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

DIVISON BENCH
COURT NO.1
Appeal No. E/52365-52370/2014

[Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-679-684-13-14 dated 10.01.2014 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)

Shiva Industries	**Appellant**

Vs.

CCE, Jammu & Kashmir	**Respondent**

Appearance

Ms. Surbhi Sinha, Advocate- for the appellant
Shri. Tarun Kumar, AR- for the respondent

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

FINAL ORDER NO: 63006-63011 / 2018

Per Ashok Jindal:

The appellants are in appeal against the impugned orders wherein the ld. Commissioner (A) has remanded the matter back to the adjudicating authority for re-quantification of the amount of refund sanctioned to them in terms of Notification No. 19/2008-CE dated 27.03.2008 and 34/2008-CE dated 10.06.2008.

2. The facts of the case are that the appellants are located in the state of Jammu & Kashmir and availing the benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. The appellants claims self credit refund of education cess and higher education cess paid by them in terms of 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

were denied to the appellant 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 appellants are entitled to refund claim of education cess and higher education cess in terms of the above said notifications.

3. 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 has been restricted to the 50% of the value addition. The said issue came up before this Tribunal in the case ***of M/s Nitin Enterprises Ltd. Vide Final order No. 62104-62111/2018 dated 23.03.2018*** 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.*
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> *With these terms, appeals are allowed."*

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

4. As both the issues has been decided in favour of the appellants in the case of M/s Nitin Enterprises Ltd. (supra), therefore, we hold that the appellants are entitled for refund claim as claimed by them.

In these terms, the impugned orders are set aside. The appeals are 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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