IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Miscellaneous Application Nos.E/MISC/75138/16, 75475/17, 75476/17, 75401/18

Sl. Nos.1-6) Appeal Nos.E/70694/13, 75581/16, 75580/16, 76142/14, 75200/15, 75558/15

Cross Objection Nos.E/CO/75483/16, 75477/16

(Arising out of Order-in-Original No.

Sl.No.1) 38/Comm/CE/SLG/12-13 dated 29.03.2013
Sl.No.2-3) 37-38/Comm/CE/SLG/15-16 dated 10.02.2016
Sl.No.4) 02/Comm/CE/SLG/2014 dated 10.07.2014
Sl.No.5) 08/Comm/CE/SLG/14-15 dated 10.12.2014
Sl.No.6) 19/Comm/CE/SLG/14-15 dated 26.03.2015

All passed by the Commissioner of Customs, Central Excise & Service Tax, Siliguri.)

M/s. Intas Pharmaceuticals Ltd.
Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, Siliguri
Respondent (s)

Appearance:
Shri Ravi Raghavan & Shri D.Sen, Advocates for the Appellant (s)

Shri S.S.Chattopadhyay, Supdt.(AR) for the Revenue

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

Date of Hearing/Decision :- 19.03.2018

ORDER NO…MO/75285-288/2018, FO/75403-408/2018

Per Shri Justice (Dr.) Satish Chandra.

All the appeals have been filed by the appellants against impugned order-in-original Nos. 38/Comm/CE/SLG/12-13 dated 29.03.2013, 37-38/Comm/CE/SLG/15-16 dated 10.02.2016, 02/Comm/CE/SLG/2014 dated 10.07.2014, 08/Comm/CE/SLG/14-15 dated 10.12.2014, 19/Comm/CE/SLG/14-15 dated 26.03.2015.

2. Heard Shri Ravi Raghavan and S.S.Chattopadhyay, representative of the parties.

3. After hearing both the parties two issues are emerging in the present appeals.

4. First issue is regarding the validity of the Notification No.20/2008 dated 27.03.2008 and Notification No.37/2008 dated 16.06.2008 pertaining to the withdrawal of the exemption granted in the payment of duty for utilization towards Cenvat credit/cash convert upon the appellants. Both parties have agreed that the issue has been decided by the Gujarat High Court in the case of SAL Steel Ltd. v. Union of India [2010 (260) E.L.T. 185 (Guj.)] and by the Sikkim High Court in the case of Sun Pharma Laboratories Ltd. v. Union of India in WP(C) No.41/2015 with WP(C) No.8/2017 with WP(C) No.27/2017 & WP(C) No.40/2017 in favour of the appellants. Similar issues have been taken by other High Courts including Gauhati and Jammu & Kashmir. Now the matter is pending before Hon'ble Supreme Court in the SLP No.028194-028201/2010 and others.

5. Both the parties have agreed that without the final verdict of the Hon'ble Supreme Court the present appeal cannot be decided.

6. In view of the above, liberty is granted to the appellant to come again after having the final verdict from the Hon'ble Supreme Court, within the prescribed time, if advised so.

7. The second issue is pertaining to the Education and Higher Education Cess. The matter has come up before the Hon'lble Supreme Court in the case of SRD Nutrients v. CCE [2017-TIOL-416-SC] where it was observed that the appellants were entitled to refund of Education Cess and Higher Education Cess which was paid along with the Excise duty once the Excise duty itself was exempted from the levy.

8. In view of the above, following the ratio laid down by the Hon'ble Supreme Court, we modify the impugned order and allow the claim of the appellants pertaining to the refund of Education and Higher Education Cess. This ground is allowed in favour of the appellant. In the result, all the appeal are disposed of in terms of the above. All Miscellaneous Applications and Cross Objections are also disposed of.

(Dictated and pronounced in the open court.)

SD/
(C.J.Mathew)
Member(Technical)

SD/
(Justice Dr. Satish Chandra)
President

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