CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 02.01.2018

Excise Appeal No. 51522 of 2017
(Arising out of order in original No. 09/COMMR/CEX/IND/2017-18 dated 28.04.2017 passed by the Commissioner of Central Excise, Ujjain).

M/s Grasim Industries Limited Appellant

Vs.

CCE, Ujjain Respondent

Appearance:

Sh. Rahul Tangri, Advocate for the appellant
Sh. M. R. Sharma, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 50016/2018

Per: **B. Ravichandran**:

The appellant is aggrieved by the order in original No. 09/COMMR/CEX/IND/2017-18 dated 28.04.2017 passed by the Commissioner of Central Excise, Ujjain.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Viscose Staple Fibre and other excisable goods. They were also availing credit of duty on inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004. The appellant purchased certain dutiable items from 100% EOU. The said items suffered duty in terms of the proviso to Section 3(1) of the Central Excise Act, 1944. The duty is aggregate of all duties of customs, additional duty payable on the goods as if imported into India. On such gross amount of duty the goods also suffer education/ Higher

Education Cesses. The dispute in the present appeal relates to eligibility of the appellant to avail credit of such cesses paid on the gross duty amount suffered by the product cleared from the EOU. The Revenue held a view that such cesses are not covered by Rule 3 of Cenvat Credit Rules, 2004 as these are not cesses paid on Excise Duty. The Original Authority held that the formula to calculate the quantum of excise duty credit as given under Rule 3(7) of Cenvat Credit Rules, 2004 has been rightly complied for availing credit by the appellant and cesses paid on the gross amount is not available for credit.

3. Ld. Counsel appearing for the appellant submitted that the formula given in Rule 3(7) only restrict the quantum of excise credit available on the goods purchased from EOU. The credit taken on Education Cesses paid on such goods is clearly covered by Rule 3(1) of the Cenvat Credit Rules, 2004 and the Original Authority erroneously concluded that the said rule does not cover the cesses paid on gross tax amount in terms of proviso to Section 3(1) of the Central Excise Act, 1944. He relied on the decision of the Tribunal in ***Polypack Industries vs. CCE, Belgaum -2015 (327) ELT 568 (Tri. Bang.***) in support of his contention.

4. Ld. AR appearing for the Revenue reiterated the finding recorded by the Original Authority.

5. We have heard both the sides and perused appeal record.

6. We note that the Tribunal in ***Polypack Industries*** (supra) examined an identical dispute with reference to cesses paid on the gross amount of duty liability in terms of proviso to Section 3(1) of the Act. The Tribunal relying on the decision in ***Emcure Pharmaceuticals Ltd. vs. Commissioner – 2008 (225)***

ELT 513 (Tri.) held that such credit availed on Education Cess/ High Education Cess cannot be denied. We note that the Original Authority though referred to the decision of the Tribunal in ***Emcure Pharmaceuticals*** (supra) as a defence submission of the appellant, did not examine the applicability of the said decision. We note that the impugned order erroneously concluded that the disputed cesses are not mentioned in the eligible list of duty/ cess under Rule 3 of Cenvat Credit Rules, 2004. Sl. No. (vi) and (via) under Rule 3(1) refers to such cesses.

7. In view of the decision of the Tribunal referred to above, we find the impugned order is not sustainable and accordingly the same is set aside. The appeal is allowed.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Pant