CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 653 of 2012
[Arising out of OIA-225/2012/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

M/s. Gallantt Metal Ltd **....Appellant**
S.No. 176, Near Toll Gate, Samakhiali, Bhachau,
Kutch,Gujarat

VERSUS

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

APPEARANCE:
Shri. R. Subramanya (Advocate) for the Appellant
Shri. Dharmendra. Karjani, Superintendent, Authorized Representative

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

FINAL ORDER NO.A/ 12250 /2019

DATE OF HEARING: 27.11.2019
DATE OF DECISION:27.11.2019

RAMESH NAIR

The issue involved is that whether the appellant is entitled to utilize the CENVAT Credit of basic Excise Duty for payment of Education Cess while availing the Exemption Notification No. 39/2001-CE.

2. Sh. R. Subramanya, Learned Counsel appearing on behalf of the appellant at the outset submits that this issue is covered by various following judgments;

- Rama Cylinder Pvt. Ltd-2016 (339) E.L.T. 147 (Tri.-Ahmd.)
- Welspun Corporation Ltd.-2014 (314) E.L.T. 968 (GOI)

2.1. He also placed reliance on the decision of this tribunal Order No. A/11115-11118/2019 dated 10.7.2019 in the case of M/s. Asr Multimetal Pvt. Ltd.

3. Shri. Dharmendra Karjani, Learned Superintendent, Authorized Representative appearing on behalf of the revenue reiterates the finding of the impugned order.

4. Heard both the sides and perused the records, the issue is no longer *res -Integra* as the same has been decided in various judgments as cited by the Learned Counsel that the Cenvat Credit of Basic Excise Duty can be utilized for payment of Education Cess and Secondary & Higher Education Cess while working under Exemption Notification No. 39/2001-CE. The tribunal in order dated 10.7.2009 cited above passed the following 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 are based the Exemption Notification No. 39/2001-CE, has been decided in the case of SRF 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 Cylinder Pvt. Ltd(Supra).*
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> *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*.

5. In view of the above decision which has relied upon the various judgments of this Tribunal, We set aside the impugned order. Appeal is allowed.

(Dictated Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi