CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 85038 OF 2022

(Arising out of Order-in-Appeal No.PUN-EXCUS-001-APP-67/2021-22 dated 29.09.2021 by the Commissioner of Central Tax (Appeals-I), Central Tax, Pune, F-Wing, 3rd Floor, GST Bhawan, 41/A, Sassoon Road, Pune-411001)

TATA BUSINESS EXCELENCE GROUP
TMTC Campus, 1, Mangaldas Road,
Pune-411001
Appellant

Vs.

THE COMMISSIONER OF CENTRAL EXCISE& SERVICE TAX-PUNE-I
C-Wing, 2nd Floor, GST Bhavan, 41/A,
Sassoon Road, Pune-411001
Respondent

Appearance:
Present for the Appellant:Shri Gopal Mandhara, Advocate
Present for the Respondent: Shri S.B.P.Sinha (AR)

CORAM:HON'BLE MR.ASHOK JINDAL, MEMBER (JUDCIAL)

<u>FINAL ORDER NO.86088/2024</u>

Date of Hearing/Decision: **10.09.2024**

PER: ASHOK JINDAL

The appellant is in appeal against the order wherein the refund of Rs. 03,08,778/- was denied to the appellant.

2. The facts of the case are that during the period June, 2017, the appellant was providing services, namely, management consultancy services to their group companies. The appellant filed refund claim on 10.06.2020 under section

11B of Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 in respect of education cess, secondary & higher education cess and Krishi Kalyan Cess, as they could not transit the same to GST regime for further utilization of the same. The refund claim was rejected by the adjudicating authority on the ground that in view of Madras High Court decision in WA 53 of 2020, wherein it was held that the assessee is not entitled to carry forward and set off of unutilized cess. Against this order, the appellant is before me.

3. Ld. Counsel for the appellant appearing for the appellant submits that the issue has been settled by this Tribunal in the case of Emami Cement Limited vs. Commissioner of CGST & Central Excise-Raipur-2022 (3) TMI 1254-CESTAT, New Delhi,

4. On the other hand, ld.AR submits that there is no provision under the law to transit balance credit of EC, SHEC & KKC, remained unutilized as on 30.6.2017 under section 140 of CGST Act wherein refund under section 11B in cash.

5. In support of his contention, he relied on the decision of Hon'ble High Court in the case of Sutherland Global vs. Asstt .Commissioner, Chennai-2019 (30) GSTL 628 (Mad.) wherein Single Member of Hon'ble Madras High Court has held that the appellant is entitled to refund in cash of EC, SHEC & KKC. Under the same jurisdictional High Court, wherein Double Member bench of the Madras High Court in the case of Sutherland Global-2023-6-Centad 99 (Mad.) has held that unutilized cess in the hands of assessee becomes dead credit in the year 2015

itself with these levies dropped by the Finance Act itself and no question of it being claimed as right to be carried forward and set-off after 1.7.2017 against output GST liability. Therefore, he prayed that the impugned order to be upheld.

6. Heard the parties and considered the submissions.

7. I find that there are contrary decisions of several High Courts wherein Hon'ble Punjab & Haryana High Court in the case of Shree Krishna Paper Mills-2019 (12) TMI 1348- P & H examined whether refund could be ordered or unutilized credit on closure of the unit and held, in view of the earlier decision of the Punjab & Haryana High Court in Rama Industries Ltd. vs. CCE, Chandigarh-2009 (2) TMI 136-P & H and the decision of Karnataka High Court in Slovak India-2006 (7) TMI 9 – Kar. That refund should be granted. It is therefore, seen that there are conflicting decisions of the Karnataka High Court and the Punjab & Haryana High Court on the one hand and the Rajasthan High Court on the other hand, the decision of the Karnataka High Court in Slovak India was affirmed by the Supreme Court.

8. As there are contrary decisions of several High Courts on the issue, in that circumstance, I rely on the decision of the Tribunal in the case of Emami Cement Ltd. cited (supra) wherein after examining the decisions of Hon'ble Punjab & Haryana High Court in the case of Shree Krishna Paper Mills and in Rama Industries, wherein it has been held that

the appellant is entitled for refund of balance of amount of cess. This Tribunal has examined the issue in para 15 in as under:

"15. It is, therefore, clear from the aforesaid decision rendered in Slovak India Trading by the Tribunal,, the Karnaktaka High Court and the Supreme Court that refund has to be granted when either there is a closure of the factory or when an assessee goes out of the Modvat scheme."

9. In view of the decision of this Tribunal in the case of Emami Cement Limited cited supra, I hold that the appellant is entitled to claim refund of unutilized education cess, secondary & higher education cess and Krishi Kalyan Cess lying in their account as on 30.06.2017.

10. In view of this, the impugned order is set aside and the appeal is allowed with consequential relief, if any

dictated & pronounced in court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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