

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 60091 of 2023 [SM]**

[Arising out of OIA No.JNK-EXCUS-APP-138-139/22-23 dated 04.11.2022 passed by the Commissioner (Appeals), CGST, Central Excise and Customs, Jammu]

**M/s IND Swift Laboratories**

**: Appellant**

Phase-I, Industrial Growth Centre,  
Samba, Jammu & Kashmir-124121

Vs

**Commissioner of Central Excise  
And Service Tax, Jammu & Kashmir**

**: Respondent**

OB-32, Rail Head Complex,  
Jammu & Kashmir- 180012

**With**

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**: Respondent**

OB-32, Rail Head Complex,  
Jammu & Kashmir- 180012

**APPEARANCE:**

Shri Surjeet Bhadu, Advocate for the Appellant

Shri Narinder Singh, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**FINALORDER Nos.60037-60038/2024**

Date of Hearing: 01.02.2024

Date of Decision: 01.02.2024

**Per: S. S. GARG**

These two appeals are directed against the common impugned order dated 04.11.2022 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeals of the appellant and upheld the Order-in-Original. For the sake of convenience, I may take the facts of Appeal No. E/60092/2023.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of pharmaceutical products i.e. Bulk Drugs falling under Chapter 29 of the First Schedule to the Central Excise Tariff Act, 1985 and is registered with the Central Excise Department. The appellant is availing the benefit of area based exemption vide Notification No.56/2002-CE dated 14.11.2002 and Notification No.01/2010-CE dated 06.02.2010 wherein the duty paid through PLA/TR-6 challan by the manufacturing unit is eligible for claiming refund as an incentive for development of industrial growth in the backward area. Accordingly, the appellant filed refund claim by way of self-credit for the month of June 2015 and September 2015 for Rs.29,40,750/- and out of total amount, Rs.12,99,229/- pertains to June 2015 on account of Central Excise duty paid through PLA under the said Notification. The Assistant Commissioner, CGST, Region Samba allowed the refund of Rs.16,41,522 under Notification No.01/2010-CE dated 06.10.2010 to the appellant vide Order-in-Original dated 31.08.2020. Further, the Original Authority rejected the

refund claim of Rs.12,99,229/- without giving any opportunity of hearing and without issuing the show-cause notice. The Adjudicating Authority has rejected the refund under Notification No.01/2010-CE solely on the basis/ ground that the appellant has made payment of duty through PLA at Nil payment through CENVAT credit account under Notification No.01/2010-CE and aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who rejected both the appeals by the common order. Hence, the present appeal.

3. Heard both sides and perused the records of the case.

4. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts, the law and the exemption Notification No.56/2002-CE dated 14.11.2002 as well as Notification No.01/2010-CE dated 06.02.2010. He further submits that the learned Commissioner has passed ex parte order without giving any reasonable opportunity of hearing to the appellant. Learned Commissioner (Appeals) has granted three dates of hearings i.e. 09.09.2022, 16.09.2022 and 23.09.2022 in one consolidated hearing Notice dated 17.08.2022 and thereafter without giving any reasonable opportunity of hearing passed ex parte impugned order. Learned Counsel further submits that notice of hearing dated 17.08.2022 whereby granting of three dates of hearing in one consolidated notice are violation of the principles of natural justice. In support of his submission, he relied upon the judgment of the Hon'ble High Court of

Gujarat in the case of Regent Overseas Pvt. Ltd. Vs Union of India – 2017 (6) GSTL 15 (Guj.) wherein the Hon'ble High Court, after analyzing the procedure prescribed under law to be followed by the Adjudicating Authority, has held that one consolidated notice providing three dates of hearing is violation of the principles of natural justice and is not a proper procedure to be followed by the Adjudicating Authority as per the provisions of the Act. He further submits that since the Commissioner (Appeals) has not considered any of his grounds of appeal raised by him and has wrongly upheld the Order-in-Original by mis-interpreting the whole spirit of the notification No. 01/2010-CE dated 06.10.2010.

5. On the other hand, learned Authorized Representative for the Department reiterates the findings of the impugned order and submits that the appellant did not appear before the Commissioner on any date of hearing and therefore, Commissioner has proceeded to decide both the appeals ex parte.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the impugned order passed by the learned Commissioner (Appeals) ex parte is without affording an opportunity of hearing to the appellant. Further, I find that one consolidated hearing notice granting opportunity of hearing on three different dates i.e. 09.09.2022, 16.09.2022 and 23.09.2022 is clearly in violation of the principles of natural justice. This issue has been considered by the Hon'ble High Court of Gujarat in the case of

Regent Overseas Pvt. Ltd. (supra) wherein the Hon'ble High Court has held as under:

"11. Thus, by virtue of the provisions of sub-section (2) of Section 33A of the Act, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such a case, the adjudicating authority may grant time and adjourn the hearing by recording the reasons in writing. However, in view of the proviso thereto not more than three such adjournments can be granted. On a plain reading of sub-section (2) of Section 33A of the Act and the proviso thereto, what the same envisages is fixing a date of hearing and in case if a party asks for time and makes out sufficient cause, then to adjourn the hearing. Since the number of such adjournments is limited to three, the hearing would be required to be fixed on each such occasion, and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another day. However, the adjudicating authority is required to give one date at a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case. Thus, apart from the fact that the notice of hearing has not been served in the manner contemplated under Section 37C of the Act, the notice itself suffers from a legal infirmity inasmuch as it fixes three dates of hearing at a time, which is not in consonance with the proviso to Section 33A of the Act.

12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three

adjournments would mean, in all four dates of personal hearing.

13. As discussed hereinabove, in view of the fact that the notice for personal hearing was Kat served upon the petitioners in accordance with law, no one could remain present for personal hearing on behalf of the petitioners on the dates specified in the notice and the adjudicating authority has proceeded on the footing that three adjournments have been granted and has passed and the impugned ex parte order. Such order is, therefore, clearly in breach of the principles of natural justice warranting interference by this court in exercise of powers under Article 226 of the Constitution of India

7. In view of the decisions cited supra, I am of the considered opinion that the impugned order is not sustainable in law and therefore, I set aside the same and remand the case back to the learned Commissioner (Appeals) with the direction to decide the same on merits after giving reasonable opportunity of hearing to the appellant and thereafter pass a reasoned order in accordance with law. Learned Commissioner (Appeals) is further directed to decide the appeals within a period of three months after receipt of the certified copy of this order. Accordingly, both the appeals are allowed by way of remand.

*(Operative part of the order pronounced in the open Court)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)