

[ 3418 ]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**MONDAY, THE NINTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR**

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

**CENTRAL EXCISE APPEALS NO: 26 OF 2024**

Appeal is filed under Section 130 of the Customs Act, 1962 against the Order of the Customs, Central Excise & Service Tax Appellate Tribunal, Regional Bench, Hyderabad in Final Order No: A/30182/2024-CU[DB] dated 20-02-2024 in Customs Appeal No. 30323 of 2021, preferred against the Order in Appeal No. HYD-CUS-000-APP-108-20-21(APP-I) dated 15-01-2021 on the file of the Commissioner (Appeals-I) of Central Taxes, Hyderabad, preferred against the Order in Original (De novo) No. 05/2020-21.Ref.EPD dated 17-08-2020 on the file of the Assistant Commissioner, Export Promotion Division, Hyderabad.

**Between:**

Principal Commissioner of Customs, Hyderabad, L.B. Stadium Road,  
Basheerbagh, Hyderabad 500004

**...Appellant**

**AND**

M/s. Granules India Limited, 2nd Floor, 3rd Block My Home Hub, Madhapur,  
Rangareddy, Telangana 400081

**...Respondent**

**IA NO: 1 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased be suspend the operation of the Hon'ble CESTAT's Final Order No. A/30182/2024-CUS (DB), dated 20-02-2024, passed in Appeal No. C/30323 of 2021, pending disposal of the Main Appeal.

**Counsel for the Appellant : Mr Bathula Raj Kiran  
SC for Excise & Customs**

**Counsel for the Respondent : Mr Karan Talwar**

**The Court delivered the following Judgment :**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

**CENTRAL EXCISE APPEAL No.26 of 2024**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Bathula Raj Kiran, learned Standing Counsel for Excise and Customs for the appellant.

Mr. Karan Talwar, learned counsel for the respondent.

2. This appeal under Section 130 of the Customs Act, 1962, has been filed by the Revenue against the order dated 20.02.2024 in Customs Appeal No.30323 of 2021 passed by the Customs, Excise and Service Tax Appellate Tribunal, Hyderabad (hereinafter referred to as, "the Tribunal").

3. Facts giving rise to filing of this appeal briefly stated are that the respondent (hereinafter referred to as, "the assessee") is registered with the Department and it imported duty free inputs under advance authorisation

prior to 01.07.2017 for use of such goods for manufacture and export thereof and or under the condition to fulfil export obligation. The assessee could not fulfil certain advance authorisation and could not fulfil the export obligation. Therefore, the assessee paid CVD (in lieu of Central Excise) and SAD (additional duty of customs in lieu of Sales Tax) with CESS along with interest during the period August 2018 – March 2019 (Goods and Services Tax (GST) Regime). Under the provisions of the erstwhile Central Excise and Service Tax Regime, the assessee was entitled to take credit of the CVD + SAD paid. However, the assessee could not avail of the aforesaid benefit due to change of regime to GST with effect from 01.07.2017. The assessee could not pay the credit as there was no provision in GST to avail the input credit of the duties paid for regularisation of benefit on default under advance authorisation.

4. The assessee thereupon filed an application under Section 142(3) read with Section 174 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as, “the

CGST Act"). The Revenue issued a show cause notice dated 12.02.2020 on the ground that the adjudicating authority did not have jurisdiction under Section 142(3) of the CGST Act to entertain the claim of refund and the same was not a case of excess/erroneous payment of duty. The adjudicating authority passed an order on 17.08.2020 and rejected the claim of the assessee for refund of a sum of Rs.3,28,75,733/-, *inter alia*, on the ground that there is no provision/notification/rule/regulation in the existing law prior to 01.07.2017 allowing for cash refund of cenvatable components on the ground that input tax credit cannot be availed during the GST Regime. Being aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal by an order dated 20.02.2024 has allowed the appeal. Hence, this appeal.

5. Learned counsel for the Revenue submitted that the Tribunal ought to have appreciated that the adjudicating authority did not have jurisdiction under Section 142 of the CGST Act. In support of the aforesaid submission,

reliance has been placed on the Circular No.3/3/2017-GST dated 05.07.2017.

6. On the other hand, learned counsel for the assessee has supported the order passed by the Tribunal.

7. We have considered the rival submissions made on both sides and have perused the record.

8. Admittedly, the assessee had paid the amount of CVD and SAD between the period August 2018 – March 2019 by way of regularisation of shortfall in fulfilment of the export obligation. The Tribunal has relied on Section 142(3) of the CGST Act and has held that the same provided that every claim for refund by any person before, on or after the appointed day for refund of any amount of central value added tax credit/duty/tax/interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of the existing law. The Tribunal, by taking into account the provisions of sub sections (3), (5) and (8A) of Section 142 of the CGST Act, has held that the assessee is entitled to claim refund of

CVD and SAD paid after the appointed day. Accordingly, the assessee had been held to be entitled to refund of central value added tax credit of Rs.3,28,75,733/-. The aforesaid finding is in consonance with law and the same cannot be termed as perverse. No substantial question of law arises for consideration in this appeal.

9. In the result, the appeal fails and is hereby dismissed. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- M. VIJAYA BHASKER  
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Customs, Central Excise & Service Tax Appellate Tribunal, Regional Bench, Hyderabad
2. The Commissioner (Appeals-I) of Central Taxes, Hyderabad
3. The Assistant Commissioner, Export Promotion Division, Hyderabad
4. One CC to Mr Bathula Raj Kiran, SC for Excise & Customs [OPUC]
5. One CC to Mr Karan Talwar, Advocate [OPUC]
6. Two CD Copies

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**HIGH COURT**

**DATED:09/12/2024**



**JUDGMENT**

**CEA.No.26 of 2024**

**DISMISSING THE CEA**

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KP  
8/1/25