CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal Nos. 41174 and 41175 of 2017

(Arising out of Orders-in-Appeal Nos. 62-63/2017 (CXA-II) dated 13.02.2017 passed by Commissioner of Central Excise (Appeals - II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Orchid Healthcare, Unit II (100% EOU) **...Appellant**
Plot No. B-5 & B-6 (part),
SIPCOT, Irungattukottai,
Sriperumbudur,
Kanchipuram – 602 105.

And

M/s. Orchid Pharma Ltd. **...Appellant**
(formerly known as Orchid Chemicals & Pharmaceuticals Ltd.) (100% EOU)
Plot Nos. 138 – 149,
SIDCO Industrial Estate,
Alathur – 603 110.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai IV Commissionerate,
No. 692, MHU Complex,
Anna Salai,
Nandanam,
Chennai – 600 035.

APPEARANCE:

For the Appellants : Mr. Vimal Kumar, Asst. Manager (Finance)
For the Respondent : Mr. M. Selvakumar, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40448-40449 / 2025

DATE OF HEARING : 01.04.2025
DATE OF DECISION : 17.04.2025

Per Mr. VASA SESHAGIRI RAO

These two Excise Appeals Nos. E/41174&41175/2017 have been filed by M/s. Orchid Healthcare, Unit II (100% EOU), Sriperumbudur and M/s. Orchid Pharma Ltd., Alathur (hereinafter referred to as 'Appellants') directed against the Orders-in-Appeal Nos. 62-63/2017 (CXA-II) dated 13.02.2017 passed by Commissioner of Central Excise (Appeals - II), Chennai who have confirmed the Orders-in-Original No. 03/2016 dated 29.02.2016 passed by the Commissioner of Central Excise, Sriperumbudur Division and No. 50/2016 dated 29.04.2016 passed by the Assistant Commissioner of Central Excise, Tambaram Division wherein the demand of central excise duty was confirmed along with interest and imposed penalties.

1.2 The above appeals have come up for hearing as per the published list and now these have been taken up for disposal by this common order.

2. Brief facts of the case are that the Appellants are a 100% Export Oriented Unit (EOU) and was receiving inputs for manufacturing excisable goods in terms of Notification No. 22/2003-CE dated 31.03.2003 which were packed in unit

containers. Procurement of inputs was exempted from payment of excise duty. The Show Cause Notices were issued seeking demand of duty on the clearances of the containers without payment of Central Excise duty for the periods from April 2014 to March 2015 and January 2015 to September 2015.

3. When these cases are posted before the Tribunal for hearing on 01.04.2025, the Representative of the Company Mr. Vimal Kumar, Assistant Manager (Finance) has stated that the Appeals may be closed in view of the Resolution Plan approved by the NCLT, Chennai's Order dated 27.06.2019. The Representative for the Appellants has placed on record two Final Orders i.e, *F.O.Nos. 40253-40255/2025 dated 20.02.2025* and *F.O.Nos. 40154-40167/2024 dated 15.02.2024* issued by the Tribunal Chennai in respect of the Appellant.

4. The Ld. Authorized Representative Mr. M. Selvakumar represented the Department who have confirmed about the approval of the Resolution Plan in respect of the Appellant by the NCLT, Chennai.

5. Heard both sides and considered the submission of the Representative of the Company.

6. A perusal of the Final Order dated 20.02.2025 and 15.02.2024 of the Tribunal in the Appellants' own case indicate that the Appellants' company was under Corporate Insolvency Resolution Proceedings as per the Insolvency & Bankruptcy Code, 2016 (IBC 2016) and the NCLT, Chennai approved the Resolution Plan *vide* its Order dated 27.06.2019. The details of the appeals are as follows: -

Period of dispute	**OIO**	**OIA**	**Demand**	**CESTAT Appeal Nos.**
April 2014 to March 2015	No. 03/2016 dated 29.20.2016	No. 62/2017 dated 13.02.2017	8,383/-	E/41174&41175/2015
January 2015 to September 2015	No. 50/2016 dated 29.04.2016	No. 63/2017 dated 13.02.2017	61,146/-	

7. The Supreme court in the case of *Ghanashyam Mishra & Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. [2021 9 SCC 657]* has held that after the approval of the resolution plan by the NCLT, a creditor including the Central Government cannot recover any dues from the corporate debtor which are not a part of the resolution plan approved by the NCLT and the debt shall stand extinguished and no such proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority [NCLT] grants its approval under Section 31 could be continued.

8. We have noted that in the above order that the Hon’ble Apex Court has framed the question in Para-No. 2 as follows: -

> *“2. The short but important questions, that arise for consideration in this batch of matters, are as under:*
>
> *(i) ……*
>
> *(ii) ……..*
>
> *(iii) As to whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority?”*

In Para 95 of the said order, the above question was answered as given below: -

> *“95. In the result, we answer the questions framed by us as under:*
>
> *(i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*
>
> *(ii)…..”*

It is not ascertainable whether the Department has registered its claim with the Liquidator as above. However, now no further proceedings can survive in this appeal.

9. At this juncture, it is also expedient to refer to Rule 22 of the Customs, Excise, Service Tax Appellate Tribunal (Procedure) Rules, 1982 which reads as follows: -

> "***RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. —*** *Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be :*
>
> *Provided that every such application shall be made within a period of sixty days of the occurrence of the event :*
>
> *Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit."*

10. As the NCLT, Chennai has already accorded its order for Liquidation of approval of the Resolution Plan in respect of the appellant *vide* its order dated 27.06.2019 and as application as per Rule 22 has been made by the Official Liquidator appointed by the NCLT for continuance of the appeal, the appeal should abate in terms of the above referred Rule.

11. As such the appeal gets abated in terms of Rule 22 of the CESTAT (Procedure) Rules, 1982 and also gets dismissed being infructuous.

(Order pronounced in open court on 17.04.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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