CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I
Single Member Bench

Excise Appeal No. 30370 of 2024
(Arising out of **Order-in-Appeal** No.HYD-SVTAX-RRC-APP1-042-23-24, dated 22.02.2024 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

M/s Aurigene Oncology Ltd., .. **APPELLANT**
(Formerly Known as Aurigene Discovery Technologies Limited),
39-40, KIADB Industrial Area,
Electronic City, Phase-II,
Hosur Road, Bangaluru Urban,
Karnataka – 560 100.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – GST
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Pasanna GI, Advocate for the Appellant.
Shri K. Raji Reddy, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30118/2025

Date of Hearing:19.02.2025
Date of Decision:09.04.2025

M/s Aurigene Oncology Ltd., (hereinafter referred to as appellant) have filed this appeal against the Order-in-Appeal No.HYD-SVTAX-RRC-APP1-042-23-24 dated 22.02.2024, by which, appeal was rejected as not maintainable, upheld the Order-in-Original dated 06.09.2023.

2. Learned Counsel for the appellant states that there are set principles to adjudicate any matter of refund application filed before the Adjudicating Authorities while disposing the case. However, from the facts and chronology of events, it is seen and observed that in no time, the appellant was given an opportunity of being heard and there was clear violation of natural justice granted under the law. Appellant was not given an

opportunity of personal hearing in the matter to record his submission as to question of jurisdiction. No any written clarification or clear provision to why and how Central Tax Authorities lies jurisdiction to process the refund claim filed by the appellant. Learned Advocate for the appellant relies on the following case laws:

i) M/s Knowledge Capital Services Pvt Ltd., Vs Union of India & Others in Writ Petition No. 61 of 2023 before the Hon'ble High Court of Judicature at Bombay.

ii) M/s Nagarjuna Construction Co. Ltd., Vs Govt of A.P. & Ors in Civil Appeal No. 1438 of 2004 before Hon'ble Supreme Court of India

iii) Kesar Enterprises Ltd., Vs State of U.P & Ors. In Civil Appeal No. 6896 of 2002 before Hon'ble Supreme Court of India.

3. Facts of the case is that during the pre-GST period, the appellant imported various capital goods from outside India for the internal research activities by submitting the applicable duty exemption on Counter Veiling Duty (CVD) and Special Additional Duty (SAD) under DSIR Scheme. Subsequently, the appellant opted de-bonding of import of capital goods and approached Air Cargo, Customs, Hyderabad and computed and paid the duty foregone amount on its imports, which have to be paid at the time of de-bonding procedure and accordingly paid the CVD and SAD amounting to Rs. 34,82,978/-. Since, the payment of duty carried out during the period of December, 2019 there was no bill, the appellant could have claim this as Cenvat Credit post implementation of GST Law in India. Appellant filed refund claim on 10.12.2020 for the Cenvat amount paid before the Deputy Commissioner of Central Tax, Gachibowli, GST Division, Hyderabad under miscellaneous transactional provisions laid down under GST Laws. Against which the Central Tax office issued Deficiency Memo dated 24.12.2020

observing some deficiencies in the refund claim filed. In reply, the appellant fixed some of the procedure aspect and observed under deficiency memo dated 21.12.2020 and requested the Central Tax Authorities to process the refund claim. There was no development in claim process for some time. However, on 22.09.2021, the Deputy Commissioner of Central Tax, Gachibowli GST Division, Hyderabad, vide letter dated 22.09.2021 returned the refund filed quoting that the paid duties are having customs component in it. Hence, refund claim should have been filed before Jurisdictional Customs Authorities. On receipt of communication from Central Tax, Gachibowli Division, the appellant approached Jurisdictional Customs Authorities in relation to his refund claim. However, he was denied of filing any claim saying that the CVD and SAD duties are not customs component but clearly part of Cenvat duty. Consequently, on confirming legality of right Jurisdiction to file refund claim, the appellant once again approached the Central Tax Authorities, Gachibowli Division, Hyderabad and resubmitted the claim vide registered post dated 01.02.2022. Due to COVID-19 Pandemic, there was no further development in the case during the period of Financial Year 2022-23. And finally, the appellant met the Deputy Commissioner of Central Tax, Gachibowli Division, Hyderabad, in person explaining the hardship faced by him and filed the letter dated 18.05.2023 requesting Authorities to adjudicate/process for his refund claim. Deputy Commissioner of Central Tax, Gachibowli Division, Hyderabad, issued communication dated 06.09.2023 referring to earlier letter dated 22.09.2021 and decided that the refund filed cannot be processed due to lack of Jurisdiction as opined earlier. Aggrieved by the order issued of Deputy Commissioner of Central Tax, Gachibowli Division, Hyderabad, the appellant has filed the appeal before the office of the Commissioner of Customs and Central Tax (Appeals-I), Hyderabad contesting the decision arrived by the Deputy Commissioner of

Central Tax, Gachibowli Division, Hyderabad. Commissioner (Appeals), granted personal hearing and recorded the submissions made by the appellant and rejected the appeal filed by the appellant on the ground of non-maintainability without examining the merits of the issue.

4. Learned AR for the Department reiterates the findings of the Commissioner (Appeals).

5. Heard both the sides and perused the records.

6. Deputy Commissioner of Central Tax, Gachibowli Division, Hyderabad, by letter dated 06.09.2023 impugned order (order-in-original) informed the applicant as follows:

> "Please refer to your letter dated 18.05.2023 on the above subject.
>
> On perusal of the records of this office, it is noticed that your earlier claim on the same subject matter and for the same amount was returned for want of jurisdiction (copy of letter C.No. IV/16/R/63/2020-Gach (Refunds) dated 22.09.2021 is enclosed for reference).
>
> The decision later in this regard cannot be reconsidered."

In this information/Order-in-Original enclosed earlier order dated 22.09.2021 in which it was stated that as follows:

> "In this regard, this is to submit that all the refund claims submitted by you are having customs components and all the enclosures/supporting documents submitted by you pertains to customs jurisdiction only. The verification and authenticity of the above payment details and supporting documents can not be verified or ascertained in CGST Range/Division. Here it is to submit that filing of refunds in wrong jurisdiction is tantamount to non-filing of refund. Accordingly, the refund claim is returned herewith along with this letter same may be submitted before the concerned jurisdictional authority."

7. Therefore, by letter dated 22.09.2021, concerned Deputy Commissioner returned the refund claim on the ground of Jurisdiction - with above observation that it may be submitted before the concerned Jurisdictional Authority. After receipt of this communication appellant approached Jurisdictional Customs Authorities in relation to his refund claim. However, it was denied of filing any claim saying that CVD and SAD duties are not customs component but clearly part of Cenvat duty. Then appellant, once again, approached the Central Tax office, Gachibowli Division, Hyderabad and resubmitted claim. But their claim not decided on merit and denied to reconsider on the ground that earlier claim on same subject matter and for the same amount was returned for want of Jurisdiction.

8. Then appellant filed appeal before the Commissioner (Appeals). Commissioner (Appeals) in para 6 & 8 states as follows:

> "6. The appellants claimed that on receipt of the said communication from the respondent, they approached the jurisdictional Customs Authorities, but they were not allowed to file refund claim stating that CVD and SAD duties are not Customs components, but clearly part of CENVAT duty. Thereafter, the appellants re-submitted the refund claim to the respondent's office vide Registered Post with Acknowledgment Due (RPAD) dated 01.02.2022. The appellants have also submitted a letter dated 18.05.2023 to the respondent requesting to process their refund claim. With reference to the appellant's letter dated 18.05.2023, the respondent issued the impugned letter C.No. IV/16/Refunds/03/2023-24 dated 06.09.2023 making it clear that the appellants' earlier claim in this regard was returned for want of jurisdiction and the decision cannot be reconsidered.
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> 8. As the earlier communication C.No. IV/16/R/63/2020-Gach. Refund (Tech) dated 22.09.2021 of the respondent attained finality due to the fact that the appellants had not availed legal remedy by way of filing an appeal against it, the present appeal of the appellant against the impugned letter is not

maintainable. Hence, I proceed to reject the appeal filed by the appellants without examining merits of the issue."

Here also important to mention that in Commissioner (appeals) para 6 then para 8. There is no any para of 7. It may be clerical/typing error. So stated as para in Appeal. As mentioned above, appeal was rejected on the ground that appellant was failed to file an appeal against earlier communication dated 22.09.2021 within the time stipulated under the Law. Appellant have given proper and satisfactory reason why he had not filed the appeal against the communication dated 22.09.2021 as stated in Para 7 of Memorandum of Appeal that "on receipt of communication from Central Tax, Gachibowli Division, Hyderabad, the appellant approached Jurisdictional Customs Authorities in relation to his refund claim, however, he was denied of filing any claim saying that the CVD and SAD duties are not customs components but clearly part of Cenvat duty". It is also important that no any opportunity of hearing has been given by the Adjudicating Authority. It is a Statutory procedure that no application for a refund should be rejected without giving an opportunity to the appellant of being heard. Hon'ble Supreme Court in Civil Appeal No. 1438/2004 (PG 67) M/s Nagarjuna Construction Company Vs Government of Andhra Pradesh and Others, in which Hon'ble Supreme Court held that natural justice is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. In Civil Appeal No. 6896/2002 Kesar Enterprises Ltd., Vs Uttar Pradesh and others Hon'ble Supreme Court held that the principle of natural justice demand i.e. show cause notice should be issued and an opportunity of hearing should be awarded to the person concerned before order.

9. Therefore, Adjudicating Authority passed the order without giving proper opportunity of hearing which is against the natural justice and procedure established by law. Learned Commissioner (Appeals) also not considered these facts therefore, appeal is liable to be allowed by way of remand with direction to decide refund claim on merit after giving proper opportunity to appellant.

10. Appeal is allowed by way of remand and refund claim by application dated 18.05.2023 and 22.09.2021 which are restored and directed to Adjudicating Authority to decide the refund claim filed by the appellant on merit with reason/speaking order after giving proper opportunity of hearing to the appellant within 3 months from the receipt of the copy of this order.

(Pronounced in open court on 09.04.2025)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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