(2024) 02 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.60020, 60021, 60022, 60023, 60024, 60025, 60026, 60027 Of 2022

M/S Cadila Pharmaceuticals Ltd And Others — APPELLANT

Vs

Commissioner Of Central Excise And Service Tax, Jammu — RESPONDENT

Date of Decision : 09-02-2024

Acts Referred:
Central Excise Act, 1944 — Section 11B, 11BB

Citation : (2024) 02 CESTAT CK 0010

Hon'ble Judges : P. Anjani Kumar, Member (T)

Bench : Single Bench

Advocate : Naveen Bindal, Shivam Syal

Final Decision : Dismissed

Judgement

P. Anjani Kumar, Member (T)

1. The appellants, M/s Cadila Pharmaceuticals Ltd. are manufacturers of Medicaments and were availing area based Exemption under Notification No. 56/2002, as amended; the appellant filed refund claims of Education Cess and Secondary and Higher Education Cess; the Department rejected the refund claims and appeals filed by the appellants were rejected by the appellate Commissioner; on an appeal by the appellants this Bench allowed the appeal following the ratio of the judgment of Hon’ble Supreme Court in the case of SRD Nutrients Pvt. Ltd.-2017 (355) ELT 481 (S.C.); consequently, the refunds were granted to the appellants; however, interest on the delayed payment of refund was not considered by the sanctioning authority; on various appeals preferred by the appellants, Commissioner (Appeals) vide a common impugned order dated 15.11.2021 rejected the appellant’s request for grant of interest holding that Hon’ble Apex Court has decided the matter, pertaining to refund of Education Cess and Secondary and Higher Education Cess, finally in the case of M/s Unicorn Industries-2019 (370) ELT 3 (SC) holding that refund of Education Cess and Secondary and Higher Education Cess is not admissible; hence, these appeals.

2. Shri Naveen Bindal appearing on behalf of the appellants submits that the Ld. Commissioner (Appeals) rejected the refund placing reliance on Circular No. 682/73/2002-CE dated 19.12.2002 which held that in terms of the Notification No. 56/2002, refund is not of Education Cess and Secondary and Higher Education Cess paid but is a route created for operationalization of the exemption notification and therefore, provisions of Section 11B and Section 11BB are not applicable; the stand taken by the Learned Commissioner (Appeals) is not correct as the refund itself was sanction under Section 11B; Hon'ble Guwahati High Court in the case of Amalgamated Plantation – 2016 (340) ELT 310 held that Circular cannot have an overriding effect on the statutory provisions; Hon'ble Supreme Court held, in the case of Ranbaxy Laboratories Ltd. 2011 (273) ELT 3 (SC), that interest would follow automatically.

3. Learned Counsel further submits that whereas the appeal was in respect of grant of interest on refund, Learned Commissioner discussed on the applicability of refund vis-à-vis the decision of Apex Court in the cases of SRD Nutrients (supra) and M/s Unicorn Industries (supra); there is a contradiction in the order of the Learned Commissioner (Appeals) in as much as holding that refunds under the Notification No. 56/2002 do not fall under Section 11B while relying upon the doctrine of unjust enrichment at the same time; he relies on the judgment of the Tribunal in the case of Champion Flavours vide Final Order No. A/60140/2023 dated 29.05.2023.

4. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

5. Heard both sides and perused the records of the case. Brief issues involved in these cases is as to whether the appellants are entitled for interest on the refund sanctioned to them by the Department consequential to the orders passed by the Tribunal following the decision of Hon'ble Apex Court in the case of SRD Nutrients (supra). Learned Counsel for the appellants argues that interest is a natural corollary of the refund granted and the rights of the appellants cannot be taken away for the reason that the Hon'ble Apex Court has overturned the decision in SRD Nutrients (supra) vide their decision in the case of M/s Unicorn Industries (supra). It is the case of the Department that as the decision of Hon'ble Apex Court in SRD Nutrients (supra) is no longer in vogue, the refund granted itself is not a matter of right of the appellant and therefore, the case of granting of interest does not arise.

6. I find that consequent to the passing of judgment by the Hon'ble Supreme Court in the case of M/s Unicorn Industries (supra), the Department has raised a number of demands on the refunds already granted to various assessees; Hon'ble High Court of Jammu & Kashmir in the case of Narbada Industrial Bari Brahmana, Jammu & Others, in the case of CEA No.10/2020, has held that the change of opinion of the Court in a subsequent matter of another party would not give any leverage to the appellants to re-open the decision which has attained finality. Hon'ble Court observed that:

74. Applying the aforesaid principle in the cases at hand, since the assessee has been held entitled to the refund of the Educational cess and Secondary & Higher Educational cess on the basis of a judgment and order of the Supreme Court in case SRD Nutrients which was in vogue at the relevant time, the appellants are not entitled to make recovery of the said refunded amount on the basis of the subsequent decision of the Supreme Court rendered in the case of Unicorn Industries. If such an action is permitted, it will open a Pandora box and the lis between the parties which had attained finality will never come to an end. This would be against the public policy which envisages providing quietus to litigation at some stage.

7. I find that Hon'ble Apex Court has upheld the above decision. I further find that the ratio of the above judgment is equally applicable to the Department and the assessees. Either way, it would amount to opening up of a pandoras box as held by the Hon'ble High Court of Jammu, Kashmir& Ladakh. If the Department is barred from raising demands for the refunds already granted, the appellants also cannot seek interest on the refunds already granted. I further find that CBEC clarified vide Circular No.682/73/2002-CX dated 19.11.2002 that the provisions of Section 11B of the Central Excise Act, 1944 are not applicable in the case of Exemption Notifications No.56/2002 and No. 57/2002 both dated 14.11.2002. I am in agreement with the findings of the learned Commissioner (Appeals) that the mechanism of refund has been put in place in order to operationalize the exemption contained in the notifications and to the extent, refunds arising out of these notifications cannot be considered to be refunds under Section 11B of the Central Excise Act, 1944. For this reason, also, I find that the appellants have not made out any case for grant of interest.

8. In view of the discussion above, all the appeals are rejected.