

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, WEST BLOCK-II, R.K. PURAM, NEW DELHI.**

CCE, Jammu vs. M/s Jindal Drugs Limited and other connected cases.

E/A No. 342/09, E/A No. 343/09, E/A No. 344-345/09, E/A No. 346/09, E/A No. 347/09, E/A No. 348/09, E/A Nos. 646-648/09, E/A Nos. 649-650/09, E/A Nos. 651-652/09, E/A No. 653/09, E/A Nos. 654-56/09, E/A Nos. 657-659/09, E/A Nos. 660-663/09, E/A Nos. 664-667/09, E/A Nos. 668-71/09, E/A Nos. 672-674/09, E/A No. 703/09, E/A Nos. 757-763/09, E/A Nos. 764-768/09, E/A Nos. 769-770/09, E/A Nos. 771-772/09, E/A Nos. 774-781/09, E/A Nos. 782-787/09, E/A Nos. 788-789/09, E/A Nos. 790-792/09, E/A Nos. 793-801/09, E/A Nos. 871-872/09, E/A No. 873/09, E/A No. 874/09, E/A No. 875/09, E/A Nos. 876/09, E/A Nos. 965-966/09, E/A Nos. 1012-1013/ 09, E/A Nos. 1014-1018/ 09, E/A Nos. 1469-1470/ 09, E/A Nos. 1472-1476/09, E/ A Nos. 1477-1480/09, E/A Nos. 1481-1483/09, E/A. Nos. 1484-1487/09, E/A. No. 1491/09, E/A Nos. 1492-1499/ 09, E/A. Nos. 1500-1508/09, E/A. Nos. 1509-1517/09, E/A Nos. 1518 - 1519/09, E/A No. 1520/09, E/A No. 1521-1523/09, E/A Nos. 1524-1525/09, E/A No. 1526/09, E/A Nos. 1527-1530/09, E/A Nos.1531-1534/09, E/A No. 1535/09, E/A Nos. 1536-1539/09, E/A Nos. 1540-1542/09, E/A Nos. 1757-1761/09, E/A No. 1763/09, E/A Nos. 1778-86/09, E/A Nos. 1787 to 1791/09, E/A Nos. 1792 to 1798/09, E/A Nos. 1799 to 1802/09, E/A Nos.1803 to 1805/09, E/A No. 1806/09, E/A No. 1807/09, E/A Nos. 1808-1809/09, E/A Nos. 1817/09, E/A Nos. 1847-1848/09, E/A No. 1921/09, E/A Nos. 1922-1923/09, E/A No. 1924/09, E/A No. 1925/09, E/A No. 1926/09, E/A No. 1927/09, E/A Nos. 1928-1930/09, E/A No. 1931/09, E/A No. 1936/ 09, E/A No. 1937/09, E/A Nos. 1938 & 1941/09, E/A No. 1939/09, E/A No. 1940/09, E/A No. 1942/09, E/A No. 1943/09, E/A Nos. 1944-1947/09, E/A No. 1948/09, E/A No.1949/ 09, E/A Nos. 1950-1951 &1953/09, E/A No.1952 /09, E/A No. 1954 -1955/09, E/A No. 1956/ 09, E/A.Nos. 1957 to 1959/09, E/A No. 116/08, E/A No. 1886/2007, E/A Nos. 1713, 1716 & 1717/08, E/A Nos. 1317, 1326-1329/08, E/A Nos. 1333-1334/08, E/A Nos. 1323-1325/08, E/A No. 1457/08, E/A No. 1458/08, E/A Nos. 1463-1465/08, E/A No.1466/08, E/A Nos. 1467-1469/08, E/A Nos. 1473-1474/08, E/A Nos. 1475-1476/08, E/A No.1477/08, E/A No.1478/08, E/A No. 1479/08, E/A No. 1481/08, E/A No. 1482/08, E/A Nos. 1707-1709/08, E/A No. 1711/08, E/A No. 1712/08, E/A No. 1714/08, E/A No.1715 /08, E/A Nos. 1718-1719/08, E/A Nos. 1814-1816/08, E/A Nos. 2460-61/08, E/A Nos. 2464-65/08, E/A No. 2508/08, E/A Nos. 2690-97/08, E/A Nos. 2698, 2701/08, E/A Nos. 2699 & 2700/08, E/A No. 224/09, E/A 340/09, E/A Nos. 1254-1259/09, E/A Nos. 1260-1263/09, E/A Nos. 1264-1266/09, E/A Nos. 1267-1271/09, E/A Nos. 1272 – 1274/09, E/A Nos. 1275 – 1276/09, E/A Nos. 1277 – 1278/ 09, E/A No.1279/09, E/A Nos. 1281 – 1282/09, E/ A No. 1283/09, E/A No. 1284/ 09, E/A No. 1285/ 09, E/A No. 1297/09,

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

COURT-I

Date of hearing: 10/11.08.2009

Date of decision: 12.08.2009

Sl. No.	Excise Appeal No.	Name of the appellant	Respondent	Arising out of the order in appeal No. and date	Passed by the
1	E/A No. 342/09	CCE, JAMMU	M/s JINDAL DRUGS LTD.,	747-748/ CE/ APPL/JAL/2008 dt. 12.11.2008	Comm (A) CCE, Jalandh ar (Hq. at Chandig arh)
2	E/A No. 343/09	CCE, JAMMU	M/s V.S. INDUSTRIES	-do-	-do-
3	E/A No. 344-345/09	CCE, JAMMU	M/s RAVENBHEL HEALTH CARE P. LTD.,	723-748/CE/ APPL /JAL/ 2008 dt. 11.11.2008	-do-
4	E/A No. 346/09	CCE, JAMMU	M/s SINGLA CABLES	-do-	-do-
5	E/A No. 347/09	CCE, JAMMU	M/s KASHMIR STEEL ROLLING MILLS	723-726/CE/ APPL/ JAL /2008 dt.11.11.2008	-do-
6	E/A No. 348/09	CCE, JAMMU	M/s NANDA MINT & PINE CHEMICALS LTD.,	720-721/CE/ APPL /JAL2008 dt. 11.11.2008	-do-
7	E/A Nos. 646-648/09	CCE, JAMMU	M/s COROMANDEL FERTILIZERS LTD.,	793-803/CE/ APPL/ JAL/2008 dt. 17.12.2008	-do-
8	E/A Nos. 649-650/09	CCE, JAMMU	M/s PIONEER PESTICIDES PVT. LTD.,	-do-	-do-

9	E/A Nos. 651-652/09	CCE, JAMMU	M/s BHAGWATI METAL WORKS,	-do-	-do-
10	E/A No. 653/09	CCE, JAMMU	M/s PHAROSE REMEDIES LTD.,	-do-	-do-
11	E/A Nos. 654-56/09	CCE, JAMMU	M/s INTEX INDUSTRIES	-do-	-do-
12	E/A Nos. 657-659/09	CCE, JAMMU	M/s SIDHI VINAYAK ALLOYS INDS.	827-829/CE/ APPL/JAL/2008 dt.22.12.2008.	-do-
13	E/A Nos. 660-663/09	CCE, JAMMU	M/s AMBIKA INTERNATIONAL	789-792/CE/ APPL/JAL/2008 dt. 17.12.2008	-do-
14	E/A Nos. 664-667/09	CCE, JAMMU	M/s J.S.B. ALUMINIUM	816-819/CE/ APPL/JAL/2008 dt. 22.12.2008	-do-
15	E/A Nos. 668-71/09	CCE, JAMMU	M/s NATONAL CABLES (INDIA)	820-826/CE/ APPL/JAL/2008 dt. 22.12.2008	-do-
16	E/A Nos. 672-674/09	CCE, JAMMU	M/s JHELM INDUSTEIES	-do-	-do-
17	E/A No. 703/09	CCE, JAMMU	M/s NANDA MINT & PINE CHEMICALS LTD.	720-721/CE/ APPL/JAL/2008 dt. 11.11.2008.	-do-
18	E/A Nos. 757-763/09	CCE, JAMMU	M/s AADISHAKTI ENTERPRISES	7-13/CE/APPL/ JAL/2009 dt. 06.01.2009.	-do-
19	E/A Nos. 764-768/09	CCE, JAMMU	M/s R.B.JODHEMAL & CO.	811-815/CE/ APPL/JAL/2008 dt. 22.12.2008	-do-
20	E/A Nos. 769-770/09	CCE, JAMMU	M/s VIRAJ INDUSTRIES	807-810/CE/ APPL/JAI/2009 dt.22.12.2008	-do-
21	E/A Nos. 771-772/09	CCE, JAMMU	M/s TAWI CHEMICALS INDUSTIRES	-do-	-do-
22	E/A Nos. 774-781/09	CCE, JAMMU	M/s JAMMU METAL INDUSTRIES	852-859/CE/ APPL/JAL/2008 dt. 23.12.2008.	-do-

23	E/A Nos. 782-787/09	CCE, JAMMU	M/s MODERN WHITENERS P. LTD.,	830-849/CE/ APPL/JAL/2008 dt. 22.12.2008.	-do-
24	E/A Nos. 788-789/09	CCE, JAMMU	M/s SUD PINES PVT. LTD.,	-do-	-do-
25	E/A Nos. 790-792/09	CCE, JAMMU	M/s MASTERS INDIA	-do-	-do-
26	E/A Nos. 793-801/09	CCE, JAMMU	M/s TAWI CHEMICALS INDUSTRIES (UNIT-II)	-do-	-do-
27	E/A Nos. 871-872/09	CCE, JAMMU	M/s NORTH SUN ENTERPRISES	01-06/CE/APPL /JAL/2009 dt. 07.1.2009.	-do-
28	E/A No. 873/09	CCE, JAMMU	M/s CHARAG ASSOCIATES	-do-	-do-
29	E/A No. 874/09	CCE, Jammu	M/s CHINAR ELECTRICAL ROLES	-do-	-do-
30	E/A No. 875/09	CCE, JAMMU	M/s ZAIN STEEL ENGINEERING WORKS	-do-	-do-
31	E/A Nos. 876/09	CCE, JAMMU	M/s JEHLUM ELECTRICAL INDUSTRIES	-do-	-do-
32	E/A Nos. 965-966/09	CCE, JAMMU	M/s BHARAT INSECTICIDES LTD.,	22-23/CE/APPL/ JAL(JK) 2009 dt. 14.1.2009.	-do-
33	E/A Nos. 1012 -1013/ 09	CCE, JAMMU	M/s CONTINENTAL TRANSFORMERS LTD.,	19-20/CE/APPL/ JAL(JK) 2009 dt. 15.1.2009	-do-
34	E/A Nos. 1014-1018/ 09	CCE, JAMMU	M/s CROP CHEMICALS INDIA LTD.,	14-18/CE/APPL/ JAL(JK) 2008 dt. 14.1.2009.	-do-
35	E/A Nos. 1469-1470/ 09	CCE, JAMMU	M/s JAI SHREE RASAYAN UDYOG LIMITED	125-126/ CE/ APPL/ JAL(JK) 2009 dt. 18.2.2009.	-do-
36	E/A Nos. 1472- 1476/09	CCE, JAMMU	M/S SHREE SITA RAM INDS. PVT. LTD.	127-142/CE/ APPL/ JAL(JK) 2009 dt. 18.2.2009	-do-

37	E/ A Nos. 1477- 1480/09	CCE, JAMMU	M/s J&K METALS	-do-	-do-
38	E/A Nos. 1481- 1483/09	CCE, JAMMU	M/s KRISHI RASAYAN EXPORTS PVT. LTD.	-do-	-do-
39	E/A. Nos. 1484- 1487/09	CCE, JAMMU	M/s SAMRAT FERRO ALLOYS PVT. LTD.	-do-	-do-
40	E/A. No. 1491/09	CCE, JAMMU	M/s HI TECH TRANSFORMERS	124/CE/APPL/ JAL(JK)/2009 dt. 12.02.2009.	-do-
41	E/A Nos. 1492-1499/ 09	CCE, JAMMU	M/s NAV BHARAT METAL	143-193/CE/ APPL/JAL (JK)/2009 dt. 18.2.2009.	-do-
42	E/A. Nos. 1500- 1508/09	CCE, JAMMU	M/s SUDHIR GENSETS LTD., UNIT-II	-do-	-do-
43	E/A. Nos. 1509- 1517/09	CCE, JAMMU	M/s K.C. SHREE METAL INDS.	-do-	-do-
44	E/A Nos. 1518 - 1519/09	CCE, JAMMU	M/S METAL EXTRUSIONS	-do-	-do-
45	E/A No. 1520/09	CCE, JAMMU	M/S SHREY INDUSTRIES PVT. LTD.	-do-	-do-
46	E/A No. 1521- 1523/09	CCE, JAMMU	M/S FINE AROMATICS	-do-	-do-
47	E/A Nos. 1524- 1525/09	CCE, JAMMU	M/S KRISHI RASAYAN EXPORTS PVT. LTD.	-do-	-do-
48	E/A No. 1526/09	CCE, JAMMU	M/S PHAROSE REMEDIES LTD.,	-do-	-do-
49	E/A Nos. 1527- 1530/09	CCE, JAMMU	M/S COROMANDEL FERTILIZERS LIMITED	-do-	-do-

50	E/A Nos.1531-1534/09	CCE, JAMMU	M/S SONALAC PAINTS AND COATINGS LTD.	-do-	-do-
51	E/A No. 1535/09	CCE, JAMMU	M/S PIONEER PESTICIDES PVT. LTD.	-do-	-do-
52	E/A Nos. 1536-1539/09	CCE, JAMMU	M/S V. BHATIA INTERNATIONAL	-do-	-do-
53	E/A Nos. 1540-1542/09	CCE, JAMMU	M/S ANU PRODUCTS LIMITED	-do-	-do-
54	E/A Nos. 1757-1761/09	CCE, JAMMU	M/S INSECTICIDES INDIA LIMITED	250-254/CE/ APPL /JAL (JK)/2009 dt. 13.3.2009.	-do-
55	E/A No. 1763/09	CCE, JAMMU	M/S ALBA POWER PVT. LTD.	260/CE/APPL/ JAL (JK)/2009 dt.13.3.2009.	-do-
56	E/A Nos. 1778-86/09	CCE, JAMMU	M/S JK CARD BOARD INDS. & JAYCON ENGINEERS	209-226/CE/ APPL/ JAL (JK)/ 2009 dt.13.3.2009.	-do-
57	E/A Nos. 1787 to 1791/09	CCE, JAMMU	M/S SHIVA STEEL ROLLING MILLS	227-247/CE/ APPL /JAL (JK)/2009 dt. 13.3.2009.	-do-
	E/A Nos. 1792 to 1798/09		M/S JAY AMBEY CORPN. & OTHERS	-do-	
	E/A Nos. 1799 to 1802/09		M/S BHAGWATI METAL WORKS	-do-	
	E/A Nos.1803 to 1805/09		M/S NORDIC FORMULATIONS PVT. LTD.	-do-	
	E/A No. 1806/09		M/S B.R. AGROTECH LTD.	-do-	
	E/A No. 1807/09		M/S NANDA MINT AND PINE CHEMICALS LTD.	-do-	
58	E/A Nos. 1808-1809/09	CCE, JAMMU	M/S BHARAT INSECTICIDES	255-256/CE/ APPL / JAL(JK) /2009 dt.	-do-

				13.3.2009.	
59	E/A Nos. 1817/09	CCE, JAMMU	M/S SHANKAR TIMBER PRODUCTS	264/CE/APPL /JAL(JK)/2009 dt. 20.3.2009.	-do-
60	E/A Nos. 1847- 1848/09	CCE, JAMMU	M/S MCB ELECTRO CONTROL	262-263/CE/ APPL/JAL (JK)/2009 dt.20.3.2009	-do-
61	E/A No. 1921/09	CCE, JAMMU	M/S JAMMU CASTINGS PVT. LTD.	269- 274/CE/APPL /JAL(JK)/2009 dt. 31.3.2009.	-do-
62	E/A Nos. 1922- 1923/09	CCE, JAMMU	M/S K.C. MINERALS AND ALLIED INDS.	-do-	-do-
63	E/A No. 1924/09	CCE, JAMMU	M/S AAR BEE INDS.	-do-	-do-
64	E/A No. 1925/09	CCE, JAMMU	M/S NAV BHARAT METALS	-do-	-do-
65	E/A No. 1926/09	CCE, JAMMU	M/S JAY AMBEY AROMATICS	-do-	-do-
66	E/A No. 1927/09	CCE, JAMMU	M/S K.C. MINERALS AND ALLIED INDS.	296-300/CE/ APPL /JAL(JK)/ 2009 dt. 31.3.2009.	-do-
67	E/A Nos. 1928- 1930/09	CCE, JAMMU	M/S HITACHI HOME AND LIFE SOLUTIONS (I) LTD.	-do-	-do-
68	E/A No. 1931/09	CCE, JAMMU	M/S TAWI CHEMICALS INDUSTRIES	-do-	-do-
69	E/A No.	CCE,	M/S SHANKAR	350-CE/APPL/	-do-

	1936/09	JAMMU	TIMBER PRODUCTS	JAL (JK)/2009 dt. 31.3.2009.	
70	E/A No. 1937/09	CCE, JAMMU	M/S AMBIKA INTERNATIONAL	268/CE/APPL/ JAL (JK)/2009 dt. 31.3.2009.	-do-
71	E/A Nos. 1938 & 1941/09	CCE, JAMMU	M/S B.R. AGROTECH LTD.	323-337/CE/ APPL/ JAL (JK)/2009 dt. 31.3.2009.	-do-
72	E/A No. 1939/09	CCE, JAMMU	M/S CHENAB AGRO-CHEM LTD.	-do-	-do-
73	E/A No. 1940/09	CCE, JAMMU	M/S BHARAT UDYOG	-do-	-do-
74	E/A No. 1942/09	CCE, JAMMU	M/S NATURAL HERBAL PRODUCTS	-do-	-do-
75	E/A No. 1943/09	CCE, JAMMU	M/S NATIONAL HERBAL PRODUCTS	-do-	-do-
76	E/A Nos. 1944-1947/09	CCE, JAMMU	M/S CARDINAL CHEMICALS PVT. LTD.	-do-	-do-
77	E/A No. 1948/09	CCE, JAMMU	M/S K.C. MINERAL & ALLIED INDUSTRIES	301-322/CE/APPL / JAL(JK)/2009 dt. 31.3.2009	-do-
	E/A No.1949/09		M/S SIDHI VINAYAK ALLOYS	-do-	
	E/A Nos. 1950-1951 & 1953/09		M/S NARMADA STEEL LTD.	-do-	
	E/A No.1952 /09		M/S SHREYANS ENTERPRISES	-do-	
	E/A No. 1954		M/S SHIVA MINT		

	-1955/09 E/A No. 1956/ 09 E/A.Nos. 1957 to 1959/09		INDUSTRIES M/S FINE AROMATICS M/S AMBIKA INTERNATIONAL	-do- -do- -do-	
78	E/A No. 116/08	CCE, JAMMU	M/S GODREJ AGROVET LTD.	316/CE/APPL/ JAL/07 dt. 08.10.2007	-do-
79	E/A No. 1886/2007	CCE, JAMMU	M/S CONTINENTAL TRANSFORMERS	69/CE/APPL/JAL /07 dt. 23.7.2007	-do-
80	E/A Nos. 1713, 1716 & 1717/08	CCE, JAMMU	M/S CONTINENTAL TRANSFORMERS	188/CE/APPL/ JAL/ 2008 dt. 9.4.2008, 203-204/CE/ APPL/ JAL/2008 dt. 22.4.2008	-do-
81	E/A Nos. 1317, 1326- 1329/08	CCE, JAMMU	M/S INSECTICIDES INDIA LTD.,	94/CE/APPL/ JAL 2008 dt. 20.3.2008, 89- 92/CE/APPL/ JAL/ 2008 dt.20.3.2008	-do-
82	E/A Nos. 1333- 1334/08	CCE, JAMMU	M/S INSECTICIDES INDIA LTD.,	95-96/CE/APPL/ JAL /2008 dt. 20.3.2008	-do-
83	E/A Nos. 1323- 1325/08	CCE, JAMMU	M/S CONTINENTAL TRANSFORMERS	97-99/CE/APPL/ JAL/ 2008 dt. 20.3.2008	-do-
84	E/A No. 1457/08	CCE, JAMMU	M/S RAVENBHEL HEALTHCARE PVT. LTD.	146/CE/APPL/ JAL 2008 dt. 31.3.2008	-do-
85	E/A No. 1458/08	CCE, JAMMU	M/S JINDAL DRUGS PVT. LTD.	159/CE/APPL/ JAL/ 2008 dt. 28.3.2008	-do-
86	E/A Nos. 1463- 1465/08	CCE, JAMMU	M/S INTEX INDUSTRIES	128- 130/CE/APPL/ JAL/ 2008 dt. 28.3.2008	-do-
87	E/A No.1466/08	CCE, JAMMU	M/S RAVENBHEL HEALTHCARE PVT. LTD.	131/CE/APPL/ JAL/2008 dt. 28.3.2008	-do-

88	E/A Nos. 1467- 1469/08	CCE, JAMMU	M/S PHAROSE REMEDIES LTD.	132- 134/CE/APPL/ JAL/ 2008 dt. 28.3.2008	-do-
89	E/A Nos. 1473- 1474/08	CCE, JAMMU	M/S RAVENBHEL HEALTHCARE PVT. LTD.	147-148/CE/ APPL/JAL/ 2008 dt. 31.3.2008	-do-
90	E/A Nos. 1475- 1476/08	CCE, JAMMU	M/S CROP CHEMICALS INDIA LTD., UNIT-II	139, 141/CE/ APPL/ JAL/2008 dt. 31.3.2008	-do-
91	E/A No.1477/08	CCE, JAMMU	M/S CROP CHEMICALS INDIA LTD., UNIT-II	140/CE/APPL/ JAL 2008 dt. 31.3.2008	-do-
92	E/A No.1478/08	CCE, JAMMU	M/S KOMAL ENTERPRISES	112/CE/APPL/ JAL/2008 dt. 27.3.2008	-do-
93	E/A No. 1479/08	CCE, JAMMU	M/s PHAROSE REMEDIES LTD.	84/CE/APPL/ JAL/2008 dt. 14.3.2008	-do-
94	E/A No. 1481/08	CCE, JAMMU	M/S INTEX INDUSTRIES	149/CE/APPL/ JAL/2008 dt. 31.3.2008	-do-
95	E/A No. 1482/08	CCE, JAMMU	M/s INDIGO FLAVOURS PVT. LTD.	136/CE/APPL/ JAL/2008 dt. 28.3.2008	-do-
96	E/A Nos. 1707- 1709/08	CCE, JAMMU	M/S KASHMIR STEEL ROLLING MILLS	190-192/CE/ APPL/ JAL/2008 dt. 23.4.2008	-do-
97	E/A No. 1711/08	CCE, JAMMU	M/S PHAROSE REMEDIES LTD.	234-252/CE/ APPL/ JAL/2008 dt. 30.4.2008	-do-
98	E/A No. 1712/08	CCE, JAMMU	M/S CROP CHEMICALS INDIA LTD.,	198/CE/APPL/ JAL/2008 dt. 17.4.2008	-do-
99	E/A No. 1714/08	CCE, JAMMU	M/S SHREE BALAJI ALLOYS	189/CE/APPL/ JAL/ 2008 dt. 9.4.2008	-do-
100	E/A No.1715 /08	CCE, JAMMU	M/S INSECTICIDES INDIA LTD.,	211/CE/APPL/ JAL/ 2008 dt. 23.4.2008	-do-

101	E/A Nos. 1718- 1719/08	CCE, JAMMU	M/S INTEX INDUSTRIES	201-202/CE/ JAL/ APPL/ 2008 dt. 23.4.2008	-do-
102	E/A Nos. 1814- 1816/08	CCE, JAMMU	M/S RAVENBHEL HEALTHCARE PVT. LTD.	185-187/CE/ APPL/JAL/ 2008 dt. 22.4.2008	-do-
103	E/A Nos. 2460-61/08	CCE, JAMMU	M/S COROMANDEL FERTILIZERS LTD.,	341, 342/CE/ APPL /JAL/2008 dt 31.7.2008	-do-
104	E/A Nos. 2464-65/08	CCE, JAMMU	M/S RAVENBHEL HEALTHCARE PVT. LTD.	361- 362/CE/APPL /JAL/2008 dt 28.8.2008	-do-
105	E/A No. 2508/08	CCE, JAMMU	M/S INDIGO FLAVOURS PVT. LTD.	184/CE/APPL /JAL/2008 dt 17.4.2008	-do-
106	E/A Nos. 2690-97/08	CCE, JAMMU	M/S INDIGO FLAVOURS PVT. LTD.	451- 458/CE/APPL /JAL/2008 dt 16.9.2008	-do-
107	E/A Nos. 2698, 2701/08	CCE, JAMMU	M/S KASHMIR WIRES	465-468/CE/ APPL /JAL/2008 dt 19.9.2008	-do-
108	E/A Nos. 2699 & 2700/08	CCE, JAMMU	M/S JAY AMBEY CORPN.	465-468/CE/ APPL /JAL/2008 dt 19.9.2008	-do-
109	E/A No. 224/09	CCE, JAMMU	M/S JHELM INDUSTRIES	690/CE/APPL /JAL/2008 dt. 21.10.2008	-do-
110	E/A 340/09	CCE, JAMMU	M/S POWER WAVES INDUSTRIES	749/CE/APPL/ JAL /2008 dt. 12.11.2008	-do-
111	E/A Nos. 1254- 1259/09	CCE, JAMMU	M/S INDIGO FLAVOURS PVT. LTD.	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
112	E/A Nos.	CCE,	M/S REVENBHEL	87-118/CE/APPL	-do-

	1260-1263/09	JAMMU	HEALTHCARE PVT. LTD.	/JAL(JK)/2009 dt.11.2.2009	
113	E/A Nos. 1264-1266/09	CCE, JAMMU	M/S ARAVALI INFRA POWER PVT. LTD.	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
114	E/A Nos. 1267-1271/09	CCE, JAMMU	M/S SHIVALIK AGRO CHEMICALS	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
115	E/A Nos. 1272 – 1274/09	CCE, JAMMU	M/S HARD CASTLE PETROFER PVT. LTD.	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
116	E/A Nos. 1275 – 1276/09	CCE, JAMMU	M/S MCB ELECTRO CONTROL	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
117	E/A Nos. 1277 – 1278/09 E/A No.1279/09	CCE, JAMMU	M/S KASHMIR STEEL ROLLING MILLS M/S KASHMIR WIRES	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
118	E/A Nos. 1281 – 1282/09	CCE, JAMMU	M/S J.K. PETRO-CHEMICALS	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
119	E/ A No. 1283/09	CCE, JAMMU	M/S KARRIER INDUSTRIES	87-118/CE/APPL /JAL(JK)/2009 dt.11.2.2009	-do-
120	E/A No. 1284/ 09	CCE, JAMMU	M/S NORDIC FORMULATIONS PVT. LTD.,	-do-	-do-
121	E/A No. 1285/ 09	CCE, JAMMU	M/S G.TECH INDUSTRIES	-do-	-do-
122	E/A No. 1297/09	CCE, JAMMU	M/S SIDHI VINAYAK ALLOYS INDUS.	78-80/CE/APPL /JAL(JK)/2009 dt.30.1.2009	-do-

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appearance:

Appeared for the Appellant – Shri B.K. Singh, Jt. CDR, Sh. V.K. Choudhary, DR & Shri P.K. Singh, DR

Appeared for the Respondent – Shri A.R. Madhav Rao, Sh. R.K. Hasija, Sh. Sudhir Malhotra, Sh. R. Santhanam, S.K. Malhotra, Sh. S. Sunil, Sh. A.S. Gill, Sh. Vishnu Sexena, Sh. Atul Gupta, Advocates

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

FINAL Oral Order No. 900-1236/09-EX

Per Shri Justice R.M.S. Khandeparkar:

In all these appeals common questions of law and facts arise and, therefore, they were heard together and are being disposed of by this common order, in terms of direction issued on 8.7.2009 in Appeal No.342/2009 and other connected matters.

2. In all these appeals the point for consideration which arises is whether the education cess and higher education cess which was paid alongwith the excise duty in terms of exemption Notification No. 56/02 dated 14.11.2002 are also refundable alongwith the excise duty paid under the said exemption notification.

3. Learned Representatives for the Department and the learned Advocates as well as Chartered Accountant appearing for the assessees were heard at length on the above issue in all these matters.

4. Few facts relevant for the decision in all these matters on the above issue need to be noted. In exercise of powers conferred under Section 5A(1) of the Central Excise Act alongwith two other enactments, a notification came to be issued being Notification No. 56/2002 with reference to the area specified thereunder and the assesses submitted their declaration in accordance with the requirement of the said notification to avail the benefit thereunder in relation to the manufacture of the products in their factories located within the area specified under the said notification. The assessees were permitted to avail the benefit under the said notification either by way of payment of utilizing cenvat credit or

by way of duty in cash or in PLA account. Each of the assesseees availed such benefits at his option in terms of the said notification. Alongwith the payment of duty either in cash or by depositing the amount in PLA account, the assesseees also paid education and higher education cess equivalent to 2% and 1% respectively of the aggregate of all the duties levied and collected in the above form. Thereafter in terms of the said notification, the assesseees approached the authorities for refund of amount of duty paid either in cash or by way of deposit in the PLA account, and alongwith that also claimed the refund of the amount of education and higher education cess paid by them with reference to the duties paid under the notification. The Assistant Commissioner, who heard the matters in this regard, allowed refund of the excise duties paid in cash or through PLA account, but rejected the request for refund of the education or the higher education cess. Being aggrieved by the rejection of the claim for refund of the education and higher education cess, the assesseees carried the matter in appeal before the Commissioner (Appeals) who by his orders allowed the claim of the assesseees for refund of the education and higher education cess. It is on this count, the department has preferred these appeals before this Tribunal.

5. The Notification No. 56/2002 under which the assesseees claim for refund of the education and higher education cess which has been granted by the Commissioner (Appeals) and which is disputed by the Department reads thus-

“Jammu, Kashmir and Udhampur — Exemption to units located in Industrial Growth Centre, Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than goods specified in Annexure I appended hereto, and cleared from a unit located in the Industrial Growth Centre, Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate, or Scheme

Area, as the case may be, specified in Annexure - II appended hereto, from so much of the duty of excise or additional duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the amount of duty paid by the manufacturer of goods, other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2002.

The exemption 2. contained in this notification shall be given effect to in the following manner, namely :-

(a) The manufacturer shall submit a statement of the duty paid, other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2002, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th day of the next month in which the duty has been paid.

(b) The Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall refund the amount of duty paid, other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2002, during the month under consideration to the manufacturer by the 15th day of the next month.

(c) If there is likely to be any delay in the verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th day of the next month to the month under consideration, and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds admissible to the manufacturer.

The exemption 3. contained in this notification shall apply only to the following kind of units namely :-

(a) New industrial units which have commenced their commercial production on or after the 14th day of June 2002.

(b) Industrial units existing before the 14th day of June 2002, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty-five per cent on or after 14th day of June 2002.

The 4. exemption contained in this notification shall apply to any of the said units for a period not exceeding ten years from the date of publication of this notification in the Official Gazette or from the date of commencement of commercial production whichever is later".

6. Learned Representatives for the Department submitted that the notification in question has been apparently issued under Section 5A(1) of the Central Excise Act, 1944 read with Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Section 3(3) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 and, therefore, on the face of it, the notification cannot be extended to any duty which is payable under any other enactment irrespective of the fact whether it is in the nature of excise duty or not. It was further submitted that education and higher education cess

were imposed under the Finance Act and the notification in question nowhere speaks of any exemption in relation to the duties imposed under any of the Finance Acts and, therefore, the plain reading of the notification would not permit exemption from the cess sought to be imposed under Finance Act and for the same reason question of refund thereof does not arise. Attention was drawn to Finance Act, 2004 and Finance Act 2007 in relation to the provisions relating to the education and higher education cess which was sought to be imposed under the said enactments. Referring to Section 93 of the Finance Act 2004, it was sought to be contended that levy in the nature of the cess is under different and separate enactment and notification in question does not find any reference to such enactment. In that regard attention was sought to be drawn to the decision of the Larger Bench of the Tribunal in *Nellimarla Jute Mills vs. Collector of Central Excise, Guntur* reported in 1987 (31) ELT 209 (T), and in particular para 12 of the decision. Reliance was also placed in the decision of the Hon'ble Supreme Court in the matter of *Union of India and Others vs. Modi Rubber Limited and Others* reported in 1986 (25) ELT 849. It was also sought to be contended that the notification does not speak of absolute exemption from the payment of duties. It is in the nature of partial exemption. It was also submitted that refund in the matter under the notification is restricted to the amount either paid in cash or debited from PLA account and it does not relate to the payment of duties in terms of reversal of cenvat credit. Further, referring to the decision of the Hon'ble Himachal High Court in *Indo Farm Tractors & Motors Ltd., vs. Union of India* reported in 2008 (222) ELT 184 (H.P.). It was sought to be contended that the calculation of education cess is based on notional calculation of the excise duty.

7. Learned Representatives for the Department also submitted that the refund of the amount of duty in the cases in hand is not in terms of Section 11B of the said Act, but the source of provision of law in this regard is confined to the notification in question. Though it is termed as an exemption notification, in a

sense, it is in the nature of refund provision. Being so, according to the appellants, the scope of refund cannot travel beyond the provision as specified under the said notification. Drawing our attention to the decision of the Apex Court in *Assistant Director of Mines and Geology vs. Deccan Cements Ltd., & Anr.* Reported in 2008 (222) ELT 321 (SC), it was stated that the source of power for levy of excise duty and that of the cess is under two different enactments and the notification which is restricted to the benefit under a specified enactments cannot be interpreted so as to include the benefits under some other enactment. It was also contended that the collection of the duty once levied is a natural corollary to the levy of the duty. It was also submitted that unless the notification specifically describes the duty to be refundable, even if it is assumed to be in the form of excise duty, cannot be read in the said notification as one of the duty refundable under the said notification.

8. Drawing our attention to the phraseology used in the said notification, it was contended that the same speaks of payment of collection consequent to the levy of the duty. Further, referring to Section 93 of the Finance Act, it was also contended that the education cess and higher education cess was calculated and levied and collected on the basis of total amount of duties which were paid in terms of the said notification.

9. On the other hand, learned Advocates appearing for the respondents submitted that the levy and payment of excise duty in terms of the said notification does not include "collection of duty" within the meaning of the said expression under the statutory provision in relation to the payment of excise duty. According to the learned Advocates, deposit of the amount in PLA account in terms of the said notification would not amount to collection of the duty and, therefore, there was no question of levy of education cess in relation to such amount of duty of excise which is never "collected" within the meaning of said expression under Section 93 of the Finance Act. Drawing to our attention to the Finance Act, it was

contended that levy of cess is essentially with reference to the excise duty "levied and collected". In the absence of "collection of duty" according to the respondents there was no occasion for the department to levy the cess and whatever amount on assumption that such cess can be levied was collected by the respondents is obviously refundable alongwith the excise duty which was paid under the said notification. Attention was also drawn to the decision in the matter of Bharat Box Factory Ltd., vs. CCE, Jammu reported in 2007 (214) ELT 534 (Tri.- Del). Referring to the notification, it was sought to be contended that the levy of duty under the said notification was not with intention of collecting the same in its strict sense, but it was with the intention to return the same to the assesseees and, therefore, whatever amount that was received by the Department under the said notification ought to have been repaid to the assesseees. In this regard, attention was drawn to Circular No. 345/2/2004-TRU (Pt.), dated 10.08.2004 and particularly to answer to Question No. 2 thereunder while contending that since no duty is actually refundable, there was no occasion for levy of cess and even assuming that the duty was refundable it was not actually collected and, therefore, the requirements for levy of cess in terms of Section 93 were not satisfied. Referring to the decision of Hon'ble Rajasthan High Court in Banswara Syntex Limited vs. Union of India reported in 2007 (216) ELT 16 (Raj.), it was contended that the cess, in fact, is in the nature of surcharge and once it is clear that there is no collection of the parent levy, obviously there would be no occasion for surcharge. In that regard, reference was made to paras 15, 16 and 19 of the judgement in Banswara Syntex Limited case. In that regard attention was also drawn to para 35 of the decision of the Apex Court in the matter of R.S. Joshi, Sales Tax Officer, Gujarat and Ors. vs. Ajit Mills Limited and Anr. reported in AIR 1977 SC 2279, as also Circular No. 682/73/2002-CX dated 19.12.2002. It was sought to be contended that the notification was basically designed to give certain relief from the payment of duties by the manufacturers establishing their units in the state of Jammu & Kashmir. Being so, the intention of legislature

being to grant exemption to manufacturers from the subjected area from payment of duties and the levy of cess being directly related to the levy and collection of excise duty, in the absence of actual collection of excise duty, there was no obligation for the assesseees to pay the education cess. It was sought to be contended that even the authorities have clearly understood the notification to have been designed to give full exemption to the assesseees from the payment of duties and, therefore, objection by the Department for refund of the education cess is unwarranted.

10. Relying upon the decision by the Apex Court in CCE, Patna vs. Telco reported in 1997 (92) ELT 303, it was sought to be contended that a notification cannot be read in such a manner that it would defeat the very purpose behind the issuance of the said exemption of notification. If we give literal meaning to the words of the notification, according to the learned Advocates for the respondents, it would defeat the very purpose and intention behind issuing the said notification. The intended purpose being to grant full benefit and exemption from payment of duties, it would obviously include education cess which is in the nature of excise duty.

11. It was further submitted that undoubtedly the duty was leviable and but for exemption, it could not be collected. In that regard attention was sought to be drawn to the decision of the Apex Court in Orient Paper Mills Limited vs. Union of India reported in 1978 ELT J311 and in particular para 9 thereof.

12. It was then sought to be contended that since the duty was exempted in the sense though it was levied but not collected, there was no occasion for levy of cess. According to the respondents, the notification is complete in all respects. As regards the liability as well as the discharge of liability, as well as the reversal of whatever amount that is paid by the assessee in the form of duty. In sense, it gives complete exemption from payment of duty and, therefore, while refunding

the excise duty whatever that has been paid as well as any amount paid on account of levy of excise duty, also should be refunded to the assessee.

13. It was also sought to be contended that the notification nowhere speaks of actual collection of the excise duty, though it refers to the levy of the duty and the payment thereof in PLA account. Whatever is deposited in PLA account cannot be construed as collection of the duty by the State. It is only when the amount from PLA account is debited and the same is credited to the revenue account, it will amount to collection of duty. Whatever amount is paid to PLA account, even assuming that it is collection, it would be a case of payment under the notification in question with intention of returning the same to the assessee and, therefore, there would be no collection of duty. It was sought to be contended that whatever amount which is required to be returned to the assessee on account of exemption of duty, tender of such amount in PLA account would not amount to collection of duty. Being so, it is the contention on behalf of the respondents that the education cess ipso facto gets exemption under the said notification.

14. Drawing our attention to the decision in the matter of *State of Karnataka vs. Sunagar Bros.* reported in 1993 (65) ELT 471 (S.C.), it was sought to be contended that it is not the nomenclature but the character of the tax or duty that is to be seen and if one consider the nature of the duty in the form of cess under the Finance Act, it would be at once clear that it is nothing but one of the forms of excise duty. Further, referring to the decision of the Apex Court in *M/s Ashok Service Centre and Another etc. vs. State of Orissa* reported in AIR 1983 SCC 394, it was sought to be contended that when the parent levy in the form of excise duty is itself sought to be exempted under the notification, the Department cannot be heard to contend that the assessee would be liable to pay the cess. Referring to the decision in the matter of *Pratibha Processors vs. Union of India* reported in 1996 (88) ELT 12 (S.C.) and in the matter of *Commissioner of Customs, Chennai vs. Jayanthi Krishna & Co.* reported in 2000 (119) ELT 4 (S.C.), it was sought to

be contended that once the goods do not attract the excise duty, question of payment of cess cannot arise. Considering the exemption granted under notification, according to the respondents, therefore, alongwith the refund of the duty, the cess is also refundable since the basic duty is not to be collected in relation to the goods manufactured in the area specified under the said notification, the same cannot be subjected to the payment of cess, therefore, whatever amount paid as cess alongwith the duty which was paid by the party, has to be refunded. In support of this contention reliance was also placed in the decisions of *Indian Oil Corporation Limited vs. Collector of Central Excise, Calcutta* reported in 1986 (24) ELT 593 (Tri.), *Tata Oil Mills Co. Ltd., vs. Collector of Central Excise, Calcutta* reported in 1985 (21) ELT 730 (Tri.), *Kalyani Spinning Mills Ltd., vs. Commissioner of C. Ex. Kolkata-III* reported in 2009 (236) ELT 496 (Tri. Kolkata) and *CCE, Mumbai vs. Raymond Limited* reported in 2005 (192) ELT 868 (Tri. Mumbai).

15. Reliance was also placed in the matter of *Vishal Electronics Pvt. Limited vs. Union of India* reported in 1993 (68) ELT 557 (Bom) while contending that the fact of exemption of goods from the payment of duty has to be considered with reference to the different headings related to the tariff rate in respect of such goods.

16. Placing reliance in the decision of the Apex Court in the matter of *Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others vs. Dharmendra Trading Company and Others* reported in (1988) 3 SCC 570, it was sought to be contended that grant of exemption may be in different forms, including in the form of refund. In that regard, attention was drawn to para 6 of the said decision. At the same time it was also contended on behalf of the respondents that it is not their case that a notification is a refund notification. In essence it is an exemption notification but the manner of giving exemption is in the nature of refund after deposit of the amount in PLA account and this is not

merely an understanding of the assessee but also of the concerned authority itself and that is clear from the circulars to which attention was drawn by the respondents. According to the respondents even the framers of the notification understood the same as an exemption notification which does not contemplate actual collection of duty.

17. Since the matter relates to the issue pertaining to the claim of exemption and the consequential benefits arising thereunder, it would be appropriate to understand what the notification itself states.

18. The notification on the face of it, undoubtedly states the same to be an exemption notification. It specifies the circumstances under which an assessee seeking to avail the benefits thereunder would be entitled to avail the same. It also enumerates the condition which an assessee seeking to avail the benefit thereunder has to satisfy. It also enumerates the obligations which the assessee has to fulfill in order to avail the benefits thereunder. It describes the method of performing the obligations of the assessee in order to avail the benefit thereunder. It specifies the mode in which the obligations in relation to the duty liability are to be discharged by the assessee seeking to avail the benefit thereunder. It explains the terminology used in the said notification as also the units to which the exemption would apply. It also specifies the benefits, its nature and steps which are to be required to be taken by the assessee to avail those benefits, including the period within which such steps are required to be taken. It also specifies various steps required to be taken to give full effect to the notification. In that respect, as rightly pointed out by the learned Advocate, the notification on the face of it appears to be complete in all respects.

19. Once the notification is not disputed to be complete in all respects, it hardly leaves any room for interpretation thereof. The controversy mainly relates to the mode of complying with the obligation relating to the levy of the excise

duty in terms of the said notification. Needless to say that the levy of excise duty was in pursuance of the statutory provisions. The collection thereof was in terms of the said notification. While it is the contention of the assessee that it was merely in the form of tender in PLA account, it is the contention of the Department that it was essentially in the form of payment. Based on the argument regarding mere tender of the amount of duty, it is sought to be contended by the assessee that there was no obligation to pay the education cess, whereas it is the contention of the Department that in view of levy and payment of duty, the requirement of Section 93 of the Finance Act were fulfilled and, therefore, the cess was lawfully and validly paid and collected.

20. The notification clearly speaks of exemption "from so much of the duty of excise or additional duty of excise, as the case may be, leviable thereon under any of the said acts as is equivalent to the amount of duty paid by the manufacturer of goods, other than the amount of duty paid by utilization of cenvat credit under the CENVAT Credit Rules, 2002". The notification in the opening para itself specifies the scope of exemption available under the said notification. In para 1A, it specifies that the manufacturer has to comply with the condition that he has to first utilize whole of the cenvat credit available to him on the last day of the month under consideration for payment of duty on goods cleared during such month and pay the balance amount in cash. While in para 2 it relates to the manner in which exemption contained in the notification should be made effective. It provides that the manufacturer shall submit a statement of duty paid, other than by way of utilization of cenvat credit, by 7th of the month following the concerned month, and the authority shall verify and refund the amount of duty paid, other than the amount of duty paid by utilization of cenvat credit, possibly by 15th of the month following the concerned month. Para 2A specifies that the manufacturer at his own option, may give necessary declaration in advance and may take credit of the amount of duty paid during the month under consideration other than by way of

utilization of CENVAT credit in his account current, maintained in terms of para V of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs and such amount credited in the account current may be utilized by the manufacturer for payment of duty, in the manner specified under Rule 8 of the Central Excise Rules, 2002, in subsequent months, and such payment should be deemed to be payment in cash. In respect of such payment also, the duty paid would be refunded within the time stipulated in the said notification. Rule 8 of the Central Excise Rules 2002 describes the manner in which the payment is required to be made.

21. The notification on the face of it uses the expression “payment of duty” with reference to discharge of duty obligation by the manufacturer for availing the exemption benefit under the said notification. The term “collection” is nowhere to be found in the notification. The said term is used in Section 93 of the Finance Act. It is settled law that the meaning of any term in a taxing statute cannot be understood with reference to even similar term used in the different taxing statute. It is essentially to be understood in the context it is used in the very section where the term is found to have been used. Being so, even while understanding the term in the notification which are issued under a taxing statute, the meaning of the term thereunder cannot be understood with reference to the similar term used in a different statute, unrelated to the notification. The expression “payment of duty” in the notification, therefore, will have to be understood with reference to the similar expression used in the Central Excise Act or the connected enactments. The term used in the notification which is issued under Central Excise Act, Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 will have to be understood with reference to similar expression used in those three enactments and rules made thereunder. The expression “payment of duty” has been clarified in the Central Excise Rules, 2002. Once the notification clearly specifies that the

payment of duty has to be made in the manner specified under Rule 8 of the Central Excise Rules 2002, there is no scope to contend that the payment of duty as specified under the notification is in a form different from the one which is specified under the said rules. The mode, the manner and effect of the payment of duty in terms of the said notification will have to be understood primarily as specified under the notification itself and in case of any doubt, by taking resort to the provisions of Central Excise Rules 2002. Having so understood, we wonder as to how can there be any scope to presume that such payment of duty would not amount to actual payment or actual collection of the duty by the Government. In fact, there is a basic fallacy in the argument that the payment of duty under the notification would not amount to collection of duty in the sense that very concept of exemption presupposes levy of duty. Undoubtedly, levy precedes collection. But the question of refund can arise only after payment once the exemption notification clearly speaks of refund of the duty, it presupposes actual payment of duty preceding the act of refund. Being so, the notification which speaks of payment of duty consequent to levy and thereafter refund thereof. It obviously includes the concept of collection of duty. There cannot be refund, unless there had been payment. Being so, the argument advanced on behalf of the assesseees that the payment in terms of the notification is not in the form of collection cannot be accepted. In fact, none of the judgements which have been cited or relied upon on behalf of the assesseees deals with this aspect of the matter nor there is any indication that view that is sought to be canvassed herein on behalf of the assesseees is found to be even remotely acceptable to any of the Courts in any of those cases.

22. In Deccan Cements Ltd., & Anr.(supra), the Apex Court in para 6 held thus-

“It is to be noted that there are different stages in the matter of imposition of tax or cess. First is the source of power for levying tax or cess as the case may be. The second is the actual levy by an adjudication or assessment order. Sometimes, the quantification of the amount payable is done in the adjudication/ assessment order. Finally, comes the question of collection. That being so, collection is a natural corollary of the levy. It is inconceivable that the levy is valid but collection can be held to be impermissible. That is an irreconcilable situation”.

(Emphasis supplied).

23. The Apex Court has clearly specified three stages which form part of process of imposition of tax or cess and simultaneously has ruled that the actual realization of the tax or cess is a natural corollary of the levy. Once a notification, which is undisputedly complete in all respects, reveals all the stages which are required to be followed for the compliance of the obligation regarding the payment of duty with the intention to avail the benefits under such notification, and it includes the last stage of levy i.e. the collection of levy, it cannot be said that it does not include the collection within the meaning of the said expression as is understood in the taxing statute.

24. It is also pertinent to note that considering the rules regarding the payment of duty, it is not only the deposit of the amount in PLA account that specifies the requirement of notification but it requires debiting of amount to the extent liability is required to be discharged, which clearly shows the notification does contemplate completion of the last stage ~~last stage~~ in the process of imposition of tax or duty before being entitled to claim benefit under the notification. In other words, unless the stage of collection is completed, the requirement under the notification to avail the benefit thereunder does not stand complied with. Section 93 of the Finance Act 2002 undoubtedly provides that the education cess levied under Section 91, in the case of goods specified in First

Res.

Schedule to the Central Excise Tariff Act, 1985, being goods manufactured or produced, shall be a duty of excise at the rate of two percent, calculated on the aggregate of all duties of excise which are levied and collected by the Central Government, under the provisions of Central excise Act or under any other law for the time being in force. Undoubtedly, therefore, the calculation of education cess has to be on the basis of aggregate of all the duties of excise which are levied and collected by the Government. It is equally true that the term 'collected' would reveal the compliance of the last stage of levy. However, once the notification, on the face of it, discloses inclusion of such last stage of levy to be the requirement for availing benefit thereunder, in our considered opinion in the absence of collection of duty, there would be no compliance of the obligation of the assessee in order to avail the benefit under the said notification.

25. Once it is found that the notification nowhere gives room for non collection of duty as sought to be contended on behalf of the assessees, we find no force in the argument canvassed on behalf of the assessee that the levy of education cess or higher education cess are either without any basis or that the same was illegally levied. We find that the Department was justified in levying the education cess and higher education cess as the excise duties were lawfully levied and collected in the manner specified under the said notification read with the provisions of Central Excise Rules, 2002. Neither the decision in Bharat Box Factory Limited case nor in Cyrus Surfactants Pvt. Limited case deals with this aspect of the matter nor that point ever arose therein and /or was considered and, therefore, the said decisions are of no help to the respondents in the matter in hand.

26. It brings us to the question as to whether education cess so collected would also be refundable under the said notification.

27. As already pointed out above, the notification *ex facie* discloses to have been issued under three enactments namely, Central Excise Act, 1944, Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. The contention on behalf of the assesseees is that since the education cess is in the nature of excise duty, the exemption of the excise duty would automatically relate to the exemption of the education cess. On the other hand, the Department contends that the education cess is levied under the Finance Act and the exemption notification nowhere relates to the Finance Act and, therefore, there is no scope for grant of such exemption under the said notification.

28. Undoubtedly, in case of exemption from tax or duty liability, it is essentially to be understood with reference to the notification itself, unless there is ambiguity in the notification. It is not the case of the respondents that the notification is ambiguous. However, it is their contention that the exemption has been essentially granted with the intention to give certain benefits to the manufacturer establishing their industrial units in the State of Jammu & Kashmir, and that once it cannot be disputed that the education cess is in the nature of excise duty and the intention of legislature being to give benefit of exemption from payment of such duties on establishment of unit in the State of Jammu & Kashmir, to give full effect to such notification, it has to be construed to include exemption to education cess alongwith other excise duties.

29. The very opening para of the notification states that the exemption is from "so much of the duty of excise or additional duty of excise" leviable under any of the "said acts" and equivalent to the amount of the duty paid by the manufacturer of goods, other than the amount of duty paid by utilization of cenvat credit under the Cenvat Credit Rules, 2002. Being so, the notification clearly specifies that it relates to the duty of excise or additional duty of excise leviable under the statutes which are mentioned as those statutes under which the said

notification has been issued. Apparently, therefore, the notification relates to duties which are payable under the provisions of the Acts under which the notification has been issued. The contention, however, is that since the notification also uses the expression "duty of excise or additional duty of excise" it would also include the education cess which has been clearly defined as "duty of excise" under section 93 of the Finance Act, 2004. The contention is totally devoid of substance. Merely because the cess which is paid in terms of the provisions of the Finance Act and partakes the color of the excise duty, that itself would not make the tax or the duty to be the part of the excise duty paid in terms of the said notification. The notification clearly states that the exemption is to "the duty of excise or additional duty of excise, as the case may be, leviable thereunder in all the said Acts". It clearly restricts to the Acts specified under the said notification and does not include the Finance Act. Being so, there is hardly any room to presume that the expression "duty of excise or additional duty of excise" will also refer to any duty under any other Acts also. It is, however, sought to be contended that the education cess was sought to be levied for the first time in 2002 whereas the notification was issued in 2004 when the Finance Act was not in force. In our opinion, it makes no difference. Neither the Finance Act 2004, nor any other notification discloses that a refund of excise duty collected as per liability under law relating to the excise duty statutes would automatically result in proportionate reduction in liability in relation to the education cess levied under Finance Act. Besides it is not the case of the respondent that consequent upon enforcement of the Finance Act, 2004, there was any amendment to the Notification No. 56/2002 either to include the excise duty under the Finance Act to be forming part of the said notification or otherwise. It is settled law that under the guise of interpretation, the Courts and Tribunal are neither empowered to restrict nor enlarge the scope of any exemption notification. The benefits of exemption granted under the exemption notification have to be granted in terms of the notification, neither less, nor more.

30. The decision of the Apex Court in *Modi Rubber Limited and Others* (supra) undoubtedly was in relation to the point as to whether the basic duty of excise levied under the Central Excise and Salt Act, 1994 would also cover special duty of excise levied under the Finance Bills and Act, additional duty of excise levied under the Additional Duty of Excise (Goods of Special Importance) Act 1957, and any other kind of duty of excise levied under a Central enactment. The issue had arisen with reference to two notifications issued under Rule 8(1) of the Central Excise Rules, 1944 being Notification No. 123/74-C.E., dated 01.08.74 and No. 27/81-C.E. dated 01.03.81. It was held that since the notification granting exemption from duty of excise was issued by the Central Government in exercise of power under Rule 8(1) simpliciter, without anything more, it must, by reason of the definition of 'duty' contained in Rule 2 clause (v) which according to the well-recognised canons of construction has been projected in Rule 8(1), should be read as granting exemption only in respect of duty of excise payable under the Central Excises and Salt Act, 1944. The said ruling was given after observing that "it is not uncommon to find out that the legislature sometimes, with a view to making its intention clear beyond doubt, uses language *ex abundanti cautela* though it may not be strictly necessary and even without it the same intention can be spelt out as a matter of judicial construction and this would be more so in case of subordinate legislation by Executive. The officer drafting a particular piece of subordinate legislation in the Executive Department may employ words with a view to leaving no scope for possible doubt as to its intention or sometimes even for greater completeness, though these words may not add anything to the meaning and scope of the subordinate legislation". Undoubtedly, therefore, the Apex Court has held that since the notification was issued under specific provision of the specified Act simpliciter without reference to any other statute, the exemption granted cannot be held to be applicable to the similar type of tax leviable under different enactments. Applying the same rule in the matter in hand, once it is clear that the notification has been issued under three specified enactments, and further exemption having

been specified as available to the excise duty and special excise duty leviable under those very enactments, there is no scope for inclusion of any other similar type of excise duty in the exemption notification.

31. As regards the contention relating to the intention behind the grant of exemption, undoubtedly it is essentially for the benefit of the manufacturer establishing their units in the State of Jammu & Kashmir. However, one cannot forget that the words used in the notification should be understood in the context in which they are used. Once the expression used in the notification clearly discloses that the benefit thereunder are available to the duties leviable under the statutes under which the notification has been issued and not to a duty levied under any other enactment, irrespective of the fact that such duty may be of similar in nature, it goes without saying that the benefits under notification would be restricted to the duty paid under the statutes under which the notification has been issued.

32. The decision of the Apex Court in M/s Ashok Service Centre and another case was on the point that any dealer who is not liable to pay tax under the Principal Act either by reason of his not having sufficient gross turnover or by reason of exemption given under Section 7 of the Principal Act was also not liable to pay additional tax under Orissa Additional Sales Tax Act, 1975 as amended by Orissa Additional Sales Tax (Amendment) Act, 1979. The Principal Act was the Orissa Sales Tax Act 1975. The Apex Court therein clearly ruled that but for the second act which though had a long title, it could not be considered as an independent statute and both the acts were required to be read together. In the background of those facts, the issue as to whether the exemption available under the Principal Act would enure to the benefit under the provisions of the second Act was considered and since both the enactments were considered to be read together, obviously, the exemption under the Principal Act was held to be available under the second Act also. That is not the case in the matter in hand.

Undisputedly, the levy of cess is under totally independent enactment i.e. Finance Act 2004 and Finance Act, 2007. However, both the said enactments cannot be read as forming part of the Central Excise Act nor both Acts are required to be read together. In the Finance Act, under section 93(3), it provides that the provisions of Central Excise Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of the penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 or the rules, as the case may be, would disclose that the provisions of two Acts are independent from each other and merely because education cess is defined as the excise duty, it could not be construed that the cess levied under Finance Act should also be exempted under the said notification even in the absence of clear specification in that regard under the said notification.

33. In Telco case, the issue involved related to interpretation of Section 9 of the Industries (Development and Regulation) Act, 1951 viz-a-viz the notification dated 28.12.82 issued thereunder and Rule 2 and 3 of Automobile Cess Rules 1984, and it was with reference to the dispute relating to the manner in which the levy of cess to be collected in respect of the motor vehicles. It was the contention on behalf of the Revenue that the cess should be levied at 1/8% of the value of the motor vehicle that value being computed as explained in Section 9 of the Industries (Development and Regulation) Act. It was the contention of the assessee that the value of motor vehicle for the purpose of levy of cess is to be calculated in the manner laid down in the Central Excise and Salt Act 1944 read with Rule 3 of the Automobile Cess Rules. The point for consideration was totally different and unrelated to the matter under consideration. Being so, the observation therein are of no help to the assessee in the case in hand.

34. In Orient Weaving Mills (P) Ltd. & Anr. Vs. Union of India & Ors. Reported in AIR 1962 SC 98 case the Apex Court was dealing with the matter pertaining to the challenge to certain provisions of Central Excise and Salt Act on the ground that they were ultra virus to the Constitution. We fail to understand how this decision can have any relevancy to the matter in issue.

35. In Sunagar Bros. case the Apex Court in para 7 of the decision has held that the fact that the quantum of the additional tax is determined with reference to the sales tax/ purchase tax imposed would not alter its character. The additional tax is nothing but an enhancement in the rate of the sales tax, purchase tax under the Act. The question which the Apex Court was dealing with in the said matter was whether the mandate under section 20(3) of the Karnataka Sales Tax Act, 1957 to pay the undisputed tax before the appeal is entertained was also applicable to the additional tax payable under section 6B of the same Act. In other words, whether it was obligatory under the Karnataka Sales Tax Act, 1957 to deposit the amount relating to additional tax before the appeal was entertained was the issue before the Apex Court and in that contention the above observation was made. It is nobody case that the education cess is payable under the provisions of Central Excise Act, 1944 or two of the other enactments under which the notification has been issued.

36. In Pratibha Processors case, the issue related to the interpretation to be placed upon Section 61(2) of the Customs Act, 1962. The said issue arose pursuant to the question as to whether an assessee would be liable to pay interest even in the absence of duty liability. In that respect, the ruling was that since there was no duty liability, question of payment of interest does not arise. It is elementary that there could not be any interest liability unless there is principal amount dues. Being so, unless there is a duty element involved, question of interest cannot arise. It is totally on a different issue and can be of no help to the respondents case in hand.

37. In Jayanthi Krishna & Co. case, the Hon'ble Court had granted relief based on the decision in Pratibha Processors case.

38. In Orient Paper Mills case, the question as to whether the amount of duty of excise payable by a manufacturer mentioned in Section 280ZD for the purposes of tax credit certificate postulated by under section 280ZE of the Income Tax Act, 1961 means excise duty actually paid or excise duty leviable under the Excise Act. It was held that the decision of the High Court placing reliance in the judgement of the Apex Court in Orient Weaving Mills (P) Ltd. & Anr. Vs. Union of India & Ors. Reported in AIR 1962 SC 98, that the exemption granted by an exemption notification has effect as if enacted as a part of the statute required no further discussion. It merely means that once exemption under notification is issued it forms part of the statutory provisions and, therefore, has to be given effect as contemplated under the notification considering the same as part of the mandate of the statute.

39. The decisions in Indian Oil Corporation Limited, Tata Oil Mills Co. Limited, Kalyani Spinning Mills Limited and Raymond Limited are on the point that once the goods are exempted under a notification from whole of the duty of excise leviable thereon, it would also entitle for exemption from additional duty and or special excise duty. Considering the nature of the exemption granted under such notification, the said rulings were given. One fails to understand how the said criteria can be applied in the matter in hand. The education cess which is imposed under totally different and independent enactment, and the notification nowhere refers to the Finance Act. Being so, none of these decisions are of any help in the matter in hand. Similar is the case of M/s Vishal Electronics Pvt. Limited wherein it was held that the rate of duty for goods falling under a heading when is to be determined with reference to the rate applicable to goods of a different heading, the exemption if any to the goods of that different heading is

also to be taken into account while determining the rate of duty for the former goods. This is totally in a different situation.

40. In Dharmendra Trading Company case, it was a matter relating to the principle of promissory estoppel. Neither the exemption notification nor any other provision either in the form of notification or otherwise has been brought to our notice which would reveal any promise being made to the manufacturers establishing units in the State of Jammu & Kashmir that alongwith the exemption in relation to the excise duty, they would also be entitled to exemption in relation to the education cess. In fact, the Apex Court in Dharmendra case was dealing with the contention whereby it was sought to be argued that there was no authority to the State Government to grant refund of the said tax. In that context the Apex Court has ruled that the benefit sought to be granted under notification cannot be denied on such lame excuses.

41. In Indo Farm Tractors & Motors Limited case which is sought to be relied upon on behalf of the Department, while contending that the notification in question is in fact not an exemption notification but arrangement for refund of the duty and even it is held to be exemption notification, the education cess can be levied on notional calculation of the excise duty. It is true that the High Court of Himachal Pradesh in Indo Farm Tractors & Motors Limited has held that the contention of the petitioner that the Education cess is levied @ 2% of the aggregate of the duties and since the petitioner has been exempted from paying excise duty, this 2% cess cannot be calculated is not tenable. The excise duty can always be calculated even if it is not collected and on this notional calculation, the education cess can be calculated. This cess has to be collected in terms of the Finance Act. Needless to say that the observations were made with reference to the challenge in the matter wherein the issue related to absence of jurisdiction to the Revenue Department to collect any cess leviable on tractors. At the same time it appears that there was no dispute raised before the High Court that for the

purpose of levy of education cess, it is absolutely necessary that there must be levy and collection of excise duty. In other words the observations as above were made in the facts of the case wherein there was no dispute raised that education cess could be calculated even on notional calculation of excise duty. Being so, that will be of no help to the Revenue in the matter in hand.

42. Perusal of the notification in question also discloses that the exemption granted thereunder is not an absolute exemption. The exemption is restricted to the extent of the amount paid either in cash or through PLA account in terms of the said notification and not otherwise. It is only that amount which become refundable in terms of the said notification.

43. The contention which is sought to be advanced on behalf of the assesseees that the levy of education cess was clearly impermissible in relation to the goods manufactured in the State of Jammu & Kashmir and which were entitled to avail the benefit of exemption under the said notification, rather than lending any support to the contention for claim of refund of the education cess under the said notification directly goes against arguments advanced in support thereof. If it is a case of the assessee that levy and collection of education cess in respect of the goods which were entitled for exemption under the said notification to be totally invalid and illegal, then question of refund of such allegedly illegally collected cess does not and can not arise under the said notification. Refund under the said notification could be to the extent of legally paid amount under the said notification and not beyond that. In other words therefore, in relation to the amount which was not paid in terms of the provisions of the said notification, question of refund under the said notification would not arise and in such case, the claimant will have to pursue his remedy elsewhere.

44. It is also to be noted that in terms of the notification in question the assessee claiming benefit under the said notification is entitled to pass the burden upon the buyers of their product. This would also reveal that the amount of duty paid in terms of notification already stand collected in the public exchequer and that is why the manufacturer could transfer the duty liability to the buyers.

45. Needless to say that all the observations in relation to the provisions of Finance Act, 2004 would also squarely apply in relation to the provisions of Finance Act 2007.

46. For the reasons stated above, therefore, we find that in terms of the notification in question, there was no prohibition for levy and collection of education cess or higher education cess in respect of the levy and payment of excise duty and additional excise duty pertaining to the goods which were entitled for the exemption benefit under the said notification. The said notification nowhere exempts the liability of the manufacturer to pay the education cess or the higher education cess. The said notification has been issued strictly under three enactments specified in the said notification and exemption does not relate to the imposition of education cess under Finance Act either 2004 or 2007. There is no question of refund of education cess or higher education cess paid in the matter in hand by those who have availed the benefit under exemption Notification No. 56/2002 dated 14.11.2002. Hence the order passed by the Commissioner (Appeals) could not be sustained and is liable to be set aside and order passed by the original authority to be restored with all consequential results.

47. Accordingly, the appeals succeed. The impugned orders are hereby set aside and orders of the original authority are confirmed with consequential results.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/