CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 54769 of 2014

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-214-215-14-15 dated 23.05.2014 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

M/s United Phosphorous Ltd. **......Appellant**
Industrial Growth Centre, Samba,
Jammu & Kashmir

VERSUS

Commissioner of Central Excise & Service Tax, Jammu & Kashmir **......Respondent**
OB-32, Rail Head Complex,
Jammu & Kashmir - 180012

<u>APPEARANCE:</u>

Shri Prakash Shah and Shri Mohit Raval, Advocates for the Appellant

Shri Yashpal Singh, Authorized Representative for the Respondent

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

FINAL ORDER NO.60913/2025

DATE OF HEARING: 24.07.2025
DATE OF DECISION: 24.07.2025

<u>P. ANJANI KUMAR</u>:

M/s United Phosphorous Ltd, the appellants, are engaged in the manufacture of insecticides, weedicides etc. and are availing the exemption under the provisions of Notification No.56/2002-CE dated 14.11.2002 as amended. They have claimed two refunds for the month of October and November 2012. It appeared to the Revenue that the appellants have availed self-credit which included the duty paid on account of Education Cess and Higher Education Cess and an amount over and above the value addition available as per the Notification. Assistant Commissioner, vide Order-in-Original dated 30.10.2013, rejected refund of Education Cess and Higher Education Cess and self-credit of amount of Rs.2,99,21,171/- over and above the value addition of 34% permitted as per the Notification. Learned Commissioner (Appeals) vide impugned order dated 23.05.2014 upheld the order of the lower authority. Hence, this appeal.

2. Learned Counsel for the appellant reiterates the Grounds of Appeal, the gist of which is as follows:

- Education Cess is a duty of excise only and therefore, exemption for central excise duty includes Education Cess also; thus, refund of Education Cess and Secondary and Higher Education Cess has been correctly availed.
- Learned Commissioner erred in holding that once Hon'ble High Court has modified, its interim order, vide order dated 13.12.2012, all the refunds sanctioned/ determined after that date, whether pertaining to the period prior or after 13.12.2012 are to be passed keeping in view the interim directions containing in the said order dated 13.12.2012.

3. Learned Authorized Representative for the Department explains at length the similarities between Notification No.71/2003-CE dated 09.09.2003 and Notification No.56/2002-CE dated

14.11.2002 and submits that the decision of Hon'ble Apex Court in the case of VVF, delivered in the context of Notification No.71/2003-CE dated 09.09.2003 is squarely applicable to the present appeal. He submits that when the Notification has been upheld by the Hon'ble Apex Court in the case of VVF Ltd. – 2020 (372) ELT 495 (SC), the interim order given by the Hon'ble High Court of J & K in CWP No.405/2009 cannot be maintained. He also relies on this Bench's decision in the case of Ind Swift Labs vide Final Order No. A/60412-60440/2023 dated 19.09.2023 and in the case of Modern Papers vide Final Order No.60544-60545/2024 dated 26.09.2024.

4. Heard both sides and perused the records of the case. We find that learned Commissioner (Appeals) vide impugned order held that:

> 9. As regard the contention of the appellants that their claims of refund pertain to Oct. 2012 & Nov. 2012 i.e. prior to passing of interim directions dated 13.12.2012 by the Hon'ble J&K High Court, which do not have retrospective effect, I do not find merit in their contention as Hon'ble High Court's interim order dated 13.12.2012 is in continuation to its earlier interim order dated 07.04.2011, which was also issued as a consequence to the LPA filed by the department for modification of its earlier order dated 23.12.2010. Hence to say that aforesaid interim order dated 13.12.2012 is not applicable for determination of refund pertaining to the prior periods is illogical and without any basis. Once the Hon'ble High Court has modified its earlier interim directions on 13.12.2012, all the refunds sanctioned/determined after that date, whether

> pertaining to the period prior or after 13.12.2012, are to be passed keeping in view of the interim directions contained the said order dated 13.12.2012.

5. We find that though Hon'ble High Court of J & K has in its interim order held that the amendment, to Notification No.56/2002-CE dated 14.11.2002, fixing value addition was ultra vires of the Constitution, they held, vide final order dated 19.9.2018, on LPAOW No 20/2011, that *in view of the aforesaid submissions of the learned counsel for the parties the appeal is disposed of with the observation that the result of the instant appeal shall also be governed by the decision in the matter which is pending before the Supreme Court.* [SLP(C) No.028194-028201/2010 & SLP(C)CC No.012392-012399/2010 against the order passed by the Division Bench of Hon'ble Gujarat High Court].

6. We find that Hon'ble Supreme Court has finally decided the above-mentioned petitions vide order - 2020 (372) ELT 495 (SC) has upheld the constitutional validity of the amendments carried to Notification No.71/2003-CE dated 09.09.2003 and Notification No.56/2002-CE dated 14.11.2002. Hon'ble Supreme Court has held as follows:

> **16.** Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not

> retroactive. Consequently, all these appeals are *ALLOWED.* The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside. Consequently, the original writ petitions filed by the respective original writ petitioners before the respective High Courts challenging the respective subsequent notifications/industrial policies stand dismissed and for the reasons stated hereinabove, the challenge to the respective subsequent notifications/industrial policies impugned before the respective High Courts *FAIL.* However, it is *CLARIFIED* that the present judgment shall not affect the amount of excise duty already refunded, meaning thereby, the cases in which the excise duty is already refunded prior to the subsequent notifications/industrial policies impugned before the respective High Court, they are not to be reopened. However, it is further *CLARIFIED* that the pending refund applications shall be decided as per the subsequent notifications/industrial policies which were impugned before the respective High Courts and they shall be decided in accordance with the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand disposed of accordingly. *NO COSTS.*

7. We, therefore, find that the submissions of the appellants based on the decision of Hon'ble J & K High Court's interim order are not acceptable. Therefore, restricting the self-refund to a fixed

percentage of value addition, is correct. We find that Hon'ble Apex Court in the case of Unicorn Industries – 2019 (370) ELT 3 (SC) held that a Notification has to be issued for providing exemption under the said source of power and that in the absence of Notification containing an exemption to such additional duties in the nature of Education Cess and Secondary & Higher Education Cess, they cannot be said to have been exempted. We find that this Bench of the Tribunal followed the Hon'ble Apex Court's order in Unicorn Industries in the case of Indswift Labs Ltd vide Final Order No. A/60412-60440/2023 dated 19.09.2023. This Bench has also held in the case of Modern Papers vide Order No. 60544-60545/2024 dated 26.09.2024 that the refund needs to be restricted to 34% in terms of the Notification No.19/2008 dated 27.03.2008.

8. In view of the above, we find that the appeal is sans any merit. Therefore, we dismiss the appeal.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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