

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10941 of 2013-DB

(Arising out of OIA-36/2013/RAJ/CE/AK/COMMR-A/AHD dated 31/01/2013 passed by Commissioner of Central Excise-RAJKOT)

Welspun Corp Limited

Survey No. 665,
Village: Varsamedi, Taluka : Anjar,
Kutch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat - 360001

.....Respondent

APPEARANCE:

R. Subramanya, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 11308 /2023

DATE OF HEARING: 03.03.2023
DATE OF DECISION: 21.06.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled to utilize the cenvat credit of basic excise duty for payment of education cess and secondary higher education cess.

2. Shri R. Subramanya, Learned Counsel appearing on behalf of the appellant submits that this issue has been settled in the following judgments:-

- Mono Steel India Ltd Vs. CCE – 2022 (8) TMI 411 - CESTAT Ahmedabad
- VVF Ltd Vs. CCE – 2022 (12) TMI 1188- CESTAT Ahmedabad
- Gallant Metal Ltd Vs. CCE – 2019 (11) TMI 1742 – CESTAT Ahmedabad

- ASR Multi Metals Pvt Ltd & Others Vs. CCE – 2019 (7) TMI 1937
CESTAT Ahmedabad
- ASR Multi Metals Pvt Ltd Vs. CCE -2018 (10) TMI 1627 – CESTAT
Ahmedabad
- India Steel Corpn Ltd VS. CCE – 2016 (11) TMI 1591 – CESTAT
Ahmedabad
- CCE & ST vs. Madura Ind Textiles – 2013(1) TMI 352 – Gujarat High
Court
- Final Order Of Hon'ble Cestat, Ahmedabad No. A/12250/2019 dated
27.11.2019 in Appeal No. E/653/2012.

3. On the other hand, Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We find that the issue is no longer re-integra as in various judgments it was held that the assessee is entitled for the utilization of cenvat credit of basic excise duty for payment of education cess or higher education cess. Some of the judgments are reproduced below:-

M/S ASR MULTIMETALS P. LTD VS. CCE & ST RAJKOT – 2018 (10) TMI 1627
–CESTAT AHMEDABAD

"The issue is whether the appellant is entitled for the refund of Education Cess under Exemption Notification of 39/2001-CE.

2. Sh. R. Subramanya & Sh. Jigar Shah Ld. Counsels appearing on behalf of the appellants submit that the issue is covered by Hon'ble Supreme Court Judgment in the case of SRD Nutrients (P) Ltd. vs CCE Guwahati 2017 (355) ELT 481 (SC), according to which refund is available on Education Cess paid under Notification 39/2001-CE.

3. Sh. G. Jha Ld. Suptd. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the Hon'ble Supreme Court has not considered the judgment which is in favour of the Revenue on the identical issue in the case of Bajaj Auto Ltd. vs UOI 2017 (352) ELT 147 (Uttarakhand).

4. We have carefully considered the submission made by both the sides and perused the records. We find that the Hon'ble Supreme Court in SRD Nutrients (P) Ltd. (supra) considering the very same issue particularly on the area based exemption notification held that Education Cess being a duty of excise is exempted under area based exemption notification, therefore, in view of this Hon'ble Supreme Court judgment, the judgment of Uttarakhand High Court in the case of Bajaj Auto Ltd. (supra) is

distinguished. Following the judgments in SRD Nutrients (P) Ltd., the impugned orders are not sustainable, accordingly, set aside. Appeals are allowed."

MONO STEEL INDIA LTD VS. CCE - 2022 (8) TMI 411 - CESTAT AHMEDABAD

"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 area 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).

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."

ASR Multimetals Pvt. Limited & others - Order No. A/11115-11118/2019 dated 10.07.2019

"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."*

4. *Following the above decisions passed by this Tribunal, we are of the view that the appellant is entitled for utilization of Cenvat credit of basic excise duty for payment of Education Cess and Secondary and Higher Education Cess. Accordingly, the impugned order is set-aside and the appeal is allowed."*

4.1 In view of the above decision including other decision cited by the counsel, the issue is no more res- inetgra as it has been decided in favour of the assessee.

5. Accordingly, the impugned order is set aside and appeal is allowed.

(Pronounced in the open court on 21.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

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