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

Appeal No. E/2548/2008-2553,2554-2557 & 2559/2008 - EX[DB] WITH E/S/2564-2570 & 2572/2009-EX

Date 05/02/2010

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

To :
M/S GITANJALI INDUSTRIES
BLOCK-B, 2ND FLOOR, MODULAR INDUSTRIAL
FLAT, EPIP KARTHOLI,SIDCO INDUSTRIAL
COMPLEX, BARI BRAHMANA, JAMMU

M/S GITANJALI INDUSTRIES — Appellant

Vs

C.C.E. JAMMU — Respondent

STAY ORDER NO.91-98/2010-EX

I am directed to transmit herewith a certified copy of **Final order No. 44-51// 2010 EX[DB]** dated 15-1-2010 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 SH. K.K. ANAND, ADV.,
   A-5, BASEMENT,
   LALPATNAGAR-III
   N. DELHI-24
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

PRINCIPAL BENCH - COURT NO. I

Excise Stay Application No. E/S/2564-2570 & 2572 of 2008 in Excise Appeal No.E/2551-2557 & 2559 of 2008

Date of Hearing/Decision:15.01.2010

M/s. Gitanjali Industries ...Appellant

Vs.

Commissioner of Central Excise, Jammu ...Respondent

Present for the Appellant : Shri K.K. Anand, Advocate
Present for the Respondent : Shri Amrish Jain, SDR

Coram: Hon'ble Mr.Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

STAY **ORAL ORDER NO.** 91 – 98/2010-EX **DATED:15.01.2010**

PER: JUSTICE R.M.S.KHANDEPARKAR

All concerned Applications are disposed of while allowing the same and directing the registry to place Appeal Nos. 2551-2557 & 2559 of 2008 for final disposal forthwith. Applications, accordingly, stand disposed of.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

PRINCIPAL BENCH - COURT NO. I

Excise Appeal Nos.E/2551-2553/2008
[Arising out of Order-in-Appeal No.6-11/CE/ADDPL/JAL/2007 dated 22.1.2007 passed by the Commissioner of Central Excise (Appeals), Jalandhar]

Excise Appeal Nos 2554-2557 & 2559 of 2008
[Arising out of Order-in-Appeal No.16-21/CE/ADDPL/JAL/2007 dated 24.1.2007 passed by the Commissioner of Central Excise (Appeals), Jalandhar]

Date of Hearing/Decision:15.01.2010

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.Rakesh Kumar, 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?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	[illegible]
4	Whether Order is to be circulated to the Departmental authorities?	Y

M/s. Gitanjali Industries ...Appellant

Vs.

Commissioner of Central Excise, Jammu ...Respondent

Present for the Appellant : Shri K.K. Anand, Advocate
Present for the Respondent : Shri Amrish Jain, SDR

Coram: Hon'ble Mr.Justice R.M.S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL **ORAL ORDER NO.** 44-51/2010-EX **DATED:15.01.2010**

PER: JUSTICE R.M.S.KHANDEPARKAR

Heard. These matters taken up for hearing in terms of the order passed today in stay application No.2564-2570 & 2572/08. In all these appeals, undisputedly, the issue involved relates to the claim of the assessee for refund of the amount which was stated as Additional Excise Duty, National Calamity Contingency Duty and Education CESS by the assessee within the Territory of Jammu & Kashmir. The claim is based under the Notification No.56/02-C.E dated 14th Nov., 2002.

2. Placing reliance in the decision of the Rajasthan High Court in the matter of Banswara Syntex Ltd. vs. Union of India reported in 2007 (216) ELT 16 (Raj.) and Circular No.682/73/2002-CX dated 19th December, 2002, the ld. Advocate for the appellants submitted that the duty paid in cash as Additional Excise Duty or NCCD or Education Cess, taking into consideration the provisions of Notification No.56/2002-C.E. dated 14th November, 2002 is liable to be refunded, however, the same has been refused by the authorities below. According to ld. Advocate, the above Circular and decision of the Rajasthan High Court was not considered by this Tribunal while deciding the matters involving similar issue on 12.8.2009.

3. The Departmental Representative appearing on behalf of the Revenue submitted that the issues sought to be raised is squarely covered by the said decision dated 12.08.09. According to him the Additional Excise Duty and NCCD do not form part of the excise duty within the meaning of the said expression under Excise Act read with the said Notification No.56/2002 and hence the decision of the Rajasthan High Court is not attracted in the matter in hand. It cannot be disputed that the Tribunal by detailed order dated 12th August, 2009 has clearly held that merely because by virtue of artificial

definition under some other statute any CESS or duty payable there-under is defined as excise duty that would not form part of excise duty payable under the Excise Act, taking into consideration the phraseology used or relevant terms in the notification in question. Considering the same the issue sought to be raised in the matter in hand as rightly contended on behalf of the department already stands concluded by the said decision dated 12th August, 2009.

4. The notification dated 19th December 2002 and para 2 there of to which our attention was drawn read thus:-

> "2. *The above two notifications for the state of J&K exempt that portion of the excise duty, which is paid by the manufacturers in cash. For this purpose, a suitable mechanism has been incorporated in the notifications. The manufacturer is first required to pay the excise duty and thereafter, whatever is paid in cash is to be refunded. It is also intended that the user of any input or capital goods on which such exemption has been availed should get the full Cenvat credit including the portion of duty refunded to the manufacturer of such input or capital goods. For this purpose, Cenvat Credit Rules, 2002 have been amended by Notification No.39/2002-CE (N.T.) dated 14.11.2002."*

5. Plain reading of the said para would disclose that it refers to the payment as the excise duty. It does not relate to payment of any other duty which is termed as excise duty by virtue of some statutory provision other than in the Excise Act itself. Besides, the Circular cannot over ride the decision of the Tribunal. The Tribunal having considered the point in detail after taking into consideration all the relevant decisions of the

Apex Court, in our considered opinion the circular can be of no help to the appellants to persuade us to take a different view in the matter. As regards the decision of the Rajasthan High Court, the same do not deal with the issues which were dealt with by the Tribunal in the order dated 12th August, 2009. Undoubtedly, apparently whether the Education Cess payable in terms of the provisions of Finance Act would be the excise duty within the meaning of the said expression under the excise Act read with the Notification in question was not before the Rajasthan High Court. Being so, the said decision also cannot be of any help to the appellants in the case in hand. In the circumstances, for the reasons stated in the order dated 12th August, 2009, the issues sought to be raised in the matter in hand being fully covered by the said decision, the appeals are liable to be dismissed and are, accordingly, hereby dismissed.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Anita