CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONALBENCH- COURT NO.– II

Single Member Bench

CustomsAppeal No.30156 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-063-19-20(APP-I), dated 26.12.2019passed byCommissioner of GST &Central Excise(Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500081.

VERSUS

Commissioner ofCentral Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30157 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-0064/19-20 (APP-I), dated 27.12.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30158 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-0061/19-20 (APP-I), dated 26.12.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30159 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-0062-19-20 (APP-I), dated 26.12.2019 passed by Commissioner GST &Central Excise (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Excise Appeal No. 30160 of 2020

(Arising out of **Order-in-Appeal** No.HYD-EXCUS-MD-AP2-0073-19-20ST, dated 31.01.2020passed by Commissioner of GST&Central Excise (Appeals-II), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Medchal - GST
MedchalCommissionerate,
H.No. 11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI Bazarghat Branch,
Lakdikapool, Hyderabad,
Telangana – 500 004.

WITH

Excise Appeal No. 30161 of 2020

(Arising out of **Order-in-Appeal** No.HYD-EXCUS-MD-AP2-0072-19-20 CE, dated 31.01.2020 passed by Commissioner of GST &Central Excise (Appeals-II), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Medchal - GST
MedchalCommissionerate,
H.No. 11-4-649/B,
Opposite Mehdi Function Palace,
Above SBI Bazarghat Branch,
Lakdikapool, Hyderabad,
Telangana – 500 004.

WITH

Excise Appeal No. 30162 of 2020

(Arising out of **Order-in-Appeal** No.VIZ-EXCUS-001-APP-040-20-21 dated 15.05.2020 passed by Commissioner of Central Tax & Customs (Appeals), Visakhapatnam)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Visakhapatnam– GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Customs Appeal No. 30208 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-059-19-20 (APP-I), dated 17.12.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30209 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-057-19-20 (APP-I), dated 13.12.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30210 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-056-19-20 (APP-I), dated 13.12.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

WITH

Customs Appeal No. 30211 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-060-19-20 (APP-I), dated 19.12.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

AND

Customs Appeal No. 30281 of 2020

(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-42-19-20 (APP-I), dated 31.10.2019 passed by Commissioner of Customs &Central Tax (Appeals-I), Hyderabad)

AurobindoPharma Ltd., .. **APPELLANT**
The Water Mark Building,
Plot No. 11, Survery No. 9,
Kondapur, Hitech City,
Hyderabad,
Telangana – 500 081.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – Customs
KendriyaShulkBhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:

Shri D V SubbaRao, Advocatefor the Appellant.
Shri P Amaresh, Authorised Representative for the Respondent.

CORAM: HON'BLEMr. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER No. A/30036-30047/2024

Date of Hearing:18.01.2024
Date of Decision:18.01.2024

[ORDER PER: R. MURALIDHAR]

The appellants are manufacturers of pharma products and they regularly export their goods to various countries. They also have several units within India. Their goods are also sent to from one unit to another on stock transfer(non-sale basis). The appellants have filed refund claims on the following three different set of facts:

i) The appellants have exported their goods on payment of Excise Duty and claimed rebate of the same. However, in some cases overseas exporters have partly rejected the consignments on account of some defects and sent back the same to the appellant. On all such re-imports, the appellants were required to pay the initial rebate claim as CVD. At the time of imports, the appellants have calculated and paid the CVDunder the re-import Bills of Entry. These stocks have been taken by them in their books. In the normal course, they would have been eligible to take the Cenvat Credit but they did not have the means to take the credit in the GST regime. Therefore, they have filed refund claim in terms of Section 142(3) of the CGST Act, 2017 before the Customs Authorities. [Present Appeal No. C/30156/2020, C/30159/2020, C/30209/2020, C/30210/2020, C/30211/2020 and C/30281/2020]

ii) The appellants have cleared their goods from their one unit to another unit for which they were required to follow the procedure under Rule 8 of the Valuation Rules 2000, by filing the Cost Certificate under CAS-4. After initial clearance from one unit to another unit on payment of Excise Duty, when CAS-4 certificate was finalised, differential Excise Duty was required to be paid and was also paid. In the normal course, the differential Excise Duty so paid would be eligible as Cenvat Credit to the receiving unit. However, as the differential duty was paid after 01.07.2017 in the GST regime for the past period, there was no scope for them to claim the Cenvat Credit. For such amounts paid the appellants have filed the refund claim in terms of Section 142(3) of CGST Act, 2017 before the Central Excise authorities [Appeal No. E/30160/2020, E/30161/2020 and E/30162/2020]

iii) The inputs / raw materials were imported under Advance Licenses for which they were required to fulfil the Export Obligations. However, in some cases they could not fulfil the export obligations. On account of non-fulfilment of export obligation they have paid the custom duties foregone CVD + SAD as IGST. These payments have been made for the imports which were clearedprior to 30.06.2017 under Advance Licenses for which the Customs Duty foregone amounts have been paid after 01.07.2017 between December 2017 to May 2018, in the present GST regime. On the ground that they do not have any provision to claim the Cenvat Credit of the the IGST paid during the present GST regime, they have preferred the refund in terms of Section 27 of the Customs Act 1962, seeking cash refund of such amounts. [Appeal No. C/30157/2020, C/30158/2020 and C/30208/2020]

2. All these refund claims were to seek cash refund which is permissible under Section 142(3) of the CGST Act, 2017. After due process, the Adjudicating Authorities rejected the refund claim on the following grounds:

> 14. Refund of Customs duty is governed by the provisions of Section 27 of the Customs Act, 1962. As per sub-section (1) of Section 27 of the Customs Act, 1962:
>
> (1) Any person claiming refund of any duty or interest,—
>
> (a) paid by him; or
>
> (b) borne by him,
>
> may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest
>
> In the subject case, as the claim is made on 13.12.2018 i.e. within one year from the date of payment duty on 25.05.2018, and the claim is not time bared.
>
> 15. Whereas, the main purpose any provision of refund in any law is basically to give relief to the tax payer who had paid tax in excess of what is required to be paid or who had paid inapplicable tax. As discussed in Para 12 above, **in the subject case, the Additional Duty of Customs (CVD) was paid by the importer correctly, according to the provisions of Customs law.** For refund of such correctly paid duty i.e., for refund of any duty paid in accordance with law, there shall be specific provision under the law, with specific conditions stipulate therein. For

example, in respect of Additional Duty of Customs (SAD) leviable under Section 3(5) of the Customs Tariff Act, 1975, on the goods which are imported into India for subsequent sale, exemption form whole of SAD was granted by way of refund, under Notification No. 102/2007-Cus dated 14.07.2007, as amended, subject to the condition that appropriate sales tax or value added tax is paid on the sale of such goods. However, any similar provision for refund of the Additional Duty of Customs (CVD), leviable under Section 3(1) of the Customs Tariff Act, 1975 is not made available under Customs Law, even after the introduction of GST. Thus, **as on date, there is no provision under Customs law for refund of correctly paid Additional Duty of Customs (CVD), for the reason that the CENVAT credit or input tax credit of such duty cannot be availed under the respective laws.**

16. It appears that, M/s APL(U-I) are well aware that there is no provision under Customs law for refund of Additional Duty of Customs (CVD) only for the reason that the input tax credit of such duty cannot be availed under GST law. **Therefore, it appears that, they have taken recourse under the provisions of Section 142(3) of CGST Act, 2017. This provision of CGST Act is discussed at Para 4 above. It is basically a transitional provision made under the newly introduced CGST Act, which states that any refund claim of tax paid under the existing law shall be disposed of in accordance with the provisions of existing law. Further, the words "existing law" is defined under Section 2(48) of CGST Act, 2017 and the same is discussed at para 5 above. It is a well-known fact that, certain laws relating to indirect taxes, such as Central Excise law, Service Tax law, Sales Tax / VAT laws etc., were rescinded and, in their place, certain common laws related to GST were introduced with effect from 01.07.2017. Therefore, for smooth transition from the existing laws to new laws related to GST, several transitional provisions were made available under CGST Act, 2017. Section 142(3) of CGST Act, 2017 is one such provision made for dealing with the refund claims made in respect of the taxes, interest or any amounts paid under the provisions of "existing law". Therefore, the meaning of "existing laws" defined under Section 2(48) of CGST Act, 2017 shall be limited to those laws which were existing as on the appointed day i.e. 01.07.2017 and subsumed into the newly introduced GST law. There may be hundreds of laws existing in India as on 01.07.2017, including the many direct or indirect tax laws. Obviously, the meaning of "existing law" defined under Section 2(48) of CGST Act, 2017 cannot be extended to cover all the laws which were existing in India as on 01.07.2017. Hence, only those laws which were subsumed into GST laws, shall be treated as "existing laws". Otherwise, the whole purpose of the transitional provisions will be vitiated. Therefore, by no stretch of imagination, the Customs law can be treated as a part of "existing laws" defined under Section 2(48) of CGST Act, 2017. The contention of M/s APL(U-I) that "existing law" defined under Section 2(48) of CGST Act, 2017 covers Customs Law is totally not acceptable. Therefore, it is clearly evident that, M/s APL(U-I) have wrongly interpreted the transitional provision**

stipulated under Section 142(3) of CGST Act, 2017 and consequently invoked the said provision incorrectly, for claiming the refund of CVD paid by them under the provisions of Customs Act, 1962. Thus, the subject refund claim filed by M/s APO(U-I) is not in accordance with the law.

3. On appeal, the Commissioner (Appeals) has rejected the refund claims on the following grounds:

8. Appellant's contention in appeal is that since the existing law has been subsumed by the CGST Act, 2017, since they are unable to avail cenvat credit under GST Law, refund of such credit in cash can be granted under the provisions of Section 142(3) of the CGST Act 2017. **I have carefully considered the contention on this count. The said provisions of Section 142(3) of the CGST Act, 2017 are reproduced hereunder for ready reference:**

"142(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act."

7. As evident from the above facts since the appellant could not fulfil the conditions for import against the valid advance authorization governed by Notification No. 18/2015-Cus dates 01.04.2015 as amended by Notification No. 79/2017 dated 13.10.2017 as they intended to supply the final products as deemed exports to EOU, instead of physical exports as required under subject Notification. The appellant had no other option but to pay the applicable customs duties including the IGST required to be paid under Section 3(7) of the Customs Tariff Act. Since the said duty paid was something which was required to be paid on the subject imports, there is no ground to claim any refund of the same under Section 27 of the Customs Act, 1962. The appellant's contention that since they have paid the IGST duty manually through TR-6 challan and that since said challan is not a specified document under Rule 36 of the CGST Rules, 2017 to avail input tax credit and hence, they should be allowed refund of the duty paid, cannot be accepted as a valid ground. Payment of the IGST duty required under the Customs Act, 1962 and availment of Input Credit of such duty paid under the CGST Act, 2017 are two different aspects. The payment of IGST per se does not confer any right or entitlement to claim refund of such duty paid unless there are provisions which allow such refund. **If manual TR-6 challan is not a specified document under Rule 36 of the CGST Rules 2017, that cannot be a**

ground to claim refund under Section 27 of the Customs Act, 1962. In consequence, refund in question sought by the appellant under the said provisions is not admissible to them.

4. Being aggrieved, the appellants are before this Tribunal.

5. Learned Advocate relies on the following case laws:

1) Mithila Drugs Pvt Ltd vs CGST, Udaipur
[2022 (3) TMI 58 – CESTAT New Delhi]

2) Clariant Chemicals India Ltd vs CCE & ST, Raigad
[2022 (10) TMI 796 – CESTAT Mumbai]

3) ITCO Industries Ltd vs CGST & CE, Salem
[2022 (6) TMI 1040 – CESTAT Chennai]

4) Flex Caps and Polymers (P) Ltd., VsCCx, Indure
[2022 (58) GSTL 545 (Tri-Del)]

6. The learned counsel submits that in all the above cases, it has been held that when the CVD and SAD have been paid as part of the Customs Duty foregone in respect of non-fulfilment of export obligation, the importer would be eligible to claim the cash refund as per Section 142 (3) of the CGST Act 2017. In the present case admittedly what is paid is the CVD+SAD or the IGST in the present regime. What has been held as eligible for CVD+SAD would be equally be applicable for the IGST paid, since the ratio of Section 142(3) is squarely applicable.

7. He also relies on the Larger Bench's decision in the case of **Bosch Electrical Drive India Pvt Ltd., Interim Order No. 40021/2023 dated 21.12.2023,** wherein it has been held that the only way to get the refund of the amount which otherwise would have been available under Cenvat, is to rely on Section 142(3) and file the refund claim accordingly.

8. In view of these submissions, he prays that the appeal may be allowed.

9. The Learned AR submits that the appellant has filed the refund claims before Customs Authorities and they have held that they do not have the Jurisdiction to entertain the refund claim. He also reiterates the findings of the Lower Authorities to justify the rejection of the refund claim.

10. He further submits that this very issue had come up before the Chennai Bench in the appellant's own case. Vide Final Order No. A/40158-40177/2022 dated 06.05.2022 it has been held by the Tribunal that the appellant is not eligible claim refund under Section 142(3) of the CGST Act 2017. Similar decision was also given by Chennai Bench in the case of Servo Packaging Ltd., Vs CGST & C.ExPuducherry [2020 (373) ELT 550 (Tri-Chennai)]. In these cases, it was held that if any amount on account of CVD and SAD is paid on account of non-fulfilment of export obligation, the same cannot be claimed as refund under Section 142(3) of the CGST Act 2017.

11. He also submits that the Bosch LB decision cited by the appellant deals with a situation of refund of cenvat credit pertaining to Service Tax and Central Excise only, whereas in the present case, the refund is claimed for the Customs Duty.

12. Heard both sides, perused the appeal papers and written submissions and case laws cited by both sides.

13. After going through the facts, I find that there is no dispute on facts. Admittedly in some cases, the appellant has failed to fulfil the export obligations and consequently they had to pay the initial customs duty foregone. The initial customs duty foregone consisted of Basic Customs Duty + CVD + SAD. When on account of non-fulfilment of export obligations, they had to pay the customs duty after 01.07.2017, the provisions relating to CVD and SAD (Additional Duties of Customs) have been amended to make the payment by way of IGST. While CVD and SAD were eligible as Cenvat Credit in the earlier regime, even the IGST is eligible as Input Tax Credit in the present regime. The appellants were not in a position to claim the Cenvat Credit for the differential duty which was payable for the past period nor could they take the Input Tax Credit under GST, since the goods in question were imported prior to 30.06.2017. Therefore the only recourse is to seek cash refund of the same. In some cases, the appellants have paid

the differential Excise Duty on account of higher CAS-4 value arrived at by them subsequently for their inter-unit stock transfers. Even, this differential Excise Duty amounts which would have normally have been takenas Cenvat Credit could not be taken by them in the present GST regime because of which they have filed the refund claims. In some cases, the appellants have exported goods and initially had claimed the full export benefit in terms of rebate of excess duty. However, since part of the goods were rejected by the overseas importer and they were sent back to India, the appellant was required to forego the export benefits like Rebate of Excise Duty initially taken by them. The samewas paid by them by way of CVD at the time of re-import. Even, in this case, in the normal situation, they would have been eligible to take the Cenvat Credit but they could not do so in the present regime.

14. The issue as to whether such matters of cash refund claimed under Section 142(3) could be decided by this Tribunal was before the Larger Bench in the case of Bosch Electricals India, decided by the Larger Bench on 21.12.2023. The Larger Bench had concluded that the CESTAT has the jurisdiction to take up the Appeals of such nature.The Larger Bench has also categorically held at para 49 as under:

> *"49. In the present case, the service tax was paid under the provisions of Chapter V of the Finance Act and refund was claimed under sub-section (3) of section 142 of the CGST Act, under which the claim was required to be disposed of in accordance with the provisions of the existing law. <u>Therefore, even if the service tax had been deposited by the appellant after 01.01.2017, nonetheless the refund of any amount of the CENVAT credit could be claimed only under subsection (3) of section 142 of the CGST Act and against this order an appeal will lie to the Tribunal."</u>[Emphasis supplied]*

15. This makes it clear that the only recourse available to the assessee who pay the Service Tax, Excise Duty in the form of CVD + SAD or IGST or Excise Duty subsequently after 01.07.2017, is to get the refund in terms of Section 142(3) of the CGST Act 2017.

16. On going through the case law cited by the Learned Advocate, I find that on the very same issue, the Tribunal have been consistently holding that the appellant should be eligible for cash refund.

In the case of **Mithila Drugs Pvt Ltd Vs CGST, Udaipur [2022 (3) TMI 58 – CESTAT New Delhi],** the Delhi Bench has held as under:

> *"7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequently during GSTregime, for the imports made prior to 30.06.2017 is not disputed under the advance authorisation scheme. Itis also not disputed that the appellant have paid the CVD and SAD in August, 2018 by way of regularisationon being so pointed out by the Revenue Authority. Further, I find that the Court below have erred in observingin the impugned order, that without producing proper records of duty paid invoices etc. in manufacture ofdutiable final product, refund cannot be given. I further find that refund of CVD and SAD in question isallowable, as credit is no longer available under the GST regime, which was however available under theerstwhile regime of Central Excise prior to 30.06.2017. Accordingly, I hold that the appellant is entitled torefund under the provisions of Section 142(3) and (6) of the CGST Act.*
>
> *8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellant of theamount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refundshall be granted within a period of 45 days from the date of receipt of order alongwith interest under Section11BB of the Central Excise Act. The impugned orders are set aside." [Emphasis supplied]*

In the case of **Clariant Chemicals India Ltd Vs CCE & ST, Raigad [2022 (10) TMI 796 – CESTAT Mumbai],** the Mumbai Bench has held as under:

> *8. Upon hearing the Counsels from both sides and after perusal of the case record, it is apparent that Appellant's eligibility to take credit of the duties paid as CENVAT Credit is undisputable and only because of procedural aberration occurred during transition to GST period, Appellant could not take the credits in its electronic ledger in the GST regime, for which it sought for refund such a contingency is perhaps foreseen by the legislature for which contingent provision is well enumerated in Clause 6(a) of Section142 of the CGST Act that deals with claim for CENVAT Credit after the appointed date under the existing law. It reads:-*
>
> > *"6(a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated weather before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of exiting law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:*

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;" (Underlined to emphasise)

9. It is an admitted fact of the parties that the said CENVAT Credit balance was not carried forward to the Appellant's account on the appointed date since it was not due on the said day also. Therefore, in view of clear provision contain under Section 142(6)(a) of the CGST Act, Claimant/Appellant is eligible to get the refund of credit by cash except where unjust enrichment is alleged or established against the Appellant. The Appellant is also otherwise eligible to go for availment of transitional credit through filing required forms in Tran-I as per the order passed by the Hon'ble Supreme Court on 22nd July, 2022 but in view of the observation of this Tribunal read with Section 142(6)(a) of the CGST Act that such CENVAT Credit amount shall be paid to the Appellant in cash, it can't avail dual benefits once order of this Tribunal is duly complied by the Respondent-Department by the closing date of the window." [Emphasis supplied]

In the case of **ITCO Industries Ltd Vs CGST & CE, Salem [2022 (6) TMI 1040 – CESTAT Chennai],** the Chennai Bench has held as under:

11. From the narration of facts, it can be seen that Department has rejected the claims invoking Rule 9(1)(b)of Cenvat Credit Rules, 2004. The said provision has already been reproduced above. The Department is ofthe view that credit is not eligible as appellant has paid the duties only after issuing a demand notice. Onperusal of the alleged demand notice, it is merely in the nature of an intimation letter and has not been issuedinvoking any provisions of Customs law or Excise law. Further, in such intimation also, there is no allegationof any fraud, collusion or suppression of facts with intent to evade payment of duty. There is no evidenceplaced before me to establish that the duties were paid after adjudication and rendering a finding of fraud,collusion or suppression of fact with intent to evade payment of duty. In such circumstances, the credit cannotbe denied. I hold that the appellant is eligible for credit of CVD and SAD paid by them. The Tribunal in thecase of Circor Flow Technologies (supra) and Mithila Drugs Pvt. Ltd. (supra) had analysed a similar issue. InM/s.Mithila Drugs Pvt. Ltd., the facts are identical to that of the instant case. The relevant paragraphs read asunder:

*"5.1 Learned Counsel further relies on the precedent ruling of this Tribunal in**Flexi Caps andPolymers Pvt. Ltd., Vs. Commissioner, CGST & Central Excise, Indore -2021 (9) TMI 917-CESTAT, New Delhi**,wherein also pursuant to demand of service tax under reverse chargemechanism after 30.06.2017, for transaction related prior to the said date (01.07.17), this Tribunal heldthat as the appellant was entitled to cenvat credit under Cenvat Credit Rules, which is not now*

available due to GST regime, is entitled to refund under Section 142 read with Rule 146 of the CGST Act.

6. Learned Authorised Representative Sh. Mahesh Bhardwaj appearing for the Revenue relies on theimpugned order.

7. Having considered the rival contentions, I find that the payment of CVD and SAD subsequentlyduring GST regime, for the imports made prior to 30.06.2017 is not disputed under the advanceauthorisation scheme. It is also not disputed that the appellant have paid the CVD and SAD in August,2018 by way of regularisation on being so pointed out by the Revenue Authority. Further, I find that theCourt below have erred in observing in the impugned order, that without producing proper records ofduty paid invoices etc. in manufacture of dutiable final product, refund cannot be given. I further findthat refund of CVD and SAD in question is allowable, as credit is no longer available under the GSTregime, which was however available under the erstwhile regime of Central Excise prior to 30.06.2017.Accordingly, I hold that the appellant is entitled to refund under the provisions of Section 142(3) and (6)of the CGST Act.

8. Accordingly, I direct the jurisdictional Assistant Commissioner to grant refunds to the appellant of the amount of SAD & CVD as reflected in the show causes notices and also in the orders-in-appeal. Such refund shall be granted within a period of 45 days from the date of receipt of order along with interest under Section 11BB of the Central Excise Act. The impugned orders are set aside."

12. <u>After appreciating the facts and evidence as well as applying the principles of law laid in the above decisions, I am of the view that the rejection of refund claims cannot be justified. The impugned orders are set aside</u>. Appeals are allowed with consequential relief, if any, as per law." [Emphasis supplied]

17. I find that these case laws read with the LB decision in the case of Bosch Electricals would be squarely applicable to the present appeals.

18. So far as the case law cited by the Learned AR in respect of Aurobindo Pharma and Servo Packaging Ltd., Chennai Bench is concerned, in both these cases the decisions were given prior to the Larger Bench taking its clear view on this issue. Since the Larger Bench had taken the view that the only recourse available to the appellant is to get the cash refund in terms of Section 142(3) to claim cash refund, these two case laws are not applicable presently.

19. In respect of the issue raised about the refund being filed before the Customs authorities, it is seen that what is paid is the Customs Duty, out of which the CVD +SAD or IGST portion is cenvatable or eligible for Input Tax Credit in the normal course. Therefore, since the initial duty was paid to the Customs, the appellants have filed their claim there. If the Customs officials felt that the refund claim was filed without jurisdiction, they should have returned the refund claims on this ground, advising the appellant to approach the GST authorities, which was not done in this case. Moreover, in the order portion, the Adjudicating authority has not rejected the refund claim on this ground. Even in the subsequent appeal before the Commissioner (Appeals), he also has dealt with the non-applicability of the Section 142(3) and dismissed the appeal. In respect of differential Excise duties paid, the appellants have filed the refund claims with Central Excise Authorities only as can be seen from the Appeal papers. Therefore, this objection of the AR is legally not sustainable.

20. In respect of AR's concern that Bosch LB decision is applicable only for Service Tax and Central Excise related matters is concerned, it is seen that in that case only Service and Central Excise issue were before the LB. Further, the Cenvat taking is guided by the Cenvat Credit Rules 2004. Hence, in this case where the issue of CVD,SAD or IGST to be taken as cenvat are involved, the LB decision is required to be applied. It is also noted that in the cited decisions and even before the LB decision, the Tribunals were consistently holding that cash refund can be granted under Section 142(3) for CVD and SAD. What is applicable for CVD and SAD is equally applicable to IGST since in both the cases the importer is eligible to take the credit of such duties/taxes.

21. Respectfully, following the Larger Bench decision as well as the other applicable case laws cited supra, I allow the appeal with consequential relief, if any as per law.

22. In respect of six refund claims (Appeal Nos. C/30156/2020, C/30159/2020, C/30209/2020, C/30210/2020, C/30211/2020, C/30281/2011) wherein the appellants have received back part of the exported goods from their overseas importer on account of some rejection, the Jurisdictional Officer is directed to undertake a verification process to check whether these stocks have been properly accounted for and recorded

by the appellant in their books of accounts. Only for this limited purpose the matter is remanded to the Adjudicating in respect of these six appeals. Subject to such verification, the refunds may be granted with consequential relief.

23. In respect of other six appeals [E/30160/2020, E/30161/2020, E/30162/2020, C/30157/2020, C/30158/2020, C/30208/2020], the Appeals are allowed and refund is to be granted with consequential relief.

24. All the appeals are disposed off thus.

(Order dictated and pronounced in open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

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