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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/812 /2009-815 /2009, & E/913 /2010-944 /2010 - EX[DB]
E/CO/109,108,107,106/09 & E/COD/134-165/2010
E/S/803-806/09 & E/S/969-1000/2010

Date 12/08/2010

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II — Appellant

Vs

M/S SIDHI VINAYAK INDUSTRIES , — Respondent

MISC ORDER NO. 436-467/2010-EX,
STAY ORDER NO. 517-552/2010-EX,

I am directed to transmit herewith a certified copy of **Final order No.** 561-596/ **2010 EX[DB]** dated 05-8-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S SIDHI VINAYAK INDUSTRIES ,
   A-53, MIA, BASNI PHASE-II, JODHPUR (RAJASTHAN)
2. Adv. / Consult SH, K.K. ANAND, ADV.,
   A-5, BASEMENT,
   LAJPAT NAGAR-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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

17. M/S B.P.B. (INDIA),
    G-625, MIA, BASNI PHASE-II, JODHPUR. (RAJ.)

P.T.O. 1-4,

18 M/S ARIHANT INDUSTRIES,
C-82, MIA, PHASE-II, BASNI, JODHPUR (RAJ.)

19 M/S BOHRA INDUSTRIES,
A-46(B), MIA, PHASE-II, BASNI, JODHPUR (RAJ.)

20 M/S MEHTA UDYOG,
E-265, MIA, PHASE-II, BASNI, JODHPUR (RAJ.)

21 M/S SHIVAM METALS,
6TH IND. AREA, BEHIND NEW POWER HOUSE, JODHPUR (RAJ.)

22 M/S ACCURATE METALS,
C-81, BASNI PHASE-II, JODHPUR. (RAJ.)

23 M/S ACME INDUSTRIES,
E-85, MIA, BASNI PHASE-II, JODHPUR. (RAJ.)

24 M/S AGARWAL FERRO (I) PVT. LTD.,
G-10-11, RIICO INDUSTRIAL AREA, SHEOGANJ, DISTT. SIROHI, (RAJ.)

25 M/S ARIHANT METALS,
16-B(1), HEAVY INDUSTRIAL AREA, JODHPUR. (RAJ.)

26 M/S BRIGHT METALS,
4, LIGHT IND. AREA, JODHPUR. (RAJ.)

27 M/S DAGA UDYOG,
A-53, MIA, BASNI PHASE-II, JODHPUR. (RAJ.)

28 M/S DAULAT INDUSTRIES,
7A, HEAVY INDUSTRIAL AREA, JODHPUR. (RAJ.)

29 M/S GANGA STEELS,
F-465, MIA, BASNI PHASE-II, JODHPUR. (RAJ.)

30 M/S GANPATI STEELS,
F-327A, MIA BASNI PHASE-II, JODHPUR. (RAJ.)

31 M/S J.M. METALS,
E-21, MIA, II PHASE, BASNI, JODHPUR (RAJ.)

32. M/S KHEMANI METAL INDUSTRIES PVT. LTD.
A-46(A), MIA, BASNI PHASE-II, JODHPUR. (RAJ.)

33. M/S LAKSHMI PIPE INDUSTRIES,
E-392, MIA PHASE-II, BASNI, JODHPUR. (RAJ.)

34. M/S LAXMI METALS,
G1-600-601, MIA, PHASE-II, BASNI, JODHPUR. (RAJ.)

35. M/S MEHTA METAL INDUSTRIES,
H-212, MIA, PHASE-II, JODHPUR. (RAJ.)

36. M/S NATIONAL METALS,
E-73A, MIA, BASNI PHASE-II, JODHPUR. (RAJ.)

37. M/S NATIONAL STEELS INDUSTRIES,
416, MIA, BASNI, PHASE-II, JODHPUR. (RAJ.)

38. M/S OSWAL METALS,
B-15, INDUSTRIAL AREA, OPP. DIESEL SHED, JODHPUR. (RAJ.)

39. M/S PARAKH INDUSTRIES,
F-109, MIA-II, PHASE, BASNI, JODHPUR. (RAJ.)

