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

Dated: 09/08/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **A/70729/2017-EX[DB] dated 26/07/2017**

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/1684/2009	**RANA PAPERS LTD.** 8TH K.M.JANSATH ROAD, MUZAFFARNAGAR-251001 (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Copy To
3Advocate(s) / Consultant(s):

Aalok Arora,Adv
82 - Mission Compound,
Saharanpur,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. 1

APPEAL No. E/1684/2009-EX[DB]

(Arising out of Order-in-Original No. 07/Commr./MRT-I/2009 dated 17/03/2009 passed by Commissioner of Central Excise & Customs, Meerut-I)

M/s Rana Papers Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Meerut-I	**Respondent**

Appearance:

Shri Alok Arora	for Appellant
Shri Sandeep Kumar Singh (Deputy Commissioner) AR	for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	26/07/2017
Date of Decision	:	26/07/2017

FINAL ORDER NO. 70729/2017

Per: Anil G. Shakkarwar

Present appeal is directed against Order-in-Original No. 07/Commr./MRT-I/2009 dated 17.03.2009 passed by Commissioner, Customs & Central Excise Meerut-I

2. Brief facts of the case are that the appellant were having two Divisions in their manufacturing establishment one was related to manufacture of Kraft Paper which was called Paper Division and another was engaged in the manufacture of MS

Ingots and the same was called Steel Division. During the scrutiny of ER returns for the period from July, 2006 to October, 2006 it was noticed by Revenue that during the month of July, 2006 Education Cess on MS Ingots was short paid to the extent of Rs. 5000/- by due date i.e. 05/08/2006, further period of 30 days provided by the Central Excise Rules ended on 04.09.2006 and said that short payment of Education Cess of Rs. 5000/- was paid by appellant on 13.09.2006 and interest of Rs. 70/- on the said short payment was paid on 01.10.2006 and, therefore, it appeared to Revenue that the clearances with effect from 05.09.2006 to 01.10.2006 attracted provisions of Rule 8 (3A) of Central Excise Rules, 2002. Therefore, through show cause notice dated 30.07.2007 it was alleged that during the period duty should have been paid consignment wise and only through cash payment and, therefore, the duty paid otherwise for clearances of goods during the said period amounted to clearance of goods without payment of duty. Through said show cause notice Central Excise Duty amounting to Rs. 1,03,94,960/- was demanded under the provisions of Section 11A of Central Excise Act, 1944. On contest the issue was adjudicated through Order-in-Original No. 02/2008 dated 23.01.2008 wherein the demand was confirmed and the penalty of Rs. 5000/- was imposed. Aggrieved by the said order the appellant preferred appeal before this Tribunal which was assigned Appeal No. E/511/2008. The said appeal filed before this Tribunal was disposed of through Final Order No. 200/2008-EX dated 17 April, 2008 wherein it was observed that the appellant had produced data showing that they had already paid Rs. 7000/- in excess in respect of Education Cess upto July, 2006. However, the said contention was not raised before the Original Authority, therefore, the matter was remanded to the Original Authority for fresh consideration. On 16.12.2008 appellant submitted their reply in the proceedings after the remand of the matter before Original Authority wherein it was contended that they had paid excess in respect of Education Cess amounting to Rs. 7000/- and produced a chart evidencing the same alongwith copies of invoices for the period from April, 2006 to July, 2006 and contended that question of short payment of Education Cess for the month of July, 2006 amounting to Rs. 5000/- did not survive. During the personal hearing on 13.01.2009 the appellant reiterated that they had paid excess Education Cess of Rs. 7,478/- by adding Paper Cess in Basic Excise Duty which was not suppose to be added and hence there was excess payment of Education Cess and there was no short payment of Education Cess to the extent of Rs. 5000/- for the month of July, 2006. The Original Authority decided the issue through impugned Order-in-Original dated 17.03.2009. The Original Authority had held that Education Cess is levied on Central Excise Duty collected by Department of Revenue and Paper Cess is also collected by Department of

Revenue, therefore, Paper Cess should be included in the value to arrive at Education Cess payable and in view of that there was no excess payment of Education Cess by the appellant and in view of same he has again confirmed the demand of Rs. 1,03,94,960/- and imposed penalty of Rs. 5000/-. Aggrieved by the said order appellant is before this Tribunal.

3. Heard Shri Alok Arora who has submitted that if it is accepted that Paper Cess should not be treated as basis for calculation of Education Cess payable then it is an admitted fact that from April, 2006 to July, 2006 they had paid Rs. 7,478/- as Education Cess in excess of their due. He has submitted that it was held by a Coordinate Bench of this Tribunal in the case of Andhra Pradesh Paper Mills Ltd. v/s Commissioner of Central Excise & Customs, Visakhapatnam-II reported at 2009 (235) ELT (474) (Tri. Bang.) that Paper Cess is not includable in the value for calculating Education Cess.

4. Learned AR has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of record we find that the issue to be decided is whether the appellant had paid Education Cess of Rs. 7,478/- in excess of their due from April, 2006 to July, 2006 and whether that will

establish that for the month of July, 2006 they had not short paid Education Cess by Rs. 5000/-. We find that the Coordinate Bench of this Tribunal in the above stated case of Andhra Pradesh Paper Mills Ltd. had already decided that Paper Cess shall not be considered as includable for calculation of Education Cess. In other words Education Cess is not levied on Paper Cess. Since the issue is already settled, we find that from April, 2006 to July, 2006 exchequer had Rs. 7,478/- paid by the appellant towards Education Cess in excess of their due. Therefore, for the month of July. 2006 it doesn't establish that the appellant had short paid Education Cess to the tune of Rs. 5000/-. Once it is clear that there was no short payment of Education Cess the question of invocation of provisions of Rule 8 (3A) of Central Excise Rules, 2002 does not arise. Therefore, we hold that the present show cause notice is not sustainable. Therefore, we set aside the impugned Order-in-Original dated 17.03.2009 and allow the appeal. The appellant shall be entitled for consequential relief.

(Dictated and pronounced in Court)

-Sd/-	-Sd/-
(ANIL CHOUDHARY)	**(ANIL G. SHAKKARWAR)**
Member (JUDICIAL)	**Member(TECHNICAL)**

Anku

प्रमाणित प्रति/Certified True Copy
14/08/17
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