CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60191 of 2018

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-118-124/17-18 dated 08.12.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Jammu]

M/s Osaka Alloy and Steels Pvt. Ltd. **……Appellant**
Near Tank No. 4, Phase II, Industrial Growth Centre Samba, Jammu and Kashmir-184121

VERSUS

Commissioner of Central Excise, Jammu & Kashmir **……Respondent**
OB-32, Rail Head Complex, Jammu and Kashmir-180012

APPEARANCE:

Shri Om Parkash Arora, Representative for the Appellant

Shri Shantanu Kumar Meena, 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. 61742 /2025

DATE OF HEARING: 15.10.2025
DATE OF DECISION: 09.12.2025

P. ANJANI KUMAR:

The appellants, M/s Osaka Alloy & Steels Pvt. Ltd, are manufacturers of Lead Ingots and are availing exemption contained in Notification No 56/14.11.2002 and/or Notification No. 01/2010-

CE dated 06.02.2010 as amended, being located in the State of Jammu & Kashmir. The appellants commenced commercial production on 01.11.2011. The appellants filed refund claims of ₹56,76,286/- and ₹89,14,851/- for the periods September 2014 to November 2014 and December 2014 to March 2015, respectively, being refund of self-credit under the area-based exemption scheme. The original adjudicating authority, processed these refund claims, under Notification No. 01/2010-CE dated 06.02.2010; vide orders dated 13.03.2015 and 30.10.2015, rejected refund of amounts of ₹36,32,823 and ₹56,37,652 respectively, being in excess of the admissible refund over and above the value addition norm under the said notification, as the appellants commenced commercial production on 01.11.2011, i.e., after issuance of the said notification. On an appeal preferred by the appellants, learned Commissioner (Appeals), vide impugned order dated 08.12.2017, upheld the orders passed by the lower authority.

2. Shri Om Parkash Arora, Representative, appearing for the appellants submits that the impugned order is contrary to the ratio of the CESTAT's Final Order No. A/50603-50604/2015-EX(DB) dated 13.03.2015, passed in their own case regarding fixation of special rates of value addition for FY 2012-13 and 2013-14; in view of the Hon'ble High Court of Jammu & Kashmir's judgment dated 23.12.2010 in OWP No. 470/2008 in the case of M/s Reckitt Benckiser & Ors, they are entitled to 100% refund; department failed to give effect to the Tribunal's directions concerning

determination of eligibility under Notification No. 56/2002-CE, and that their unit should have been treated as eligible under the earlier notification instead of restricting them to Notification No. 01/2010-CE.

3. Shri Narinder Singh, Authorised Representative, of the Department contends that the refund claims presently in dispute were processed strictly under Notification No. 01/2010-CE, since the appellant commenced production only after its issuance; the appellant was correctly extended refund only to the extent of 36% as applicable to Lead Ingots; even if the appellant is considered under the earlier Notification No. 56/2002-CE as amended, the admissibility of refund would still be restricted to the extent of value addition, in view of Hon'ble Apex Court judgment in VVF Ltd 2020 (372) ELT 495 (S.C.).

4. Heard both sides and perused the records of the case. We find that the main contention of the appellant is that the orders of this Bench issued on 13.03.2015 are not complied; the department could have considered the refund under earlier Notification No 56/2002; their request is on record. We find that before the Commissioner (Appeals), they have represented that the order in original was not a speaking order. We find that the Commissioner (Appeals) observed under, in the impugned order.

> *5.2. In this regard. I find that the date of commencement of production of the appellant is 01-11-2011. It is evident from the records that the appellant themselves opted to avail the exemption under the said notification and applied to the jurisdictional Commissioner for fixation of special rates under*

the said notification for the period 2012-13. The jurisdictional Commissioner has fixed the same as 69.27%. Being aggrieved, the appellant filed an appeal against the said orders dated 31-05-2012 before the Hon'ble CESTAT. Further. the appellant again applied to the jurisdictional Commissioner for fixation of special rates for the period 2013-14 and the Commissioner rejected the same. Being aggrieved the appellant again filed an appeal against the said orders dated 01-04-2014 before the Hon'ble CESTAT and also contested to keep their option alive to avail the exemption either under the first Notification or under the said notification. The CESTAT vide final order dated 13.03.2015. set aside both the orders of the jurisdictional Commissioner (dated 31-05-2012 and 01-04-2014) and remanded the matter to him for denovo decision with directions to examine as to whether the appellant's unit is located in the areas specified under the first Notification and they satisfy the other conditions, if any, of that notification.

5.3. From the above-mentioned facts. it is very much evident that the appellant themselves opted to avail the exemption under the said notification. The Hon'ble CESTAT accepted the contention of the appellant regarding beeping their option alive to avail the exemption either under the first Notification or under the said notification and the matter was remanded to the jurisdictional Commissioner for denovo decision. During the course of personal hearing held on25.10.2017. the appellant themselves informed that the decision of the jurisdictional Commissioner, in denovo proceedings, in compliance of CESTAT' Order No. 50603-50604 dated 13-03-2015, is still pending. Though in statement of facts, the appellant has claimed that they filed refund-claims for the months of September 2014 to November 2014, in terms of the first notification.However, they have not placed on record any evidence in this regard. Either copies of refund claim applications or copy of option filed for availing facility of self-credit. In view of this, I find there was no option with the adjudicating authority except to

decide the refund claims under the said notification for which the appellant themselves had initially opted. Accordingly: the decision of the adjudicating authority to process the refund claims of the appellant under the said notification is fair and legal. I do not find any reason to interfere with the impugned orders on this issue.

5.4. Now, I take up the second issue, as regards to appellant's contention that the orders of the adjudicating authority are non-speaking as it has not assigned any reason for rejecting their claims under the first Notification. As discussed supra, the issue regarding whether the appellant's unit is located in the areas specified under the firs Notification and whether they satisfy the other conditions of that notification was remanded to the jurisdictional Commissioner for denovo decision by the Hon'ble CESTAT. The decision in the denovo proceedings is reported to be still pending before the jurisdictional Commissioner. The adjudicating authority has no role to perform with respect to said directions of Hon'ble CESTAT. Accordingly, this plea of the appellant is not acceptable. I also find that the judgment coated by the appellant are not relevant in the facts and circumstances of the present case as the appellant had itself filed their refund claim applications as well as option for self-credit, with the adjudicating authority, in terms of the said notification. The appellant has also not placed any evidence on record, regarding bringing the directions dated 13-03-2015, of Hon'ble CESTAT, in the knowledge of adjudicating authority before passing of the impugned orders dated 30.10-2015 or regarding having applied for refund claims in terms of first Notification.

5. On going through the impugned order, we find that the learned Commissioner has not addressed the concerns of the appellants regarding the absence of speaking order. Regarding this objection by the appellants, commissioner finds that the issue regarding whether

the appellant's unit is located in the areas specified under the firs Notification and whether they satisfy the other conditions of that notification was remanded to the jurisdictional Commissioner for de novo decision by the Hon'ble CESTAT; the decision in the de novo proceedings is reported to be still pending before the jurisdictional Commissioner; the adjudicating authority has no role to perform with respect to said directions of Hon'ble CESTAT; accordingly this plea of the appellant is not acceptable. We fail to understand the logic of the impugned order. Though, we understand that the original authority has no role to play decision by the Commissioner, it can in no way be a reason for not issuing a speaking order, which is clear violation of principles of natural justice. We find that the order in original having been issued in contravention of the principles of natural justice, should have been set aside by the Commissioner and the issue must have been remanded to the original authority for a fresh consideration following principles of natural justice.

6. We further finds that the Commissioner further records the findings that the appellant has also not placed any evidence on record, regarding bringing the directions dated 13-03-2015, of Hon’ble CESTAT, in the knowledge of adjudicating authority before passing of the impugned orders dated 30.10-2015 or regarding having applied for refund claims in terms of first Notification. We find that it was for the original authority to examine the issue with available records and issue a speaking order. The appellate authority cannot supplement what has not been done by the

original authority remanded the matter to him for de novo decision with directions to examine as to whether the appellant's unit is located in the areas specified under the first Notification and they satisfy the other conditions, if any, of that notification. Commissioner (Appeals) while accepting that this Bench remanded the matter to Commissioner directing him. Inter alia, to see whether appellants are eligible for the first notification, finds that no request of the appellant to consider the refund under the first notification is not on record.

7. We further find that Learned Authorised Representative submits that the appellants' claim of entitlement to 100% refund of central excise duty under Notification No. 56/2002-CE is based on judgement of Hon'ble High court in the case of Reckitt Benckiser, but the legal position has been conclusively settled by the Hon'ble Supreme Court in VVF, Ltd 2020 (372) ELT 495 (SC) and that while the issue pending before the Commissioner, in remand, is about the admissibility for the previous years and the present proceedings are for 2014-15 and the appellant's production started in 2011 and therefore second Notification is applicable. However, the period under consideration before this Bench in the previous order was concerning the period after 2011 only. Therefore, the issue pending before Commissioner has a bearing on the impugned proceedings. Ideally, the adjudicating authority should have waited for the Commissioner to decide the issue in remand, before rejecting the claim of the appellant. Anyway, it is for the adjudicating Authority,

to consider all the issues involved before passing a speaking order after considering the submissions of the appellants and after following the principles of natural justice.

8. In view of the above, we set aside the impugned order and remand the matter to original authority, in above terms, with a direction to consider all the submissions of the appellant and to pass a speaking order. Needless to say that the principles of Natural Justice shall be followed.

(Order pronounced in the open court on 09.12 .2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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