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

DIVISION BENCH
Court-I

Appeal No.E/421/2010 & E/3701/2012
(Arising out of OIA No.642/CE/APPL/CHD-II(JK)/2009 dt.30.11.2009 and OIA No.137/CE/APPL/CHD-II(JK)/2012 dt.31.8.2012 passed by the CCE (Appeals), Chandigarh)

Date of hearing/Decision:24.10.2018

M/s. Ritzy Polymers **Appellant**
Vs.
CCE, Jammu & Kashmir **Respondent**

Present for the Appellant: Shri B.L.Narasimhan, Advocate
Present for the Respondent: Shri V.Gupta, AR

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

FINAL ORDER NO.63315-63316/2018

PER: ASHOK JINDAL

The appellant has filed two appeals against the impugned orders wherein in Appeal No.E/421/2010, the demand of duty has been confirmed on account of refund erroneously sanctioned to them and whereas in Appeal No.E/3701/2012, the refund amount has been adjusted by the Revenue for the demand confirmed in the impugned order in Appeal No.E/421/2010.

2. Heard the parties.

3. The case of the Revenue is that the appellant is not entitled to claim refund for outward transportation charges under Notification No.56/02-CE dt.14.11.2002. Since the appellant has filed the refund claim which was sanctioned and the same has not been challenged. Later on a show cause notice was issued to the appellant to demand erroneously refund of duty paid on outward transportation charges under Notification No.56/02-CE

dt.14.11.2002. The matter was adjudicated, the refund sought to be recovered and the same is adjudicated against the refund pending with the department. In the impugned order, of Appeal No.E/3701/2012, the refund has been adjusted and also denied refund on education cess and higher education cess availed by them in terms of Notification No.56/02-CE dt.14.11.2002.

4. Considering the fact that the Revenue has not challenged the order of sanctioning the refund claim in Appeal No.E/421/2010, therefore, in light of the decision of this Tribunal in the case of M/s. Bharat Box Factory Limited vide Final Order No.62192-62193/2018 dt.20.3.2018, wherein this Tribunal has observed as under:-

"*5. Heard the parties, considered the submissions. After hearing the contentions of both sides, we find that the issue emerges before us is that, as refund claim was sanctioned to the appellant, and without challenging those assessment orders of refund claims sanctioning thereof, can be challenged by way of issuance of show cause notice under Section 11A of the Act or not. The said issue is exempted by the Hon'ble High Court of Gauhati in the case of Jellalpur Tea Estate (supra), wherein the Hon'ble High Court observed as under:-*

> **"13.** That apart, the Assistant Commissioner of Central Excise, Silchar had passed a final order in favour of the assessee on 29-4-2002 and admittedly, this order was revisable under Section 35-E of the Act. For reasons best known to the Commissioner of Central Excise, Shillong no action was taken to have the order of the Assistant Commissioner revised or set aside. Having failed to avail of the statutory remedy available under the Act, the Revenue sought to circumvent the law (as it were) by taking recourse to Section 11A of the Act. In our opinion, this was clearly impermissible inasmuch as what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all.**"**

We hold that provisions of Section 11A of the Act are not applicable to the facts of this case. Accordingly, demand against the appellant is not sustainable."

5. Therefore, the demand confirmed by impugned order in Appeal No.E/421/2010 is not sustainable.

6. Accordingly, the adjustment of refund in the impugned order in Appeal No.E/3701/2012 is also not sustainable. Hence, the demand on account adjustment of refund is set aside.

7. Further, we take note of the fact that in Appeal No.E/3701/2012, the appellant has also challenged the order of denial of refund of education cess and higher education cess in terms of Notification No.56/02-CE dt.14.11.2002.

8. As the issue has been settled by Hon'ble Supreme Court in the case of M/s. SRD Nutrients Pvt.Ltd. vs. CCE- Guwahati-2017 (355) ELT 481 (SC), therefore the appellant is entitled to claim refund of education cess and higher education cess paid by the appellant in terms Notification No.56/02-CE dt.14.11.2002.

9. In the result, the impugned orders are set aside and appeals are allowed with consequential relief.

(dictated and pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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