Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.368 of 2012

(Arising out of OIA-92/2012/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise and Service Tax-RAJKOT)

M/s. Asr Multimetals Pvt Ltd **.........Appellant**
Survey No. 394/2, 398, 399, 400,
Nh 8a, Village : Chhadawada, Taluka : Bhachau,
Kutch, Gujarat .

VERSUS

C.C.E. & S.T.-Rajkot **.........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

i. **Excise Appeal No. 369 of 2012 (Asr Multimetals Pvt Ltd)**
ii. **Excise Appeal No. 370 of 2012 (Asr Multimetals Pvt Ltd)**
iii. **Excise Appeal No. 371 of 2012 (Gallantt Metal Ltd)**

APPEARANCE:
Sh. R. Subramanya, Advocate for the Appellant
Sh. K.J. Kinariwala, Authorised representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11115-11118 /2019

DATE OF HEARING: 10.07.2019
DATE OF DECISION:10.07.2019

RAMESH NAIR

The issue involved is that whether the appellant can utilize credit of basic excise duty for payment of Education Cess And Secondary & Higher Education Cess when they are working under Exemption Notification no. 39/2001-CE which area based exemption.

2. Sh. R. Subramanya, Ld. Counsel appearing on behalf of the appellant submits that the issue is settled in the case of SRD Nutrients Private Limited, he also placed reliance on the following judgments:-

- Rama Cylinders Pvt. Ltd-2016 (339) E.L.T 147 (Tri.-Ahmd.)
- In RE: Welspun Corporation Ltd.-2014 (314) E.L.T. 968 (G.O.I.)

3. Sh. K.J. Kinariwala, Ld. Assistant Commissioner (AR) appearing for the Revenue reiterates the finding of the impugned order.

4. Heard both the sides and perused the records. We find that the issue that whether the credit of basic excise duty can be utilized for payment of Education Cess and Secondary & Higher Education Cess when the appellant availed the area based the Exemption Notification No. 39/2001-CE, has been decided in the case of SRD Nutrients Private Limited.-2017 (355) ELT 481 (S.C). Relying on the said Apex Court judgment the Hon'ble Supreme Court in the case of Hitachi Home Vs. Commissioner reported at 2018 (361) ELT A17 (S.C) disposed of the appeal relying on its judgment in the case of SRD Nutrients Private Limited. This issue was also considered by this Tribunal in the case of Rama Cylinders Pvt. Ltd (Supra).

5. In view of these above judgments the issue is no longer *res-Integra*, accordingly, the appellant are entitled for utilization of credit of basic excise duty for payment of Education Cess and Secondary & Higher Education Cess. Therefore, impugned order is not sustainable, hence, the same is set aside, appeals are allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi