IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO.-1

Excise Appeal No. 50206 of 2016-[DB]

[Arising out of Order-in-Original No. 35/ Commr./Dehradun/2015 dated 27.11.2015 passed by the Commissioner of Customs & Central Excise]

Hero Motorcorp Limited **……Appellant**
Plot No. 3, Sector-10,
Integrated Industrial Estate,
SIDCUL, Haridwar

Versus

Commissioner of Central Goods and Service Tax & Central Excise, Dehradun **….Respondent**
E- Block Nehru Colony, Dehradun

Appearance

Present for the appellant : Shri S Ganesh, Sr. Advocate, Shri Srinivas and Shri Sumit Wadhwa, Advocates
Present for the respondent: Shri H C Saini, Authorised Representative

Coram: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 50763 /2019

Date of Hearing/Decision: 30.05.2019

JUSTICE DILIP GUPTA:

This appeal has been filed to assail the order dated 27 November, 2015 passed by the Commissioner of Customs and Central Excise, Dehradun by which the demand to pay National Calamity Contingent duty (hereinafter referred to as 'NCCD'), Education Cess (hereinafter referred to as 'EC') and Secondary and Higher Education Cess (hereinafter referred to as 'SHEC') has been confirmed. The Appellant has also been directed to pay interest and penalty.

2. The contention of the Appellant is that National Calamity Contingency is in the nature of a duty and, therefore, entitled for the benefit of the Exemption Notification.

3. It is not in dispute that this issue was raised by the Appellant for earlier periods in the Supreme Court. It is also not in dispute that the Appellant had deposited certain amounts towards NCCD, EC and SHEC during the pendency of the appeal before the Supreme Court but penalty was not deposited by the Appellant.

4. The Supreme Court in the aforesaid **Civil Appeal Nos. 1600-1605 of 2018** (M/s Hero Motocorp Limited vs. Commissioner of Customs and Central Excise decided on 30 April, 2019) filed by the Appellant for the earlier period passed the following order;

> "**All the appeals pertain to the liability of the assessee to pay National Calamity Contingent Duty (for short 'NCCD').** This issue was pending consideration before this Court when these appeals were filed and subsequently **the legal position stands settled by the decision of this Court in Civil Appeal No.3239 of 2019 titled as Bajaj Auto Limited Vs. Union of India decided on 27.03.2019 opining that the NCCD is in the nature of excise duty and is, thus, entitled to the benefit of the exemption notification.**

> 2. Learned counsel for the respondent-Department did seek to contend that the appellant has given up this plea before the High Court but on reading of the order we cannot come to such a conclusion as all that has been stated is that at the relevant stage of time view of the High Court was against the assessee which has been specifically reversed in Bajaj Auto Limited case (supra).
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> 3. In view of the aforesaid, all the appeals are liable to be allowed in terms of the Judgment in Bajaj Auto Limited's case (supra). We order accordingly.
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> 4. As per the interim order dated 19.03.2018 interim stay had been granted in respect of the penalty amount but the other amounts had to be deposited and are stated to have been so deposited.
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> 5. That being the position, the amount paid to the Department would be refunded back within a maximum period of two months from the receipt of copy of this order.
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> 6. The appeals are accordingly allowed."
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> (emphasis supplied)

5. The imposition of duty on National Calamity Contingent, therefore needs to be set aside. The payment for EC and SHEC ,in such circumstances, will also have to be set aside.

6. This appeal, therefore, deserves to be allowed in the same terms as the aforesaid order dated 30 April, 2019 of the Supreme Court. The Appeal is, accordingly, allowed. The order dated 27 November, 2015 passed by the Commissioner is set aside. The amount paid by the Appellant to the Department pursuant to the impugned order will be refunded to the Appellant within a

maximum period of two months from the date a copy of this order is submitted by the Appellant before the authority concerned.

(Dictated and pronounced in open court)

(Bijay Kumar)
Member(Technical)

(Justice Dilip Gupta)
President

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