IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 729 OF 2021

Combitic Global Caplet Pvt. Ltd.,)
earlier known as Unisule Pvt. Ltd.,a company)
incorporated under the Companies Act, 1956)
having its registered office at 2027/7,)
Chuna Mandi, Paharganj, New Delhi 110055)
and factory at M-15, D-2 & D-3,)
Industrial Area, Sonepat, Haryana-131001.) ..Petitioner

Versus

1 The Union of India through the Secretary,)
Ministry of Finance, Department of Revenue,)
128-A/North Block, New Delhi-110 001.)

2 Principal Commissioner RA and Ex-officio)
Additional Secretary to the Government of India)
8th Floor, World Trade Centre, Cuff Parade,)
Mumbai 400 005.)

3 The Commissioner of Central Tax, &)
Central Excise (Appeals), Raigad,)
5th Floor, CGO Complex, CBD Belapur,)
Navi Mumbai - 400 614.)

4 The Assistant Commissioner, Maritime Rebate,)
CGST & Central Excise, Belapur, 1st floor, CGO)
Complex, CBD Belapur, Navi Mumbai 400 614) ..Respondents

WITH
WRIT PETITION NO.1228 OF 2021

Mr Sriram Sridharan for Petitioner
Mr Karan Adik a/w Ms Maya Majumdar for Respondents in WP/729/2021
Ms Maya Majumdar for Respondents in WP/1228/2021

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 10th JUNE 2024

Meera Jadhav

ORAL JUDGMENT (PER K. R. SHRIRAM J.)

1 Since the pleadings are completed, we decided to dispose the petition at the admission stage itself. Therefore, Rule. Rule made returnable forthwith and heard.

2 Substantial prayers sought in the above petitions are prayer clauses (a) and (b), which read as under:

3 In both these petitions, the facts are identical and for convenience we adopt the facts in Writ Petition No.729 of 2021.

WRIT PETITION NO.729 OF 2021

> *"a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the impugned Order dated 7.9.2018 (Exhibit- A) passed by Respondent No. 2 and the impugned Order-in-Appeal dated 16.7.2020 (Exhibit- B) passed by Respondent No.3.*
>
> *b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers, subordinates, servants and agents to forthwith sanction, grant and pay to the Petitioner rebate of Rs.10,48,11,737/- with appropriate interest thereon under Section 11BB of the Central Excise Act, 1944."*

WRIT PETITION NO. 1228 OF 2021

> *"a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to*

the Petitioner's case and after going into the validity and legality thereof to quash and set aside the impugned Orders dated 25.7.2018 (Exhibit- A1), 26.7.2018 (Exhibit A2) and 3.8.2018 (Exhibit A3) passed by Respondent No. 2 and the impugned Order-in-Appeal dated 24.6.2020 (Exhibit- B) passed by Respondent No.3.

b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers, subordinates, servants and agents to forthwith sanction, grant and pay to the Petitioner rebate of Rs.21,92,162/- with appropriate interest thereon under Section 11BB of the Central Excise Act, 1944."

4 Petitioner by this petition is challenging an order dated 7th September 2018 passed by respondent no.2, i.e., Principal Commissioner of RA and Ex-officio Additional Secretary, directing the original authority to allow re-credit of excess duty paid by petitioner in its CENVAT credit account totally amounting to Rs.10,48,11,734/-. By these petitions, petitioner is also impugning an order dated 16th July 2020 passed by respondent no.3, i.e., the Commissioner of Central Tax & Central Excise (Appeals), upholding re-credit of rebate amount to CENVAT credit account as specified in the following table:

Sr. No.	Total rebate claims	Particulars of orders-in-Original (OIO)	Total amount of rebate claimed (Rs.)	Amount sanction (as per OIO) (Rs.)	Amount rejected (as per OIO) (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)
1	90	OIO No. 1981/11-12/DC (Rebate)/Raigad	3,56,46,104	71,05,078	2,85,41,026

		dated 31.1.2012			
2	81	OIO No. 2112/11-12/DC (Rebate)/Raigad dated 15.2.2012	2,55,05,401	97,35,858	1,57,69,543
3	141	OIO No. 1832/12-13/DC (Rebate)/Raigad dated 15.10.2012	5,37,82,461	1,74,27,997	3,63,54,464
4	96	OIO No. 2413/12-13/DC (Rebate)/Raigad dated 21.12.2012	3,50,95,693	1,09,48,992	2,41,46,701
		Total	15,00,29,659	4,52,17,925	10,48,11,737

5 Petitioner is engaged in the manufacture and export of medicaments falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act 1985. Admittedly, petitioner has in its CENVAT credit account an amount of Rs.10,48,11,734/-. Petitioner filed an application under Section 35EE of the Central Excise Act, 1944 before respondent no.2. Respondent no.2, by an order dated 5th October 2018 held as under:

> *"Government holds that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and has to be treated as voluntary deposit with the Government, which is required to be returned in the manner in which it was paid as the said amount cannot be retained by the Government. Government therefore, holds that the excess duty paid by the Company over and above the FOB value be allowed as re-credit in the Cenvat credit account from which it was paid/debited subject to compliance of the provisions of Section 12B of Central Excise Act, 1944. Government however, directs that the re-credit of the excess duty paid is to be allowed by the original authority in all the above cases subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944. and only after examining the aspect of unjust enrichment to satisfy himself that the duty incidence had not been passed on and realised by the Company from the overseas buyer."*

6 The matter was referred to respondent no.4, who by an order dated

22nd August 2019 held as under:

> *'The then adjudicating authority who conducted the personal hearing held on 15.01.2019 was transferred before adjudicating the case and in such scenario the directions stipulated under CBIC circular No.96/2017-CX.1 dated 19.01.2017 is required to be followed. In this circular at Serial No.16 it is mentioned that the successor in office should offer a fresh hearing to the noticee before deciding the case and issuing adjudication order. Accordingly, the claimant was given another personal hearing on 17.07.2019 vide this office letter F.No.V/Rebate/RA/Combitic/Belapur/18-19/69 dated 03.07.2019. Shri DK Singh, Advocate and Shri AP Yadav, Manager attended the personal hearing on behalf of the claimant during which they submitted that the credit should be paid in cash in terms of Section 142 of the CGST Act, 2017. They also submitted a written submission vide its letter CGC/2018-19/1707/1 dated 17.07.2019. Vide their letter dated 17.07.2019 they also enclosed the copy of their earlier submission letter dated 15.01.2019 and the copy of CESTAT Tribunal Order no. 60129-60130/2019 dated 14.02.2019 which is already on the record. They further requested for cash refund of their pending rebate claim amount.*
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> *From the above observations of the Government it is seen that the quantum of rebate claim amount as discussed above in 4 orders in Original is admissible to the claimant, however only by way of re-credit. As regards, the compliance of Section 12B of Central Excise Act, 1944 I find that the aspect of unjust enrichment is not applicable in the instant case because the goods exported are on payment of central excise duty and therefore, the duty incidence has not been passed on and realized by the company from the overseas buyer and the said fact is ascertained and corroborated alongside the financial statements of the year 2017-18. In this regard I also take on record a certificate dated 05.11.2018 issued by Chartered Accountant Mr. Vishal Batra thereby giving the undertaking that the amount of duty claimed as refund has been shown as Central Excise Duty/ Service tax receivable under the heading current assets in the balance sheet for the financial year 2017-18 of the company.*
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> *In view of the above discussion and findings, I pass the following order:*
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> *I hereby re-credit an amount of Rs.10,48,11,734/- (Rupees Ten Crores Forty Eight Lakhs Eleven Thousand Seven Hundred and Thirty Four Only) to M/s Combiotic Global Caplet Pvt Ltd, under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 and in view of above Government Order."*

7 Petitioner challenged these orders before respondent no.3, who by order dated 16th July 2020 rejected petitioner's challenge. The relevant

paragraph of the order dated 16th July 2020, which is also impugned in this petition, reads as under:

> *"6.4 I find that the Company has contended that the adjudicating authority has erroneously and invalidly issued the impugned order for re-crediting the disputed amount in their Cenvat credit account under the existing laws without perusing the provisions of the Section 142 of the CGST Act, 2017. I find that they further contended that in terms of the Section 142(3) of the CGST Act, 2017 read with Para10 & 10.1 of Circular No. 37/11/2018-GST dated 15th March, 2018, the said amount should have been sanctioned in cash instead of re-crediting in their Cenvat credit account.*
>
> *I have perused the impugned revision order dated 05.10.2018 of the Hon'ble Revision Authority. I find that at Para 38 of the said order, the Revision Authority has directed (in all the four cases mentioned herein above in Table-A) the original authority to allow the said amount by way of re-credit in the Cenvat credit account of the Company subject to compliance of Section 12 B of the Central Excise Act, 1944 and only after examining the aspect of unjust enrichment to satisfy himself that the duty incidence had not been passed on and realized by the company from the overseas buyer. I find that the impugned Revision Order has been issued after implementation of GST and the provisions of Central Goods and Service Tax Act, 2017 were applicable at the time of issuing said orders by Revision Authority. If the appellant had any grievance regarding availment of re-credit in Cenvat credit account or sanctioning of claim by way of re-credit instead of cash, they should have contested the Revision Authority's order in higher forum. I find that Company had not challenged the order of the Revision authority, therefore, the said order of Revision authority attains finality and the adjudicating authority was duty bound to implement the said order of the Revision Authority. Since, there was no basic changes in the provisions of Central Goods and Service Tax Act, 2017 during the period from the date of issue of order of the Revision Authority to the date of issue of impugned order, I find that the adjudicating authority rightly followed the directions of Revision Authority which are binding on him and accordingly allowed the appellant to take re-credit of Rs.10,48,11,734/- in their Cenvat credit account under the provision of Section 11B of the Act, read with Rule-18 of the Central Excise Rules, 2002. Since, the adjudicating authority was bound to the order of the Revision Authority, I do not find any infirmity in the impugned order. Further, I find that Company has contended that they should be refund the re-credit amount in cash under Section 142(3) of the CGST Act, 2017. I find that since the impugned Revision Order attains finality, Company's this claim cannot be entertained. I find that Revision Authority's order has to be implemented in letter and spirit. Thus, I find that the appeal filed by the Company is unsustainable."*

8 It is these orders which are impugned in this petition and the stand taken by petitioner is that Section 142(3) of the Central Goods And Services Tax Act 2017 (the Act) clearly says, w.e.f 1st July 2017, in view of the effect of change in the regime, i.e., when the GST regime was introduced, any refund that was payable to petitioner has to be paid in cash. Mr. Sridharan submitted that since the CENVAT regime has come to an end, credit of amount payable to petitioner to the CENVAT account would make no sense because petitioner will not get the money or credit thereof under the GST regime. Mr. Sridharan states since the government cannot retain any amount which is not due to it, the amount so collected is allowed to be paid over in cash as provided in sub Section (3) of Section 142 of the Act.

9 Mr. Adik, and Ms Majmudar adopted the same submissions, submitted that the amount that was paid by petitioner was a voluntary deposit which was given on their own volition and not towards any duty and, therefore, the Adjudicating Authority has correctly come to the conclusion that such amount has to be returned to petitioner in the manner it was initially paid.

10 Section 142(3) of the Act reads as under:

> *"142:- **Miscellaneous transitional provisions** :-*
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> *(1) ********************
>
> *(2)********************
>
> *(3) 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, 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 (1 of 1944):*
>
> *Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:*
>
> *Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*
>
> ********** "

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.

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.

13 Therefore, Rule made absolute in terms of prayer clauses (a) and (b) of both petitions, which are quoted above.

14 The amount shall be paid together with accumulated interest in accordance with law within four weeks of this order being uploaded.

15 Petitioners are not required to communicate this order to respondents since they have been represented by advocates.

(JITENDRA JAIN, J.) **(K. R. SHRIRAM, J.)**

Meera Jadhav