CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 51126 OF 2020

[Arising out of Order-in-Appeal No. 350 (SM)/ST/JPR/2020 dated 13.07.2020 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Vivek Pharmachem India Ltd. ……... Appellant
N. H.–8, Chimanpura, Amer Road
Jaipur

vs.

The Commissioner ....Respondent
Central Goods & Service Tax
Commissionerate, Jaipur

APPEARANCE:

Ms. Priyanka Goel, Advocate for the Appellant
Mr. Shashank Yadav, Authorized Representative for the Revenue

CORAM: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing :06.07.2026
Date of Pronouncement :16.07.2026

FINAL ORDER NO. 51197/2026

PER: MS. BINU TAMTA

M/s. Vivek Pharmachem India Limited[1] has challenged the Order–in–Appeal[2] confirming the order passed by the Assistant Commissioner sanctioning the refund but credited to the Consumer Welfare Fund under Section 12C of the Central Excise Act, 1944[3] on the

[1] appellant
[2] 350 (SM)/ST/JPR/2020 dated 13.07.2020
[3] CEA

ground that the appellant failed to prove that the incidence of service tax was not passed on.

2. The factual matrix of the case is that the appellant being engaged in the manufacture of medicaments had availed cenvat credit of Rs. 70,08,629/- on input services (service commission). As the department alleged that the appellant was not eligible to avail cenvat credit, the said amount was reversed in RG–23A Part–II (Rs/ 9,30,348/- on 01.01.2014, Rs. 54,29,291/- on 26.07.2013 and Rs. 6,48,988/- on 09.09.2014)

3. The Tribunal vide Final Order No. 57580/2017 dated 01.11.2017 allowed the cenvat credit and in terms thereof the appellant filed a refund claim of Rs. 70,08,629/-. Show Cause Notice dated 19.03.2019 was issued alleging that the appellant could not rebut the presumption of unjust enrichment as the reversed cenvat credit was treated as revenue expenditure in financial accounts implying that the burden of duty was passed on to the customer. On adjudication, the Assistant Commissioner vide Order dated 23.05.2019 sanctioned the refund but credited the amount to the Consumer Welfare Fund. On appeal, the Commissioner (Appeals) confirmed the said order. Hence, the present appeal before this Tribunal.

4. Heard both sides and perused the records of the case.

5. Ms. Priyanka Goel, Ld. Counsel for the appellant submitted that the debit of service tax as expenses in the financial accounts showing as receivable in the current assets in the balance sheet is not relevant to

decide whether the burden of service tax is passed on to other persons. She also submitted that the appellant had already transferred the amount of duty debited to profit and loss account to the current assets appearing in the balance sheet as receivable and, therefore, the duty is not debited to the profit and loss account. She has also clarified that even if it is assumed that the payment of service tax is debited to expenses in the financial account even then the tax liability was borne by the appellants only and therefore, the principle of unjust enrichment would not apply. The Ld. Counsel has relied on the following decisions in support of her case:

- **Barmer Lignite Mining Co. Ltd. *vs* Comm. CGST, Jaipur**[4]
- **M/s. Chambal Fertilizer and Chemicals *vs* Comm. CGST & ST, Udaipur**[5]
- **M/s. National Aluminium Co. Ltd. *vs* Comm. CGST & Excise Rourkela**[6]

6. Mr. Sashank Yadav, Ld. Authorised Representative for the Revenue contested the appeal while reiterating the findings of the authorities below. He relied on Section 12B which speaks of presumption that incidence of duty has been passed on to the buyer and in view thereof he submitted that the appellant has not been able to establish the same as they have not produced any documents on record despite request made by the department. The Ld. Authorised Representative has relied on the decision of the Apex Court in the case of **Union of India *vs* Solar Pesticide Pvt.**

[4] 2024(12)TMI 940–CESTAT New Delhi
[5] 2023(2) TMI 10–CESTAT New Delhi
[6] 2024(7) TMI 1041 – CESTAT Kolkata

Ltd.[7] Where the view expressed by the Apex Court was that the principle of unjust enrichment will apply even in the case where burden of duty has been passed indirectly by including it in the pricing of the raw material. On that principle he submitted that the refund claim is hit by unjust enrichment as the reverse of this tax was included in the cost of goods sold.

7. Having examined the rival submissions and the decisions relied on by both the parties we find that the sole issue to be decided is whether the incidence of service tax was passed on to the customers and, therefore, the refund claim is hit by the bar of unjust enrichment as per Section 11B of the Act. The admitted facts are that the appellant had claimed cenvat credit but had reversed the same and it is only after the decision of the Tribunal holding them eligible to claim the cenvat credit they filed the refund claim. In the process, the duty reversed by the appellant is debited to profit and loss account or is shown as receivable in the balance sheet of the appellant. We take note of the submissions of the Ld. Counsel that at the time of reversal of cenvat credit no invoice was raised to recover the reversed amount from their customers and, therefore, the burden of reversal of the cenvat credit was borne by the appellant themselves. The Ld. Counsel has also placed on record the CA Certificate dated 04.07.2026 which has been issued on the examination of the books of accounts and the relevant contents thereof are quoted below:

> "In this connection, we have examined the books of accounts of M/s. Vivek Pharmachem (India) Ltd. N. H. 8, Chimanpura, Amer Road, Jaipur having Excise Registration No. AAACV6399LXM001 and certify that Company had deposited Service Tax of Rs. 70,08,629/- which was paid

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[7] 2000(116)ELT 401 (S.C.)

> by reversal (Rs. 9,30,348/- vide RG – 23 Part – II Entry No. 458 dated 01.01.2011 + Rs. 54,29,291/- vide RG-23A part II Entry No. 212 dated 26.07.2013 + Rs. 6,48,988/- vide Entry No. 455 dated 09.09.2014 in RG – 23 A part Ii and burden thereof was not transferred to anybody else by the way of raising of any invoice.)"

8. In the case of **Barmer Lignite Mining Co. Ltd.**, after considering several decisions on the issue whether the claim of refund is hit by the bar of unjust enrichment in terms of Section 11B, we had observed that any amount during the pendency of adjudication or investigation is in the nature of deposit and therefore, cannot be considered to be towards payment of duty and consequentially the principle of unjust enrichment would not apply in the refund claim. On the point that the amount was accounted as expenditure in the Profit and Loss Account relying on the earlier decision of the Tribunal in the case of **Chambal Fertilizers and Chemicals** it was observed that the method of accounting followed does not impact the admissibility of refund and cannot be made a basis to hold that the incidence of duty had been passed. The observations made in the case of Chambal Fertilizers and Chemicals is set out below:

> "8. The method of accounting followed by an asessee does not impact the admissibility of refund, and cannot be made a basis to hold that the incidence of duty had passed. In this regard, reliance can be placed on the decision of the Tribunal in **Commissioner of Customs, ACC Import Commissionerate, New Customs House, New Delhi** *vs.* **UT Electronics Private Limited [2020-TIOL-386-CESTAT, Delhi]**. The Tribunal held that merely because the excise duty is booked as 'expenditure' in Profit and Loss Account, it cannot be said the incidence of duty had passed. A similar view was taken by the Tribunal in **Allied Chemicals & Pharmaceutical Private Limited** *vs.* **CCE & ST, Jaipur–I [2019 (2) TMI 849 – CESTAT New Delhi.]** In any case, the entry made by the appellant of the amount in 2006–07 was neutralized by the appellant in 2016–17, when the appellant booked the same amount as 'recoverable' in its books under the head 'current assets' after the appeal was allowed by the Tribunal."

9. The authenticity of certificate issued by the Chartered Accountant was also considered in the light of earlier decisions and it was observed that the certificate issued by the Chartered Accountant is good evidence to show that the disputed duty amount had not been collected from the customers and the said certificate could not have been sidelined without production of any evidence to show that the certificates were wrong.

10. In view of the decisions cited, we find merits in the submissions of the Ld. Counsel for the appellant and we, therefore, hold that the refund claim is not hit by unjust enrichment.

11. Having examined the decision in the case of **Solar Pesticide Pvt. Ltd.** we are of the view that the same is distinguishable. The issue before the Apex Court was whether the doctrine of unjust enrichment is applicable in respect of raw material imported and consumed in the manufacture of final products. In that view of the matter the Court was of the view that this is a case where the duty paid on raw material is added to the price of the finished goods which are sold and in which case the burden or the incidence of the duty on the raw material would stand passed on to the purchaser of the finished products. The Court thus concluded that when the whole or part of the duty which is incurred on the import of raw material is passed on another person indirectly then an application for refund of such duty would not be allowed. Hence the ratio laid down by the Apex Court will not be applicable in the facts of the present case where actually the incidence of duty has not been passed on by the appellant to its customers. Rather, the duty was borne by the appellant while reversing the cenvat credit amount.

12. We do not find any merits in the impugned order and the same is, hereby set aside. The appeal is allowed with consequential relief.

[Order pronounced on 16.07.2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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