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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60269 of 2024

[Arising out of Order-in-Original No. 04/CE/SRC/Commissioner/J&K/2023-24 dated 04.03.2024 passed by the Commissioner of CGST, Jammu]

M/s Modern Papers ......**Appellant**
Lane No.3, Phase-I, SIDCO Industrial
Complex, Bari Brahmana, Samba,
J & K – 181133

VERSUS

Commissioner of Central Goods & Service Tax and Central Excise, Jammu ......**Respondent**
OB-32, Rail Head Complex, Bahu Plaza,
Jammu, J & K - 18001

<u>APPEARANCE:</u>

Shri T.R. Rustagi, Advocate for the Appellant

Shri S.K. 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.60207/2026

DATE OF HEARING: 20.11.2025
DATE OF DECISION: 25.02.2026

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

M/s Modern Papers, the appellants assail the order, dated 04-03-2024, passed by Commissioner of Central Excise, Jammu.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of pesticides and are availing the exemption contained under Notification No. 56/2002-CE dated 14-

11-2002 as amended by Notifications No. 19/2008-CE dated 27-03-2008 & 34/2008-CE dated 10- 06- 2008; the appellants claimed special rate, for the years 2010-11 to 2016-17, on the ground that actual value addition in their case was at least 39.10% (115% of 34%) and, therefore Modern Papers applied for fixation of special rates; they duly revised applications as per the queries raised and clarifications sought by the authorities. Learned Commissioner passed the impugned order holding, inter alia, that

- value addition figures/claims, submitted vide letter dated 17. 11. 2023 by Modern Papers are liable for rejection as not supported by value addition certificates containing reliable data.
- the eligibility condition of actual value addition being at least 115% of 34% was satisfied only in respect of four products, namely, Buprofezin 25% SC, Emamectin Benzoate 5% SG, Sulosulfuron 75% WDG, and Chloropyriphos 50%+Cypermethrin 5% EC
- no special rate can be given in respect of some items where nil or negative sales value is indicated;
- the value of the finished products should be based on actual sale price and not on the MRP and as per Section 4A of the Central Excise Act, 1944.
- discounts given need to be deducted while arriving at the net sales value; when product-wise details of rebate/discount/cash discount are not available, discounts are to be proportionately taken across all products.

- certificates given by the statutory auditor should be based on the audited balance sheet of the unit for the preceding financial year.
- Year to Year comparison shows considerable variations in the value addition percentages; the appellant has not given any product-wise reasons for year- wise variations in rates of value addition.

3. Shri T.R. Rustagi, Learned Counsel for appellants, submits that there is no difference in the special rates arrived at by the Commissioner and the rates claimed by the appellants. He submits the following as an example.

Product	Rate claimed	Rate determined
Buprofezin 25% SC	52.08%	52.07%
Emamectin Benzoate 5% SG	83.13%, 73%, 47.99%	83.13%, 72.97%, 47.79%
Sulfosulfuron 75%	57.13%	57.12%,
Chloropyriphos 50%+Cypermethrin 5% EC	98.54%	98.53%

4. Learned Counsel for appellants, submits that the Commissioner's observation that the entire data relating to all the applications deserves to be rejected outright as not reliable is incorrect for the following reasons:

- The rates claimed are duly certified by the Statutory Auditor (Chartered Accountant), using the formula prescribed in the Notification No. 56/2002-CE.

- No show cause notice was issued to the Appellant proposing to reject the applications; it is gross violation of the principles of natural justice; this ground alone renders the Order illegal.
- Commissioner travelled beyond the procedure prescribed in the notification for fixing the special rates for actual value addition; the correctness of the special rates claimed by the manufacturer or producer of specified goods is required to be examined only within the parameters and methodology prescribed in the notification.
- an enquiry into the comparable value addition rates year-wise has no relevance to the fixation of special rates for 'eligible' products; while comparing, commissioner included the products which do not satisfy the test of minimum value addition of 115% of 34%.
- figures of actual value addition certified by the Chartered Accountant cannot be questioned and held non-reliable without any credible and cogent reasons. Moreover, in this particular case, whatever deficiencies needed correction, as perceived by the Commissioner, to determine the value addition have already been corrected by him. Having done it, the Commissioner is not empowered to reject the special rate calculations of four eligible products on any other consideration.

