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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11578 of 2016-DB

[Arising out of Order-in-Original/Appeal No CCESA-VAD-APP-II-MM-10-2016-17 dated 26.04.2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Prafful Overseas Pvt Limited .... **Appellant**
Plot No. 9C, GIDC, Panoli, SURAT
GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-ii .... **Respondent**
1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE :

None for the Appellant
Shri Rajesh R. Kurup, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 09.08.2023
DATE OF DECISION: 12.09.2023

FINAL ORDER NO. 12007/2023

RAMESH NAIR :

The issue involved in the present case is whether the appellant is entitled for refund of Education Cess and Secondary and Higher Education Cess paid against CVD portion of customs duty.

2. Shri S. Suryanarayanan, learned Counsel vide his letter dated 07.08.2023 submitted that identical case of the appellant Company has been decided vide this bench Order No. A/10536-10538/2022, accordingly he requested that this appeal be decided on merits.

3. Shri Rajesh R. Kurup, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the issue is no longer res-integra and in the appellant's own

case vide order dated 20.05.2022 decided the matter against the appellant which may be followed in the present appeal also.

4. Heard both the sides and perused the record. We find that the identical issue in the appellant's own case has been decided vide order No. A/10536-10538/2022 dated 20.05.2022. The order is reproduced below:-

> 4. I have carefully considered the submissions made by both the sides and perused the records. I find that the only ground for claim of refund of the appellant is that the period of taking credit as beyond the normal period. Therefore, the recovery of the same is not sustainable on time bar consequently they are entitled for the refund. The appellant have strongly relied upon the decision of Nirma Ltd (supra) wherein the demand for the extended period was set aside. I find that in the present case it is not a case of demand but the appellant have paid the amount of Cenvat credit accepting their mistake that the Cenvat credit in respect of CVD of the custom duty is not admissible. This issue was raised by the audit and consequently the appellant have paid the amount. It is pertinent to note that the issue of non availability of the Cenvat credit has been decided by this Tribunal in the case of Nirma P. Ltd and ors Vs. 2018(361) ELT 136 (Tri.- Ahmd). As per this judgment the appellant was not entitled for Cenvat credit. Therefore as per the merit of the case the appellant was not entitled for the Cenvat credit. Accordingly, they have reversed the credit. It is also important to note that in the present case there is no demand involved the issue of extended period can be decided only in case of demand not in the case of the refund. The refund needs to be decided only on the merit whether the appellant was entitled for Cenvat credit or otherwise. The demand notice issued under Section 11A which prescribes the time limit which is not the case hear. Therefore, the decision of the tribunal in the case of Nirma Ltd. relied upon by the appellant is of no help to the appellant for the reason that the same related to demand of recovery of wrongly availed the Cenvat credit. Whereas in the present case appellant have filed the refund claim and the refund was rightly decided on the merit that whether the appellant is entitled for Cenvat credit or not.
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> 5. Accordingly, I do not find any infirmity in impugned order rejecting the refund. Considering merit of the case. Hence, the impugned orders are upheld and appeals are dismissed."

5. In view of the above decision of this Tribunal in the appellant's own case on the identical issue, the issue is settled against the appellant. Accordingly following the decision of this Tribunal, we are of the view that the impugned order is correct and legal hence the same is sustainable. The appeal filed by the appellant is dismissed.

(Pronounced in the open court on 12.09.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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