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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11252 of 2017- DB

(Arising out of OIA-AHM-EXCUS-001-APP-072-074-2016-17 dated 28.02.2017 passed by Commissioner of Central Excise, Customs& Service Tax-Ahmedabad)

C.C.E., Ahmedabad – I **........Appellant**
C. Ex Bhavan,NrPanjrapole& Polytechnic,
Ambavadi,Ahmedabad, Gujarat-380015

VERSUS

Meghmani Dyes And Intermediate Ltd. **......Respondent**
Plot No. 100a, Phase-I
Gidc,Vatva, Ahmedabad-Gujarat

APPEARANCE:
Shri SudhanshuBissa, Advocate for the Appellant
Shri R.K. Agarwal, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO.   11081/2024

DATE OF HEARING: 10.05.2024
DATE OF DECISION: 16.05.2024

RAMESH NAIR

The revenue filed the present appeal against order in appeal No. AHM-EXCUS-001-APP-072-07402016-17 dated 27.03.2017 whereby the Learned Commissioner (Appeals) set aside the Revenue's appeal which was filed against the orders in original dated 15.04.2016 and 12.04.2016.

1.1 The issue involved in the present case is that how education cess and higher secondary education cess on the excise duty chargeable on the goods cleared by 100% export oriented unit into DTA is to be calculated.

2. Shri R.K. Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that though the issue was decided by this Tribunal in the appellant's own case, however the Revenue in the matter of Sarla Performance Fibres Ltd. and Kemrock Industries & Exports Ltd. vs CCE Vadodara filed before Hon'ble Supreme Court and

the same are pending, therefore, the adjudicating authority as well as Commissioner (Appeals) could not have decided the matter finally.

3. Shri SudhanshuBissa, learned counsel appearing on behalf of the respondent submits that both the lower authorities have followed the judgments of this Tribunal in the case of Sarla Performance Fibres Ltd. 2010 (253) ELLT 203 (Tri. Amd.), following the same in the appellant's own case for the earlier period, the appeal was allowed reported at Meghmani Dyes & Intermediates Ltd. 2014 (306) ELT 658 (Tri. Amd.) and which was upheld by the Hon'ble Supreme Court reported at 2014 (3070 ELT A79 (SC), therefore, primarily in the appellant's own case, the issue is no longer res-integra. He also placed reliance on the following judgments:

- Kemrock Industries & Exports Ltd. 2015 (319) ELT 132 (Tri. Amd.)
- AishwaryaPlast Exports P.Ltd. 2018 (7) TMI 975-CESTAT AHM
- CCE & ST vs EID Parry India Ltd. 2018 (2) TMI 693-CESTAT CHENNAI
- EID Parry (India) Ltd. 2018 (10) GSTL 490 (Tri. Chennai)
- Claris Lifesciences Ltd. 2014 (305) ELT 497 (Guj.)

3.1 He further submits that in case of Kemrock Industries & Exports Limited the civil appeal No. 714/2012 was dismissed as withdrawn.

4. We have carefully considered the submission made by both the sides and perused the records. We find that even though in the matter the issue in hand is pending before Hon'ble Supreme Court in case of Sarla Performance Fibers Limited, there is no stay granted to the Revenue. Moreover, in the appellant's own case following the decision of Sarla Performance Fibres Limited (supra), this Tribunal has passed the order in their favour and the same was upheld by the Hon'ble Supreme Court. The Tribunal order is reproduced below:

> *"In all the above appeals, the issue involved is same. The issue that has arisen is whether the appellants are liable to pay Education Cess again on the amount which has been worked out by calculating the customs duty payable on the goods in respect of clearances made by 100% EOU to domestic tariff area. The lower authorities have held that even after arriving at the measure of Customs duty for working out the Central Excise duty payable, the Education Cess has to be levied once again.*
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> ***2.*** *Both the sides agree that this issue is covered by the decision of this Tribunal in the case of M/s. Sarala Performance Pvt. Ltd. reported in 2010-TIOL-408-CESTAT-Ahmedabad = 2010 (253) E.L.T. 203 (Tribunal) wherein it was held that once the measure of Customs duty equivalent to Central Excise duty leviable on the like goods has been*

worked out, question of levying Education Cess separately in respect of clearances by 100% EOU to DTA does not arise. In view of the above, we allow the stay petitions and take up the appeals for final decision since the issue involved has already been settled by the decision of this Tribunal cited above. Since the matter is covered by the decision, all the appeals are allowed with consequential relief to the appellants."

5. In view of the above decision of the Tribunal which was upheld by the Hon'ble Supreme Court in the appellant's own case, the present appeal does not survive. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Order pronounced in the open court on 16.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha