IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 75564 of 2023

(Virtual Hearing)

(Arising out of Order-in-Original No.03/COMM/CE/SLG/2019-20 dated 05.12.2019 passed by Commissioner of CGST & Central Excise, Siliguri)

Commissioner of CGST & C.E., Siliguri **: Appellant**
C.R.Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001.

VERSUS

M/s. Microlab Limited **: Respondent**
Mamring-Namthang Road, Mamring, South Sikkim-737132.

APPEARANCE:

Shri P.Das, Authorized Representative for the Appellant

Shri Vishal Agarwal & Shri Kshitij Awasthi, Advocate for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77945/ 2025

DATE OF HEARING :11.12.2025

DATE OF DECISION:11.12.2025

Order : [Per Shri Ashok Jindal]

Revenue is in appeal against the impugned order and Respondent has also filed a Cross-Objection.

2. The facts of the case are as under:

1. The captioned appeal has been filed by the Appellant against Order-in-Original No. 03/COMM/CE/SLG/2019-20 dated 05.12.2019 ('OIO') in terms of which, the Adjudicating Authority has dropped the demand of Rs. 7,06,77,801/- pertaining to alleged erroneous refund of the self-credit taken by the Respondent in its account current, during the period from Aril, 2017 to June,

2017 (‘Relevant Period’) in terms of Notification No. 20/2007-CE dated 25.04.2007, as amended (‘Exemption Notification’).

2. The Respondent (based out of Sikkim) is engaged in the manufacture of medicaments classifiable under Chapter 30 of the erstwhile Central Excise Tariff and was accordingly availing the benefit of the Exemption Notification since April, 2015. Under the said Notification, goods cleared from a unit in any of the North-Eastern States including Sikkim were exempt from so much of the duty of Excise leviable thereon as was equivalent to the duty payable on value addition undertaken in the manufacture of the said goods by the said unit.

3. The exemption under the said Notification was given by way of a refund mechanism, as provided in para 2C therein. Based on the data provided by the manufacturer, the jurisdictional Asstt./Dy. Commissioner of Central Excise was required to sanction the refund. Alternatively, the manufacturer could, in terms of para 2D of the said Notification, avail suo moto refund of the eligible amount, by way of credit, on its own, in its account current, whereafter such manufacturer was required to furnish the requisite details and the proper officer was required to pass an order verifying the same.

4. In terms of para 2D(c) of the said Notification, the manufacturer desirous of availing the option of self-credit was required to exercise this option in writing prior to effecting the first clearance in the financial year. The Respondent had rightly exercised its option in writing by issuing invoice dated 04.04.2017 (being the first clearance of F.Y.2017-18). However, the case made out by the Department

in the Show Cause Notice was that the Respondent had intimated the Department only on 13.04.2017, which was after the first clearance.

5. The Adjudicating Authority, vide the OIO, observed that the conditions under para 2D of the Exemption Notification were directory in nature and therefore, any delay in compliance of such conditions would, at the highest, qualify as a procedural lapse and would not deprive the Respondent of the substantive benefit granted by way of the Exemption Notification. Aggrieved by the said OIO, the Appellant has filed the present appeal before this Hon'ble Tribunal.

3. The Ld Authorized Representative appearing on behalf of the Revenue submits that as the Respondent had not complied with the condition 2D(c) of the Exemption Notification No. 20/2007 C.E. dated 25.04.2007 as they have not filed the option of self credit in advance before first clearance. Whereas they have issued invoice of 04.04.2017 for first clearance of Financial Year 2017-18 and intimation was given to the department only on 13.04.2017. Therefore, they are not entitled for exemption.

4. On the other hand the Ld Counsel for the Respondent submitted that the eligibility of the Respondent to avail benefit of Exemption Notification is not disputed. It is his submission that Respondent has complied with the condition of Exemption Notification. He further submitted that substantial benefit cannot be denied on account of procedural lapse. In view of this it is his submission that issue is squarely covered by the decision of this Tribunal in the case of Saraswati Agro Chemicals India Ltd. vs.

CCE, J & K, 2018 (3)TMI 263-CESTAT, Chandigarh. Therefore, appeal is to be dismissed.

5. Heard the parties. Considered the submissions.

6. We find that the issue has been examined in this Tribunal in the case of Saraswati Agro Chemicals India Ltd. (Supra) wherein this Tribunal observed as under:

"*7. We have examined the notification No. 01/2010-CE dated 06.02.2010. For better appreciation, the relevant conditions 5(d), 5(e) and 5(f) of the Notification are reproduced below:*

"(d) the manufacturer shall submit a statement of the total duty payable as well as the duty paid by utilization of CENVAT credit or otherwise and the credit taken as per clause (a), on each category of goods manufactured and cleared under the notification and specified in the said Table, to the Assistant commissioner of Central Excise or Deputy Commissioner of Central excise, as the case may be, by the 15th day of the month in which the credit has been so taken;

(e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate to the manufacturer by the 15th day of the next month to the month in which the statement under clause (d) has been submitted. In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the intimation, reverse the said excess credit from the account current

maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount.