5. Learned Counsel submits that the Order passed by the Commissioner rejecting the applications is neither proper nor legal in view of the decision of this Bench in the case of M/s Kokuyo Camlin Limited 2023 (6) TMI 300–CESTAT Chandigarh. He also relies on the

E-Mail dated 22-04-2024 sent by Revenue. He further submits that it is well settled law that in the normal course the authorities are bound to accept the Chartered Accountant’s Certificate as held in M/s Hindustan Unilever Limited 2023 (10) TMI 991-Cestat Kol.

6. Shri S.K. Meena, learned Authorised Representative, reiterates the findings of the impugned order and submits that the appellants challenge to the Notification No. 19/2008-CE and 34/2008-CE, vide which benefit, as was given under the original Notification No. 56/2002-CE was restricted to value addition, has been since decided by the Hon’ble Supreme Court in the case of VVF 2020 (372) ELT 495 (SC).

7. Learned Authorised Representative submits that the appellant mainly contesting the calculation method as adopted by the adjudicating authority for value addition on two grounds namely, (i) for the purpose of calculating the value addition in terms of explanation given under para 2.1 of the subsequent Notification No. 19/2008-CE, Sale value to be considered as MRP under Section 4A of the Central Excise Act,1944 and discount/ rebate etc. should not be deducted from the sale value and (ii). “Net foreign exchange loss”, should not be added to the cost of raw materials. He submits that the said two issues have been dealt in the case of M/s Medley Pharmaceuticals Ltd. Vs Commissioner of Central Excise, Jammu-2025 (5) TMI 1909-CESTAT Chandigarh and it was held that the sale value under para 2.1 of the subsequent Notification No. 19/2008-CE, is not the MRP under Section 4A of the CEA,1944; cost would mean the cost in the hands of the appellant and if the appellant had born

all the expenses in procuring the raw material, same is required to be added to the cost of raw materials.

8. Heard both sides and perused the records of the case. We find that the impugned order is passed against the applications, dated 09.07.2020 (received on 14.08.2020), made by the appellants, for fixation of Higher Value Addition (special rates), for seven years i.e 2010-11 to 2016-17; it was preliminary observed by the learned Commissioner that the appellants submitted certificates based on the assessable value of the given financial years for which claims are made instead of the figures of audited balance sheets for the preceding financial years; the appellants filed revised certificates dated 07.11.2023 given by Chartered Accountant. We find that the appellants, prima facie, submitted to the adjudicating authority that sales value should be the MRP less abatement value and that sales value is to be interpreted in the light of the objective of the exemption notification.

9. We find that learned Commissioner has given the following findings:

- The Value Addition Rates claimed by the appellants is more than 115% of the notified rate of 34% and therefore, they have made out a case for fixation of Special Rate of Value Addition;
- However, the appellants did not file the special rate applications on or before the prescribed due dates in the relevant notifications. Meanwhile, Hon'ble Apex Court's order upholding the constitutional validity of the Notification Nos.19/2008-CE dated 27.03.2008 and 34/2008-CE dated

10.06.2008 and directed that all the pending applications shall be decided accordingly;

- However, the appellants filed a Write Petition No.1844/2021 before the Hon'ble High Court of Jammu & Kashmir vide Order dated 09.09.2021 (amended vide Order dated 06.10.2021) directed the department to consider the applications filed on 09.07.2020 for fixation of Special Rate without insisting on time limit; an appeal preferred by the Revenue before the Hon'ble Supreme Court came to be dismissed;
- The appellants did not provide certificates containing actual sale value for the year 2010-11 and therefore, he was not considering the fixation of Special Rates for the years 2010-11 and however was proceeded to fix rates for the subsequent years;
- Corresponding figures in the balance sheets/ profit and loss accounts of respective previous years tally with the figures given in Value Addition Certificates issued by the auditors of the appellants;
- MRP cannot be considered as a sale value; sale value is the actual sale price on which goods have been actually sold to the buyers and the value incorporated in the books of accounts;
- Value Addition Certificates in respect of goods, viz. solvents (Chapter 29) and packaging items (Chapter 76), need not be considered as they do not fall under Chapter 38 and moreover, packaging items are only traded by the appellant and not manufactured;

- Value of the goods, which are shown in the negative and value of returned items cannot be included as the Value Addition is Nil or negative;
- As there are no exempted goods and exported goods, their value thereof is not deducted,
- Foreign Exchange Loss, for the period of 2014-15, should be included in the cost of the raw materials as it is directly linked to the expenses incurred on raw materials.

10. We find that learned Commissioner finds that the principles adopted in the calculation of the Special rates as submitted by the appellants are mostly correct except in respect of three items i.e. the value to be taken whether MRP or Sales Value; as to whether the foreign exchange loss is to be included or excluded for arriving at the cost of the raw material and that rebates/discounts/cash discounts, shown as expenses, have to be deducted while arriving at the net sales value in the calculations. We find that taking note of the fact that product-wise details are rebates, discounts, cash discounts are not available on records, the Commissioner distributed the amount proportionately and revised the sales value in his Order.

11. We find that the appellants contest the learned Commissioner's findings on the issue whether the MRP or the actual value requires to be considered for arriving at the sales figures. We find that the Notification provides a methodology for calculation of actual Value Addition if claimed by the appellants in terms of the Notification No.19/2008-CE dated 27.03.2008. We find that Explanation under sub-para 4(b) of Para 2.1 of the Notification provides that:

Explanation: For the purpose of this paragraph, the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account the following:

(i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;

(ii) Less: Cost of raw materials and packing material consumed in the said goods;

(iii) Less: Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;

(iv) Plus: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year;

(v) Less: Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration.

Special rate would be the ratio of actual value addition in the production or manufacture of the said goods to the sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods.

12. We find that the explanation is clear as far as the value is concerned. The explanation makes it clear that sale value of the said goods, excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods, is to be considered. This Bench has gone in to this issue in the case of M/s Medley Pharmaceuticals Lt, vide final order No. 60576-60577/2025 dated 27-5-2025 and held that

> *12. Coming to the first question as to whether the value shown in financial records or the value under Section 4A less abatement be taken for arriving at the value of sales, we find that the as per the explanation below para 4 of the notification prescribes that the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year. we find that the adjudicating authority observes that the explanation to Para 2.1 provides that for the purpose of*

this Paragraph, the actual value addition in respect of the said goods shall be calculated on the basis of the Financial Records of the preceding financial year; thus as per the provisions, the calculation for fixation of Special Rate under Notification No. 56/2002-CE dated 14.11.2002, as amended, is to be done as per the figures of the Audited Balance Sheet/Financial Records of the unit. In view of the explicit provision in the Notification, we find that the commissioner was correct in taking the value as per financial records and the appellant's contention in this regard are not acceptable.

13. In view of the above, we find that the value that needs to be considered for the purposes of the fixation of special rate as per the Notification Nos.19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008 is the actual sale value i.e. the actual amount realised by the appellants in the sale of the goods minus the taxes paid etc and not the MRP as per Section4A of the Central Excise Act, 1944. We find that the wordings of the Statute being plain and unambiguous, the same shall be read and construed strictly by the words and no intendment is allowed in interpreting the same as held in Dharmendra Textiles Processors – 2008 (231) ELT 3 (SC). As regards the Foreign Exchange Loss, we are in agreement with the logic of the impugned order that the same being occurred in respect of the imported goods, the same cannot be excluded from the cost of raw material.

14. We find that no show cause notice was issued to the Appellant proposing to reject the applications, which is gross violation of the principles of natural justice. The appellants submit that on this ground alone, the Order passed by the Commissioner is illegal. They further submit that the figures of actual value addition certified by the Chartered Accountant cannot be questioned and be held non-

reliable without any credible and cogent reasons; it is well settled law that in the normal course the authorities are bound to accept the Chartered Accountant's Certificate. Reliance is placed upon the Hon'ble Tribunal's judgment in M/s Hindustan Unilever Limited 2023 (10) TMI 991-Cestat Kol. We find that the submissions made by the appellants have legal force. We find however, that both the issues have not caused any great material effect on the calculations arrived at by the commissioner after giving a couple of opportunities to the appellants to file the revised claims. We find that whatever deficiencies needed correction, as perceived by the Commissioner, have already been corrected by him.

15. We find that having discussed each of the items required in the calculation of the Special Rate for the respective years, having concluded that the Special rate claimed by the appellants is correct for some items in some years, surprisingly, commissioner finds that there are variations in cost and sale figures over the years. The doubt was not necessary and a query sent to appellants, vide email dated 22.02.2024, to furnish the reasons (product-wise) attributable to these variations, was unwarranted. We find that in reply, the appellants, vide letter dated 27.02.2024, submitted as follows.

> *………the variation in Cost and Sale prices can be attributed to several factors-*
>
> *1. Seasonal Nature and Weather Dependency: Our industry is inherently seasonal and closely tied to prevailing weather conditions in the country. The demand for sprays fluctuates based on agricultural seasons. Favourable weather conditions lead to increased demand, influencing the selling prices in response to market demand dynamics.*
>
> *2. Product Registrations and Approvals: The products in our industry undergo various registrations and approvals. Notably,*

not all manufacturers secure registrations play a pivotal role in establishing market dominance for registered products. For instance, during the initial years, our firm held the exclusive registration for selling Emamectin, resulting in significant profit margins. However, as competitors obtained similar registrations, market competition intensified, leading to subsequent price reductions.

3. Raw Material Dependency on China: In the Agro-Chemical Industry, China serves as a key supplier of major raw materials. Consequently, the pricing of these raw materials is subject to market conditions prevailing in China. Fluctuations in the Chinese market directly impact the cost of raw materials, thereby influencing overall production costs and subsequently affecting the pricing of our products."

16. We find that after raising an irrelevant query, even after going through the calculations and the certificates given by the statutory Auditor/ Chartered Accountant, without appreciating the reply given by the appellants, learned Commissioner observes as follows

I observe that Modern has given only a general reply in probable sense and has not given t-wise reasons for year wise variations in rates of value addition. Modern has also not provided any corroborative data leading to such wide variations. As such, I find that Modern could not provide any plausible reasons for such variations. I am of the opinion that so much variations in the rates of value addition cannot be accepted in the absence of any acute reasons. Accordingly, I am not inclined to accept the value addition certificates submitted vide letter dated 17.11.2023 by Modern containing product-wise value additions and thus, the applications for special rate fixation filed by Modern are liable for rejection as not supported by value addition certificates containing reliable data. Without prejudice to this, the applications for the years 2014-15, 2015-16 and 2016-17 are liable for rejection on addition ground that none of the goods qualify for special rate certification as the value addition is less than 39.10% i.e. 115% of the 34% rate prescribed in notification No. 56/2002-CE dated 14.11.2002, as amended.

17. We find that having observed as above, the commissioner proceeds to reject all the applications filed by the appellants. We find that Learned Commissioner ignores his own finding that the appellants are eligible for value addition in respect of some items. Interestingly, we find that the value addition decided by the commissioner (AA) does not vary much from the value addition claimed by the appellants, in respect of the said items in the said years. Interestingly, Commissioner does not even bother to sanction the Special Rate in respect of items for which he himself held that the value addition was more than 115% of 34% and he doesn’t even discuss the admissibility to additional refund in such cases. He pauses just before the conclusion and makes a U-turn and holds that the special rates cannot be sanctioned for extraneous reasons, which were effectively countered by the appellants as discussed above. Such an order cannot be sustained.

18. We find that that appellants have claimed a value addition, over and above 115% of 34% in respect of 4 items only, among many items they manufactured and cleared over the years. The calculations submitted by the appellants are duly certified by the Chartered Accountant. The Certificates are not countered by the Commissioner with any cogent reasons as discussed above. It is seen that the values arrived by Commissioner are not at variance with the values arrived by the Appellants. Its travesty of justice that the commissioner rejects the special rates even in respect of those items. The rate arrived by Commissioner and claimed by the appellants are reproduced in the chart below.

Year	Particular of Goods	Value a Addition %	
		By AA	By Appellant
2011-12	BUPROFEZIN 25% SC	52.07	52.08
	EMAMECTIN BENZOATE 5% SG	83.13	83.13
	SULFOSULFURON 75% WDG	57.12	57.13
2012-13	EMAMECTIN BENZOATE 5% SG	72.97	73.00
2013-14	CHLOROPYRIPHOS 50%+CYPERMETHRIN 5% EC	98.53	98.54
	EMAMECTIN BENZOATE 5% SG	47.79	47.99

19. In view of the above, we find that there is hardly any difference in the Rates arrived by the Adjudicating authority and the Rates claimed by the appellant. We are of the considered opinion that the impugned order has not made out any case for rejection of the special rates. We find that because of this reason and the other legal infirmities, as discussed above, the impugned order cannot be sustained and needs to be set aside.

20. Accordingly, the appeal is allowed.

(Order pronounced in the open court on 25/02/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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