CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Excise Appeal No. 1353 of 2012

(Arising out of OIA No.15 & 16/2012-CE dt.30.01.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Mylan Laboratories Ltd
IDA Phase-IV, Jeedimetla,
Hyderabad, AP – 500 034

......Appellant

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad-IV
Posnett Bhawan, Ramkoti,
Hyderabad, Telangana – 500 001

......Respondent

Appearance
Shri Ravi Kumar Yanamandra, Advocate for the Appellant.
Shri V.R. Pavan Kumar, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30186/2023

Date of Hearing: 12.07.2023
Date of Decision: 12.07.2023

[Order per: ANIL CHOUDHARY]

1. This appeal is directed against Order-in-Appeal No. 15 & 16/2012-CE dated 30.01.2012.

2. Heard both sides and perused the records. On perusal of records it transpires that the issue is regarding liability to pay education cess and secondary & higher education cess, on the amount of excise duty determined in terms of provisions of Sec.3(1) of Central Excise Act, 1944 read with Customs Tariff Act, to be payable by 100% EOUs on clearances to DTA.

3. Both sides agree that this issue was referred to Larger Bench and the Larger Bench in the case of Kumar Arch Tech Pvt Ltd, [2013 (290) ELT 372 (Tri-LB)] have held as follows:

"I do not agree with the argument of Revenue because it disturbs the principle that duties payable on goods cleared into DTA from a hundred percent Export Oriented Unit should be on par with the duties payable on goods imported from abroad into the country. Secondly, if the expression "duties of customs" in the said proviso is interpreted to mean duty including education cesses the expression "duties of excise" used in the same expression should also be interpreted in a similar manner in which case there is no scope for including the cesses for a third time in the calculation."

Thus, education cess and secondary & higher education cess cannot be levied third time. Since, both sides agree the issue is covered by the Larger Bench ratio, we hold that impugned order is unsustainable and liable to be set aside and we do so.

4. Appeal stands allowed.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda