

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

Appeal No. E/3438/2010 - EX[DB] WITH E/S/3226/2010-EX

Date 07/07/2011

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

To :
M/S KRISHIK SAHAKARI SUGAR KARKHANA
MARYADIT,
NARAINPURA (RANGHOGARH), DISTRICT GUNA
(M.P.)
M/S KRISHIK SAHAKARI SUGAR KARKHANA
MARYADIT,

Appellant

Vs
Respondent

C.C.E. INDORE

STAY ORDER NO. 678/2011-EX.

I am directed to transmit herewith a certified copy of Final order No.505/ 2011 EX[DB] dated 13-6-11
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. INDORE

MANIK BAGH PALACE, POST

BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult

MR.ASHUTOSH UPADHYAY, ADVOCATE

4, KISHAN COLONY-567, M.G.ROAD, OPPOSITE HIGH COURT, INDORE (M.P.)

3. C.D.R

4. Bar association, CESTAT, New Delhi

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

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

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

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

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

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

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

14. HON'BLE PRESIDENT,



Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. I

DATE OF HEARING : 13/06/2011.

DATE OF DECISION : 13/06/2011.

**Excise Stay Application No. 3226 of 2010 in Appeal No.
3438 of 2010**

M/s Krishak Sahakari Sugar] Karkhana Maryadit]	Appellants
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Versus

CCE, Indore	Respondent
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Appearance

Shri Ashutosh Upadhyay, Advocate - for the Appellants.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

**CORAM : Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)**

STAY Order No. 678/2011 - EX Dated : _____

Per. Shri Justice R.M.S. Khandeparkar :-

Since we propose to dispose of the appeal itself, the application is allowed without insisting for any deposit and directing the registry to place the appeal for final hearing forthwith.

**(Justice R.M.S. Khandeparkar)
President**

**(Rakesh Kumar)
Member (Technical)**

PK

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.
Principal Bench, New Delhi**

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DATE OF HEARING : 13/06/2011.
DATE OF DECISION : 13/06/2011.

Excise Appeal No. 3438 of 2010

M/s Krishak Sahakari Sugar]
Karkhana Maryadit]

Appellants

Versus

CCE, Indore

Respondent

[Arising out of the Order-in-Appeal No. IND-214/10/
Appeal/Indore dated 16/08/2010 passed by The
Commissioner (Appeal), Central Excise & Customs,
Indore.]

For Approval and signature :

Hon'ble Shri Justice R.M.S. Khandeparkar, President

Hon'ble Shri 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 would 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? : *Yes*
4. Whether order is to be circulated to the Department Authorities? : *Yes*

Appearance

Shri Ashutosh Upadhyay, Advocate - for the Appellants.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 505/2011 - EX Dated : _____

Per. Shri Justice R.M.S. Khandeparkar :-

This appeal is being disposed of in terms of order passed today in stay application No. 3226/10. Heard the learned advocate for the appellants and DR for the respondent.

2. The issue involved in the matter is whether education cess and secondary and higher education cess can be levied on sugar cess collected in terms of Sugar Cess Act, 1982 read with Sugar Development Fund Act, 1982. The learned advocate for the appellants placing reliance in the decision of the Hon'ble Gujarat High Court in the matter of **Commissioner vs. Sahakari Khand Udyog Mandal Ltd.** reported in **2010 (03) LCX 0290** submitted that law in this regard is well settled by the said decision and accordingly the impugned order confirming the demand regarding education, secondary and higher education cess needs to be quashed.

3. The appellants are engaged in manufacture of sugar and molasses falling under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. As the department found that during the period from October 2008 to August 2009, the appellants had cleared free

sale sugar as well as levy sugar on payment of basic excise duty sugar cess, education cess and higher education cess, but while calculating the amount of education cess and secondary and higher education cess, the appellants had not taken into consideration the sugar cess. The show cause notice dated 4th November 2009 came to be issued, which was contested by the appellants by the reply dated 26th November 2009. However, the Assistant Commissioner, Gwalior by his order dated 26th February 2010 confirmed the demand of Rs. 74,580/- for education cess and secondary and higher education cess in relation to the sugar cess, which was not paid by the appellants and also imposed penalty of Rs. 5,000/-. The appeal against the same was dismissed by the Commissioner (Appeals), Indore by his order dated 16th August 2010.

4. The Hon'ble Gujarat High Court after considering all the relevant provisions of law held that the Sugar Cess Act and the Sugar Development Fund Act operate as a consolidated scheme and the provisions of both the Acts are to be read together and on such conjoint reading, it is apparent that the sugar cess levied and collected cannot be equated with the duty of Central Excise and, therefore, cannot be treated to be part and parcel of the amount on which education cess can be calculated.

5. Considering the law laid down by the Hon'ble Gujarat High Court which squarely applies to the undisputed facts of the case in hand, the impugned order is not sustainable and is liable to be set aside. Accordingly, the appeal succeeds and the same is allowed and the impugned order is set aside with consequential relief.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK