

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148 SECTOR 17-C CHANDIGARH**

Date of Hearing/Order: 6.12.2018

**Appeal No. E/54465/2015-DB
E/54221-54225/2015**

(Arising out of Order-in-Original No. JNK-EXCUS-000-APP-258-263-15-16 dated 6.8.2015 passed by Commissioner, Central Excise & Customs, Jammu)

M/s Sun Pharma Laboratories Ltd. Appellant

Vs.

CCE & ST, Jammu & Kashmir Respondent

Appearance :

Shri Kiran Salwe, Advocate - for the appellant

Shri A.K. Saini, DR - for the respondent

**CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)**

Final Order No. 63644-63649/2018

Per Bijay Kumar :

The present appeals are directed against the Order-in-Appeal No. JNK-EXCUS-000-APP-258-263-15-16 dated 6.8.2015 passed by the Id. Commissioner (Appeals) wherein he has upheld the order passed by the lower adjudicating authority. The issue involved in all these appeal are regarding rejection of refund on account of education and higher education cess, denial of Cenvat on account of value addition, denial of Cenvat credit on the input procured from EOU in the various appeals of the lower adjudicating authority.

2. Heard the parties.

3. Both the parties fairly concedes that all the issues stand decided in favour of the appellant by the various decisions of this Tribunal as well as the High Court of J&K.

- (a) Appeal No. E/54221/2015-EX.(DB) – is against the order passed by jurisdictional Dy. Commissioner for the period April 2011 to June 2011 wherein he has rejected the refund on account of education and higher education cess. We find that this issue is settled by Hon'ble Supreme Court in the case of *SRD Nutrients Pvt. Ltd. Vs. CCE, Guwahati* – 2017 (355) ELT 481 (SC) which has subsequently followed by various Final Orders of this Tribunal, the order being Final Order No. A/60547-60556/2018-EX.(DB) dated 6.3.2018, Final Order No. A/62650-62651/2018-EX.(DB) dated 28.8.2018 and Final Order No. A/62157-62191/2018-EX.(DB) dated 23.3.2018. Following the aforesaid judgement, the order passed by the Id. Commissioner (Appeals) is not sustainable in law.
- (b) Appeal No. E/54222/2015-EX.(DB)- this appeal pertains to the period Feb. 2011 to July 2011, wherein Id. lower authority has upheld the denial of Cenvat credit on the input procured from the EOU. This issue also stands settled

- in favour of appellant following the decision of coordinate bench of this Tribunal in the case of **Metaclad Industries Vs. CCE, Mumbai-II** - 2013 (289) ELT 381 (Tri.-Mumbai), **Micro Labs Pvt. Ltd. Vs. CCE & ST, Bangalore- LTU** - 2015-TIOL-2825-CESTAT-BANG. and CESTAT Final Order No. A/88018/16/SMB dated 22.2.2016 in the case of **M/s Micro Labs Ltd. Vs. CCE & ST, Bangalore**.
- (c) Appeal No. E/54223/2015-EX(DB) - This order pertains to period December 2013 regarding the rejection of refund claim on account of education cess and higher education cess and rejection of refund on value addition. The case of value addition is covered by the judgement of **Reckitt Benckiser Vs. Union of India** - 2011 (269) ELT 194 (J&K) and Final Order No. A/62073-62076 & 62207/2018-EX(DB) dated 22.3.2018. This issue is also stands settled in favour of the appellant.
- (d) Appeal No. E/54224/2015-EX(DB) - is pertaining the period Jan. 2014 wherein the lower adjudicating authority has rejected the refund claim on account of value addition. The issue is also decided in favour of the appellant in view of the judgement cited earlier by us.
- (e) Appeal No. E/54225/2015-EX(DB) - for the period August 2011 to March 2012 regarding denial of Cenvat credit on the input procured from EOU. This is also a covered matter

the decision of Hon'ble J&K High Court and the Final Order of this Tribunal as has been discussed above.

- (f) Appeal No. E/54465/2015 - pertaining to Jan. 2013 to Nov. 2013 on account of rejection of refund on account of education cess and Higher Education Cess. This issue is also covered by the precedent decision of Hon'ble Supreme Court and also the subsequent order of this Bench.

4. In view of above, we find that the order passed by the Id. Commissioner (Appeals) is not sustainable and, therefore, we set aside the impugned order with consequential benefit as per law.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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