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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/1305/2011 - EX[DB] WITH E/S/1675/2011-EX Date **09/12/2011**

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

To :
C.C.E. JAMMU
OB-32, RAIL HEAD COMPLEX, JAMMU - 180012.

C.C.E. JAMMU Appellant

Vs

M/S PHAROSE REMEDIES LIMITED, **STAY ORDER NO. 1400/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.1016/ 2011 EX[DB]** dated 07-12-11 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 PHAROSE REMEDIES LIMITED,
22 MILESTONE, NH-I, PATLI
MORH, TARORE BARI
BRAHAMANA, JAMMU (J&K)

2. Adv. / Consult

NONE

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions 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 (Haryana)
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

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1305 of 2011
Excise Stay Application No. 1675 of 2011

[Arising out of Order-in-Appeal No. 83/CE/APPL/Jal/2008 dated 17.3.2008 passed by the Commissioner of Central Excise (Appeals), Chandigarh-I]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Commissioner of Central Excise
J &K, Jammu — Appellants

Vs.

M/s. Pharose Remedies — Respondent

Appearance:

Shri S.R. Meena, SDR for the Appellants
None for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing /decision: 24.11.2011

STAY ORAL ORDER No. 1400/2011-EX

FINAL **ORAL ORDER NO. 1016/2011-EX**

Per Archana Wadhwa (for the Bench):

At this stage, we note that the Revenue's appeal itself can be disposed of.

2. The dispute in the appeal relates to the issue as to whether refund of Education Cess and Secondary and Higher Education Cess was in respect of units located in the area of Jammu and Kashmir is admissible in terms of exemption notification No. 56/2002-C E. Learned DR appearing for the revenue submits that though the said issue was not the subject matter before the Assistant Commissioner, but Commissioner (Appeals) has extended the scope of appeal filed before him and allowed the refund of Education Cess and higher and secondary Education Cess. In any case, he submits that for allowing the refund, Commissioner (Appeals) has relied upon the Tribunal's decision in the case of CCE, Jammu vs. Bharat Box Factory reported as [2007 (214) ELT 534 (Tri) and rendered by Single Member Bench of the Tribunal. He submits that the said judgement is not approved by the subsequent Division Bench of the Tribunal in the case of CCE, Jammu vs. Jindal Drugs Ltd. reported as [2011 (267) ELT 653 (Tri-Del)].

3. Without going into the controversy as to whether the Education Cess was the subject matter of appeal before the Commissioner (Appeals), we find that the law on such legal issue stand decided against the respondent in the above referred judgement of the Tribunal in the

case of Jindal Drugs Ltd. . As such, the law declared in the case of Bharat Box Factory is not a good law. Otherwise also, we find that the said decision in the case of Bharat Box Factory Ltd. stands challenged by the Revenue before the Hon'ble High Court of Jammu and Kashmir which has dismissed the writ petition on the ground that the issue relates to rate of duty of excise and the appeal to High Court is not maintainable, as reported in 2008 (231) ELT 416 (J&K). Thereafter the appeal stand filed by the Revenue before the Hon'ble Supreme Court.

4. Inasmuch as we find that the main issue of availability of benefit of notification No. 56/2002-CE dated 14.11.2002 stand decided against the respondents, in the case of Jindal Drugs Ltd., we set aside that part of the impugned order of the Commissioner (Appeals) vide which he has sanctioned the refund in respect of Education Cess and higher and secondary Education Cess. The Revenue's appeal is allowed in the above extent. Stay petition also gets disposed of.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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