IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75490 of 2023

(Arising out of Order-in-Appeal No.54-55/SLG-CE/2022-23 dated 31.01.2023 passed by Commissioner(Appeals), CGST & CX Appeals Commissionerate, Siliguri.)

M/s. Torrent Pharmaceuticals Ltd.
(32 No. Middle Camp, NH-10, East District, Gangtok, Sikkim-737135.)

...Appellant

VERSUS

Commissioner, CGST & CX, Siliguri Commissinerate

.....Respondent

(C.R. Building, Haren Mukherjee Road, Hikimpara, Siliguri, West Bengal.)

WITH

Excise Appeal No.75491 of 2023

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...Appellant

VERSUS

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.....Respondent

(C.R. Building, Haren Mukherjee Road, Hikimpara, Siliguri, West Bengal.)

<u>APPEARANCE</u>

Shri Shovit Betal & Shri Deepro Sen, Advocates for the Appellant (s)
Shri S.K.Dikshit, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

<u>FINAL ORDER NO. 76872-76873/2025</u>

DATE OF HEARING : 08.07.2025
DATE OF DECISION : 08.07.2025

Per : R. MURALIDHAR :

The Appellant was operating under Area Based Exemption Scheme under Notification No.20/2007-CE dated 25.04.2007 as amended from time to time. Under this scheme the Appellant was eligible to take cash refund for the amounts paid through their PLA Account. The Appellant's refund was fixed at 56% provisionally and @ 70% finally. The Appellant used their Cenvat Account for payment of Education Cess and SHE Cess also. When the Refund claim was filed, the Adjudicating authority after adjusting Education Cess and SHE Cess paid by them through Cenvat disallowed refund to this extent and granted the balance refund. Being aggrieved, the Appellants have filed their Appeals before the Commissioner(Appeals). The Commissioner(Appeals) vide Order-in-Appeal No.236-237/SLG-CE/2019-20 dated 23.10.2019 held that the Appellant is eligible to utilize the Cenvat credit even for payment of Education Cess and SHE Cess. On the other hand he relied on the judgement of Hon'ble Gauhati High Court in the case of **Union of India vs. Kamakhya Cosmetics & Pharmaceutical Pvt.Ltd. [2015 (323) ELT 33 (Gau.)]**.

2. The Appellants filed their refund claim which arose as a consequence of the Order-in-Appeal dated 23.10.2019. The Revenue issued Show Cause Notices to the Appellant on the ground that the decision of Hon'ble Gauhati High Court in the case of **Kamakhya Cosmetics** has been over-turned by Hon'ble Supreme Court in the case of **Unicorn Industries v. Union of India [2019 (370) ELT 3 (S.C.)]**. Being aggrieved, the Appellants filed their Appeal before the Commissioner(Appeals), who has dismissed their Appeals. Being aggrieved, the Appellant is before the Tribunal.

3. The Ld.Counsel appearing on behalf of the Appellant submits that Revenue has not filed any further Appeal against Order-in-Appeal No.236-237/SLG-CE/2019-20 dated 23.10.2019 passed by the Commissioner(Appeals). As a matter of fact it is mentioned in the Show Cause Notice that this order has been accepted by the Committee of Commissioners. Therefore, he submits that since the Order-in-Appeal

dated 23.10.2019 has reached finality, the Revenue could not have taken the stand about **Kamakhya Cosmetics & Pharmaceuticals** case being over-ruled or over-turned by Hon'ble Supreme Court in the case of **Unicorn Industries**. Based on these submissions he prays that the present Appeals may be allowed.

4. The Ld.AR for the Revenue reiterates the findings of the lower authorities. He submits that in the case of **Unicorn Industries vs. Union of India** it was held that Education Cess and SHE Cess are not part of the Excise Duty. Applying the ratio of this judgement the Appellant would not be eligible for cash refund for the Education Cess paid by the Appellant through their Cenvat Account.

5. Heard both sides and perused the appeal records.

6. We find that the decision of Hon'ble Gauhati High Court in the case of Kamakhya Cosmetics (cited supra) was in force when the Order-in-Appeal dated 23.10.2019 was passed by the Commissioner(Appeals). If the Department takes the stand that this decision of Gauhati High Court has been over-turned by Hon'ble Supreme Court in the case of Unicorn Industries Ltd., which was rendered on 06.12.2019, the Revenue had enough time to consider the same and the Committee of Commissioners could have preferred their Appeal before the Tribunal.

7. We find Para 3 of the Show Cause Notice that the Order-in-Appeal was accepted and the acceptance by Committee of Commissioners was intimated vide E-mail dated 15.01.2020. Therefore, even after the rendering of the judgement by Hon'ble Supreme Court in the case of Unicorn Industries on 06.12.2019 the Committee of Commissioners has taken a decision to refrain from filing any Appeal before the Tribunal. Therefore, once the Department takes a stand that the order of the Commissioner(Appeals) is not required to be agitated before the Tribunal, the decision of the Commissioner(Appeals) reaches finality. In such a case, the Department has no case for refusal of consequential refund.

8. Considering the above factual details and statutory provisions, we set aside the impugned order and allow the Appeals filed by the Appellant. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/ Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

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