40. M/S PRAMOD & PRAMOD,
E-322, MIA, II PHASE, JODHPUR. (RAJ.)

41. M/S PRATIK METALS PVT. LTD.
E-74, MIA, 2ND PHASE, BASNI, JODHPUR (RAJ.)

42. M/S RAJESH METALS,
G-624, BASNI, PHASE-II, JODHPUR. (RAJ.)

43. M/S RELIABLE STEEL,
NO.6, NEW NAKODA INDUSTRIAL AREA, MIA BASNI PHASE-II, JODHPUR. (RAJ.)

44. M/S RONAK INDUSTRIES,
E-16-A, MIA, 2ND PHASE, BASNI, JODHPUR (RAJASTHAN)

45. M/S SHANTI UDYOG,
16-B, HEAVY INDUSTRIAL AREA, JODHPUR. (RAJ.)

46. M/S SHREE DAGA STEELS,
G-1/93 BEHIND NEW POWER HOUSE, JODHPUR. (RAJ.)

47. M/S SUPER METALS,
F-552A, MIA, BASNI, II PHASE, JODHPUR. (RAJ.)

48. M/S SURAJ STEEL INDUSTRIES,
E-148, MIA, PHASE-II, BASNI, JODHPUR. (RAJ.)

49. M/S SURANA METALS,
7A-II, HEAVY INDUSTRIAL AREA, JODHPUR. (RAJ.)

50. M/S TUBES & BARS,
27, INDUSTRIAL AREA, OPP. DIESEL SHED, JODHPUR
(RAJASTHAN)

51. M/S VIRAT METAL INDUSTRIES,
64(1), INDUSTRIAL AREA, JODHPUR. (RAJ.)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:5.8.2010

S.No.	Condonation Application No. in Central Excise Appeal No.	Appellant	Respondents	Arising out of the order in appeal No. and date	Passed by
1.	134/2010 in E/913/2010	C.C.E., Jaipur II	National Steels Industries	12-47(DK) CE/JPR-II/2009 dated 30.1.2009	Commissioner (Appeals), Customs & Central Excise, Jaipur-II
2.	135/2010 in E/914/2010	-do-	Bright Steels	-do-	-do-
3.	136/2010 in E/915/2010	-do-	Super Metals	-do-	-do-
4.	137/2010 in E/916/2010	-do-	Oswal Metals	-do-	-do-
5.	138/2010 in E/917/2010	-do-	Daga Udyog	-do-	-do-
6.	139/2010 in E/918/2010	-do-	Shree Daga Steels	-do-	-do-
7.	140/2010 in E/919/2010	-do-	Parakh Industreis	-do-	-do-
8.	141/2010 in E/920/2010	-do-	Mehta Metal Industries	-do-	-do-
9.	142/2010 in E/921/2010	-do-	Rajesh Metals	-do-	-do-
10.	143/2010 in E/922/2010	-do-	Ganpati Steels	-do-	-do-
11.	144/2010 in E/923/2010	-do-	Suraj Steel	-do-	-do-
12.	145/2010 in E/924/2010	-do-	Arihant Metals	-do-	-do-
13.	146/2010 in E/925/2010	-do-	Shanti Udyog	-do-	-do-
14.	147/2010 in E/926/2010	-do-	Lakshmi Pipe Industries	-do-	-do-
15.	148/2010 in E/927/2010	-do-	Khemani Metal Industries Pvt. Ltd.	-do-	-do-
16.	149/2010 in E/928/2010	-do-	Surana Metals	-do-	-do-
17.	150/2010 in E/929/2010	-do-	Reliable Steels	-do-	-do-
18.	151/2010 in E/930/2010	-do-	Accurate Metals	-do-	-do-
19.	152/2010 in E/931/2010	-do-	National Metals	-do-	-do-
20.	153/2010 in E/932/2010	-do-	Virat Metal Industries	-do-	-do-
21.	154/2010 in E/933/2010	-do-	Pramod & Pramod	-do-	-do-
22.	155/2010 in E/934/2010	-do-	Daulat Industries	-do-	-do-
23.	156/2010 in E/935/2010	-do-	Ganga Steels	-do-	-do-

S.No.	Condonation Application No. in Central Excise Appeal No.	Appellant	Respondents	Arising out of the order in appeal No. and date	Passed by
24.	157/2010 in E/936/2010	C.C.E., Jaipur II	ACME Industries	12-47(DK) CE/JPR-II/2009 dated 30.1.2009	Commissioner (Appeals), Customs & Central Excise, Jaipur-II
25.	158/2010 in E/937/2010	-do-	B.P.B. (India)	-do-	-do-
26.	159/2010 in E/938/2010	-do-	Laxmi Metals	-do-	-do-
27.	160/2010 in E/939/2010	-do-	Agarwal Ferro (I) Pvt. Ltd.	-do-	-do-
28.	161/2010 in E/940/2010	-do-	J.M. Metals	-do-	-do-
29.	162/2010 in E/941/2010	-do-	Shivam Metals	-do-	-do-
30.	163/2010 in E/942/2010	-do-	Mehta Udyog	-do-	-do-
31.	164/2010 in E/943/2010	-do-	Arihant Industries	-do-	-do-
32.	165/2010 in E/944/2010	-do-	Bohra Industries	-do-	-do-

Appearance:

Shri Sunil Kumar, Authorized Departmental Representative (SDR) for the Revenue and Shri Jatin Mahajan, Advocate for the respondents and none for the respondents at Serial No.4

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

Misc Oral Order No. 436 To 467 / 10-Ex

Per Shri Justice R.M.S. Khandeparkar:

Heard the learned SDR for the Revenue and the learned Advocate for the respondents. Considering the facts disclosed in the applications and as there has been no objection raised by way of reply, the delay is condoned and the applications are accordingly disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:5.8.2010

S.No.	Stay Application No. in Central Excise Appeal No.	Appellant	Respondents	Arising out of the order in appeal No. and date	Passed by
1.	803/2009 in E/812/2009	C.C.E., Jaipur II	Sidhi Vinayak Industries	12-47(DK) CE/JPR-II/2009 dated 30.1.2009	Commissioner (Appeals), Customs & Central Excise, Jaipur-II
2.	804/2009 in E/813/2009	-do-	Pratik Metals Pvt. Ltd.	-do-	-do-
3.	805/2009 in E/814/2009	-do-	Tubes & Bars	-do-	-do-
4.	806/2009 in E/815/2009	-do-	Ronak Industries	-do-	-do-
5.	969/2010 in E/913/2010	-do-	National Steels Industries		
6.	970/2010 in E/914/2010	-do-	Bright Steels	-do-	-do-
7.	971/2010 in E/915/2010	-do-	Super Metals	-do-	-do-
8.	972/2010 in E/916/2010	-do-	Oswal Metals	-do-	-do-
9.	973/2010 in E/917/2010	-do-	Daga Udyog	-do-	-do-
10.	974/2010 in E/918/2010	-do-	Shree Daga Steels	-do-	-do-
11.	975/2010 in E/919/2010	-do-	Parakh Industreis	-do-	-do-
12.	976/2010 in E/920/2010	-do-	Mehta Metal Industries	-do-	-do-
13.	977/2010 in E/921/2010	-do-	Rajesh Metals	-do-	-do-
14.	978/2010 in E/922/2010	-do-	Ganpati Steels	-do-	-do-
15.	979/2010 in E/923/2010	-do-	Suraj Steel	-do-	-do-
16.	980/2010 in E/924/2010	-do-	Arihant Metals	-do-	-do-
17.	981/2010 in E/925/2010	-do-	Shanti Udyog	-do-	-do-
18.	982/2010 in E/926/2010	-do-	Lakshmi Pipe Industries	-do-	-do-
19.	983/2010 in E/927/2010	-do-	Khemani Metal Industries Pvt. Ltd.	-do-	-do-
20.	984/2010 in E/928/2010	-do-	Surana Metals	-do-	-do-
21.	985/2010 in E/929/2010	-do-	Reliable Steels	-do-	-do-
22.	986/2010 in E/930/2010	-do-	Accurate Metals	-do-	-do-

S.No.	Stay Application No. in Central Excise Appeal No.	Appellant	Respondents	Arising out of the order in appeal No. and date	Passed by
23.	987/2010 in E/931/2010	-do-	National Metals	12-47(DK) CE/JPR-II/2009 dated 30.1.2009	Commissioner (Appeals), Customs & Central Excise, Jaipur-II
24.	988/2010 in E/932/2010	-do-	Virat Metal Industries	-do-	-do-
25.	989/2010 in E/933/20010	-do-	Pramod & Pramod	-do-	-do-
26.	990/2009 in E/934/2010	-do-	Daulat Industries	-do-	-do-
27.	991/2009 in E/935/2010	-do-	Ganga Steels	-do-	-do-
28.	992/2010 in E/936/2010	-do-	ACME Industries	-do-	-do-
29.	993/2010 in E/937/2010	-do-	M/s B.P.B (India)	-do-	-do-
30.	994/2010 in E/938/2010	-do-	Laxmi Metals	-do-	-do-
31.	995/2010 in E/939/2010	-do-	Agarwal Ferro (I) Pvt. Ltd.	-do-	-do-
32.	996/2010 in E/940/2010	-do-	J.M. Metals	-do-	-do-
33.	997/2010 in E/941/2010	-do-	Shivam Metals	-do-	-do-
34.	998/2010 in E/942/2010	-do-	Mehta Udyog	-do-	-do-
35.	999/2010 in E/943/2010	-do-	Arihant Industries	-do-	-do-
36.	E/1000/2010 in E/944/2010	-do-	Bohra Industries	-do-	-do-

Appearance:

Shri Sunil Kumar, Authorized Departmental Representative (SDR) for the Revenue and Shri Jatin Mahajan, Advocate for the respondents and none for the respondents at Serial No.8

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

STAY Oral Order No. 517-552/10-EX

Per Shri Justice R.M.S. Khandeparkar:

Since we have already disposed of the main appeals, the stay applications do not survive and stand disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:5.8.2010

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

S.No.	Central Excise Appeal No. with Cross-Objection No.	Appellant	Respondents	Arising out of the order in appeal No. and date	Passed by the
(1)	(2)	(3)	(4)	(5)	(6)
1.	E/812/2009 E/CO/109/2009	C.C.E., Jaipur II	Sidhi Vinayak Industries	12-47(DK) CE/JPR-II/2009 dated 30.1.2009	Commissioner (Appeals), Customs & Central Excise, Jaipur-II
2.	E/813/2009 E/CO/108/2009	-do-	Pratik Metals Pvt. Ltd.	-do-	-do-
3.	E/814/2009 E/CO/107/2009	-do-	Tubes & Bars	-do-	-do-
4.	E/815/2009 E/CO/106/2009	-do-	Ronak Industries	-do-	-do-
5.	E/913/2010	-do-	National Steels Industries		
6.	E/914/2010	-do-	Bright Steels	-do-	-do-
7.	E/915/2010	-do-	Super Metals	-do-	-do-
8.	E/916/2010	-do-	Oswal Metals	-do-	-do-
9.	E/917/2010	-do-	Daga Udyog	-do-	-do-
10.	E/918/2010	-do-	Shree Daga Steels	-do-	-do-
11.	E/919/2010	-do-	Parakh Industreis	-do-	-do-
12.	E/920/2010	-do-	Mehta Metal Industries	-do-	-do-
13.	E/921/2010	-do-	Rajesh Metals	-do-	-do-

(1)	(2)	(3)	(4)	(5)	(6)
14.	E/922/2010	C.C.E., Jaipur II	Ganpati Steels	12-47(DK) CE/JPR-II/2009 dated 30.1.2009	Commissioner (Appeals), Customs & Central Excise, Jaipur-II
15.	E/923/2010	-do-	Suraj Steel	-do-	-do-
16.	E/924/2010	-do-	Arihant Metals	-do-	-do-
17.	E/925/2010	-do-	Shanti Udyog	-do-	-do-
18.	E/926/2010	-do-	Lakshmi Pipe Industries	-do-	-do-
19.	E/927/2010	-do-	Khemani Metal Industries Pvt. Ltd.	-do-	-do-
20.	E/928/2010	-do-	Surana Metals	-do-	-do-
21.	E/929/2010	-do-	Reliable Steels	-do-	-do-
22.	E/930/2010	-do-	Accurate Metals	-do-	-do-
23.	E/931/2010	-do-	National Metals	-do-	-do-
24.	E/932/2010	-do-	Virat Metal Industries	-do-	-do-
25.	E/933/20010	-do-	Pramod & Pramod	-do-	-do-
26.	E/934/2010	-do-	Daulat Industries	-do-	-do-
27.	E/935/2010	-do-	Ganga Steels	-do-	-do-
28.	E/936/2010	-do-	ACME Industries	-do-	-do-
29.	E/937/2010	-do-	M/s B.P.B (India)	-do-	-do-
30.	E/938/2010	-do-	Laxmi Metals	-do-	-do-
31.	E/939/2010	-do-	Agarwal Ferro (I) Pvt. Ltd.	-do-	-do-
32.	E/940/2010	-do-	J.M. Metals	-do-	-do-
33.	E/941/2010	-do-	Shivam Metals	-do-	-do-
34.	E/942/2010	-do-	Mehta Udyog	-do-	-do-
35.	E/943/2010	-do-	Arihant Industries	-do-	-do-
36.	E/944/2010	-do-	Bohra Industries	-do-	-do-

Appearance:

Shri Sushil Kumar, Authorized Departmental Representative (SDR) for the Revenue and Shri Jatin Mahajan, Advocate for the respondents and none for the respondents at serial No.8

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

FINAL Order No. 561-596/10-EX

Per Shri Justice R.M.S. Khandeparkar:

Since a common question of law and facts arise in all these matters, they are taken up together for hearing.

2. None appears for the respondents at serial No.8. Heard the learned SDR for the Revenue and the learned Advocate Shri Jatin Mahajan for the respondents.

3. The issue sought to be raised in the matters pertains to the refund claim granted by the Commissioner (Appeals) in relation to the education cess and higher education cess which was paid by the assessees and the refund of which is disputed by the Department on the ground that the amount of education cess and higher education cess was not forming part of the excise duty liability which it was paid by the assessees in terms of the Notification No.34/2001-CE dated 28th June, 2001, as amended from time to time. In fact, the same issue was raised earlier in number of matters, some of which were disposed of on 12th August, 2009 in the matter of Jindal Drugs and Others reported in 2010 (97) RLTONLINE 13 (CESTAT-Del.) and some others were disposed of on 8th July, 2010 by unreported order in the matter of C.C.E., Jaipur II vs. Shri Ram Steel Industries and others. By the said decisions, it has been held that the education cess and higher education cess does not form part of the duty calculated and paid in terms of the Notification No.34/2001-CE dated 28th June, 2001, as amended from time to time and therefore, the refund of the said cess is not admissible. While arriving at the said finding, the points were discussed in detail in both the decisions.

4. Learned Advocate for the assessees, however, drawing our attention to Notification No.38/2007-CE dated 19th December, 2007 and Board's Circular No.81/17/2007-CX.3 dated 19th December 2007 submitted that in relation to the Notification with similar phraseology, the Board had clarified that duty of excise payable under the scheme under the said Notification included all duties of excise leviable like BED, AED, NCCD, Education Cess etc. and therefore, according to the learned Advocate, there is no justification to exclude the education cess and higher education cess from the duty while considering the matter under the Notification No.34/2001-CE

dated 28th June, 2001, as amended from time to time. He further submitted that though it is sought to be contended on behalf of the Department that at a time when Notification No.34/2001-CE was brought into force, there was no cess in the nature of education cess or higher education cess and the same was introduced subsequently, on that count, there is no justification to exclude the cess from the term 'excise duty' while understanding the scope of para 3 of the said Notification. It was further sought to be contended that if the law makers had intention to exclude the education cess and higher education cess from the excise duty while dealing with the matter under the said Notification, the same would have been specifically stated at the time of amendment of the said Notification, which was introduced in the year 2006-2007. The very fact that no such exclusion of cess from the excise duty is revealed inspite of the amendment to the Notification, discloses the intention of the law makers to include such cess in the excise duty.

5. The contentions sought to be canvassed on behalf of the appellants are disputed on behalf of the Department.

6. Perusal of the Notification No.38/2007-CE dated 19th December 2007 undoubtedly discloses that the provisions in para 3(1) of the Notification No.34/2001-CE have been incorporated in para 2 of this Notification. Equally, it is true that while explaining the scope of the term 'excise duty' under the Notification No.38/2007-CE, the Board had clarified that the excise duty payable under the Notification No.38/2007-CE would include all duties of excise leviable and the same would include BED, AED, NCCD, Education Cess etc.

7. The scope of the term 'excise duty' used in the Notification No.34/2001-CE has been elaborately discussed in both the decisions, namely, in the matter of Jindal Drugs as well as Shri Ram Steel Industries. Referring to the provisions of law explaining the scope and the meaning of the term 'excise duty', it has been held that the same would not include education cess and higher education cess which were imposed under the

Finance Act, 2004 and 2007. The Circular of the Board no where discloses any application of mind to this aspect. Merely because the Board has stated in the Circular that excise duty would include all the duties including education cess without considering the scope of the term 'excise duty' under the statutory provisions, that itself will not bind this Tribunal to hold the term 'excise duty' under the said Notification would include education cess or higher education cess.

8. The contention that if the law makers wanted to exclude the education cess and higher education cess from the excise duty, they would have specifically stated so at the time of amendment of the Notification is also devoid of substance. The requirement of such specification would have been there in case the statutory provisions relating to the scope of the term " excise duty" were not clear. Once the law clearly discloses the scope of the term excise duty, it is not necessary for the law makers to further explain the same again under a Notification.

9. Considering the fact that the matter in issue is fully covered by the decisions in Jindal and Drugs and Shri Ram Steel Industries. For the reasons disclosed in the judgments passed in both the matters, we find that the impugned orders are not sustainable and are liable to be set aside and the orders of the adjudicating authority in that regard are to be confirmed.

10. Accordingly, the appeals are allowed. The impugned orders are set aside and the orders passed by the adjudicating authority on the refund claim in relation to education cess and higher education cess are hereby confirmed.

11. As regards the cross-objections, it is to be noted that all the grounds therein stand answered by the decisions in the matter of C.C.E., Jammu vs. Jindal Drugs Ltd. and Ors. reported in 2010 (97) RLTONLINE 13 (CESTAT-DEL.) as well as C.C.E., Jaipur II vs. M/s Shri Ram Steel Industries and others vide Final Order No.469-511/10-Ex. dated 8.7.2010. The expression "in full discharge of liability" in para 3 of the Notification essentially relates

to the duty computed in terms of the scheme under the said Notification. Once it is clear that the computation of duty in terms of the said scheme under the said Notification relates only to the excise duty under the said Act, any liability in the form of duty or tax under any other statute cannot be construed to be included in the excise duty. There is no substance in the grounds raised in the cross-objections. For the reasons stated above, the cross-objections are liable to be rejected.

12. Therefore, the appeals succeed and the cross-objections fail. Order accordingly.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/