CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH, COURT NO.3

Excise Appeal No.86115 of 2022

(Arising out of Order-in-Appeal No.GOA-EXCUS-000-APP-039(VNT)-2021-22 dated 27.10.2021 passed by Commissioner (Appeals) CGST & Customs, Goa)

M/s Medispray Laboratories Pvt. Ltd., ...Appellant
(344/345, Kundaim Industrial Estate,
Kundaim, Goa-403115)

VERSUS

Commissioner of Central GST, Goa ....Respondent
(GST Bhavan, EDC Complex, Plot No.6,
Patto, Panaji, Goa-403001)

APPEARANCE:

Shri Rajesh Ostwal, Advocate with Shri Neeraj Bajaj, Advocate for the Appellant
Shri Dinesh Nanal, Dy. Commissioner Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.86238/2025

DATE OF HEARING : 15.04.2025
DATE OF PRONOUNCEMENT: 01.08.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.GOA-EXCUS-000-APP-039(VNT)-2021-22 dated 27.10.2021 passed by Commissioner (Appeals) CGST & Customs, Goa.

2. The facts of the case in brief are that the Appellant is *inter alia,* engaged in manufacture of bulk drugs and pharmaceutical products classifiable under Chapter 30 of Central Excise Tariff Act, 1975[1] on loan basis for M/s Cipla Ltd[2]. During the pre-GST regime, the principal manufacturer had applied for and obtained various Advance Authorizations for import of inputs without payment of customs duty for further use in manufacture of

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[1] CETA, 1975
[2] Principal Manufacturer

exported goods. The Appellant had been declared as supporting manufacturer in the said advance licenses. In terms of the Advance Authorization scheme, the Appellant was required to fulfill export obligation. At the time of redemption of some of the Advance Authorizations, it was observed that there was a shortfall in the fulfillment of export obligations. Accordingly, the Principal manufacturer paid the amount of customs duty (including CVD) forgone on the quantities of duty-free imported raw material proportionate to the shortfall in the fulfillment of export obligation. Thus, the Principal manufacturer discharged CVD amounting to Rs.18,10,749/-. The Appellant also produced certificate from principal manufacturer stating that they have no objection if the Appellant avail credit of said CVD. Under the erstwhile regime i.e., prior to 01.07.2017, the Appellant was entitled to avail Cenvat credit of CVD paid for regularization of unutilized duty-free inputs imported against the Advance Authorization in terms of Rule 3 read with Rule 9 of the Cenvat Credit Rules[3]. However, post implementation of GST (w.e.f. 01.07.2017), there is no specific provision for availing credit of CVD paid post 01.07.2017. In view of transitional provision i.e., Section 140(1) of the Central Goods and Services Tax Act, 2017[4], closing balance of Cenvat credit disclosed in ER-1 return as on 30.06.2017 was allowed to be transitioned into GST. However, there is no specific provisions for transfer of credit of CVD paid subsequent to introduction of GST in respect of goods imported prior to 01.07.2017. Accordingly, the Appellant filed refund claim of Rs.18,10,749/- in respect of CVD paid by principal manufacturer for regularization of imports after introduction of GST regime, in terms of Section 142(3) of CGST Act which provides for refund in cash. The Department vide SCN dated 26.06.2020 sought to deny refund claim to the Appellant. It was alleged that the assessee was not eligible to claim refund under the provisions of Section 142(3) of CGST Act, 2017. The Appellant is not eligible to claim credit under Rule (9)(1)(b) of

[3] CCR
[4] CGST Act

CCR, 2004 as the duty was discharged after the demand by DGFT, which shows the fraud or collusion on part of principle manufacturer. Further, Section 11B of Central Excise Act, 1944[5] does not cover a situation where the refund of credit is lying unutilized due to non-export of goods. Further, as per CBEC Circular No.40/2013 - Customs dated 09.10.2013, there is no scope of refund in case of default in export obligation, therefore this case is liable for rejection. Vide Order-in-Original dated 31.07.2020, the Deputy Commissioner rejected entire refund claim of Rs.18,10,749/-. Vide Order-in-Appeal dated 27.10.2021, the Commissioner (Appeals) upheld the Order-in-Original and rejected the Appeal filed. The Commissioner (Appeals) further held that the Appellant is entitled for Cenvat credit of CVD as per Rule 3(1)(vii) & 3(1)(viia) of CCR, 2004. Hence, the present appeal before the Tribunal.

3. Learned Advocate appearing on behalf of the Appellant submits that as per Section 142(3) of CGST Act, 2017, the refund of duty paid on or after the transition date shall be disposed of in accordance with existing law. Relevant portion is reproduced as under:-

> *"(3) Every claim of refund filed by any person before, on or after the appointed day, for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of Section 11B of the Central Excise Act, 1944."*

In terms of the aforesaid provision, a refund claim of any amount of Cenvat credit paid under the 'existing law' must be disposed of as per the 'existing law' and any amount accruing to the assessee thereof must be refunded in cash. On perusal of Section 2(48) of the CGST Act, which defines existing law, it is

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[5] CEA, 1944

clear that CCR and CEA falls within the scope of 'existing law'. Learned Advocate further submitted that in terms of the explanation to Section 142 of the CGST Act, the expression 'Central Value Added Tax (CENVAT) Credit' has the same meaning as assigned to it under the CEA or the rules made thereunder. Therefore, CVD discharged by the Appellant partakes the nature of 'Cenvat credit' even for the purpose of Section 142(3) and any claim of refund of such Cenvat credit shall be disposed in accordance with provisions of existing law. Learned Advocate further submitted that the Appellant is entitled to take Cenvat credit on the CVD paid. Hence, the amount of Cenvat credit that accrues to the Appellant in terms of the 'existing law' is entitled to be refunded in cash. It is evident that the only bar for granting a refund in cash under Section 142(3) of the CGST Act is Section 11B(2) of CEA. In the present facts, it is undisputed that the CVD discharged has been borne solely by the Appellant and the incidence of such duty has not been passed on to any other person. Hence, the restriction of Section 11B(2) is not applicable in this case. He further submitted that the Appellant is entitled for refund of CVD paid by the Appellant, for regularization of imports made in the pre-GST regime, in terms of Section 142(3) of the CGST Act.

4. The learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

5. Heard both the sides and perused the appeal records.

6. I find that the learned Commissioner (Appeals) in the impugned order held that Section 11B does not provide for refund of CVD. Further, Section 11B does not provide for refund of Cenvat credit other than refund under Rule 5, 5A and 5B of CCR, 2004. Since the refund is not pertaining to Rule 5, 5A and 5B, hence the refund is not eligible. The Commissioner (Appeals) further held that none of the sub-clauses of Section 11B(2) of CEA, 1944, covers the refund of CVD. I find that Section 142(3) of CGST Act, 2017 is a non-obstante clause and therefore overrides all the provisions of central excise except for Section

11B(2) of CEA, 1944. Section 11(B)(2) of CEA, 1944 deals with cases related to unjust enrichment and the same is not subject matter of dispute. Therefore, the Commissioner (Appeals) has erred in understanding Section 142(3) of CGST Act, 2017 by holding that the refund claim is not filed under Rule 5, 5A and 5B is wrong and not complied with Section 11B is incorrect. Even if the entire Section 11B of CEA, 1944 is applicable, then also the Appellant has duly complied with Section 11B. As per Section 11B(2), where the case of the assessee is covered by any of the clause given in proviso to Section 11B(2), the refund is required to be granted to the said applicant. I find that Clause (c) to Section 11B(2) provides where the refund is of duty paid on goods used as input and the refund is granted in accordance with CCR, 2004. Clause (d) to Section 11B(2) provides where the duty is paid by the manufacturer and incidence is not passed on to another person. Duty is required to be given to the said manufacturer. Thus, the instant case is squarely covered under clause (c) and (d) and bar of unjust enrichment is not applicable to the present case. Further, I find that the Appellant had also submitted CA certificate to certify that the burden of duty has not been passed on. I find that as per the decision of Eicher Motors Vs. CCE-1999 (106) E.L.T. 3 (SC), it was held that the Cenvat credit is nothing but an advance tax paid till the adjustment of the same in future liability. The instant case is squarely covered under clause (d) and therefore, reference to Rule 5, 5A and 5B of CCR, as per clause (c) is unwarranted. I find that the disputed refund application is filed by the Appellant under Section 142(3) of CGST Act, 2017 and not under Section 11B of CEA, 1944. Section 142(3) of CGST Act, 2017 only provides for applicability of Section 11B(2) only for the portion of 'unjust enrichment'. The following judgements are directly applicable to the present case consistently holding that assessee is eligible for refund of credit of CVD paid after 01.07.2017 for regularization of import under the provisions of Section 142(3) of the CGST Act:-

- Granules India Ltd. vs. CCE 2024 (2) TMI 1375-(T) affirmed by the Hon'ble High Court reported at CC vs. Granules India Ltd. 2024 (12) TMI 725-Telangana High Court.
- Final Order No.86170-86180/2024 dated 10.09.2024 in the case of Cipla Ltd.

7. The Hon'ble jurisdictional High Court in the case of Combitic Global Caplet Pvt. Ltd./Cipla Ltd. vs. CCE & CE 2004 (6) TMI 498-Bombay High Court has held as under:-

> *"11. In our view, Section 142(3) of the Act is very clear in as much as, it says "every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law and any amount eventually accruing………..shall be paid in cash ………." It is very widely worded in as much as it uses the expression "CENVAT credit" and also "any other amount paid". Even if, we take it that petitioner has made voluntary deposit, that amount has to be shown as CENVAT credit in the account of petitioner. In the alternative, it would certainly come under the category "or any other amount paid". Therefore, either way the amount paid by petitioner, admittedly, has to be refunded. In fact, it is also admitted that an amount of Rs.10,48,11,737/- is refundable to petitioner. The credit of refund is the only issue because Mr. Adik, as an officer of this court and in fairness, agreed that Government cannot retain any amount without any authority of law.*
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> *12. Sub-section (3) of Section 142 of the Act very clearly says "any amount eventually accruing shall be paid in cash." In the circumstances, we are of the opinion that respondents ought to have directed the sanctioning authority to refund the amount of duty refundable to petitioner in cash instead of credit in CENVAT account, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of*

sub-section (2) of section 11B of the Central Excise Act, 1944."

