

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

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41783 of 2016

(Arising out of Order-in-Appeal No. 16/2016 SLM-CEX dated 01.07.2016 passed by the Commissioner of Central Excise (Appeals - I), No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Biogen Oxy Chemicals

SF No. 181/12, D.No. 13/2,
Gandhi Nagar, Old Sakthi Theatre Back Side,
Kaniravuthar Kulam,
Erode – 638 004.

...Appellant

Versus

Commissioner of GST and Central Excise

Salem Commissionerate,
No. 1, Foulks Compound,
Anai Road,
Salem – 636 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. Ravi Krishnan, Advocate
For the Respondent : Mr. M. Selvakumar, Authorized Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

**DATE OF HEARING : 25.09.2025
DATE OF DECISION : 28.11.2025**

FINAL ORDER No. 41404 / 2025

Order:-

This Excise Appeal No. E/41783/2016 has been filed by M/s. Biogen Oxy Chemicals, SF No. 181/2, D.No. 13/2, Gandhi Nagar, Old Sakthi Theatre Back Side, Kaniravuthar Kulam, Erode - 638004 (hereinafter referred to as the "Appellants") are engaged in the manufacture of

organic chemicals falling under Chapter Sub-heading No. 29420090 of the Central Excise Tariff Act, 1985. During the months of April 2014 and May 2014, the Appellant had paid Central Excise duty on the goods manufactured and cleared. However, in the month of June 2014, they surrendered their Central Excise registration and started availing Small Scale Industry (SSI) exemption in terms of Notification No. 8/2003-CE (NT) dated 01.03.2003.

2. It was the allegation of the Department that since the appellant had paid duty for the months of April 2014 and May 2014, they were not eligible to avail the value-based SSI exemption for the clearances effected from June 2014 onwards, and that the goods cleared from June 2014 onwards were liable to Central Excise duty. Accordingly, a Show Cause Notice dated 09.06.2015 was issued to the appellant by the Joint Commissioner of Central Excise, Salem (hereinafter referred to as the 'Lower Adjudicating Authority') proposing to demand Central Excise duty, recover interest, and impose penalty under Rule 25 of the Central Excise Rules, 2002.

3. After following the due process of law, the Lower Adjudicating Authority, *vide* Order-in-Original dated

28.12.2015, extended the benefit of cum-duty price and, as against the proposed duty demand of Rs.12,98,078/- in the Show Cause Notice, confirmed the duty demand to the extent of Rs.11,54,788/- after allowing the cum-duty benefit. The authority also demanded applicable interest and imposed a penalty of Rs.1,00,000/- under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC (1) of the Central Excise Act, 1944.

4. Aggrieved by the said Order-in-Original, the appellants preferred an appeal before the Commissioner (Appeals) on 11.03.2016, wherein they contended inter alia as follows: -

- i. That they had already discharged duty to the extent of Rs.1,10,924/- for the months of April and May 2014 and were eligible for CENVAT credit amounting to Rs.6,36,219/-.
- ii. That duty liability of Rs.4,13,896/- had been paid prior to the issuance of the Show Cause Notice.
- iii. That the Appellant was under a *bona fide* belief and, therefore, no penalty was imposable.

- iv. That there was no suppression or wilful misstatement on their part, and hence the extended period of limitation was not invocable.
- v. That in the absence of any intention to evade duty or mala fide conduct, imposition of penalty was unwarranted and waiver of penalty was justified.
- vi. That since they had not collected Central Excise duty from their customers, they were entitled to the benefit of cum-duty pricing.
- vii. That the surrender and cancellation of registration had been duly accepted by the Department, indicating a mutual oversight, for which the appellants should not be penalised.

5. After having provided an opportunity of personal hearing to the appellant and upon due consideration of the facts of the case, the records, and the grounds of appeal, the Commissioner (Appeals) recorded the following findings: -

- i. In respect of the plea for extending the CENVAT credit facility, it was observed that the lower adjudicating authority had already examined and allowed the same. Accordingly, the question of granting CENVAT credit once again did not arise.

- ii. With regard to the benefit of cum-duty pricing, it was noted that the lower adjudicating authority had already extended this benefit and consequently reduced the duty demand from Rs.12,98,078/- to Rs.11,54,788/-. Hence, the contention of the appellant on this point did not warrant further consideration.
- iii. On the issue of limitation, the Commissioner (Appeals) observed that the period of dispute extended from June 2014 to March 2015, whereas the impugned Show Cause Notice had been issued on 09.06.2015, well within the normal period of limitation. It was therefore held that the extended period had not been invoked, rendering the appellant's plea on this ground untenable.
- iv. As regards the plea of ignorance of law, the Commissioner (Appeals) relied upon the decision of the Tribunal in P. Raman v. Commissioner of Central Excise [Final Order Nos. 916-919/2012 dated 06.09.2012], wherein it was held that ignorance of law cannot be taken as a valid ground to evade penalty or to seek condonation of limitation. Following the said decision, the Commissioner (Appeals) held that the appellant's contention on this ground was without merit and accordingly rejected the request for waiver of penalty.

v. Insofar as the contention relating to *bona fide* belief, the Commissioner (Appeals) found that no cogent basis or supporting evidence had been furnished to establish the same. Reliance was placed on various Tribunal decisions holding that bona fide belief cannot be equated with blind assumption, as well as on a judgment of the Hon'ble Supreme Court which held that the plea of bona fide belief, when advanced as a defence for non-payment of duty, is unsustainable in the absence of demonstrable justification.

vi. With respect to the allegation of suppression of facts, the Commissioner (Appeals) noted that the issue had already been examined by the lower adjudicating authority. It was further observed that only a moderate penalty of Rs.1,00,000/- had been imposed against the confirmed duty demand of Rs.11,54,788/-, which did not call for any further interference or modification.

6. In view of the foregoing findings, the Commissioner (Appeals) rejected the appeal *vide* Order-in-Appeal No. 16/2016 SLM-CEX dated 01.07.2016 and upheld the Order-in-Original dated 28.12.2015 passed by the Lower Adjudicating Authority.

7. Aggrieved further by the Order-in-Appeal dated 06.07.2016, the appellants have preferred the present appeal before this Tribunal on the following grounds: -

- i. The appellants had already paid Central Excise duty of Rs.1,10,924/- during the FY 2014-15 for the months of April and May 2014 which showed that the Appellants did not have an intention to evade Central Excise Duty.
- ii. CENVAT credit of Rs.6,36,219/- is eligible for being availed as credit and therefore the demand has to be re-quantified.
- iii. That Central Excise duty liability of Rs.4,13,896/- had been paid and ER1 returns for April 2014, and May 2014 have been filed much prior to the issuance of the Show Cause Notice.
- iv. The balance Central Excise duty liability of Rs.1,10,924/- (Total Duty payable Rs.11,54,788/- CENVAT Credit available Rs.6,36,219/-) has already been paid.

The appellants have further pleaded that non-payment of duty arose out of a *bona fide* belief and ignorance of law, and that there was no suppression or misstatement of facts. They have also contended that the extended period of limitation was not applicable, and that there was no mala fide intention to evade

payment of duty. It was further pleaded that when the appellants surrendered their registration with the Central Excise Department, the same was accepted and the registration was duly cancelled by the Department, thereby indicating a mutual oversight, for which the appellants ought not to be penalised.

8. The Ld. Advocate Mr. Ravi Krishnan has argued for the Appellant and the Ld. Authorized Representative Mr. M. Selvakumar has represented the Department and have made their submissions.

9. Heard both sides and perused the documents and evidence available in appeal records.

9. It is observed that all the contentions raised by the appellant in the present appeal had already been urged before the Lower Adjudicating Authority as well as the First Appellate Authority. These issues have been duly examined and elaborately dealt with by the First Appellate Authority in paragraphs 4 to 10 of Order-in-Appeal No. 16/2016 SLM-CEX dated 01.07.2016.

10. There is no dispute as to the quantification of duty as the Lower Authorities have accepted the contention of the appellant on the issue of granting CENVAT credit and cum-duty benefit. The only plea of the appellant is regarding the penalty as it was submitted that surrender of registration was done due to a *bonafide* mistake on their part and the facts reveal that such surrender was acknowledged and accepted by the officers. To emphasize that surrender of registration was done due to the mistake on their part and also on the part of the Department.

11. In view of the above, the ends of justice will be adequately met if the penalty imposed is reduced to Rs.30,000/- (Thirty Thousand Only).

12. Thus, the appeal is partly allowed as above with consequential relief, if any, as per the law.

(Order pronounced in open court on 28.11.2025)

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