FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70081-70084/2017-SM[BR] dated 06/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1555/2011	C.C.E, 38,M.G.Marg, civil Lines, Allahabad
2	E/1556/2011	C.C.E, 38,M.G.Marg, civil Lines, Allahabad
3	E/1563/2011	C.C.E, 38,M.G.Marg, civil Lines, Allahabad
4	E/1564/2011	C.C.E, 38,M.G.Marg, civil Lines, Allahabad
		Name and Address of Respondent
5		GOVIND NAGAR SUGAR LTD Sangrampur PO Walterganj Basti(UP),,
6		BAJAJ HINDUSTAN SUGAR AND INDUSTRIES LTD Unit Kundarki Distt-Gonda(UP),,

7 BAJAJ HINDUSTAN SUGAR
AND INDUSTRIES LTD
Unit Rudauli, Distt- Basti(UP),,

,

8 BAJAJ HINDUSTAN SUGAR
AND INDUSTRIES LTD
Unit Utraula Distt-
Balrampur(UP),,

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Other Appellants and Respondents as per Annexure

Copy To

9 Advocate(s) / Consultant(s): Sh. Bipin Garg & Co.
B-1/1289-A, Vasant Kunj
New Delhi-110070

10 Bar Association, CESTAT, Allahabad

11 Director Publications, Customs, Excise, I.P. Estate, Delhi

12 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

13 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

14 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

18 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

19 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

20 C.D.R. 21 Office Copy ~~22 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos. : E/1555, 1556, 1563 & 1564/2011-EX[SM]

Arising out of OIA Nos. 46/CE/ALLD/2011 dated 25.03.2011, 48/CE/ALLD/2011 dated 25.03.2011, 47/CE/ALLD/2011 dated 25.03.2011 & 44/CE/ALLD/2011 dated 25.03.2011 all passed by Commissioner (Appeals), Central Excise, Allahabad.

I. Commissioner of Central Excise, Allahabad
II. Commissioner of Central Excise, Allahabad
III. Commissioner of Central Excise, Allahabad
IV. Commissioner of Central Excise, Allahabad

...APPELLANTS

VERSUS

I. M/s. Bajaj Hindustan Sugar & Industries Ltd. (E/1555/2011)
II. M/s. Govind Nagar Sugar Ltd. (E/1556/2011)
III. M/s. Bajaj Hindustan Sugar & Industries Ltd. (E/1563/2011)
IV. M/s. Bajaj Hindustan Sugar & Industries Ltd. (E/1564/2011)

...RESPONDENTS

APPEARANCE

Shri D.K. Deb, Asstt. Commr. (A.R.) for the Department.
Ms. Stuti Saggi, Advocate for the assessee-respondent.

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 06.01.2017
FINAL ORDER NO. 70081-70084/2017

Per Mr. Anil G. Shakkarwar :

In the above stated four appeals the issue involved is whether Education and Secondary and Higher Education Cess is chargeable on Sugar Cess and all the four appeals are filed by Revenue. Therefore, they are taken together for decision.

2. In Appeal No. E/1555/2011-EX, the show cause notice dated 28.01.2010 was issued with a proposal to recover Rs. 73330/- as Education Cess and Rs. 36665/- as Secondary and Higher Education Cess on the assessable value of Rs. 3666480/- which was Sugar Cess paid by the respondent from April, 2009 to November, 2009. It was contended in the said show cause notice that said amounts of Education Cess and Secondary & Higher Education Cess was chargable on Sugar Cess paid by the respondent. The respondent submitted before the Original Authority that as per CBEC Circular No. 345/2/2004-TRU(Pt.) dated 10.08.2004 Education Cess leviable on duty of Excise and Customs and therefore Education Cess cannot be collected on Sugar Cess. They have also relied on Final Order of this Tribunal in the case of ***Sahakari Khand Udyog Mandli Ltd Vs CCE, Daman*** reported at ***2008 (232) ELT 61 (Tri.Ahmd)*** and contended that in the said Final Order this Tribunal has held that since Sugar Cess is not leviable by Ministry of Finance and therefore by relying on said circular of the Board dated 10.08.2004 held that Sugar Cess is not includeable for the purpose of computation of Education Cess. The Original Authority did not appreciate the arguments and confirmed the demand and imposed equal penalty through Order-in-Original No. 78/DEM/2010 dated 24.09.2010. The respondent preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal No. 46/CE/Alld/2011 dated 25.03.2011, wherein the learned Commissioner (Appeals) has relied on the said CBEC's Circular dated 10.08.2004 and held that since Sugar Cess is not leviable and collected by Ministry of

Finance, Education Cess and Secondary & Higher Education Cess cannot be levied on Sugar Cess and set aside the said Order-in-Original dated 24.09.2010. Aggrieved by the said Order-in-Appeal, Revenue preferred appeal before this Tribunal.

3. In Appeal No. E/1556/2011-EX, in respect of respondent to the said appeal, show cause notice dated 28.01.2010 was issued on similar grounds. In the said show cause notice proposal was for demand of Education Cess of Rs. 74,158/- and Secondary & Higher Education Cess of Rs. 37,079/-. The respondent also submitted before Original Authority similar grounds. The said show cause notice was adjudicated through Order-in-Original No. 67/DEM/2010 dated 16.07.2010, wherein demand was confirmed and equal penalty was imposed. Respondent preferred appeal before Commissioner (Appeals) which was decided through impugned Order-in-Appeal No. 48/CE/Alld/2011 dated 25.03.2011, wherein the finding by learned Commissioner (Appeals) was same as stated in the case of Appeal No. E/1555/2011. Aggrieved by the said Order-in-Appeal dated 25.03.2011, Revenue preferred appeal before this Tribunal.

4. In respect of Appeal No. E/1563/2011-EX, the respondent was issued with show cause notice dated 08.01.2010 wherein the demand in respect of Education Cess was of Rs. 1,21,866/- and the same on account of Secondary and Higher Education Cess was Rs. 60,932/-, the grounds were similar. The submission before the Original Authority were also similar. The said show cause notice was adjudicated through Order-in-Original No. 80/DEM/2010 dated 18.10.2010 wherein the Original Authority confirmed the demand and imposed equal penalty.

The respondent preferred appeal before Commissioner (Appeals) which was decided through Order-in-Appeal No. 47/CE/ALLD/2011 dated 25.03.2011. The learned Commissioner (Appeals) gave similar findings as in case of other two earlier stated appeals. Aggrieved by the said Order-in-Appeal, Revenue preferred appeal before this Tribunal.

5. In respect of Appeal No. E/1564/2011-EX, the respondent was issued with show cause notice dated 08.01.2010 on similar grounds demanding Education Cess of Rs. 81,375/- and Secondary and Higher Education Cess of Rs. 40,689/-. The respondent submitted similar submissions before the Original Authority. The Original Authority decided the said show cause notice through the Order-in-Original No. 79/DEM/2010 dated 13.10.2010 wherein the demand was confirmed and equal penalty was imposed. Aggrieved by the said Order-in Original, respondent preferred appeal before Commissioner(Appeals) which was decided through Order-in-Appeal No. 44/CE/ALLD/2011 dated 25.03.2011, wherein learned Commissioner (Appeals) has set aside the Order-in-Original by giving finding as stated in earlier stated appeals. Aggrieved by the said Order, Revenue preferred appeal before this Tribunal.

6. In all four above stated appeals Revenue has filed grounds of appeal stating that in the case of M/s. Shah Paper Mills Ltd. Vs. CCE, Vapi through Final Order No. A/1316-1317/2008 dated 09.07.2008, this Tribunal has held that Paper Cess is a duty of Excise. The grounds further stated in the case of R.A. Shaikh Paper Mills Pvt. Ltd. Vs CCE, Vapi, this Tribunal through its Final Order No. A/1132/2008 dated 09.06.2008 has held that Paper Cess is duty of Excise.

7. Heard the learned D.R. who has supported the impugned Order-in-Original and presented the grounds of appeals.

8. Heard the learned counsel for respondent-assessee. She has submitted that this Tribunal in the case of ***Sahakari Khand Udyog Mandli Ltd Vs CCE, Daman*** reported at ***2008 (232) ELT 61 (Tri.Ahmd)*** has held that Sugar Cess though levied as duty of Excise, the said Cess is not levied by Ministry of Finance and by relying upon the said Board of Circular dated 10.08.2004, Sugar Cess cannot be included for the purpose of computation of Education Cess.

9. Having considered the rival contentions, I find that the precedent decisions of this Tribunal in the Case of ***Sahakari Khand Udyog Mandli Ltd Vs CCE, Daman*** reported at ***2008 (232) ELT 61 (Tri.Ahmd)*** is squarely applicable in the present case. Therefore, I do not find any merit in the appeals filed by Revenue. Therefore, I dismissed all the four appeals filed by Revenue.

(Pronounced and dictated in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001