(f) in case the manufacturer fails to comply with the provisions of clauses (a) to (e), he shall forfeit the option, to take credit of the amount calculated in the manner specified in paragraph 2 in his account current on his own, as provided for in clauses (a) to (c).”

8. As per the said Notification, Condition 5 (d) stipulates that the appellant is required to file a statement of the total duty payable as well as the duty paid by utilization of Cenvat credit or otherwise and the credit taken on or before 15th of the subsequent month. Admittedly, the appellant did not comply with the condition of the notification, therefore, we have to see whether the condition is an substantive or procedural lapse on the part of the appellant. We find that similar conditions have been enumerated in the Notification No.32/99-CE and Notification No.33/99-CE dated 8.7.1999 which are reproduced below:

2C. The exemption contained in this notification shall be given effect to in the following manner. namely:-

(a) The manufacturer shall submit a statement of the duty paid by utilization of Cenvat credit, on each category of goods specified in the said Table and cleared under this notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be,

by the 7th of the next month in which the duty has been paid..

Notification No. 33/99-CE dated 8.7.1999:

2C. The exemption contained in this notification shall be given effect to in the following manner, namely:-

(a) The manufacturer shall submit a statement of the total duty paid by utilisation of CENVAT credit, on each category of goods specified in the Table and cleared under this notification, to the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid.

9. As the conditions 2C of the Notification No.32/99-CE and Notification No.33/99-CE dated 8.7.1999 are similar with condition 5(d) of Notification No.01/2010-CE. This Tribunal has examined the Notification No.32/99-CE and Notification No.33/99-CE dated 8.7.1999 in the case of Vinay Cement Limited (supra) and observed as under:-

3. The dispute in the present case is as regards the availability of Notification No. 33/99 dated 8-7-99 to the respondents. The Revenue s contention is that inasmuch as the respondents have not fulfilled the condition no. 2(a) of the Notification in question, which requires them to submit a statement of the duty paid from account current to the Asst. Commissioner or Deputy Commissioner, Central Excise, by the 7th of the next month in which the duty has been paid from account current, the benefit cannot be extended to them. The Commissioner

(Appeals) has observed in her impugned order that all the other conditions as regards the eligibility of the respondents to claim the benefit of Notification are fulfilled and the said conditions as contained in 2(a) of the Notification being only procedural condition, the benefit of the Notification cannot be denied to the respondents.

4. After giving our careful consideration to the issue involved we find that there is no dispute as regards the eligibility of the respondents to the benefit of the Notification in question. The Revenue s only objection is that the statement showing payment of duty from the account current has been filed by the respondents to the proper officer by the 7th of the next month. It is well settled law that non-following of procedural requirement cannot deny the substantive benefit, otherwise available to the assessee. It is on record that the factum of payment of duty was being reflected by the appellants in RT-12 returns filed by them with the Department and as such in any case was before the Revenue. The only lapse on the part of the assesee is that the separate statement of such duty paid was not made by them and separately submitted to the proper officer. In our view such lapse on their part is not sufficient to deny them the benefit otherwise available to the Notification Accordingly, merits are found in the Revenue s appeal. The same is rejected.

10. Further, in the case of K.K. Beverages Pvt.Ltd. (Supra), this Tribunal has observed as under:

3. On a careful reading of the notification and of the impugned order we find that para 2(a) of the said

notification is procedural for submission of statement. As rightly observed by the Commissioner (Appeals) that the Hon ble Supreme Court has held in the case of Mangalore Fertilisers & Chemicals Ltd. that a distinction has to be made between substantive mandatory policy consideration and those in the area of procedure. The notification required the assessee to submit statements of duties paid under PLA by 7th of the following month. Nothing more is required to be done by the assessee for claiming the benefit. RT-12 retums were submitted to the range superintendent and as such we hold that late filing of a separate statement by itself will not result in denial of the substantive benefit, otherwise available to the respondents. There is no allegation much less any finding that the respondents have not fulfilled the substantive conditions of the notification. We also take note of the Tribunal s Order No. A-246/KOL/2001, dt. 26-4-2001 (2002 (147) E.LT. 724 (Tribunal)) wherein the Revenue s appeal filed on the identical ground in respect of the same notification was rejected. Accordingly, we do not find any merits in all the three appeals of the Revenue and reject the same.

11. We also take note of the decision the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd. (supra), the Apex Court has observed as under:

..... Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception

is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction"

12. We also take note of the fact that in all the above case, similar issue was examined by the adjudicating authority in the case of M/s. Aroma Hightech Limited vide Order dated 7.2.2013 (supra) wherein it has been observed in as under:

3.1 During the CERA audit, vide para 1 of LAR No. 1823/2007 2008 dated: 04.01.2008, it was observed that as per Para 2C(d) of the said Notification the Noticee was required to submit a statement of the duty paid, other than by way of utilization o Cenvat Credit under the Cenvat Credit Rules, 2002, along with the refund amount by 7th day of the next month to the month under consideration.

3.3. Since the Noticee has failed to submit the statement, as required under Para 2C(d) of the Notification, within the stipulated time limit, therefore, the credit of the duty of 2,32,12,642/- taken/utilized by the Noticee appeared to be irregular.

3.4 As the objection was not admitted by the department, the Para No.1 of the Local Audit Report No. 1823/2007 2008 dated: 04.01.2008 was converted into Statement of Facts No.80/2007-2008 dated 17.03.2008 and later on as Draft Para No.33/2007-2008 dated 06.11.2008 and finally as

Draft Audit Para No. 290/2007-2008 dated 18.09.2008

4. Section Officer (PAC) vide letter F.No.232/290/2007-2008 Cx-VII dated 17.03.2009 forwarded the Ministry s comments on Draft Audit Para No.290/2007-2008 dated: 18.09.2009, which are reproduced below for ready reference:

"The objection is not admitted.

2. It is reported that there was only delay in submission of documents relating to payment of duty through PLA. There is no non-payment or delay in payment of duty. When the substantive condition of the exemption Notification No.39/2001-CE dated: 7.7.2001 has been fulfilled, the benefit of exemption cannot be denied merely for procedural delay of a technical nature. Hon'ble Supreme Court in its decision in the case of Mangalore Chemicals & Fertilizers Ltd. Vs. DC (1991 (55) ELT 437 (SC)] has enunciated that while granting the exemption, the distinction is required to be made between a procedural condition of a technical nature and a substantive condition and has held that non-observance of procedural condition of technical nature is condonable Similarly, the CESTSAT in its decision in the case of:

(1) CCE, Shillong Vs. K.K. Beverages Pvt.Ltd. (2002 (148) ELT 567 (T-Kol))

(ii) CCE, Shillong Vs. Vinay Cement Ltd. (2002 (147) ELT 724 (T))

3. In view of the above, the objection may be dropped

Approved by Special Secretary to Govt. of India

(F.No.232/290/2008-CX.7)"

5. Since the objection was being contested by the department, the present show cause notice, of protective nature, was issued on 10.03.2010, wherein it was proposed to recover the wrongly availed credit of duty amounting to 2,32,12,642/- in terms of provisions of Para 2C (g) of the said Notification. It was also proposed to impose penalty under Rule 27 of Central Excise Rules, 2002.

6. The Draft Audit Report No.290/2007-2008 was included as Audit Para No.3.1 of the Report of the Comptroller and Auditor General of India for the year ended March, 2007. In its Action taken the Ministry of vide its letter F.No. 232/290/2008-CX.7 dated 27.10.2009 reiterated its comments earlier.

7. Finally, Sr.Adm. Officer (PAC), Office of the C&AG of India, New Delhi vide his letter No. 180H/PAG/Ind. Tax/CEX/PAC/258-2008 dated 29.02.2012 informed the Ministry that the Ministry s ATN on Audit Para No.3.1 of the Report of the Comptroller and Auditor General of india for the year ended March, 2007 has been vetted with no comments. The copy of the said comments was forwarded by Assistant Commissioner (PAC) vide his letter F.No.232/290/2008-CX.7 dated 12.03.2012

13. As the said issue has been examined by several authorities including the Apex Court wherein it has been held that condition 5(d) of Notification No.01/2010-CE dated 6.2.2010 is similar to other notifications which are in the manner of procedure to be followed by the appellant wherein the appellant is required to file certain documents before a particular date. If such documents are filed with a delay, in that circumstance, it is only a procedural lapse on the part of the appellant, the benefit of notification cannot be to the appellant.

14. In view of above observations, we hold that condition 5 (d) of Notification No.01/2010-CE dated 6.2.2010 is procedural in nature and for complying with the said condition with a delay cannot be fatal to the appellant. In that circumstance, the self credit taken by the appellant cannot be denied. Therefore, we do not find any merit in the impugned orders and the same are set aside.

15. In the result, the appeals are allowed with consequential relief."

7. As in similar set of facts in the case of Saraswati Agro Chemicals India Ltd. (Supra) this Tribunal has granted the benefit of exemption notification condition 2(D) of the Notification. Following the same we hold that the condition 2(d) of Notification in question is only a procedural lapse and for that substantial benefit cannot be denied to the Respondent as held by this Tribunal in the case of Lux Industries Limited v. commissioner of Central Excise, Kolkata[2024(9) TMI 238-CESTAT, Kolkata].

8. In view of this we do not find any merit in the appeal filed by the Revenue. Same is dismissed. Cross Objection are also disposed off in the above terms.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RG