8. I find that similar view was also taken in the following decisions wherein it was held that when credit accrues to assessee and comes into account of assessed after the transition is over under Section 140(1), then in such a scenario, application of refund of such credit must be sanctioned in terms of Section 142(3) of the CGST Act. Vide:-

i) Ganges International Pvt. Ltd. Vs. Ast. CGST 2022 (3) TMI 544-MADRAS HIGH COURT.
ii) OSI Systems Pvt. Ltd. Vs. CCE 2022 (9) TM1 801 - (T).
iii) Circor Flow Technologies India Pvt. Ltd. Vs. CGST & CE 2021 (12) TMI 675-(T).
iv) Jagannath Polymers Pvt. Ltd. Vs. CCGST 2021 (12) TMI 736-(T).
v) Final Order No. A/85080-85081/2023 dated 30.01.2023 passed by CESTAT, Mumbai in case of Maloo Infraspace.

9. I further find that Section 174(2) (c) of the CGST Act provides that repeal of the erstwhile enactments will not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts. Therefore, the savings clause under Section 174(2)(c) of the CGST Act which provides for saving of the rights accrued under the repealed law covers CCR as well. Since the CVD was discharged by the Appellant in relation to imports made prior to GST, the right of the Appellant to claim Cenvat credit in terms of Rule 3 of the CCR is saved by operation of Section 174(2) of the CGST Act. Further, when the levy/liability of CVD is saved, the right to claim credit on the payment of CVD would also get saved. Hence, although the payment of CVD was made when the existing law i.e., CCR was not in vogue, the right of the Appellant to claim credit on such payment is saved, just as the power of the Revenue to recover such amount is also saved. Therefore, the Appellant is entitled to claim credit and consequent refund of the said amount under Section 142(3) of the CGST Act. I find that the vested and

indefeasible right of credit of CVD which was accruing to the Appellant under the erstwhile regime cannot be taken away through the CGST Act on account of mere technicality or procedural grounds. In support of the above, reliance is placed on the decision of Adfert Technologies Pvt. Ltd. Vs. UOI-2019 (11) TMI 282 P&H High Court. Department's Special Leave Petition was dismissed by the Hon’ble Supreme Court in UOI Vs. Adfert Technologies Pvt. Ltd. - 2020 (3) TMI 188-S.C.

10. Further, I find that Section 142(6)(a) refers to every proceeding of appeal, review and reference relating to claim for Cenvat credit. In the present case as well, the Appellant have claimed Cenvat credit of differential CVD on the imported goods subsequent to non-fulfillment of export obligation. There cannot be any dispute on the admissibility of said credit as the Department is not disputing the admissibility credit of CVD paid on the very same goods prior to introduction to GST. Once the credit is found to be admissible, the amount of such credit is to be refunded in cash in terms of Section 142(6)(a). The finding of the Commissioner (Appeals) that Section 142(6) is not applicable as present case does not dispute eligibility of Cenvat credit. It is submitted that Section 142(6) deals with the situation relating to Cenvat credit. The present issue is with respect to Cenvat credit which cannot be carried forward as ITC in GST. Hence, the refund under Section 142(6)(a) of is eligible.

11. In the instant case, the Appellant is claiming the refund of Cenvat credit of CVD paid post implementation of GST. Section 11B(2)(c) of CEA, 1944 provides that the refund is required to be sanctioned if the refund involves the credit of duty paid on goods used as inputs. It is settled issue that Section 11B is not applicable on refund related to input credit. Reliance is placed on the following judgements:-

- CCE vs. Dura Syntax Ltd. 2003 (154) E.L.T. 422 (T).
- CCE vs. Kanpur Plastipack 2001 (127) E.L.T. 826 (T).

12. The Commissioner (Appeals) in the impugned order has given a finding that the judgement of Flexi Caps & Polymers Pvt.

Ltd. vs. CCGST – 2021 (9) TMI 917-(T) as relied by the Appellant is not applicable in the instant case, since the said judgment only allows cash refund under Section 142(8) of CGST Act and decision of Servo Packaging is in contrary with the said decision. In this regard, I find that the findings of the impugned order that the said decision only considered refund under Section 142(8) of CGST Act is factually incorrect. In Flexi Cap judgement, the Tribunal has also considered Section 142(3) of CGST Act and granted refund. Further, in case of Servo Packaging, the Tribunal has held that credit was not available, however in the instant case the Commissioner (Appeals) has allowed the credit and therefore ratio of Servo Packaging cannot be relied upon and decision of Flexi Cap is applicable. This shows the contrary view taken by the Commissioner (Appeals) in the impugned order.

13. In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on 01.08.2025)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS