

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40457 of 2020

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Aurobindo Pharma Limited

: Appellant

Water mark Building, Plot No. 11,
Survey No. 9, Hi Tech City,
Kondapur, Hyderabad – 500 084

VERSUS

The Commissioner of Customs

: Respondent

Chennai-II Commissionerate,
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

WITH

(i) Customs Appeal No. 40458/2020 (M/s. Aurobindo Pharma Ltd.)

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

(ii) Customs Appeal No. 40459/2020 (M/s. Aurobindo Pharma Ltd.)

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

(iii) Customs Appeal No. 40460/2020 (M/s. Aurobindo Pharma Ltd.)

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

(iv) Customs Appeal No. 40461/2020 (M/s. Aurobindo Pharma Ltd.)

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

(v) Customs Appeal No. 40462/2020 (M/s. Aurobindo Pharma Ltd.)

(Arising out of common Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), 60, Rajaji Salai, Custom House, Chennai – 600 001)

APPEARANCE:

Shri Prabhad Dobriyal, Advocate for the Appellant

Shri M. Jagan Babu, Authorized Representative (A.R.) for the Respondent

CORAM:**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)****FINAL ORDER NOS. 41628-41633 / 2021**

DATE OF HEARING: 22.06.2021

DATE OF DECISION: **01.07.2021****Order :**

The present appeals have been filed by the assessee against Order-in-Appeal Seaport C.Cus. II No. 814-819/2020 dated 12.06.2020 passed by the Commissioner of Customs (Appeals-II), Chennai.

2. When the matter was taken up for hearing, Shri Prabhad Dobriyal, Learned Advocate, appeared for the assessee-appellant and Shri M. Jagan Babu, Learned Authorized Representative appeared for the Revenue-respondent.

3.1 Learned Advocate for the appellant *inter alia* made the following submissions :

- (i) The appellants having GSTIN 36AABCA7366H1ZL obtained four Advance Licence bearing Nos. 0910024757 dated 30.11.2005, 0910025182 dated 16.01.2006, 0910025761 dated 28.03.2006 and 0910026625 dated 21.06.2006, imported some Solvents for manufacture and export of Amoxicillin Tri hydrate; it was under No Norms Category as SION for Amoxicillin Tri hydrate was abolished in 2005 by DGFT, but was reintroduced in 2006 on lower side. On comparison of restored SION and actual imports, it is observed that appellants have excess imported some Solvents viz. Methylene Chloride, Iso Propyl Alcohol and Tri Ethyl Amine;
- (ii) Appellants made a representation to the Norms Committee to modify the restored SION for

Amoxicillin Tri hydrate, but the Committee did not consider favourably and directed the appellant to follow restored SION;

- (iii) In 2009, the appellant approached Jt. DGFT, Hyderabad for clubbing of said four Advance Licences on payment of applicable penalty as per HBP. However, the same was rejected by Jt. DGFT, New Delhi;
- (iv) Subsequently in 2012, the appellant again approached the Regional Authority for clubbing two more Licences viz. 0910041088 and 0910040193 along with above mentioned four Advance Licences. However, the Regional Authority rejected the appellant's request stating that clubbing is not eligible as Advance Licence Nos. 0910024757 dated 30.11.2005, 0910025182 dated 16.01.2006, 0910025761 dated 28.03.2006 and 0910026625 dated 21.06.2006 were beyond 36 months;
- (v) Based on the direction of Customs Officials, Chennai, appellants deposited duty along with 18% and 15% interest on the excess quantity imported of Rs.1,30,38,547/- [Rs.1,00,00,000/- vide TR6 Challan No. MCM0103244 dated 30.01.2013, Rs.26,65,612/- vide TR6 Challan No. MCM0021191 dated 15.02.2018 and Rs.5,03,605/- vide TR6 Challan No. MCM0021191 dated 15.02.2018;
- (vi) In view of the factual position that the CVD and SAD paid by them could not be taken as credit, the appellant filed refund applications seeking refund of the same under Section 27 of the Customs Act, 1962;
- (vii) That the Adjudicating Authority rejected the refund claims;

(viii) Aggrieved by the orders rejecting the refund claims, the appellant preferred appeal before the Commissioner of Customs (Appeals-II), Chennai and that the appellant having not met with success in its first appeal, the present appeals have been filed.

4. *Per contra*, Learned Departmental Representative supported the findings of the lower authorities. He also relied on the decision of the Hon'ble Supreme Court in the case of *M/s. ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV* reported in 2019 (368) E.L.T. 216 (S.C.).

5. I have heard the rival contentions, perused the documents placed on record as also the decisions/orders relied upon during the course of arguments.

6.1 Admittedly, the application for refund is made under Section 27 of the Customs Act, 1962. The Hon'ble Supreme Court in the case of *M/s. Paros Electronics (P) Ltd. v. Union of India* reported in 1996 (83) E.L.T. 261 (S.C.), while dealing with the above provision, has *inter alia* held that:

"2. ...

... If the application is under Section 27 of the Act then the authority, being a creation of the statute, must act within the ambit of that provision and if the application is delayed he has no alternative but to reject it as barred by limitation."

6.2 The above judgement has been followed by the Ahmedabad Bench of the CESTAT in the case of *M/s. India Medtronic Pvt. Ltd. v. Commissioner of Central Excise & Service Tax, Vadodara* in Excise Appeal No. 10743 of 2018 [Final Order No. A/12615/2018 dated 20.11.2018].

7. In view of the above settled position of law, I do not see any reasons to interfere with the rejection of refund and consequently, the appeals stand dismissed.

(Order pronounced in the open court on **01.07.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd