,

Bangalore – I Commissionerate,
Post Box No. 5400,
C.R. Buildings,
Queen's Road,
Bangalore – 560 001.

.....**Respondent(s)**

Appearance:

Mr. Pradyumna.G.H, Advocate for the Appellant.

Mr. Rajesh Shastry, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20977 /2025

Date of Hearing: 15.01.2025

Date of Decision: 08.07.2025

Per : P.A. Augustian

The issue in the present appeal is whether the Appellant being a 100% EOU is entitled for claiming the exemption under Notification No. 23/2003-CE dated 31.03.2003 for the goods cleared into DTA.

2. The brief facts are the appellant is 100% EOU and are manufacturing and exporting bulk drugs, active pharmaceutical ingredients, etc. Alleging that the Appellant had cleared certain solvents manufactured by them into the Domestic Tariff Area (DTA) by availing ineligible benefit under Notification No. 23/2003-CE dated 31.03.2003, proceedings were initiated and the Adjudication authority as per the impugned order dated 31.01.2014 re-classified the goods and also denied the benefit of Notification No. 23/2003-CE dated 31.03.2003 to confirm the differential duty. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned Order-in-Appeal No. 499/2014-CE dated 28.08.2014 rejected the appeal. Thereafter aggrieved by the said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the goods removed to DTA are nothing but waste generated during production of the final product. The Learned Counsel submits that the issue is settled as per the decision of this Tribunal in the matter of **Commissioner of C. Ex., Hyderabad-I Vs. M/s. Aurobindo Pharma Ltd., (2010 (249) E.L.T. 415 (Tri. – Bang.)** which was confirmed by the Hon'ble High Court of Andhra Pradesh-(**2010 (259) E.L.T 673**). Thereafter the appeal filed before the Hon'ble Supreme Court was also rejected-(**2018 (361) E.L.T A81 (SC)**).

4. The Learned Counsel further submits that in Appellant's own case, for the subsequent period, Adjudication Authority confirmed the demand based on the allegation that during the period from November 2015 to October 2016 the appellants had cleared spent solvents totally valued at Rs 2,10,41,113/- by classifying the same under Sub-Heading 2942 0090 of CETA and availing the benefit of exemption under Sl. No 2 of Notification No 23/2003-CE dated 31-03-2013 as amended whereby BCD was paid @ 3.75%, which had resulted in short-payment of duty to the extent of Rs 15,23,838/-. In Appeal the issue was considered by the Commissioner (Appeals) and Commissioner (Appeals) as per the Order-in-Appeal No. 344 dated 21.09.2022 held that the issue related

to classification of spent solvents by classifying the same under Sub-Heading 29420090 of CETA and availing the benefit of exemption under Sl. No. 2 of Notification 23/2003 dated 31.03.2013 is settled in favor of the appellant.

5. The Learned Counsel also relied on the decision of the Appellate Authority for the subsequent period November 2016 to June 2017 wherein as per Order-in-Appeal No. 345/2022 dated 21.09.2022, following the judgment of Hon'ble Supreme Court it was held that:-

"10. In the light of the above orders of the Hon'ble Supreme Court, Hon'ble High Court and the Hon'ble Tribunal, the Commissioner (Appeals) being a lower Appellate Authority is bound to comply with the higher Appellate Authorities towing the principles of judicial discipline. Accordingly, the issue relating to classification of spent solvents by classifying the same under S.H.2942 0090 of CETA and availing the benefit of exemption under Sl. No 2 of Notification No 23/2003-CE dated 31-03-2013 is settled in favor of the Appellant".

6. The Learned AR reiterated the finding in the impugned order.

7. Heard both sides, since the issue is no more *res-integra* and following the judgment of Hon'ble Supreme Court and also by considering the order of Commissioner (Appeals) dropping the demand for the subsequent period in Appellant's own case, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 08.07.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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