CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60594 of 2023

[Arising out of Order-in-Appeal No. 140/ST/CGST-APPEAL-GURUGRAM/SKS/2023-24 dated 31.03.2023 passed by the Commissioner (Appeals), CGST, Gurugram]

M/s Mann and Hummel Filter Pvt. Ltd. **......Appellant**
Plot No.19, Sector-5, Phase-II, Growth Centre,
Bawal, Rewari, Haryana-123501

VERSUS

Commissioner of Central Excise, Goods and Service Tax, Faridabad **......Respondent**
GST Bhawan, New C.G.O. Complex, NH-4, Faridabad,
Haryana-121001

APPEARANCE:

None for the Appellant

Shri Narinder Singh and Shri Yashpal Singh, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60469/2025

DATE OF HEARING: 01.04.2025
DATE OF DECISION: 01.04.2025

None appeared on behalf of the appellant despite notice. This is the third time the case was listed for hearing but nobody has appeared on behalf of the appellant. Since, the issue involved in the present case is in a narrow compass, I proceed to decide the same on the basis of the grounds of appeal and after hearing the learned DR.

2. Briefly the facts of the present case are that M/s Mann and Hummel Filter Private Limited, located at Plot No. 19, Sector-5, Phase-II, Growth Centre, Bawal (here-in-after referred to as "the

Appellant"), are engaged in manufacturing of Air-Intake Manifold, Cabin Air Filter, Air Filter and Air Oil Separator. The Appellant was also registered for service provision vide Service Tax Registration No. AAECM4056DSD003 under the erstwhile Finance Act, 1994, Consequent to implementation of the GST, the appellant migrated themselves under the GST vide GSTIN No. 06AAECM4056D1ZS.At the time of implementation of GST, as per the S.T.-3 return filed for the period April 2017 to June 2017, the Appellant had a closing balance of the CENVAT credit of Krishi Kalyan Cess (KKC) to the tune of INR 5,19,990/- (Five Lakhs Nineteen Thousand Nine Hundred Ninety Only). In terms of section 140 of the CGST Act, 2017, the Appellant submitted a declaration electronically in FORM GST TRAN-1 on the common portal for carrying forward the credit of KKC of Rs. 5,19,990/- for taking input tax credit under GST relating to the period ending June, 2017. Owing to the confusion of eligibility of credit of KKC under GST law, the Appellant themselves reversed the credit of KKC of Rs. 5,19,990/- in December 2017 with a right to claim the benefit of KKC credit in future.

3. Later on, the Appellant filed a refund application under Section 118 of the al Excise Act, 1944 on 29th September, 2021 for claiming refund of KKC to the tune of INR 5,19,990/-.

4. Thereafter, a show cause notice was issued to the appellant for rejection of the refund application on the ground that there is no provision under the Central Excise Act or the Finance Act to allow such refunds. The appellant filed reply to the show cause notice and

after following the due process, the Original Authority rejected the refund claim on merits as well as on limitation. Aggrieved by the said order, the appellant filed appeal before the Commissioner, who rejected the same. Hence, the present appeal.

5. Heard learned DR and perused the material on record.

6. Learned DR states that this issue is no more *res integra* as this Bench of the Tribunal in the case of M/s SBI Cards and Payment Service Ltd. vide its Final Order No.60444-60445/2024 dated 26.07.2024 has held that assessee is not entitled to the refund of Krishi Kalyan Cess by relying upon the decision of the Division Bench of the Tribunal in the case of M/s Lupin Limited vide Final Order No. A/30020/2023 dated 16.03.2023 by CESTAT, Hyderabad Bench.

7. After hearing the learned DR and perused the grounds of appeal, I find that this issue is no more res integra and the Division Bench of this Tribunal in the case of M/s SBI Cards and Payment Service Ltd. (supra) has already rejected the appeal of the assessee by holding that they are not entitled to refund of Krishi kalyan Cess. It is pertinent to reproduce the relevant findings which are as under:

> 6. After considering the submissions of both the parties and perusal of the material on record, I find that the only issue involved in the present case is whether the appellants are entitled to get the refund of KKC under Section 142(9)(b) of CGST Act, 2017. The relevant section is reproduced here in below:
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> "(9) (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable

or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act:

(b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash underthe existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act".

7. Further, I find that this Tribunal in the case of Bharat Heavy Electricals Ltd (cited Supra) has held by relying the judgment in the case of Slovak India Trading Co. Pvt. Ltd. that assessee is eligible for cash refund of cesses lying as Cenvat credit balance as on 30.06.2017 in their accounts; but this judgment was appealed against by the department before the Hon'ble Madhya Pradesh High Court and the Hon'ble Madhya Pradesh High Court admitted the appeal on the following substantial question of law:

"Whether the unutilized CENVAT credit balances of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess as on 1.7.2017 which were not allowed to be carried forward in Tran-1 under section 140 of CGST Act, 2017 were liable to be refunded to the respondent in cash under the provisions of section 142(3) of the Central Goods & Services Tax, 2017 read with section 11B of the Central Excise Act, 1944 ?"

8. Further, the Hon'ble High Court in the meantime has directed that the refund granted by the Tribunal shall remain stayed till the final output of the appeal.

9. Further, I find that the Division Bench of this Tribunal in the case of Lupin Ltd. cited (Supra) has decided the issue of refund of KKC accumulated prior to 01.07.2017 and the relevant part of the order is reproduced here in below:

"The issue in this appeal relates to rejection of refund claims. The appellant had claimed the following refunds which have been decided by the Court below: (A)(1) Krishi Kalyan Cess paid on services received for

> manufacture of goods, namely transportation of goods, Manpower supply-recruitment, maintenance and repair service, technical testing analysis service totalling Rs. 5,46,759/-. 8. Having considered the rival contentions, we reject the amount of refund for KKC RS 5.46,759/-, following the ruling of Larger Bench in the case of Gauri Plasticulture Pvt. Ltd [2019-TIOL1248-HC-Mumbai-C.Ex-LB-2019 (30) G.ST.L. 224 (Bom)] wherein it was held that a non-utilised portion of Cenvat credit cannot be claimed as refund in cash, distinguishing the ruling in Union of India v. Slovok India Trading Company [2006 (201) E.L.T. 559 (Kar.) = 2008 (10) S.T.R. 101 (Kar.)], as not a declaration of law under Article 141 of the Constitution."
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> 10. Since, the Division Bench of this Tribunal in case of refund of KKC has decided in favour of Revenue, therefore, by following the ratio of the said decisions I am of the considered view that the appellants are not entitled to the refund of the KKC and hence, I dismiss both the appeals of the appellant.

8. By following the ratio of the above said decision, I am of the considered opinion that the appellant is not entitled to the refund of Krishi Kalyan Cess. Hence, the appeal is hereby dismissed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

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