CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/Decision: 24.10.2017

Appeal No. E/54137/2015-EX [DB]
[Arising out of the Order-in-Appeal No. 161 (SLM) CE/JPR/2015 dated 30/03/2015 Passed by The Commissioner (Appeals), Central Excise, Jaipur]

CCE & ST Udaipur … Appellant

Vs.

Jain Grani Marmo (P) Ltd. … Respondent

Appearance:
Present Shri H. Saini, DR for the appellant
Present Shri Hemant Bajaj, Advocate for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble V. Padmanabhan, Member (Technical)

FINAL ORDER No. 57475/2017

Per:Justice Dr. Satish Chandra

1. The present appeal is filed by the department against the Order-in-Appeal No. 161/2015 dated 30/03/2015. The period of dispute is May, 2008 to April, 2012.
2. The brief facts of the case are that the appellant is hundred per cent EOU engaged in the manufacture of Granite, Artificial Stone, Marble Slabs and Tiles etc, which are under the Central Excise Tariff Act, 1985. The appellant has paid the cess under protest. To recover, the respondent has filed an application for refund on 3/12/2012 which was denied by the Original Authority but allowed by the Appellate Authority. Being aggrieved the department has filed the present appeal.

3. With this background heard Shri H. Saini, Ld DR for the department and Shri Hemant Bajaj, Ld. Counsel for the respondent.
4. From the impugned order it appears that the Appellate Authority has followed the decision of the Larger Bench of the Tribunal in the case of Kumar Arch Tech Pvt. Ltd. v. CCE, Jaipur 2013 TIOL 614 CESTAT, Delhi.
5. The identical issue has come up before the Tribunal in the case of M/s Echon Industries Ltd. V/s CCE Final Order No. 53931/2016 dated 04/10/2016 where it was observed as under :-

   We have heard both sides and perused appeal records. We find that the very same issue has come up for decision by the Tribunal in Sarla Performance Fibers Ltd. and Others vs. CCE, Vapi- 2010-TIOL-408-CESTAT-AHM. The Tribunal held that once education cess is added to the customs duties to arrive at aggregate of customs duties, the question of charging education cess again does not arise. Because once it is an enhancement, it is part of relevant type of duty. What is required for the purpose of proviso to sub-section (1) of Section 3 is to arrive at aggregate of Customs duties and once we take a view that education cesses part of the customs duty and is an enhancement, the question of adding it again does not arise. We note that the decision of the Tribunal was taken up on appeal by the Revenue to Hon'ble Gujarat High Court which dismissed the same on jurisdication- 2014 (307) ELT 470 (Guj). The civil appeal filed by Revenue before the Hon'ble Supreme Court was dismissed on the ground of delay- 2014 (304) ELT A79 (SC).

6. By following our earlier order (supra) we find no reason to interfere with the impugned order passed by the Commissioner (Appeals). Hence, we sustain the reasonable order passed by the Commissioner (Appeals).
7. In the result, the appeal filed by the department is dismissed,

[Order Dictated and Pronounced in the open court]

(V.Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

Rekha