

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CENTRAL EXCISE APPEAL (CEXA) NO.24 OF 2024

Emcure Pharmaceuticals Limited

...Appellant

Versus

Commissioner of Central Excise,
Pune – I Commissionerate

...Respondent

Mr. Sandeep Sachdeva a/w. Mr. Devang Bhasin and Mr. Rishi Raj for
Appellant.

Mr. Jitendra Mishra a/w. Ms. Mamta Omle for Respondent.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

DATED : 23 October 2024.

Oral Order:- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. The challenge in this appeal is to the CESTAT Order No.3 dated 6 November 2023 and CESTAT Order No.2 dated 15 December 2022. At the outset, we note that no appeal lies against the order dated 6 November 2023, by which the Appellant's application for rectification came to be rejected.
3. Be that as it may, the learned counsel for the Appellant has proposed several questions listed on pages Nos.117 to 119 of the paper

book and has urged that these are substantial questions of law which arise in this appeal.

4. The learned counsel for the Appellant submitted that the facts in *Gauri Plasticulture P Ltd. Vs. Commissioner of C. Ex., Indore*¹, differed from the facts in the present case. He submitted that in *Gauri Plasticulture P Ltd. (supra)*, the Full Bench of this Court was concerned with a refund of the unutilised amount of CESTAT credit on account of the closure of manufacturing activities at the unit. The learned counsel for the Appellant submits that the duty was paid when the unit/factory was very much operational in the present case. He pointed out that this position has not even been disputed. Accordingly, he submits that the refund ought to have been granted in cash or, in any event, by crediting the same to the Appellant's other operational units. The learned counsel for the Appellant maintained that the position in *Gauri Plasticulture P Ltd. (supra)* was different and, therefore, based upon the decision of the Full Bench, the CESTAT could not have denied the refund of either cash or credit to the Appellant.

5. The learned counsel for the Appellant relied on *Lav Kush Textiles Vs. Commissioner of Central Excise Jaipur-II*², to support of the Appellant's case. He submitted that the facts in the said case were

1 2018 (360) E.L.T. 967 (Bom.)

2 2017 (353) E.L.T. 417 (Raj.)

identical to the facts in the Appellant's case and, therefore, based upon this decision, relief was due to the Appellant.

6. Mr. Mishra, learned counsel for the Respondent, defended the impugned order based on the reasoning effected therein. He pointed out that before the Tribunal, the Appellant had relied upon *Union of India vs. Slovak India Trading Company Pvt. Ltd.*³ and before this Court has relied upon *Lav Kush Textiles (supra)*. However, he submitted that the Full Bench of this Court expressly overruled Slovak India (*supra*) in the case of *Gauri Plasculture (supra)*. He submitted that impliedly, even *Lav Kush Textile (supra)*, therefore, stands overruled by the Full Bench of this Court in the case of *Gauri Plasticulture (supra)*.

7. Mr. Mishra, therefore, submitted that this appeal raises no substantial questions of law and ought to be dismissed.

8. The rival contentions now fall for our determination.

9. The Tribunal, in this case, has considered the factual position as now portrayed by the learned counsel for the Appellant and, by following the decision of the Full Bench of this Court in the case of *Gauri Plasticulture (supra)*, had held that no refund either in cash or in kind would be allowed to the Appellant.

3 2008 (10) S.T.R. 101 (Kar.)

10. The Full Bench, in ***Gauri Plasticulture (supra)*** framed the following questions that were referred to the Larger Bench:-

"(a) Whether cash refund is permissible in terms of clause (c) to the proviso to Section 11B(2) of the Central Excise Act, 1944 where an assessee is unable to utilize credit on inputs ?

(b) Whether by exercising power under Section 11B of the said Act of 1944, a refund of un-utilised amount of Cenvat Credit on account of the closure of manufacturing activities can be granted?

(c) Whether what is observed in the order dated 25th January 2007 passed by the Apex Court in Petition for Special Leave to Appeal (Civil) No. CC 467 of 2007 (Union of India Vs. Slovak India Trading Company Pvt. Ltd.) can be read as a declaration of law under Article 141 of the Constitution of India?"

11. After a detailed analysis of the legal provisions and several decisions fell for consideration, the Full Bench answered the questions of law framed above as (a) and (b) in the negative. Further, the Full Bench having been answered questions (a) and (b) accordingly, it was needless to state that the order of the Hon'ble Supreme Court in the case of ***Slovak India (supra)*** cannot be read as a declaration of the law under Article 141 of the Constitution of India.

12. The relevant discussion in the above regard is in paragraph Nos.28, 29 and 30 of the opinion of the Full Bench and the same reads as follows:-

"28. It is evident from a reading of the transitional provision that any amount of credit earned by a manufacturer under the Cenvat Credit Rules, 2002, as they existed prior to the 10th September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002 as they existed prior to 10th September, 2004 and remaining un-utilised on that day shall be allowed as Cenvat Credit to such manufacturer or

provider of output service under these rules, and be allowed to be utilised in accordance with these rules. This is how the transitional provision enables carrying forward of the un-utilised Cenvat Credit. That is a distinct contingency altogether. That transitional provision does not enable us to hold that the amount of un-utilised Cenvat Credit can be refunded in cash.

29. *We do not think that by taking assistance of this provision, we will be able to hold as contended by Mr. Patil that the Cenvat Credit can be refunded even in relation to those inputs which have not been used in the manufacture of the final product or the exported goods. We are called upon to read something in the substantive rule and which is totally absent therein. When Rule 5 follows Rule 4, which is titled as "Conditions for Allowing Cenvat Credit", then, we must understand the scheme in such manner as would make the law workable and consistent. Refund of Cenvat Credit in terms of Rule 5 is permissible only when there is a clearance of a final product of a manufacturer or of an intermediate product for export without payment of duty under a bond or letter of undertaking of a service provider, who provides an output service which is exported without payment of tax and by applying the format which is carved out with effect from 1st April, 2012 by the substituted Rule 5.*

30. *Prior to such substitution, we have not seen anything in Rule 5 permitting refund of un-utilised credit. We are not dealing with a situation or case of a manufacturer or producer of final products seeks to claim Cenvat Credit of the duty paid on inputs lying in stock or in process when the manufactured or produced goods cease to be exempted goods or any goods become excisable (see Rule 3(2) of the Cenvat Credit Rules, 2004). Thus, refund of Cenvat Credit is permissible where any input is used for the final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export. In the scheme of the rules, therefore, what is sought by the assessee is not permissible. Thus, the attempt by the assessee to claim refund of un-utilised Cenvat Credit cannot be upheld. Merely because the inputs were lying un-utilised or were capable of being utilised, but the manufacturing activities came to a stand still on account of closure of the factory would not enable the assessee to claim refund of Cenvat Credit. That such credit can be availed of provided the inputs are used and not otherwise is clear from the scheme of the rules to which we have made a detailed reference in the foregoing paragraphs."*

13. The learned counsel for the Appellant relied on ***Lav Kush Textile (supra)*** to contend that relief was granted by the Division Bench of the Rajasthan High Court on identical facts. On considering ***Lav Kush Textile (supra)***, we find that the same has relied upon the decision of the Karnataka High Court in ***Slovak India (supra)***. Further, this

decision notes that the Hon'ble Supreme Court had confirmed the Karnataka High Court order by dismissing the SLP against the same. In effect, therefore, the view taken in *Lav Kush Textile (supra)* based, according to the learned counsel for the Appellant on facts identical to the present case, directly conflicts with the view taken by the Full Bench of this Court in the case of *Gauri Plasticulture (supra)*.

14. In the above circumstances, we do not find any error in the impugned orders made by the CESTAT, since these orders relied upon the decision of the Full Bench in the case of *Gauri Plasticulture (supra)*. Even considering the slight difference in the factual positions, it is difficult to hold that the ratio in the case of *Gauri Plasticulture (supra)* is not attracted or would not cover the Appellant's case.

15. Accordingly, we are satisfied that the impugned orders made by the CESTAT are not error-prone and that no substantial question of law arises in this appeal.

16. This appeal is accordingly dismissed without any order for costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)