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

REGIONAL BENCH - COURT NO. I

Excise Appeal Nos. :

E/60212/2021, E/60216/2021, E/60217/2021, E/60218/2021, E/60219/2021, E/60220/2021, E/60221/2021, E/60222/2021, E/60223/2021, E/60224/2021, E/60225/2021, E/60226/2021, E/60227/2021, E/60228/2021, E/60229/2021, E/60230/2021, E/60231/2021, E/60232/2021, E/60233/2021, E/60234/2021

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP/169-188/20-21 dated 23.03.2021 passed by the Commissioner (Appeals), CGST, Jammu]

M/s Insecticides India Ltd **......Appellant**
(*<u>1st address</u>* – SIDCO Industrial Growth Centre,
Phase I, Samba,
J & K – 184121;

<u>2nd address</u> – Plot No. 11-12,
I.I.D. Centre Sicop Battal
Ballian, Udhampur, J & K – 182101)

VERSUS

Commissioner of C G & S T, Jammu **......Respondent**
(OB 32, Rail Head Complex, Bahu Plaza, Jammu,
J & K – 180012)

<u>APPEARANCE:</u>

Present for the Appellant: Mr. Ajay Jain, Advocate

Present for the Respondent: Ms. Swati Chopra, Mr. H. S. Brar, ARs

<u>CORAM:</u> HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60928-60947/2021

DATE OF HEARING: 01.11.2021
DATE OF DECISION: 23.11.2021

PER ASHOK JINDAL:

This is second round of litigation. In earlier round of litigation, this Tribunal has passed the orders sanctioning the refund claim of the appellants. Instead of implementing the orders of this Tribunal, the authorities below passed the impugned orders rejecting the refund claim of the appellant. These appeals are arising out of order-in-original as follows:

APPEAL AGAINST ORDER IN APPEAL NOS. JNK/169-188/20-21 dt 25-03-2021
Passed by the Commissioner (Appeals), Central GST, Jammu.

S.NO	APPEAL NOS.	ORDER IN ORIGINAL NO & DATE passed by AC/DC, CE/GST Division, Jammu.	CESTAT Order No & Date on the basis of which adjudicating authority sanctioned refund claim (partial claim).
1	E/ 60212/2021	1141/AC/R/18-19 dt. 31-10-2018	A/61667-61675/2018-EX(DB) dt. 06-03-2018
2.	E/ 60216 /2021	1135/AC/R/18-19 dt. 15-11-2018	A/61667-61675/2018-EX(DB) dt. 06-03-2018
3.	E/ 60234 /2021	1138/AC/R/18-19 dt. 15-11-2018	A/61667-61675/2018-EX(DB) dt. 06-03-2018
4.	E/ 60238 /2021	1136/AC/R/18-19 dt. 15-11-2018	A/61667-61675/2018-EX(DB) dt. 06-03-2018
5.	E/ 60231 /2021	1143/AC/R/18-19 dt. 15-11-2018	-------dt. 07-03-2018
6.	E/ 60217 /2021	1417/AC/R/18-19 dt. 11-12-2018	A/61667-61675/2018-EX(DB) dt. 06-03-2018
7.	E/ 60232 /2021	1419/AC/R/18-19 dt. 12-12-2018	A/60846-60919/2018-EX(DB) dt. 07-03-2018
8.	E/ 60225 /2021	1420/AC/R/18-19 dt. 12-12-2018	A/60981-60993/2018-EX(DB) dt. 08-03-2018
9.	E/ 60233 /2021	1204/AC/R/18-19 dt. 01-11-2018	A/60981-60993/2018-EX(DB) dt. 08-03-2018
10.	E/ 60224 /2021	1147/AC/R/18-19 dt. 01-11-2018	A/60981-60993/2018-EX(DB) dt. 08-03-2018
11.	E/ 60226 /2021	1149/AC/R/18-19 dt. 15-11-2018	A/61667-61675/2018-EX(DB) dt. 06-03-2018
12.	E/ 60219 /2021	1142/AC/R/18-19 dt. 01-11-2018	--------dt. 07-03-2018
13.	E/ 60230 /2021	1442/AC/R/18-19 dt. 17-12-2018	A/62911-62918/2018-EX(DB) dt. 05-09-2018
14.	E/ 60228 /2021	1437/AC/R/18-19 dt. 13-12-2018	A/63043-63046/2018-EX(DB) dt. 06-09-2018
15.	E/ 60222 /2021	1144/AC/R/18-19 dt. 15-11-2018	A/63043-63046/2018-EX(DB) dt. 06-09-2018
16.	E/ 60229 /2021	1146/AC/R/18-19 dt. 15-11-2018	A/60188-60191/2018-EX(DB) dt. 06-03-2018
17.	E/ 60227/2021	1815/AC/R/18-19 dt. 14-02-2019	A/62751-62760/2018-EX(DB) dt. 04-09-2018
18.	E/ 60223 /2021	1139/AC/R/18-19 dt. 15-11-2018	A/60981-60993/2018-EX(DB) dt. 08-03-2018

