CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017
COURT NO. I

Appeal No. E/1485/2008-DB

Date of Hearing/ Decision : 23.03.2018

[Arising out of Order-in-Appeal No. OIA-160-CE-APPL-JAL-2008 dated 27.03.2008 passed by the Commissioner (Appeals) Central Excise & ST, Jammu]

Commissioner of Central Excise & ST, Jammu : **Appellant (s)**

vs.

M/s. Jindal Drugs Pvt. Limited : **Respondent (s)**

Appearance:

Shri Tarun Kumar, A.R for the Appellants-Revenue(s)
Shri Prakash Shah, Shri Mihir Mehta, Advocates for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Final Order No. 62201 / 2018

Per : Ashok Jindal

The Revenue has filed this appeal against the impugned order.

2. The facts of the case are that the respondent-assessee is located in the State of Jammu and Kashmir and availing benefit of exemption Notification No. **56/2002-CE dated 14.11.2002**. As per the said Notification, the Respondent is availing Cenvat credit on inputs and paying duty through PLA after exhausting Cenvat credit availed by them and the same is admissible as refund to the Respondents. The refund claim of the Respondent initially sought to be

rejected on the ground that the assessee has availed Cenvat credit of basic excise duty for payment of Education Cess and Higher Education Cess. The other issue is, the Respondent is not entitled to claim refund of Education Cess/ Higher Education Cess in terms of Notification No. 56/2002-CE dated 14.11.2002 and they were required to pay duty as per CAS-4, as they have been clearing goods to their sister unit. As the Respondent have paid less duty, they required to pay more duty on which they have to pay interest to the intervening period. Therefore, the refund claim filed by the Respondent was entertained and the differential interest for the intervening period was adjusted without issuance of the show cause notice. The matter was adjudicated and the demand was confirmed. On appeal before Commissioner (Appeals), the order of adjudicating authority was set-aside, against the said order the Revenue is before us.

3. Heard the parties and considered the submissions.

4. On hearing the parties following issues emerges are:

(I) Whether the Respondent can utilise basic excise duty for payment of education cess/higher education cess or not?

(II) Whether the Respondent is entitled to claim refund of Education Cess/Higher Education Cess paid in cash, in terms of Notification No. 56/2002-CE dated 14.11.2002 or not?

(III) Whether the interest for the intervening period can be demanded/adjusted or recovered from the Respondent, without issuance of the show cause notice.

Issue No. I

The issue of payment of education cess/higher education cess through basic excise duty has been decided in the case of Hon'ble High Court of Gauhati in the case of ***Union of India Vs. Kamakhya Cosmetics & Pharmaceutical Pvt. Ltd. reported in 2015 (323) ELT 33 (Gau.)*** wherein the Hon'ble High Court has held that basic excise duty can be utilised for payment of education cess/ higher education cess. Therefore, we answer **issue (I)** in favour of the Respondent.

Issue No. II

The issue of refund of education cess/higher education cess has been dealt by the Hon'ble Apex Court in the case of **SRD Nutrients Pvt. Ltd. vs. CCE, Guwahati- 2017 (355) ELT 481 (SC),** wherein the Hon'ble Apex Court held that the Education Cess/higher education cess arises on account of payment of duty, therefore, the refund claim is admissible of education cess/ higher education cess in terms of Notification No. **56/2002-CE dated 14.11.2002**. Therefore, we answer the **Issue No. (II)** in favour of the Respondent.

Issue No. III

Whether, without issuance of the show cause notice, the demand of interest can be recovered/adjusted by the Revenue. We find that for demand of interest a show cause notice is required to be issued and the same has not been issued to the Respondent and the said issue has been held by this

Tribunal in the case of ***Punjab National Bank Vs. CC, Chandigarh-I vide Final Order No. A/60094/2017 dated 17.01.2017,*** wherein this Tribunal has held that the show cause notice has not been issued for demand of interest, therefore, question of payment of interest does not arise. In that circumstances, we hold that the interest cannot be recovered from the Respondent without issuance of the show cause notice. Further, we find that the issue is of short payment of duty on the premises that as the goods had been cleared to their sister unit and they are required to pay duty as per CAS-4, we take note of the fact that whatever the duty could have been paid by the Respondent is entitled to refund of the same. In that circumstances, it is a revenue neutral situation, therefore, on that account also payment is of interest is not required to be adjusted by the authorities below, therefore, the **Issue No. III** is also answered in favour of the Respondent**.**

5. In view of the above discussion, as all the issues have been answered in favour of the Respondent. Therefore, we do not find any merit in the appeal filed by Revenue and the same, dismissed.

(Order dictated and pronounced in the court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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