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2026:GAU-AS:12611

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2162/2026

OZONE PHARMACEUTICAL LTD (UNIT II) (EARLIER OZONE AYURVEDICS)
A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES ACT,, 1956 AND HAVING ITS OFFICE AND FACTORY AT EXPORT PROMOTION INDUSTRIAL PARK (EPIP), AMINGAON,, NORTH GUWAHATI CIRCLE, DIST- KAMRUPM, ASSAM REPRESENTED BY SRI BEDANTA NATH AGED ABOUT 50 YEARS

VERSUS

UNION OF INDIA AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF INDUSTRIES AND COMMERCE, DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION, UDYOG BHAWAN, NEW DELHI

2:THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICES TAX
GST BHAWAN
KEDAR ROAD
MACHKOWA
GUWAHATI- 781001

3:THE ASSISTANT COMMISSIONER GOODS AND SERVCES TAX
GST BHAWAN
GUWAHATI DIVISION- 1
KEDAR ROAD
MACHKOWA
GUWAHATI-78100

Advocate for the Petitioner : MS. M L GOPE, MS. N HAWELIA,MR S K SAHA,MS S SARKAR

Advocate for the Respondent : DY.S.G.I., SC, CGST

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	:	Mr. S. K. Saha, Advocate.
For the Respondents	:	Mr. S. C. Keyal, Standing Counsel, CGST, assisted by Mr. K. Jain, Advocate.
Date on which Judgment is Reserved	:	NA
Date of pronouncement of Judgment	:	02.09.2026
Whether the pronouncement is of the operative part of the Judgment	:	NA.
Whether the full Judgment has been pronounced	:	Yes.

JUDGMENT & ORDER (ORAL)

(A.D.Choudhury, J)

1. Head Mr. S. K. Saha, learned counsel for the petitioner. Also heard

Mr. S. C. Keyal, learned Standing Counsel, CGST, assisted by Mr. K. Jain, learned counsel for the respondent.

2. The petitioner has assailed the order dated 18.12.2025 passed by the Assistant Commissioner, GT & Central Excise, Guwahati Division-I, Guwahati, whereby, while sanctioning refund of Rs. 88,54,980/-, the said amount has been appropriated towards an alleged recoverable amount of Rs. 1,12,91,641/- comprising an amount of Rs. 43,65,735/- towards principal and an amount of Rs. 69,25,906/- towards interest. Consequently, a further amount of Rs. 24,36,661/- has been directed to be paid by the petitioner.

3. The principal challenge is to the appropriation of the "Sanction Refund" towards the liability, which, according to the petitioner, had neither been adjudicated nor crystallized in accordance with law.

4. The facts are not in dispute.

5. The petitioner was availing the benefit of area-based exemption under Notification No. 32/99-CE dated 08.07.1999 for the period from 31.05.2001 to 22.12.2002. The refund of duty paid was through the Personal Ledger Account (hereinafter referred to as PLA).

6. Subsequently, pursuant to the retrospective amendment brought about by Section 153 of the Finance Act, 2003, an amount of Rs. 59,17,101/- was sought to be recovered along with interest. The said amount, together with interest of Rs. 29,37,879/-, totalling Rs. 88,54,980/-, was recovered by appropriation from the subsequent refund for August to October, 2006.

7. The petitioner challenged the said recovery and, ultimately, the

learned CESTAT, Kolkata, vide order dated 26.09.2023, held that subsequent refunds could not be denied or appropriated on the ground that the petitioner had allegedly availed excess refund for an earlier period. The recovery was accordingly set aside with consequential relief.

8. The order of the learned Tribunal, though, was assailed by the department before this Court by filing C.Ex.App. No. 9/2025, however, the same was withdrawn vide order dated 11.08.2025, based on a policy decision that no further proceedings shall be carried out before the High Court when the amount is less than 2 crores.

9. Earlier, a challenge to an amendment to the exemption notification, whereby refund entitlement was correlated with the value addition made by each industry, was allowed by a Division Bench. However, the Union of India approached the Hon'ble Apex Court assailing such determination. The Hon'ble Apex Court, as an interim measure, stayed the judgment impugned with a direction to the Union of India to release 50% of the amount due, however, subject to the beneficiaries furnishing solvent surety to the satisfaction of the jurisdictional Commissioner. Subsequently, similar notifications were interfered with in **Union of India – Vs. M/S V.F.F. Limited,** reported in **(2020) 20 SCC 57.**

10. In **M/s V.F.F. Limited** (supra), it was clarified that subsequent refund applications shall be decided as per subsequent notification/industrial policies which were impugned before the respective High Courts, and they shall be decided in accordance with law and on merits and as per subsequent notifications/industrial policies impugned before the respective High Courts.

11. While giving effect to the order of the CESTAT, the authority, by impugned order dated 18.12.2025, determined that Rs. 88,54,980/- was refundable to the petitioner. In the same order, the authority also noted the separate refund of 50% of the PLA amount, granted to the petitioner for the period from 2011-2012 to 2017-2018 (up to June, 2017), pursuant to the interim order dated 07.12.2015 passed by the Hon'ble Apex Court.

12. The authority accordingly determined the amount recoverable from the petitioner to be Rs. 1,12,91,641/-. Out of this, Rs. 43,65,735/- was determined as the balance principal amount, after taking into account an amount of Rs. 5,87,340/-, which, according to the impugned order, had already been recovered at the time of granting the special rate fund. In addition thereto, the authority calculated interest of Rs. 69,25,906/-, thereby arriving at a total recoverable amount of Rs. 1,12,91,641/-.

13. The authority treated the said amount as undertaking/surety bonds furnished by the petitioner.

14. Having arrived at the aforesaid figures, the authority proceeded to appropriate the entire refund of Rs. 88,54,980/-, sanctioned to the petitioner against the amount so determined, and held that a further sum of Rs. 24,36,661/- remained payable by the petitioner.

15. The learned counsel for the petitioner submits that the entitlement of Rs. 88,54,980/- is no longer open to question, having been conclusively determined by the learned CESTAT, Kolkata, and having attained finality. This contention is also not objected to by the learned Standing Counsel for the CGST.

16. The learned counsel for the petitioner further contends that the respondents, while sanctioning the refund, could not have appropriated it towards another alleged liability in the absence of a valid, crystallized demand. It is further submitted that the alleged liability of Rs. 1,12,91,641/-, particularly the interest component of Rs.69,25,906/- has not been determined by any independent adjudicatory order after notice and opportunity of hearing to the petitioner. The authority could not, therefore, by mere computation made in the refund order and on its own, convert the alleged liability into a recoverable demand and appropriate refund against it. It is further contended that the petitioner ought to have been given a reasonable opportunity of hearing to dispute the calculation of interest and the claim that has been made by the authority on their own.

17. Per contra, Mr. S. C. Keyal, learned Standing Counsel for the CGST referring to the interim order dated 07.12.2015 and final determination made in **Union of India –Vs- M/s V.F.F. Limited** reported in **(2020) 20 SCC 57**, more particularly in paragraphs 15 and 16 of the Judgment contends that 50% PLA refund was granted pursuant to the interim order dated 07.12.2015 and that after the Judgment of the Hon'ble Apex Court in **M/s V.F.F. Limited** (supra) dated 22.04.2022, the amount became recoverable in terms of undertaking/bond furnished by the petitioner and therefore, no further adjudication is required inasmuch as the decision was based on the aforesaid two orders of the Hon'ble Apex Court. Accordingly, Mr. Keyal, learned Standing Counsel, submits that the authority was therefore justified in adjusting the amount refundable to the petitioner against the amount recoverable from it. It is his further contention that there is no necessity of

giving further hearing to the petitioner as the entire exercise has been carried out based on a determination made by the Hon'ble Apex Court to which the petitioner was also a party.

18. This court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials on record, including the determination made by the Hon'ble Apex Court and the impugned order dated 18.12.2025 passed by the Assistant Commissioner, GT & Central Excise, Guwahati Division-I, Guwahati.

19. There is no dispute that the learned CESTAT, by its order dated 26.09.2023, set aside the earlier recovery of Rs. 88,54,980/- and directed consequential relief. The said order has attained finality.

20. The respondents themselves had accepted the consequence thereof by sanctioning the refund of the said amount. The entitlement of the petitioner to Rs. 88,54,980/- is, therefore, not open for consideration in the present proceeding.

21. The admitted fact also remains that the initial refund, which was subject matter before the Hon'ble Apex Court, was made to the petitioner by virtue of an interim order passed by the Hon'ble Apex Court on the condition that the petitioner shall furnish undertaking/bond to protect the interest of the Revenue in the event, the interim order of the Hon'ble Apex Court is reversed and the final order that may be passed by the Hon'ble Apex Court goes against the petitioner. Subsequently, the Hon'ble Apex Court in **M/s V.F.F. Limited** (supra) negated the challenge, and thus, the interim order merged with the final order.

22. In that view of the matter, such a determination made by the Hon'ble Apex Court cannot be reopened in the present proceeding.

23. However, from the impugned order, more particularly, the Tables "B" and "C" under paragraph 14 disclose the detailed calculation of interest from the period w.e.f. 2011-2012 to 2017-2018 (up to June, 2017).

The fact further reveals that while making such a calculation, no opportunity was given to the petitioner to ascertain or rebut the aforesaid calculation of interest and additional charges.

24. In our opinion, the impugned order does not disclose any independent adjudication determining the aforesaid liability. In particular, it reflects that no notice was issued to the petitioner while making the determination as aforesaid, and that the determination was made on the basis of the principal amount due of Rs. 43,65,735/-, with interest arrived at Rs. 69,25,906/-. The interest amount has essentially been computed by the authority and thereafter adjusted against the refund sanctioned to the petitioner.

25. In the opinion of this Court, a mere computation of interest cannot be treated as a crystallized demand. The reliance placed upon the bond also cannot by itself justify the course adopted for computation. Such an undertaking undoubtedly furnishes a basis for appropriate recovery, but before the recovery, beyond the admitted amount under the order of the Apex Court, more particularly on interest, is effected, in our opinion, such amount has to be determined in accordance with law, taking note of the determination already made by the Hon'ble Apex Court in **M/s V.F.F. Limited** (supra).

The undertaking, therefore, cannot be construed as an authorizing authority to dispense with the requirement of a notice or opportunity of hearing.

26. This Court, therefore, is of the considered view that the sanction of Rs. 88,54,980/- and its appropriation towards the alleged liability are two separate matters.

While the sanction is required to be maintained, the appropriation cannot be sustained in the manner in which it has been made.

At the same time, this Court does not propose to adjudicate upon the substantive question as to whether the petitioner is liable to pay interest on the refund of 50% of the PLA under the order of the Supreme Court, and, if so, whether the calculation of interest is correct and is left to the adjudicating authority.

27. The respondents shall therefore consider the amount legally recoverable from the petitioner in consequence of the judgment of the Hon'ble Apex Court, the applicable notification, and the undertaking/bond; it shall be open to them to take appropriate proceedings in accordance with law after affording the petitioner due notice and opportunity of hearing.

28. Accordingly, the challenge succeeds in part.

The impugned order dated 18.12.2025 passed by the Assistant Commissioner, GST & Central Excise, Guwahati Division-I, Guwahati, is upheld to the extent of sanctioning a refund of Rs. 88,54,980/-.

However, the order is set aside to the extent it is appropriate, the said amount towards the alleged recoverable amount of Rs. 1,12,91,641/-, and the

direction to the petitioner to pay the balance amount of Rs. 24,36,661/-.

29. The respondents shall now determine the recoverable amount in respect of 50% PLA refund, including interest and other charges in accordance with law, by issuing a notice with detailed Demand and thereafter afford the petitioner an opportunity of hearing by allowing them to file a reply to such a notice and an opportunity of personal hearing.

30. At this stage, Mr. Keyal, learned Standing Counsel for the CGST, submits that the entire proceedings can be concluded within four months from today.

31. In view of the aforesaid submission, it is provided that the already sanctioned refund of Rs. 88,54,980/- may not be refunded at this stage, and appropriate action, i.e., appropriation/refund, shall be taken on conclusion of the proceedings as indicated hereinabove.

32. The writ petition stands disposed of accordingly. Parties to bear their respective costs.

JUDGE

Comparing Assistant