APPEAL AGAINST ORDER IN APPEAL NOS. JNK/169-188/20-21 dt 25-03-2021
Passed by the Commissioner (Appeals), Central GST, Jammu.

S.NO	APPEAL NO	ORDER IN ORIGINAL NO & DATE passed by AC/DC, CE/GST Division, Jammu.	CESTAT Order No & Date on the basis of which adjudicating authority sanctioned refund claim (partial claim).
1.	E/60220 /2021	135/AC/R/18-19 dt. 29-11-2018	A/62911-62918/2018-EX(DB) dt. 05-09-2018
2.	E/60221 /2021	16/AC/R/2019 dt. 14-02-2019	A/63151-63153/2018-EX(DB) dt. 07-09-2018

2. As per the orders of this Tribunal, the refund claims of the appellants for education cess and higher education cess were allowed and it was also held in some of the cases that the refund claim/ self

credit cannot be restricted in terms of Notification Nos. 19/2008-CE dt. 27.03.2008 and 34/2008-CE dt. 10.06.2008 and the appellants are entitled to claim the refund / self credit of duty paid through PLA in terms of Notification No. 56/2002-CE dt. 14.11.2002. Pursuant to the above orders passed by this Tribunal, the appellants approached to the adjudicating authority for sanctioning the refund claim. The adjudicating authority partly sanctioned the refund claim and partly rejected the refund claim. The ld. Commissioner (Appeals) had gone through the orders of the adjudicating authority. Although the same were not challenged by the Revenue before the ld. Commissioner (Appeals) but he sought the recovery of the refund claim earlier sanctioned by the adjudicating authority. Against the said orders, the appellants are before me.

3. The ld. Counsel for the appellants submits that the orders passed by this Tribunal have never been challenged by the Revenue in appeal before the higher authority, therefore, the orders of this Tribunal have attained finality. Therefore, the authorities below are duty bound to implement the orders of this Tribunal. The impugned orders are in gross violation of judicial discipline. Moreover, the ld. Commissioner (Appeals) has sought the recovery of the refund claim partly sanctioned by the adjudicating authority, which is bad in law.

4. On the other hand, the ld. AR opposed the contention of the ld. Counsel and submitted that this Tribunal has passed the orders relying on the decision in the case of M/s SRD Nutrients Pvt Ltd – 2017 (355) ELT 481 (SC). The said decision has been held per in

curium by the Hon'ble Apex Court in the case of Unicorn Industries vs. UOI - 2019 (370) ELT 3 (SC). Therefore, relying on the decision of the Hon'ble Apex Court in the case of ACIT Rajkot vs. Saurashtra Kutch Stock Exchange Ltd – 2008 (230) ELT 385 (SC), the judicial decisions act retrospectively, therefore, the ld. Commissioner (Appeals) has rightly ordered for the recovery of refund earlier sanctioned in pursuant of orders of this Tribunal.

5. Heard the parties and considered the written submissions filed by the parties.

6. It is an admitted fact that earlier orders of this Tribunal have been accepted by the Revenue and no appeal has been filed against those orders. In the absence of any challenge to the orders of this Tribunal, the adjudicating authority was duty bound to implement the orders of this Tribunal which they failed to do so. Further, in earlier round of litigation, the orders of this Tribunal were final. The decision relied upon by the ld. AR in the case of ACIT Rajkot vs. Saurashtra Kutch Stock Exchange Ltd (supra) is not applicable to the facts of this case as in that case, the issue was alive by filing the application for rectification of mistake. There is no such case in these matters, therefore, the said decision cannot be applied here. In that circumstance, the ld. Commissioner (Appeals) has exercised the power without any authority of law, the act of the ld. Commissioner (Appeals) is bad in law. The adjudicating authority is directed to implement the orders passed by this Tribunal in earlier round of

litigation as chart mentioned herein above within 30 days of receipt of this order.

7. Appeals are disposed of, accordingly.

(Order pronounced in the court on 23.11.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi