(2021) 11 CESTAT CK 0038

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10325 Of 2019

Atul Limited APPELLANT

Vs

C.C.E. And S.T.-Vadodara-II RESPONDENT

Date of Decision : 09-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0038

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The present case has been filed being aggrieved of the rejection of refund claim of Education Cess (E-Cess) and Higher Secondary Education Cess (SHE Cess) as was in balance on 28.02.2015 and carried forward till 30.06.2017. Facts in brief are as follows:

A refund claim application was filed on 05.02.2018 claiming the refund of Rs. 15,85,750/- which was the balance as on 30.06.2017 as per the appellant's E-1 and ST-3 returns for the month June, 2017 in the head of E-Cess and SHE-Cess. In the show cause notice dated 1265 dated 20.03.2018, the refund claim was proposed to be rejected. The proposal was rejected initially vide Order in Original no. 18-23/2017-18 dated 31.07.2018. The appeal, thereof, has also been rejected vide order in appeal no. 186/18-19 dated 30/11/2018. Being aggrieved, the appellant is before the Tribunal.

2. I have heard Shri Rakesh Shah, learned counsel for the appellant and Shri P.K.Singh, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue.

3. Learned counsel for the appellant has mentioned that the refund claim has wrongly been rejected. The notification no. 12/2015 dated 30.04.2015 has wrongly been applied to the facts of the present case. It is submitted that after the said notification, there has been an amendment in CENVAT credit rules in the

year 2015 which allowed the credit of E-cess and SHE Cess on goods received on order after 01.03.2015 with the invoice dated prior to said 01.03.2015, with Cess charged, and to utilize the same against the payment of basic excise duty. The adjudicating authorities have thus given a wrong interpretation to the notification no. 12/2015. Otherwise also, when the Cess was no more leviable, its closing balance cannot be treated as E-Cess or SHE-Cess, instead same stands merged with basic Cenvat credit to be utilized for payment of basic excise duty. The unutilized credit is liable to be refunded. It is mentioned that adjudicating authorities have failed to appreciate the said submission. The order under challenge is accordingly, prayed to be set aside and appeal is prayed to be allowed.

4. To rebut these submissions, learned Department Representative has laid emphasis on findings in para 5.3.1 and 5.4 of the order under challenge. It is submitted that once the amount stands lapsed, question of its refund even under the provisions of CGST Act, is not permissible. Impressing upon that there is no infirmity in the said order under challenge, the appeal is prayed to be dismissed.

5. After hearing both parties and perusing the entire records, I observe following to be the admitted facts:

i. Education Cess (E-Cess) and Secondary Education-Cess (SHE- Cess) were leviable till 28.04.2015.

ii. With effect from 01/03/2015, the credit of said E-cess and SHE-cess paid on imports or capital goods received in the factory of manufacturer of final product on or after the 01st March, 2015 can be utilized for payment of duty of excise leviable under the first schedule to the Excise Tariff Act.

iii. JRO vide his verification report dated 12.02.2018, stated that the refund in question was of the amount of E-cess and SHE-cess lying in balance of ER-1 of June, 2017, the balance thereof would not have been claimed in TRAN-1.

The refund was reported to be within time with no Government dues pending against the appellant and no unjust enrichment of amount to the appellant.

iv. The balance of E-Cess and SHE-Cess could not be mentioned in TRAN-1 in GST regime for want of any column in the requisite form to carry forward the balance of such cess.

v. There has been a notification no. 12/2015 dated 30.04.2015 permitting the assessee to utilize the credit of E-cess and SHE-cess for payment of duty of Excise for such inputs or capital goods received after 01.03.2015.

6. These admitted facts make it abundantly clear that the E-cess and SHE-cess were Cenvatable, the credit whereof was allowed even for such inputs and capital goods which were received by the manufacturer even after 01.03.2015. The appellant had accumulated credit of E-cess and SHE-cess. However, the same could not be utilized till 30.06.2017. The unutilized amount is the assessee's

money and, accordingly, has to be refunded to the assessee. The Hon'ble Apex Court in the case of Eicher Motors Ltd. v/s Union of India 1999 (106) ELT 3 (SC) has held that once credit is taken during the period when the same is allowed to be taken, the department cannot deny said credit. Subsequently, it was clarified by Hon'ble Apex Court that right to credit becomes vested and duly crystallized in favour of assessee the moment input goods/services are received and by virtue of assessee paying the duty there on by reimbursing the said amount to the supplier of the goods. The right of credit becomes absolute when the input is used in the manufacture of the final product. In the present case since the E-cess and SHE-cess were no more leviable after 28.02.2015, that the credit on the imports received by the assessee post said date was permitted to be utilized for payment of duty of excise.

7. It is observed that Commissioner (Appeals) and even the Original Adjudicating Authority has given the wrong interpretation to the said notification by specifically holding that the credit of E-Cess and SHE-cess could not be utilized for payment of excise duty by virtue of notification No. 12/2015. This reason itself is sufficient to set aside the order under challenge. Even if the case law quoted by the learned Commissioner (Appeals) with respect of settled principle of Interpretation of Taxing Statute are considered, the fact still remains is that the Commissioner (Appeals) has given a wrong interpretation while denying the utilization of credit of E-Cess and SHE- cess for payment of excise duty despite the specific permission for the same in the said notification and the subsequent amendment in Cenvat Credit Rules in 2015 permitting the utilization of credit on cess. Since the unutilized credit becomes impossible to be utilized, the said amount has to be refunded to the appellant.

6. It is further observed that with effect from 01/07/2017, the new Goods and Services Tax Act became operational, that the utilization of the said balance became impossible. However, in terms of section 142 of the said new Act, the amount is made refundable to the appellant in cash. Denial thereof by Commissioner (Appeal) is highly unaccepted and is held absolutely unreasonable. In view of the said discussion, the order under challenge is hereby set aside and consequently, the appeal stands allowed.

(Pronounced in the open court on 09.11.2021)

