CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
COURT NO.1
Appeal No. E/55148/2014

[Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-210-14-15 dated 19.05.2014 passed by the CCE (Appeals), Jammu & Kashmir]

Date of Hearing/Decision: 31.08.2018

For Approval & signature:

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

Khyber Industries Ltd. **Appellant**

Vs.

CCE, Jammu & Kashmir **Respondent**

Appearance

Shri. A.S. Gill, Advocate- for the appellant
Shri. Vijay Gupta, AR- for the respondent

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

FINAL ORDER NO: 62828/2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the ld. Commissioner (A) has dismissed the appeal filed by the appellant for non compliance of Section 35F of the Central Excise Act, 1944.

2. As the issue involved in the matter has already been decided in favour of the appellants by this Tribunal in the case of ***M/s Nitin Enterprises Ltd. Vide Final order No. 62104-62111/2018 dated 23.03.2018,*** therefore, we waive the requirement of pre deposit in terms of the Section 35F of the Central Excise Act, 1944 and taken up the appeal for final disposal.

3. The facts of the case are that the appellant is located in the state of Jammu & Kashmir and availing the benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. The appellant claims self credit refund of education and higher education paid by them in the above said notifications but the said refund claim was denied to them read with Notification No. 34/2008-CE dated 10.06.2008. The refund claims was denied to the appellant in terms of the education cess/higher education cess are not the part of the duty and the above cited notifications refund of duty only. We find that the said issue came up before the Hon'ble Apex court in the case of ***M/s SRD Nutrients Pvt. Limited Vs. CCE, Guwahti-2017 (355) ELT 481 (SC),*** wherein it has been held that the education cess/higher education cess are part of the duty and the assessee are entitled to claim refund. In these terms, we hold that the appellant is entitled to education cess and higher education cess in terms of the above said notifications.

4. We further find that in terms of the decision of the ***Hon'ble High Court of Jammu & Kashmir in the case of Reckit Benckiser Vs. UOI-2011 (269) ELT 194 (J&K),*** the refund claims was restricted of the 50% of the value addition. The said issue came up before this Tribunal in the case ***of M/s Nitin Enterprises Ltd. (supra)*** and this Tribunal observed as under:

> *"4. With regard to the issue that, in terms of Notificaiton 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.*
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> *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.*
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> *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 entitle 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."

and this Tribunal allowed the refund claim and self credit of duty paid through PLA.

5. As both the issues decided in favour of the assessee in the case of M/s Nitin Enterprises Ltd.(supra), therefore, we hold that the appellant is entitled for refund claim as claimed by them.

In these terms, the impugned order is set aside. The appeal is allowed with consequential relief, if any

(Dictated and pronounced in the open court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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