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

REGIONAL BENCH- COURT NO.1

Excise Appeal No.10358 of 2018

(Arising out of OIA-VAD-EXCUS-002-APP-300-2017-18 dated 10/08/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Prafful Overseas Pvt Ltd ....**Appellant**
Plot No. 9c, Gidc, Panoli, Ankleshwar,
BHARUCH, GUJARAT

VERSUS

C.C.E-Bharuch ....**Respondent**
Vadodara-Ii,Gst Bhavan,Subhanpura,Vadodara
Vadodara Gujarat-390023

APPEARANCE:
None appeared for the appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 11900 /2024

DATE OF HEARING: 22.08.2024
DATE OF DECISION:22.08.2024

SOMESH ARORA

When the matter was called, none was present for the appellant, however, a request to decide the matter on merits was found on record indicating that the issue stands covered in their own case in Prafful Overseas Pvt. Ltd Vs. Commissioner of Central Excise and Service Tax, Vadodara-II by order dated 20.09.2022 as reported in 2022 (5) TMI 1116-CESTAT, Ahmedabad. The issue pertains to refund of Cenvat Credit of Education Cess and Secondary Higher Education Cess paid on total Customs Duty involved.

On the CVD portion stated to be wrongly paid by the appellants and stands decided against them.

2. Learned AR reiterates the finding of the lower authorities.

3. In view of the matter having been already covered against the party for earlier period in the instant case, learned A.R. requests, following the earlier order (cited supra).

4. Considered. In view of the matter involving an underlying issue which is already covered in their own case (cited supra, this Court is of the view, the same needs to be followed in the instant case also. Para 4 of the decision cited (supra) being relevant is reproduced below:

> ***Para"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 here. 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 appeal is rejected.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi