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

Appeal No. E/621/2007

Arising out of Order-in-Appeal No. 13/CE(A)/GHY/2007 dated 30.07.2007 passed by the Commissioner of Customs & Central Excise (Appeals), Guwahati.

Commissioner of Central Excise, Shillong.

….Appellant (s)

Vs.

M/s Dharampal Satyapal Ltd.

…Respondent (s)

Appearance:
Shri R. k. Chowdhary & Shri B. N. Pal, Advocate for the Appellant (s)
Shri T. R. Rustagi, Advocate for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 18.12.2018

Order No…FO/A/77325/2018

Per Shri P. K. Choudhary:

This appeal has been filed by Revenue against the Order-in-Appeal dated 30.07.2007 passed by Ld. Commissioner (Appeals), Guwahati, whereby he has disposed 6 nos. of appeals filed by the assessee involving the period from April 2005 to November 2006. The said appeals have been allowed by the Ld. Commissioner (Appeals) in favour of the assessee, against which the Revenue has come up in appeal before us.

2. Briefly stated, the facts of the case are that the assessee is engaged in manufacture of Pan Masala under tariff heading 21069020 and availing the benefits of exemption notification no. 32/99-CE dated 08.07.1999, as amended. The assessee filed refund claims through the second option under the said notification i.e. they suo-motu took the

credit in their PLA (Account Current) in respect of excise duty paid through PLA. The Ld. Deputy Commissioner in his order held that the assessee has wrongly utilized credit of Basic Excise duty for payment of Education Cess and that the liability of Education Cess can only be paid from the Credit accruing on account of Education Cess or from the Account Current (PLA). The Ld. Dy. Commissioner accordingly deducted the amount of Education Cess for determining the correct amount of refund payable in terms of Notification no. 32/99 (Supra). He accordingly passed the orders for reversal of amount of self credits availed.

3. The Ld. Commissioner (Appeals) allowed the appeals filed by the assessee vide impugned order dated 30.07.2007 while noting that the issue as to whether basic excise duty could be used for payment of Education Cess already stands decided in favour of the assessee in their own case by Kolkata Bench of this Tribunal vide Final Order no. A-28/Kol/07 dated 29.01.2007 wherein the Tribunal relied on the decision in case of Sun Pharmaceuticals Industry vs. CCE 2007 (207) ELT 673 (Tri-Del).

4. In the present appeal, the main ground taken by the Department is that Education Cess cannot be paid by utilizing the Basic Excise duty and therefore, the order passed by Ld. Commissioner (Appeals) is not correct as has been contended by the Department in their grounds of appeal.

5. Sri R. K. Chowdhury and Sri B. N. Pal, Advocates appeared on behalf of the Revenue whereas, Sri T. R. Rustagi, Advocate, appeared on behalf of the respondent assessee.

6. Heard both sides and perused the appeal records.

7. Both sides agree that the issue as to whether Education Cess can be paid from the credit availed on account of Basic Excise duty already stands decided in favour of the assessee in their own case by the Hon'ble Gauhati High Court on 04.10.2012 reported as Dharampal Satyapal Ltd vs. Commissioner of Central Excise, Shillong 2015 (323) ELT 55 (Gau). In the said decision dated 04.10.2012, the Hon'ble High Court relied on its earlier decision dated 25.07.2012 passed in the case

of UOI vs. Kamakhya Cosmetics & Pharmaceuticals Pvt Ltd. 2015 (323) ELT 33 (Gau) as well as decision dated 29.06.2011 in Commissioner of Central Excise, Dibrugarh vs. Prag Bosimi Synthetics Ltd 2013 (295) ELT 682 (Gau) wherein it has been held that credit of Basic Excise duty can be used for discharging payment of Education Cess as well as National Calamity Contingent Duty (NCCD), in the context of excise exemption notf. No. 32/99 (Supra) availed by the assessee.

8. It has been specifically represented vide letter dated 29.01.2013 issued by the Dy. Commissioner, Office of Chief Commissioner, Shillong Zone, North Eastern Region, that all the decisions referred hereinabove, including the decision dated 04.10.2012 in assessee's own case (Dharampal Satyapal), have been accepted by the Department for implementation and no further appeals have been preferred and the same have attained finality.

9. In view of the above, the appeal filed by the Department being devoid of merits is rejected.

(Dictated and pronounced in the open court.)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Tushar Kr.