CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 86115 of 2020

(Arising out of Order-in-Appeal No. AJV/109/RGD APP/2020-21 dated 26.08.2020 passed by the Commissioner of Central Tax (Appeals), Raigad)

Roha Dyechem Pvt. Ltd. **Appellant**
Plot No.42, MIDC Industrial Estate,
At Dhatav, Post Roha,
Tal. Roha, Dist. Raigad 402 116

Vs.

Commissioner of CGST & CE, Raigad **Respondent**
4th Floor, Kendriya Utpad Shulk Bhavan,
Plot No.01, Sector 17, Khandeshwar,
Raigad 410 206

WITH

Excise Appeal No. 86116 of 2020

(Arising out of Order-in-Appeal No. AJV/108/RGD APP/2020-21 dated 26.08.2020 passed by the Commissioner of Central Tax (Appeals), Raigad)

Roha Dyechem Pvt. Ltd. **Appellant**
Plot No.42, MIDC Industrial Estate,
At Dhatav, Post Roha,
Tal. Roha, Dist. Raigad 402 116

Vs.

Commissioner of CGST & CE, Raigad **Respondent**
4th Floor, Kendriya Utpad Shulk Bhavan,
Plot No.01, Sector 17, Khandeshwar,
Raigad 410 206

AND

Excise Appeal No. 87238 of 2021

(Arising out of Order-in-Appeal No. NA/109/RGD APP/2021-22 dated 08.07.2021 passed by the Commissioner of Central Tax (Appeals), Raigad)

Roha Dyechem Pvt. Ltd. **Appellant**
Plot No.42, MIDC Industrial Estate,
At Dhatav, Post Roha,
Tal. Roha, Dist. Raigad 402 116

Vs.

Commissioner of CGST & CE, Raigad **Respondent**
4th Floor, Kendriya Utpad Shulk Bhavan,
Plot No.01, Sector 17, Khandeshwar,
Raigad 410 206

<u>Appearance:</u>

Shri Vinay Sejpal, Advocate, for Appellant
Shri Xavier P. Mascarenhas, Superintendent, Authorised Representative for the Respondent

<u>CORAM:</u>

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 16.04.2025
Date of Decision: 14.05.2025

FINAL ORDER No. 85800-85802/2025

Above stated three appeals are taken together for decision since the issue involved in all of them is the same and the appellant is also the same.

2. Brief facts of the case are that the appellant is manufacturer and registered for payment of central excise duty. Appellant had imported inputs under advance authorization for manufacture of excisable final products. Appellant could not fulfil their export obligation and for the purpose of closing the advance licence they were required to pay customs duties which included additional duty of customs which is popularly known as CVD. They were also required to pay special additional duty called SAD. They were eligible to take cenvat credit of CVD and SAD paid had the same been paid before 01.07.2017. However, in respect of appeal No. E/86115/2020 appellant paid CVD and SAD during the period from May 2018 to July 2019. Appellant paid the said duties in respect of appeal No. E/86116/2020 during the month of April 2019. In the case of appeal No. E/87238/2021 appellant paid the said duties during the period from December 2019 to March 2020. With effect from 01.07.2017, CGST Act was introduced and there was no provision for availment of cenvat credit of CVD and SAD paid after 01.07.2017. Since the appellant was eligible for availment of the benefit of credit of the said duties, appellant preferred to seek refund of the said duties paid which were otherwise eligible for availment of cenvat credit had the said duties been paid before 01.07.2017. Therefore, the appellant filed application for refund of Rs.12,84,696/- on 07.10.2019, of Rs.6,28,923/- on 14.11.2019 and of Rs.2,25,780/- on

19.10.2020. These three refund applications are dealt with in three appeals being decided. Application dated 07.10.2019 was rejected through order-in-original dated 24.01.2020 and application dated 14.11.2019 was rejected through order-in-original dated 06.02.2020. In respect of the said two applications, before rejecting the refund application, no show cause notice was issued to the appellant. In respect of refund application dated 19.10.2020, show cause notice dated 31.12.2020 was issued to the appellant proposing rejection of the said claim of refund. The said show cause notice was adjudicated through order-in-original dated 29.01.2021. Appellant preferred appeals before Commissioner (Appeals) against the aforestated three orders-in-original. The said appeals were decided through impugned orders-in-appeal dated 26.08.2020, 26.08.2020 and 08.07.2021. Aggrieved by the said orders, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. He has submitted that the appellant was eligible for seeking refund of the said duties paid which were otherwise eligible for availment of cenvat credit had the same been paid before 01.07.2017 and in accordance with the provisions of sub-section (3) of Section 142 of CGST Act, 2017, the same were eligible to be refunded in cash subject to the provisions of sub-section (2) of Section 11B of Central Excise Act, 1944. He has submitted that in respect of both the orders-in-appeal dated 26.08.2020, the original authority has not issued show cause notice before passing the orders-in-original rejecting the claims of refund. In respect of order-in-appeal dated 08.07.2021 learned Commissioner (Appeals) has upheld order-in-original dated 29.01.2021 though order-in-original dated 29.01.2021 was not sustainable in law since the original authority has held that the appellant was not eligible for cenvat credit since the appellant had not fulfilled export obligation and since the appellant had failed to comply with the provisions, the refund was not admissible to the appellant. He has further submitted that due to change in regime from earlier Central Excise Act and Finance Act to CGST Act, the appellant was not able to take cenvat credit and when CGST Act was enacted, miscellaneous transition provisions were made under Section 142 of CGST Act, 2017. He

has submitted that sub-section (3) of Section 142 of CGST Act has provided that the claim of refund of cenvat credit paid under the existing law is to be dealt with in accordance with the existing law and any amount accruing to the assessee is to be paid in cash subject to the provision of sub-section (2) of Section 11B of Central Excise Act, 1944. He has further submitted that sub-section (2) of Section 11B of Central Excise Act, 1944 provides for provision of unjust enrichment.

4. Heard the learned AR. Learned AR has submitted that the appellant has not satisfied the conditions stipulated under Clause (a) to (f) of proviso to sub-section (2) of Section 11B of Central Excise Act, 1944 and, therefore, the appellant is not eligible for refund.

5. I have carefully gone through the record of the case and submissions made. I note that the appellant was eligible to take cenvat credit of CVD and SAD paid by them. However, since the payments were made after 01.07.2017, they were not able to take cenvat credit of the same. I find that the transitional provisions under Section 142 of CGST Act, 2017 have made provisions for such contingencies. Sub-section (3) of Section 142 *ibid* provides for cash refund of such cenvat credit subject to the provisions of sub-section (2) of Section 11B of Central Excise Act, 1944. On going through the provisions of sub-section (2), it is clear that the said sub-section (2) deals with unjust enrichment. It provides that if the incidence of tax has been borne by the appellant, then the appellant is eligible for refund and if the incidence of such tax is passed on by the appellant to any other person, then such amount shall be credited to Consumer Welfare Fund. In the present case the appellant has paid CVD and SAD and, therefore, the incidence is not passed on to anybody and, therefore, they are fulfilling the requirement of the provisions of sub-section (2) of Section 11B of Central Excise Act, 1944. I, therefore, hold that the appellant is eligible for cash refund of Rs.12,84,696/-, Rs.6,28,923/- and Rs.2,25,780/-.

6. In view of my above finding, I set aside the impugned orders and allow all the three appeals.

(Pronounced in the court on 14.05.2025)

(Anil G. Shakkarwar)
Member (Technical)

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