CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

Appeal No. E/52305/2015, E/60001,60264,60267,60273-60276/2016-DB

Date of Hearing/ Decision : 23.03.2018

[Arising out of Order-in-Appeal No. OIA-JNK-EXCUS-000-APP-1054-1059-14-15 dated 11.03.2015, OIA-JNK-EXCUS-000-APP-460-465-15-16 dated 18.12.2015 and OIA-JNK-EXCUS-000-APP-483to488-15-16 dated 21.01.2016 passed by the Commissioner (Appeals) Central Excise & ST, Jammu & Kashmir]

M/s. Nitin Enterprises : **Appellant**

vs.

Commissioner of Central Excise & ST, Jammu & Kashmir : **Respondent**

Appearance:

Shri Jatin Mahajan, Advocate for the Appellant(s)
Shri Satyapal, A.R. for the Respondent(s)

CORAM:

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

Final Order No. 62104-62111 / 2018

Per : Ashok Jindal

The appellants are in appeal against the impugned orders wherein the refund claim filed by them under Notification No. 56/2002-CE dated 14.11.2002 has been rejected on two grounds (a) that the appellants are not entitled to self credit/ refund of education/ higher education cess paid by them in terms of Notification No. **56/2002-CE dated 14.11.2002** and, (b) in terms of Notification Nos. **19/2008-CE dated 27.03.2008 and 34/2008-CE**

dated 10.06.2008, there are some restrictions for refund/ self credit to the appellants, instead self credit/ refund of duty paid through PLA.

2. Heard the parties.

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.

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, relying on the decision of this Tribunal in the case of ***M/s. Biostadt India Limited & others vide Final Order No. 61350-61411/2018 dated 14.03.2018.***

5. In view of the above, we hold that the refund/ self credit cannot be restricted in terms of Notification No. **19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008** and the appellants are entitled to claim refund/self credit of duty paid through PLA, in terms of Notification No. **56/2002-CE dated 14.11.2002.** It is made clear that other than these two issues, no other issue is pressed in these appeals.

With these terms, appeals are allowed.

(Order dictated and pronounced in the court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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