

Custom, Excise & Service Tax Tribunal

M/S V M Timber Industries vs Cce&St, Jammu & Kashmir on 7 March, 2018

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

COURT NO. 1

Excise Appeal Nos. 52623 to 52638 of 2014

(Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-816-830-13-14 dated 31.01.2014 pas

DATE OF HEARING : 07.03.2018
DATE OF DECISION : 07.03.2018

M/s V M Timber Industries

. Appellants
(Rep by Sh. Jatin Mahajan, Adv.)

VERSUS

CCE&ST, Jammu & Kashmir .

Respondent

(Rep. by Sh. Harvinder Singh, DR) CORAM : HON BLE MR. JUSTICE (DR.) SATISH CHANDRA,
PRESIDENT HON BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL) FINAL ORDER
NO. _____ 61165-61180 / 2018 PER B. RAVICHANDRAN :

All these appeals are filed by the assessee-Appellants against the common Order-in-Appeal No. JNK-EXCUS-000-APP-816-830-13-14 dated 31.01.2014 passed by the Commissioner (Appeals), Central Excise, Jammu & Kashmir. By this order, the Commissioner (Appeals) has dismissed the appeals as not maintainable in view of non-compliance of directions under Section 35-F of the Central Excise Act, 1944.

2. The learned counsel appearing for the assessee-Appellants submitted that, there was no money to be deposited under Section 35-F of the Act while filing appeals before the Commissioner (Appeals). Drawing our attention to the order of the original authority, he submitted that the disputed amount of self credit, as mentioned in the order, due to certain valuation dispute has not been decided by the original authority. In fact, he specifically submitted that the same be kept pending till the disposal of matter by the Hon ble High Court/Apex Court. In such situation, there can be no question of depositing the part or full of the amount. He further submitted that, in the present appeals they are aggrieved only with reference to the entitlement of exemption/refund of education/higher education cess payable on the goods cleared by availing exemption under Notification No. 56/2002-CE dated 14.11.2002. Since the matter has finally been settled by the Hon ble Supreme Court in the case of

SRD Nutrients Pvt. Ltd. vs CCE, Guwahati, 2017 (355) ELT 481 (SC), the instant appeals can be disposed of.

3. We have heard both sides and perused the material available on record. Admittedly, the pre-deposit under Section 35-F of the Act will arise only when duty has been demanded in the order appealed against. In the present case, the disputed amount, with reference to value addition, has not been decided either way by the original authority. As such, there is no application of Section 35-F to that extent. Though, the impugned order did not decide the present dispute with reference to eligibility of the assessee-Appellants for exemption of education/higher education cess, we note that since the Apex Court has finally decided the issue, the said benefit can be extended to the assessee-Appellants as that is the only grievance for which they have filed the present appeals. Accordingly, following the ratio laid down by the Hon ble Supreme Court in the case of SRD Nutrients Pvt. Ltd. (supra), we hold that the assessee-appellants were entitled to refund of education/higher education cess which was paid along with excise duty once the excise duty itself was exempted from levy.

4. In view of the above discussion, all the appeals are allowed to the extent mentioned above.

(Dictated & pronounced in the open court) (B. RAVICHANDRAN) MEMBER (TECHNICAL)
(JUSTICE Dr. SATISH CHANDRA) PRESIDENT Golay 1 E/52623-52638/14