IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75672 of 2024

(Arising out of Order-in-Appeal No.82/GHY(A)/COM/CEX/DIB/2024 dated 12.02.2024 passed by Commissioner of Central Goods and Service Tax & Central Excise, Guwahati)

M/s. Hindustan Unilever Ltd. **: Appellant**
Personal Product Factory, Unit-I, P.O.-Doomdooma, Dist.-Tinsukia, Assam-786 151

VERSUS

Commissioner of Central Goods & Service Tax & Central Excise, Guwahati **: Respondent**
Guwahati Commissionerate, Housefed Complex, Dispur-Beltola Road, Dispur, Guwahati-781 006.

With

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APPEARANCE:

Shri MH Oatil, Shri Viraj Reshomurula, Advocates & Shri Krupa Shah, Consultant, for the Appellant

Shri Mihir Bondhopadhyay, Spl. Counsel for the Respondent

CORAM:

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

FINAL ORDER NO. 75141-75143/ 2026

DATE OF HEARING :21.01.2026

Order : [Per Shri Ashok Jindal]

The appellant has filed these 3 appeals which are having a common issue therefore, all are disposed of by a common order.

2. The facts of the case are as under:

2.1 The Appellants are engaged inter-alia in manufacture of Oral Preparations, Cosmetics, Hair Care & Skin Care Preparations, falling under Chapters 33 & 27, in their factories located at Doomdooma Estate, Dist. Tinsukia, Assam, known as Unit-I, Unit-II and Unit-III.

(1) On 20th November 1997, the Central Government announced an Industrial Policy, inviting entrepreneurs to set up new industrial Units in North-Eastern States and promised that such Units would be exempt from payment of central excise duty and income tax for a period of 10 years from the date of commencement of their commercial production. The Ministry of Industry notified the Industrial Policy on 24th December 1997.

(ii) In order to aid industrial growth in various non-developed areas of the country, including north-eastern States, Central Govt. issued Notifications granting exemption from payment of central excise duty on the goods manufactured in such areas.

(iii) Accordingly, inter-alia Notification No.32/1999-CE dated 08.07.1999 was issued granting exemption from duty of excise or additional duty of excise equivalent to the amount paid from PLA, by way of refund of such duty paid from PLA, after exhausting the Cenvat credit balance.

2.2 Similar Notifications No.56/2002-CE and 57/2002 both dated 14.11.2002 for Jammu & Kashmir, No.56/2003-CE dated 10.06.2003 and No.71/2003-CE dated 09.09.2003 for Sikkim, etc. were issued.

2.3 The said basic Notification No.32/99-CE Ibid was amended by Notification No.17/2008-CE dated 27.03.2008 and Notification No. 31/2008-CE dated 10.06.2008 providing for fixation of special rate, if the manufacturer finds that actual value addition of the goods is more than 115% of the percentage prescribed in the Notification; for which an application to the Commissioner was to be made, not later than 30th September of the respective financial years.

2.4 Succeeding Notn. No.20/2007-CE dated 25.04.2007 was issued operative for the period 01.04.2007 providing exemption alike Notification No.32/99-CE dated 08.07.1999. This Notification was also amended by Notn.No.20/2008-CE dated 27.03.2008 and No.38/2008-CE dated 10.06.2008, providing for fixation of special rate, if the manufacturer finds that actual value addition of the goods is more than 115% of the percentage prescribed in the Notification, alike in Notn.No.32/99-CE.

2.5 The said Notifications (No.32/99-CE and 20/07 ibid), as amended w.e.f 01.04.2008, had prescribed the formula to arrive at actual value addition, based on financial records of the preceding financial year.

2.6 The said amending Notifications were challenged by the Trade before jurisdictional High Courts and judgments of High Courts became subject matter of challenge before Hon'ble Supreme Court, which culminated in judgment and Order dated 22.04.2020 in the case of VVF, reported in 2020 SCC Online SC 378 [2020 (372) ELT 495 (SC)].

2.7 Hon'ble Supreme Court upheld the amendments and held that actual value addition in accordance with the amending Notifications can be claimed by the assessee-manufacturers. In a nutshell, amending Notifications were held intra virus and claim of actual value addition allowed in the amending Notifications was not disturbed.

2.8 Since the actual value addition to the sales value was more than 115% of the prescribed percentage of 56% (i.e. 64.4%), the Appellants made separate applications for fixation of special rates for Units No. 1, 2 & 3 for each of the Financial Years from 2008-09 to 2016-17, supported by requisite documents, including certificates from their Statutory Auditors.

2.9 Such 20 applications, filed by the Appellants for fixation of special rate, under Para 2.1 of Notn No.32/99 and Para 2D(1) of Notn. No.20/2007, for the financial years 2008-09 to 2016-17, were rejected by the Ld. Commissioner, vide twenty separate Orders-In-Original, based on various findings/observations contained therein. Each of the said Orders-in-Original passed by the jurisdictional Commissioner was challenged before Hon'ble CESTAT-Kolkata, by filing 20 separate appeals.

2.10 When the aforesaid twenty appeals, against the aforesaid 20 Orders-in-Original rejecting the fixation of special rates of value addition, were pending, three separate Demand Cum Show Cause Notices, all dated 21.10.2020, were issued by Asst. Commissioner, to each of the three Units alleging that they have taken excess refund/availed excess self-credit than eligible amount, as per the table annexed to Para 2A of Notification No.20/2008-CE dated 27.03.2008, amounting to Rs.90,89,24,885/-, Rs.41,44,68,615/- and Rs.27,02,00,832/-, during the period April, 2008 то June, 2017; April, 2008 to June, 2017 and March, 2013 to June, 2017, respectively, in contravention of the Hon'ble Apex Court judgment dated 22.04.2020 r/w the Hon'ble Gauhati High Court judgments dated 24.06.2020 and 07.03.2018, which was recoverable from the Appellants in terms of clause (e) r/w clause (g) of Para (X) of Notification No.32/1999-CE ibid, as amended, and Notification No. 20/2007-CE dated 25.04.2007, as amended r/w Section 11A(1) of the CEA, 1944, along with the applicable interest, as stipulated in the CEA, 1944 and Rules made thereunder.

2.11 The Appellants, by their common reply dated 28.12.2021 to aforesaid three SCNs, resisted the charges in the said SCNs based on various grounds and prayed for keeping the SCNs in abeyance, as their appeals against rejection of applications for fixation of special rates for the period 2008-09 to 2016-17 were pending before Hon'ble Tribunal, as the decision of the Tribunal would have a direct bearing on said demands.

2.12 Disregarding the aforesaid submissions, Ld. Assistant Commissioner confirmed the demand covered in the said three SCNs, by passing three separate Orders-in-Original, Unit-wise.

2.13 The Appellants challenged said Orders-In-Original, by filing three Writ Petitions [W.P(C)No.1401/2023, W.P(C)No. 1406/2023, W.P(C)No. 1408/2023] on 03.03.2023. Hon'ble Gauhati High Court, vide Order dated 15.03.2023 tagged said three Writs with earlier Writ Petition WP(C)/1261/2021.

2.14 The Appellants also simultaneously filed three separate appeals before the Ld. Commissioner (Appeals), against each of the said three Orders-in-Original, with appropriate pre-deposit of 7.5% of the demand confirmed therein.

An averment of challenging the said Orders, simultaneously before Hon'ble Gauhati High Court and also before Commissioner (Appeals), was made in the Writs as well as in the Appeals.

2.15 In their appeals before Commissioner (Appeals), the Appellants, in the grounds, referred to and relied upon the grounds in the Petition filed by Appellants before Hon'ble Gauhati High Court.

2.16 Thereafter, twenty appeals filed by the Appellants before CESTAT-Kolkata, against rejection of their applications for fixation of special rate, for the financial years 2008-09 to 2016-17, were heard on 23.08.2023. The Hon'ble Tribunal, vide Final

Order No.76741-76760/2023 dated 22.09.2023, set aside the Orders-in-Original impugned in those twenty appeals and allowed the appeals, holding that value addition, as claimed by the Appellants, was correct.

2.17 In view of the above, the Appellants approached the Hon'ble Gauhati High Court to withdraw the Writ Petitions No. W.P(C)No.1261/2021, W.P(C)No. 1401/2023, W.P(C)No.1406/2023 & W.P(C)No.1408/2023 filed by them and the Hon'ble High Court, vide Order dated 07.12.2023, was pleased to dispose those Writ Petitions, as withdrawn.

2.18 In the meantime, the Dept. has challenged the aforesaid Final Order dated 22.09.2023 passed by the Tribunal, before Hon'ble Gauhati High Court along with Interlocutory Application (I.A.) (Civil)658/2025 for condonation of delay in filing the appeal. The Hon'ble Gauhati High Court, vide Order dated 30.04.2025 (copy enclosed), has dismissed said I.A. as withdrawn.

2.19 The Commissioner (Appeals), by impugned common Order-in-Appeal No.82/GHY(A)/COM/CEX/DIB/2024 dated 12.02.2024, has rejected all the three appeals filed by the Appellants, holding that there are no merits in the appeals and there is no reason to differ with the findings of the Adjudicating Authority, based on the following findings:

i) that the demands in the present case do not appear to be on rejection of special rate fixation applications filed by the Appellants for which the Appellants have got a favourable order from CESTAT;

ii) that the demands in the present case are against the action of the Appellants of taking self-credit suo-motu, subsequent to the judgment of Gauhati High Court which was reversed once the final decision of Hon'ble Supreme Court was given;

iii)that the status of CESTAT Final Order No. 76741-76760/2023 dated 22.09.2023 is not known, i.e. as to whether the said judgment of Hon'ble CESTAT dated 22.09.2023 has been accepted by the Dept. or not;

iv) that the Appellants have not argued on merits as to why the demands are not correct and, hence, there are no merits in the appeals filed.

Hence these appeals.

3. The Ld. Counsel for the appellant submits that infact the appellant filed various application in view of the Notifications 17/2008 CE dated 27.03.2008 and Notification No. 31/2008 C.E. dated 10.06.2008 for special fixation of rates which were pending before this Tribunal and this Tribunal vide Final Order No. 76746 -76760/2023 dated 22.09.2023 allowed their appeals and directed the Adjudicated Authority to implement special rates as prayed by the appellant in their applications.

4. We further, take note on the fact that the said order was challenged by the Revenue before the Hon’ble Guwahati High Court but no stay has been obtained thereon.

5. In view of that it would be in the interest of justice to direct the Adjudicating Authority first to implement our order dated 22nd September, 2023 and thereafter to adjudicate the impugned Show Cause Notices issued to the appellant. In view of this, we set aside the impugned orders and remand matter back to the Adjudicating Authority to implement our order dated 22nd September, 2023 within 60 days from today and thereafter to adjudicate the impugned Show Cause Notices within one month thereof. With these terms appeal is disposed of by way of remand.

6. At this stage the Ld.Counsel for the appellant submits that they are entitled to take Cenvat Credit as per the order of the Hon’ble Guwahati High court on various dates. For better appreciation of the facts the list of dates and events are extracted here below:

Dates	Events
19.02.2016 (p/177 & 178)	AC by two separate letters both dated 19.02.2016 claimed that HUL's taking of self-credit [Rs. 24,98,00,940 - Unit-I + 10,76,42,993 - Unit-II = Rs.35,74,43,933/-] was in excess under Notification No. 20/2007-CE dated 25.04.2007 [Clause 4(4)(e)]
24.02.2016 (p/179 & 180)	HUL, by two separate letters both dated 24.02.2016, informed ACCE that their appeal by Division Bench of Gauhati High Court was allowed which was not stayed while their claiming of credit. Further, HUL was not a party before Supreme Court in contempt Petition.
06.07.2016 AC's Order directed to pay	AC passed two Orders both dated 06.07.2016 refraining to allow the credit taken by HUL and ordered to reverse the said excess credit [Rs. 24,98,00,940 - Unit-I + 10,76,42,993 - Unit-II = Rs.35,74,43,933/-].
WP/5379/2016	HUL filed Writ against both the Orders dated 06.07.2016 before GHC
08.09.2016 (p/183)	High Court through Interim Order Stayed recovery of Rs. 24,98,00,940/- & Rs. 10,76,42,993/- directed to be paid vide orders dated 06.07.2016.
07.03.2018 (p/82 of Compilation-B)	GHC - vide Order dated 07.03.2018 set aside both demand notices dated 06.07.2016 [HUL's WP 5379/2016]
26.02.2019 (p/84 of Compilation-B)	In spite of the above, AC directed HUL to reverse the excess credit taken.
27.03.2019 (p/188 of Appeal)	HUL's letter to AC requesting to withdraw letter dated 26.02.2019.
02.04.2019 (p/85 of Compilation-B)	AC's letter directing again to reverse the credit taken in excess of GHC's Order dated 07.03.2018.
18.04.2019 (p/195 of Appeal)	HUL informed AC that GHC's judgment dated 20.11.2014 holds the field. Credit taken during the period 20.11.2014 to 07.12.2015 prior to SC's Stay Order.

02.05.2019 (p/86 of Compilation-B)	Despite the above, AC directed again to reverse the excess credit taken.
WP/3162/2019	HUL filed WP against demand letters dated 26.02.2019, 02.04.2019 and 02.05.2019 - While arguing the Writs, Dept. produced VVF's judgment dated 22.04.2020
22.04.2020 SC-3/M (p/20 of Compilation-A)	Full Bench Judgement of Hon'ble Supreme Court in the case of VVF Limited & Another [2020 (372) ELT 495 (SC)] See paras 15 & 16
24.06.2020 HUL-Gauhati (p/101 of Compilation-B)	Hon'ble Gauhati High Court Judgment disposing of HUL's WP(C)3162/2019, directing to decide in the light of SC judgment dated 22.04.2020. - Para 20 - Orders dated 26.02.2019, 02.04.2019 and 02.05.2019 stand suspended and not to be acted upon by Dept. till revisited in the light of VVF's judgment dated 22.04.2020.

7. We hold that in terms of the order of Hon'ble Guwahati High Court wherein the demand raised by denying self credit to the appellant was set aside by the Hon'ble Guwahati High Court. Therefore, the said issue is no more res-integra. Therefore, appellant is entitled to take self-credit in terms of the order of the Hon'ble High Court of Guwahati.

8. In view of this, the impugned orders are set aside and remanded to the Adjudicating Authority to pass the fresh order as detailed in para 5 herein above.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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