IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1835 & 1766/2012-EX[DB]

(Arising out of Order-in-Appeal No.38-39-CE/MRT-I/2012 dated 06/02/2012 passed by Commissioner (Appeals), Central Excise, Meerut-I)

M/s Modi Tyres Co. Pvt. Ltd. **Appellants**

Vs.

Commissioner of Central Excise, Meerut-i **Respondents**

Appearance:

Absent on Call for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/06/2018
Date of Decision : 26/06/2018

FINAL ORDER NOs. – 71239-71240/2018

Per: Archana Wadhwa

Nobody appeared for the appellants. We have heard the learned D.R. Issue in both the cases are identical and hence the common order is being passed.

2. A very short issue is involved as to whether Education Cess and Secondary Higher Education Cess can be paid by using the credit of Basic Excise duty, which stands availed by the assessee. We find that the

issue is no more *res integra* and stands settled in various precedent decisions of the Tribunal. Reference can be made to the following decisions:-

(i) CCE, Vapi vs. Donear Industries Ltd. – 2009 (233) E.L.T. 221 (Tri.-Ahmd.).

(ii) Sun Pharmaceutical Industries vs. CCE, Jammu – 2008 (11) S.T.R. 93 (Tri.-Del.).

(iii) CCE, Vapi vs. Balaji Industries – 2008 (232) E.L.T. 693 (Tri.-Ahmd.).

(iv) CCE, Shillong vs. Godrej Consumer Products Ltd. – 2007 (219) E.L.T. 585 (Tri.-Kolkata).

3. In all these cases it has been held that Education Cess and also SHE can be paid by utilizing credit of Basic Excise duty in terms of provisions of Rule 3(4) of Cenvat Credit Rules. As such by following the said decisions, we set aside the impugned order and allow both the appeals with consequential relief to the appellants.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks