Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017
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Appeal No.E/53509-53510/2014

[Arising out of OIA-JNK-EXCUS-000-APP-1072to1075-13-14 dated 18.03.2014 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

Bbf Industries Unit-III
Bbf Industries Unit-II : Appellant (s)

Vs

CCE & ST-Jammu & Kashmir : Respondent (s)

Represented by:
For Appellant (s) : Shri B. L. Narsimhan, Advocate
For Respondent (s): Shri G. M. Sharma, AR

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

Date of Hearing/Decision: 21.02.2019

FINAL ORDER No.A/60203-60204 / 2019

Per : Mr. Ashok Jindal

On hearing the parties, the following issue emerges:-

(a) Whether the appellant who are located in the state of Jammu & Kashmir and availing benefit of Notification No. 56/2002-CE dated 14.11.2002 are entitled for refund of education cess and higher education cess or not?

(b) Whether in terms of Notification No. 19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008 the appellant are entitled to claim refund/self credit as restricted by these notification or not?

2. Heard the parties.
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3. Considering the fact that both the issues have been considered by this Tribunal in the case of ***Boistadt India Ltd. Vs. CCE & ST, Jammu & Kashmir vide Final Order No. 61350-61411/2018 dated 14.03.2018*** wherein this Tribunal observed as under:-

> *"3. Considering the fact that the issue whether the appellants are entitled to refund/ self-credit of education cess/ higher education cess paid by them has been settled by the Hon'ble Apex Court in the case of M/s. SRD Nutrients Pvt. Limited vs. CCE, Guwahati - 2017 (355) ELT 481 (SC), wherein it has been held that education cess/ higher education cess is continuation of duty paid by the assessee. If the assessee is entitled to refund of duty paid through PLA, then for the education cess/ higher education cess also, the assessee is entitled to claim refund/ self-credit. Therefore, we hold that the appellants are entitled to claim refund/ self-credit of education cess/ higher education paid by them through PLA."*

Therefore, we hold that the appellant are entitled to claim refund of education cess and higher education cess. Consequently, the impugned order qua on this issue is set-aside.

4. With regard to the issue that in terms of Notification No. 19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008 whether the appellant are entitled to claim refund/self credit as restricted by these notification or not?

We find that this Tribunal observed as under:-

> *"4. With regard to the issue that, in terms of Notification No. 19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008, whether the appellants are entitled to claim refund/self-credit as restricted by these notifications or not. After hearing the parties, we find that the notifications in question have been examined by the Hon'ble J & K High Court in the case of Reckit Benckiser vs. UOI – 2011 (269) ELT 194 (J&K), wherein the Hon'ble High Court quashed the notifications in question. Therefore, in terms of Notification No. 56/2002- CE dated 14.11.2002, the appellants are entitled to claim refund/ self-credit of duty paid through PLA.*
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> *5. The Revenue's objection that the Division Bench of the Hon'ble High Court of Jammu & Kashmir has dealt the matter wherein the Hon'ble High Court allowed 50% of refund/ self-credit, in terms of notifications in question. The objection of the Revenue has been turned down on the ground that the order of the Hon'ble High Court in the case of Reckit Benckiser (supra) has not been set-aside by any higher forum. Therefore, the said decision is holding the field as on date.*
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> *6. Further, we take note of the fact that, in the case of CCE, Delhi-I vs. M/s. Space Telelink Limited (in CEAC No. 5 of 2016 dated 08.03.2017) wherein the Hon'ble Delhi High Court observed that although there is stay of operation of order passed by a higher court but the said decision is having applicability till the said decision is set-aside. Admittedly, in this case, there is no stay of order of the Hon'ble High Court of Jammu &*

Kashmir in the case of Reckit Benckiser (supra). Moreover, we also take note of the fact that the vires of the notifications in question has been challenged by various parties in the case Unicorn Industries vs. UOI – 2013 (289) ELT 117 (Sikkim), VVF Limited vs. UOI – 2017 (349) ELT 20 (Guj.) and the respective Hon'ble High Courts also quashed the notifications in question."

Therefore, we hold that the appellant are entitled to claim refund/self credit in terms of Notification No. **56/2002-CE dated 14.11.2002** and the same cannot be restricted in terms of Notification No. 19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008 and.

With these terms, the appeals are allowed.

(Operative part of the order pronounced in the Court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.