CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench - Court – I

Excise APPEAL No. 31035 of 2018

(Arising out of **Order-in-Appeal** No. GUN-EXCUS-000-APP-040-18-19, dated 09.05.2018 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

The Ramco Cements Ltd., .. **APPELLANT**
Kumaraswamy Raja Nagar,
Jayanthipuram, Jaggayyapet Mandal,
Krishna District,
Andhra Pradesh – 521 457.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Guntur – GST
C.R. Buildings, Kannavarithota,
Guntur, Andhra Pradesh-522 004.

Appearance:
Shri R. Parthasarathy, Consultant for the Appellant.

Shri Mir Anwar Mohiuddin, Asst. Commissioner for the Respondent.

Coram: Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.________________

Date of Hearing: 30.04.2019
Date of Decision: 30.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO]

1. This appeal is filed against Order-in-Appeal No. GUN-EXCUS-000-APP-040-18-19, dated 09.05.2018.

2. Learned consultant for appellant submits that the issue falls in a narrow compass. On 01.03.2015, secondary and higher education cess and education cess were abolished. Prior to this date, they were entitled to take cenvat credit of the education cess as well as secondary and higher education cess and utilise the same for payment of respective cesses on their final products. Rule 3(7)(b) of the Cenvat Credit Rules, 2004 mandated that the credit of education cess and secondary and higher

education cess can be utilised only for payment of education cess and secondary and higher education cess respectively. When these cesses were abolished the appellant had a cenvat credit of education cess and secondary and higher education cess paid on their inputs which they could not utilise after 01.03.2015 because the final products were exempted from both these cesses. Therefore, they utilised the credit for payment of basic excise duty in violation of Rule 3(7)(b) of Cenvat Credit Rules 2004, which has been objected to by the department. A show cause notice was issued and the lower authority, after following due process, passed an order for recovery of Rs. 8,23,144/- in terms of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(1) along with interest under Section 11AA on the ground that the credit was irregularly utilised. He also imposed a penalty under Rule 15(1) read with Section 11AC of the Central Excise Act, 1944.

3. Aggrieved, the appellant appealed before the First Appellate Authority who upheld the order of the lower authority in toto and rejected the appeal. Hence this appeal.

4. Learned consultant submits that Notification No.12/2015-CE dated 30.04.2015 was issued inserting three additional provisos to Rule 3(7)(b) as follows:

> *2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule(7), in clause (b), after the second proviso, the following shall be substituted, namely:-*
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> *"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act:*
>
> *Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act:*
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> *Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act."*

The first proviso enabled anyone who received inputs after 01.03.2015 on which educational cess and secondary and higher educational cess was paid on inputs or capital goods received in the factory of manufacture on or after 01.03.2015 to utilise such credit for payment of basic excise duty. However, this notification did not extend the same benefit to education and secondary and higher education cess lying in balance as on 01.03.2015 which is their case. Learned consultant argues that this notification is in the nature of a explanation and therefore logically the benefit which was conferred for inputs received after 01.03.2015 should not be denied to those inputs which were received prior to 01.03.2015 and on which secondary and higher education cess was paid. Therefore, the notification is discriminatory. He relies on the case laws of TAFE Ltd., [2011 (268) ELT 49 (Kar)] upheld with the Hon'ble Supreme Court in [2015 (320) ELT A-195] in which the question before the Hon'ble Courts was whether the cenvat credit on inputs lying in balance in the accounts of the manufacturer of the tractors will not lapse because the tractors have become exempted from payment of duty. Both the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court held that the amount lying in the cenvat credit will not lapse because the inputs were received at a time when tractors were liable excise duty. Learned Consultant argues the same logic should also be applied to their goods and they should be allowed to utilise cenvat credit of education cess and secondary and higher education cess lying in balance for payment of basic excise duty.

5. Learned DR on the other hand reiterates the findings of the First Appellate Authority in the impugned order and submits that the Cenvat Credit Rules, 2004 as existed prior to 30.04.2015 as well as post 30.04.2015 were examined at length by the First Appellate Authority. Neither of these rules allowed cenvat credit of education cess and secondary and higher education cess lying in balance on 01.03.2015 to be utilised for payment of basic excise duty after that date. Therefore, he would urge that there is no force in the arguments of the Learned Consultant for the appellant and the appeal may be dismissed.

6. I have considered the arguments of both sides and perused the records. There is no dispute on the facts of the matter or regarding the rule position as it existed during the relevant period. The cenvat credit in question was credit of education cess and secondary and higher education cess lying in balance with the appellant on 01.03.2015. Prior to this date this could be utilised only for payment of education cess and secondary and higher education cess. The appellant could not use this credit for this purpose as these cesses were abolished. Notification No. 12/2015 amended Cenvat Credit Rules 2004 by inserting three provisos to Rule 3(7)(b) enabling utilisation of credit of education cess and secondary and higher education cess in respect of inputs received after 01.03.2015 for payment of basic excise duty. However, the balance lying in credit was not covered by this notification also. Learned consultant was correct in arguing that they lose this amount, if they cannot utilise it for payment of basic excise duty. However, I do not agree with him on the point that the case law of TAFE Ltd., applies to their case as there is no allegation in this case that the amount lying in credit must lapse. I agree with the argument that this Rule position causes some hardship to the appellant inasmuch as some credit lying in balance cannot be used because of the rule position. However, any provisions of fiscal laws or criminal laws should be read as such with no scope for intendment regardless of the consequences as has been held by the Constitutional Bench of Hon'ble Apex Court in para 25 of the judgment in the case of Dilip Kumar (Civil Appeal No. 3327 of 2007). A plain reading of the Cenvat Credit Rules as they existed during the relevant period did not allow the appellant to utilise credit of educational cess and secondary and higher education cess lying in balance for payment of basic excise duty. Consequently, I find there is no infirmity in the impugned order which needs to be upheld. The appeal is rejected and the impugned order is upheld.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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