CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60268 of 2024

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-164-168/23-24 dated 01.04.2024 passed by the Commissioner (Appeals), CE & CGST, Jammu]

Kokuyo Camlin Ltd **......Appellant**
Lane No. 9, SIDCO Industrial Growth Centre,
Phase I, Samba, J&K 184121

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex, Jammu,
J&K 180012

APPEARANCE:

Shri M. H. Patil and Ms. Kiran Chavan, Advocates for the Appellant

Shri Siddharth Jaiswal, Ms. Amita Gupta and Shri Yashpal Singh, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60879/2025

DATE OF HEARING: 17.07.2025
DATE OF DECISION: 17.07.2025

P.ANJANI KUMAR:

M/s Kokuyo Camlin Ltd., the appellants, are manufacturers of student poster colours, premium poster colours, Rylan colours falling under Tariff Item No.32121010; the have established a unit at Samba (Jammu & Kashmir) and have claimed the exemption under

Notification No.56/2002-CE dated 14.11.2002 on substantial expansion. After the issuance of Notification No.19/2008 dated 27.03.2008 which restricted the exemption to a certain percentage of value addition; the percentage of value addition prescribed for the items manufactured by the appellants was 36%; as the appellants claimed the value addition to be more than 115% of the normal rate, they applied for special rate in terms of Para 2.1 of the Notification and submitted documents backed by a certificate from the statutory auditors for the year 2008-09; thus, the appellants claimed value addition of 62.65%/ 58.60% on Section 4A value/ commercial value; the application was rejected by the Commissioner vide Order-in-Original dated 21.05.2010. On an appeal preferred by the appellants, this Bench, vide Final Order No.60151/2023 dated 06.06.2023, has fixed the value addition at 58.60%. During the interregnum, the appellants continued to avail the self-refunds on the special rate claimed and Revenue continued to issue demands seeking the excess refunds; five show cause notices covering the period March 2009 to February 2011 to October 2012 to January 2013 were issued; the appellants requested the adjudicating authority that as their appeal regarding the fixation of special rate for the year 2008-09 was pending before the Tribunal and as the various applications made by them for fixing special rates for the years 2009-10 to 2012-13 were pending before the Commissioner, the demands may not be adjudicated and kept pending. However, the impugned show cause notices were adjudicated and demands were confirmed by the Joint Commissioner vide impugned order dated 22.05.2023. The appellants preferred an appeal before Commissioner (Appeals) and submitted written request that the issue is squarely covered by the CESTAT Final Order dated 06.06.2023 in their own case. However, learned Commissioner (Appeals) proceeded to decide the appeals and upheld the demands raised in various show cause notices, vide Order-in-Appeal dated 01.04.2024, holding that in view of the Hon'ble Supreme Court's decision in the case of V.V.F Ltd. – 2020 (372) ELT 495 was in Revenue's favour and that the demands raised were in order in terms of Para 2C(g) of the Notification No.56/2002. Hence, this appeal.

2. Shri M.H. Patil, learned Counsel for the appellants submits that the learned Commissioner (Appeals) passed the impugned order disregarding/ without considering the final order passed by CESTAT, as per which the appellants were entitled for a value addition of 58.60%; the applications for fixing of special rates were pending before the Commissioner and any confirmation of demands, raised before finalisation of special rates, was bad in law; when the appellants are eligible for special rates raising demands and confirming the same is unjust; it would be a futile exercise to claim the refunds subsequently if the applications for special rates were decided in favour of the appellants.

3. Learned Counsel further submits that Hon'ble Supreme Court in the case of V.V.F Ltd. (supra) held that the applications for refund have to be decided on merits; Commissioner (Appeals) has done

injustice to the appellants inasmuch as he confirmed the allegation of short-payment of duty of Rs.2,40,24,103/- over and above confirming the demand of Rs.5,50,14,380/-. Learned Counsel would further submit that the request made by the appellants to adjourn the personal hearings and to defer the proceedings till CESTAT decided the issue was not considered by the learned Commissioner (Appeals). He submits that the issue is no longer res integra being decided in favour of the appellants in their own case and also in Osaka Alloys and Steels P. Ltd. - 2015 (328) ELT 625 (T) and Hindustan Unilever Ltd. - Final Order No. FO/76741-76760/2023 dated 22.09.2024.

4. Learned Authorized Representative for the Department reiterates the findings of the impugned order and submits that Bench may like to uphold the order while directing that the recovery may not take place till finalization of the applications for special rate.

5. Heard both sides and perused the records of the case. In the instant case, the appellants have availed the exemption in terms of Notification No.56/2002; in terms of the amending Notification No.19/2008, they requested for a special rate claiming that their value addition was more than 115% of the value addition declared for their products; learned Commissioner vide Order-in-Original dated 21.05.2010 rejected their claim. This Bench, on an appeal filed by the appellants, fixed the special rate at 58.60% vide Final Order dated 06.06.2023. During the pendency of the special rate, the appellants continued to avail self-credit on special rate basis.

Revenue followed it up by issuing show cause notices, dated 03.01.2012, 27.04.2012 15.02.2013, 25.06.2013 & 25.10.2013, in terms of Para 2C(g) of the Notification read with Section 11A of the Central Excise Act, 1944.

6. The Joint Commissioner passed the impugned order dated 22.05.2023 while the party's appeal was pending before this Bench. Having waited ten long years, the Joint Commissioner was impatient to wait for the decision by this Bench which ultimately was passed on 06.06.2023, which was only a few days after the impugned order was issued. Moreover, it is surprising that the Joint Commissioner did not wait for the Commissioner, at least, to decide the applications filed by the appellants from time to time. Learned Commissioner (Appeals) also, on his part, proceeded to confirm the impugned order despite the request of the appellants to follow this Bench's order dated 06.06.2023. Even if, the learned Commissioner was of the opinion that the appeal pending before this Bench was pertaining to the year 2008-09 and the demands lying before him for consideration pertain to the period after that, it was incumbent upon him to wait till the jurisdictional Commissioner decided the various applications for special rates filed by the appellants. There may be a justification in the submission of the learned Authorized Representative that in case the demands were not issued, they could have become time barred by the time the issue of special rate is decided, there is no justification in hurrying up the confirm the demands at an express speed after keeping them in suspended animation for ten long years. Though, the Revenue was within their

rights to issue demands to protect the interest of Revenue, there is no justification for prematurely confirming them while the application for special rate for various years was pending before the Commissioner and while the issue pertaining to the year 2008-09 was pending before this Bench. We find that it was not prudent on the part of the Commissioner (Appeals) and the Joint Commissioner to confirm the demands and to say that if the assessee wins the appeal, the route of refund is always available to them. We also find that jurisdictional Commissioner could have decided the special rate applications filed by the appellants expeditiously after the decision by the Bench vide Final Order dated 06.06.2023. Therefore, we find that the decision of the adjudicating authority and the appellate authority is premature. We are of the considered opinion that such an exercise will only contribute to the multiplicity of litigation on the same issue.

7. In view of the above, we are of the considered opinion that an awkward situation would arise if the competent authority accepts the claims of the appellants or fixes the special rate over and above the prescribed rate of 36%. Therefore, we find that the impugned orders are premature. We are of the considered opinion that such premature orders do not serve anybody’s cause and therefore, cannot be sustained.

8. In the result, we set aside the impugned order and allow the appeal by way of remand to the appellate authority with a direction to decide the appeal, filed by the appellants before him afresh, after

the competent authority i.e. jurisdictional Commissioner decides on the various applications filed by the appellants for fixation of special rate. We also direct the competent authority to decide the applications filed by the appellants for special rate over the years within four weeks of receipt of this order.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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