

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EIS/1159-1163/07 IN EXCISE APPEAL BRANCH

Appeal No. E/1427/2007-1431/2007

Date 04/07/2007

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :

1-5, M/S JINDAL DRUGS LTD.

PLOT NO.1A, INDUSTRIAL AREA, GANGYAL,
JAMMU (J&K)

M/S JINDAL DRUGS LTD.


Appellant

Vs

C.C.E. JAMMU

STAY ORDER NO.653-657/07-EX, Respondent

I am directed to transmit herewith a certified copy of Final order No. *296-300/07-EX*, dated *18-6-07* passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAMMU

OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

2. Adv. / Consult

MR.PDS LEGAL,ADVOCATE

31, MAKER CHAMBERS VI, NARIMAN POINT, MUMBAI

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


(MOHINDER SINGH)
Assistant Registrar
(Excise Appeal Branch)

**THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No.2, R.K. Puram, New Delhi-110066.
Principal Bench, New Delhi**

**COURT NO. III
Excise Stay Application Nos. 1159-1163 of 2007 in Appeal
Nos. 1427-1431 of 2007**

[Arising out of the Order-in-Appeal No. 55-59/CE/APL/
JAL/2007 dated 28/02/2007 passed by The Commissioner
(Appeals), Central Excise, Chandigarh.]

Jindal Drugs Ltd.

Appellant

Versus

CCE, Jammu

Respondent

Appearance

Shri Prakash Shah, Advocate - for the appellant.

Shri A.K. Rastogi, Authorised Representative (SDR) - for the
respondent.

**CORAM: Hon'ble Shri C.N.B. Nair, Member (Technical)
Hon'ble Shri P.K. Das, Member (Judicial)**

DATE OF HEARING/DECISION : 18/06/2007.

Final Order No. 296 to 300/07EX Dated: 18-6-2007
STAY order No 653 to 657/07EX
Per. C.N.B. Nair :-

Heard both sides and perused record.



2. We find that the issue in dispute in these appeals remains covered by the decision of this Tribunal. Accordingly, we dispense with the requirement of pre-deposit and proceed with the appeals.

3. Being located in Jammu, the appellant is entitled to the benefit of Notification No. 56/02, a notification which exempted units located, inter-alia, in Jammu from duty of Excise. Under Finance Act of 2004, Education Cess came to be levied on manufactured goods. Issue is being raised by the revenue as to whether Education Cess is also exempt under Notification No. 56/02.

4. It is seen that this issue had directly arisen in the case of M/s Sun Pharmaceutical Industries vs. CCE, Jammu and this Tribunal noted as under, in relation to the nature of Education Cess :-

“9. The objection taken that education cess is not a duty of excise is also not sustainable in the light of the declaration contained in Section 93 (1) of the Finance Act. That apart, the proposition that cess paid on goods produced in India is excise duty remains confirmed by



the decision of this Tribunal in the case of TTK LIG Ltd. Therefore, the objection taken by the first appellate authority is also not in terms of law. Apart from these is the fact that the appellant's claims are not in relation to any payment of education cess on manufactured goods. Its claims are in relation to payment of basic excise duty by cash (after fully exhausting the Cenvat credit available). These refund claims are clearly within the scheme of Notification No. 56/02. The objections taken by the lower authorities are not sustainable.”

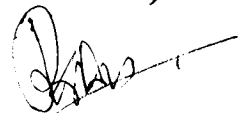
5. This order of the Tribunal was placed before the Commissioner; but we find that the Commissioner has, incorrectly, not followed the order.

6. The issue remains covered in favour of the assessee. Therefore, the impugned order is set aside and appeals are allowed with consequential relief, if any, to the appellant.

(Dictated and pronounced in open court)



(C.N.B. Nair)
Member (Technical)



(P.K. Das)
Member (Judicial)