

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

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 12911 of 2018

[Arising out of OIA-VAD-EXCUS-002-APP-190-2018-19 dated 30/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Praful Overseas Pvt Ltd

Plot No. 9-C, Gidc, Panoli, Ankleshwar,
BHARUCH,
GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

.....Respondent

WITH

EXCISE Appeal No. 12958 of 2018

[Arising out of OIA-VAD-EXCUS-002-APP-189-2018-19 dated 30/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Praful Overseas Pvt Ltd

Plot No.9-C,Gidc, Panoli, Ankleshwar,
BHARUCH,
GUJARA

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

.....Respondent

AND

EXCISE Appeal No. 12963 of 2018

[Arising out of OIA-VAD-EXCUS-002-APP-188-2018-19 dated 30/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Praful Overseas Pvt Ltd

Plot No.9-C,Gidc, Panoli, Ankleshwar,
BHARUCH,
GUJARA

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

.....Respondent

APPEARANCE:

Shri Suriyanarayanan, Advocate for the Appellant

Shri. G. Kirupanandan, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 10536-10538 /2022

DATE OF HEARING: 12.05.2022

DATE OF DECISION:20.05.2022

RAMESH NAIR

The common issue involved in the present appeals hence, the same are taken together or disposal. The issue involved is that whether the appellant is entitled for Cenvat Credit in respect of education cess and secondary higher education cess paid on total custom duty when both the duty were exempted against the CVD vide Notification No. 13/2012-Cus and 14/2012-Cus dated 17.03.2012. The appellant though initially taken the credit but subsequently on the objection of audit they have reversed the credit vide making debit entries during June, 2017. after the reversal of cenvat credit, the appellant filed refund applications during June to Aug-2017 Show Cause Notices were issued proposing denial of said refund. The assistant Commissioner denied the refund claims on merit which was upheld by the Commissioner (Appeals). Therefore, the appellant filed the present appeals before this Tribunal.

2. Shri Suriyanarayanan, Learned Counsel appearing on behalf of the appellant submits that the issue on merit has been decided against the appellant in the case of NIRMA LTD. Vs. COMMISSIONER OF CE & ST, BHAVNAGAR- 2018(361) ELT 136 (Tri.-Ahmd). The period of cenvat credit availed in respect of education and SHE cess was beyond the normal period. Therefore, the demand of such cenvat credit was not maintainable. Accordingly, the appellant was not required to pay the amount and consequently, they were entitled for the refund. He placed reliance on the following judgment of NIRMA LTD. Vs. COMMISSIONER OF CE & ST, BHAVNAGAR- 2018(361) ELT 136 (Tri.-Ahmd). Wherein the demand only for the normal period was confirmed and it was held that the demand for the extended period cannot be sustained. On this basis in the present case also the cenvat credit was availed during the period which is beyond the normal

period. The same was not payable. Therefore, they are entitled for the refund.

3. Shri G. Kirupanandan, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order. He submits that the judgment of NIRMA LTD. Vs. COMMISSIONER OF CE & ST, BHAVNAGAR- 2018(361) ELT 136 (Tri.-Ahmd) on the limitation is not applicable to the appellant's case on the ground that the said case was on the demand and recovery of wrongly availed the cenvat credit. Whereas in the present case the appellant have admittedly paid the cenvat credit after realizing that they are not entitled for the refund. In this case the refund was rightly rejected on the merit.

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.

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.

(Pronounced in the open Court on 20.05.2022)

**RAMESH NAIR
MEMBER (JUDICIAL)**