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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.75774 of 2016
And
Excise Cross Objection No.75783 of 2016

(Arising out of Order-in-OriginalNo.34/COMM/CE/SLG/15-16 dated10.02.2016 passed by Commissioner of Customs, Central Excise& Service Tax, Siliguri.)

M/s.Cipla Ltd.
(Village-Kumrek, Rangpo, Dist-East Sikkim, Sikkim-737132.)

...Appellant

VERSUS

Commissioner of Central Excise, Siliguri

.....Respondent

(C.R. Building, Haren Mukherjee Road, Hakim Para, Siliguri-734001.)

APPEARANCE

Shri Dipankar Majumdar, Advocate for the Appellant (s)
Shri S.K.Dikshit, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

MISC. ORDER NO. 75433/2025
FINAL ORDER NO. 76495/2025

DATE OF HEARING : 13.05.2025
DATE OF DECISION : 11.06.2025

Per : R. MURALIDHAR :

The Appellants have utilized Cenvat Credit under the heading of Excise Duty for payment of Education Cess and SHE Cess. On the ground that they are not eligible to do so, a Show Cause Notice was issued proposing to recover the Education Cess and the SHE Cess. The Show Cause Notice issued for the period October 2013 to September 2014, also proposed to disallow the Cenvat Credit utilized for payment of these Cesses. Noting that even on an earlier occasion on the same issue, a Show Cause Notice was issued for the period September 2013 to February 2014, the Appellants in the course of their defence, had submitted before the Adjudicating authority that the demands are over-lapping and hence the demand is required to be dropped on this ground itself. However, the Adjudicating authority has confirmed the demands. Therefore, the Appellants are before the Tribunal.

2. The Ld.Advocate takes us through the impugned Order-in-Original. He points out to the relevant extract at Para 6.9. reproduced below:-

> *"6.9 ………………… As per contention of the Noticee, such thing has happened due to irregular utilization of Cenvat available on BED amounting to Rs.29,33,057.00 towards payment of EC & SHEC, for which demand has already been confirmed and payment along with interest has already been made. The Noticee has contended that the instant demand of Rs.30,16,063.00 includes Rs.29,33,057.00 <u>already confirmed in earlier proceeding and hence the instant demand is hit by doctrine of double jeopardy and res-judicata. I also agree with the fact</u>. However, I find that the earlier proceeding in relation to demand of Rs.29,33,047.00 has not reached at its finality. It is learnt that the Noticee has already filed appeal against such Order-in-Original dated 17.07.2015 passed by the Commissioner of Central Excise, Siliguri Commissionerate before the Hon'ble CESTAT, Kolkata arguing that utilization of Cenvat credit of BED towards payment of EC & SHEC is indeed admissible in terms of Cenvat Credit Rules, 2004. <u>Thus the issue of cross-utilization of Cenvat credit of BED for payment of EC & SHEC is still in dispute and hence the instant demand of the same amount, but on separate lawfully valid ground to the effect that the Noticee had contravened the mandatory condition of the area based exemption Notification No.20/2007-CE dated 25.04.2007</u> (as amended) by way of not exhausting their correct Cenvat Credit availability on BED, resulting in excess and irregular self-credit under the Scheme, is justified and not hit by doctrine of double jeopardy or res-judicata. However, I find that both are mutually exclusive particularly so far the amount of demand is Rs.29,33,057.00. ……"*

3. The Ld.Advocate submits that even after noting that the present demand is hit by the doctrine of double jeopardy and *res judicata,* the Adjudicating authority has still have gone ahead and confirmed the demand on the ground that the issue is yet to reach finality as the matter is still pending before the Tribunal.

4. The Ld.Counsel submits that this issue was decided by Kolkata Bench vide **Final Order No.76495/2024 dated 11.07.2024**. Therefore, he submits that out of the confirmed demand in the Order-in-Original, the amount of Rs.29,33,057/- towards the Education Cess and SHE Cess and Rs.29,33,057/- towards the recovery of erroneous utilization of Cenvat Credit are required to be set aside on this ground itself.

5. With regard to balance confirmed amount of approximately Rs.83,000/-, he submits that Rs.58,733/- was utilized towards reversal of Input Tax Credit in terms of Rule 6 of Cenvat Credit Rules, 2004 and Rs.24,273/- was utilized in January 2014 for clearance of their finished goods under Rule 16 of Central Excise Rules, 2002. Though they had submitted all the relevant documentary evidence, the Adjudicating authority has not considered the same and has given a finding that no documentary evidence was produced by the Appellant to substantiate their claim.

6. In respect of the balance confirmed demand of about Rs.1.00 Lakh he submits that some quantification errors have crept in by issuing Show Cause Notice.

7. The Ld.AR for the Department reiterates the findings of the lower authority and submits that recently this issue was decided in the Appellant’s own case by this Bench on 11.07.2024.

8. We have gone through the appeal papers and other documentary evidence produced before us.

9. We find that the Appellant has rightly claimed that there has been an over-lapping of demand since Show Cause Notices have been issued pertaining to the same period. We find that out of the confirmed demand in the present proceedings Rs.29,33,057/- in respect of demand of Education Cess and SHE Cess and Rs.29,33,057/- in respect of disallowance of Cenvat Credit towards payment of Education Cess and SHE Cess, the period involved is covered by the earlier Show Cause Notice. That Show Cause Notice proceedings in the due course had reached the Tribunal and this Tribunal vide Final Order No.76495/2024 dated 11.07.2024 has allowed the Appellant's Appeal. Therefore, we set aside the demand to this extent on merits.

10. Coming to the issue of Rs.58,733/- utilized by the Appellant in October 2013 towards reversal in terms of Rule 6(3) of Cenvat Credit Rules, 2004 and payment of duty of Rs.24,273/- in terms of Rule 16 of Central Excise Rules, 2002, we find that the Appellant claims that they have submitted enough documentary evidence which has not been considered by the Adjudicating authority. We take the view that the appellant is required to be given one more opportunity to produce these documents before the Adjudicating authority, who will get these facts verified and take a considered decision.

11. With regard to the issue of error in quantification of the demand to the extent of about Rs.1.00 Lakh, we remand the matter to the Adjudicating authority. The Appellant is directed to submit all the documentary evidence towards their dispute about the quantification before the Adjudicating authority.

12. In respect of rejection of the amount taken as re-credit by the Appellant we find that the Appellant claims that there is noerror in taking the credit. The Ld. Counsel takes us through the submissions

made by the appellants before the Adjudicating authority, under the heading "*submissions on merits*". In the Order-in-Original several tables have been given with specific amount and details. He submits that once a proper reconciliation is done towards these amounts, it will get clarified that Appellant has not taken any excess re-credit as is being held in the impugned Order-in-Original. Since these details have to be checked and verified properly to come to a proper conclusion, we find that even this matter is required to be looked into by the Adjudicating Authority. Accordingly, we are remanding this matter to him.

13. The Appellants have also pleaded that since the issue was that of interpretation the penalty imposed on them should be set aside. We find that this is a reasonable request from their side. The issue as to whether the Basic Excise Duty can be utilized for payment of Education Cess and SHE was under litigation and was ultimately held in favour of the assessee.Considering the same, we set aside the penalty of Rs.6,13,158/- imposed on the Appellant.

14. The Appeal stands disposed on above terms.

15. The Cross Objection filed by the Revenue also gets disposed off.

(Order pronounced in the open court on 11.06.2025.)

Sd/	Sd/
(RAJEEV TANDON)	**(R. MURALIDHAR)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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