REGISTERED / AD

FAX : 011-26108426

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

Dated: **01/11/2012**

To

1. Appellant as per address in table below
2. Respondent as per address in table below

Final Order No. **A/1258/2012-EX[DB] dated 18/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of **the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/3856/2010,	**JSB ALUMINIUM** Phase-1, Lane No 7, SIDCO, IGC, Samba(j&K)	**C.C.E. JAMMU** OB-32, RAIL Head Complex, Jammu - 180012.

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2. Other Appellants and Respondents as per Annexure

Copy To
1. **Advocate(s) / Consultant(s):** SH. SUDHIR MALHOTRA, ADV, C/O APPELLANT.

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi **6.** Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

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

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

10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

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

<u>COURT NO. I</u>

<u>DATE OF HEARING/DECISION : 18/10/2012.</u>

Excise Appeal No. 3856 of 2010

[Arising out of the Order-in-Appeal No. 985-995/CE/APPL/CHD-I (J&K)/2010 dated 09/09/2010 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

Hon'ble Shri Justice Ajit Bharihoke, 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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s JSB Aluminium — Appellant

Versus

CCE, JAMMU — Respondent

<u>Appearance</u>

Shri Sudhir Malhotra, Advocate – for the Appellant.

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

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. A/1258/2012-Ex(BR)

Shri Justice Ajit Bharihoke :-

The appellant is registered with Central Excise Department at the address Phase I, Lane No. 7, SIDCO Industrial Growth Centre, Samba, Jammu. They are engaged in manufacture Aluminium Alloy Ingots and Steel (IRON) Scrap classifiable under sub-heading 76012010 and 72044900 of the 1st Schedule to the Central Excise Tariff Act, 1985. The appellant is covered under Notification No. 56/2002-CE dated 14/11/2002.

2. The appellant filed a refund claim for Rs. 1,59,158/- on account of Education Cess and Rs. 79,087/- on account of S&H Education Cess paid through PLA for the financial year 2010-2011 under Notification No. 56/2002-CE, as amended.

3. The Jurisdictional Assistant Commissioner vide order 9th February 2010 rejected the claim of the appellant for refund of the education cess of Rs. 1,59,158/- and S&H Education Cess Rs. 79,087/- paid by the appellant through PLA account.

4. Feeling aggrieved by the rejection of claim for refund of education cess and S&H Education Cess paid through PLA, the appellant preferred an appeal. The Commissioner (Appeals) vide impugned order-in-appeal dated 9th September 2010 affirmed the order of the Jurisdictional Assistant Commissioner and dismissed the appeal.

5. It is against the above referred order-in-appeal, the appellant has approached the Tribunal.

6. The issue involved in this appeal is whether or not the education cess and S&H Education Cess paid by the assessee in cash through PLA account would be refundable under Notification No. 56/2002-CE.

7. Learned Shri R.K. Verma, DR for the Revenue at the outset has submitted that this issue is no more res-integra as the Tribunal has finally settled this issue in the matter of **CCE, Jammu vs. Jindal Drugs Ltd.** reported in **2011 (267) E.L.T. 653 (Tri. – Del.)** by deciding in favour of the Revenue.

8. Shri Sudhir Malhotra, learned Counsel for the appellant has fairly conceded that the appellant is not disputing the correctness of the ratio of the order of the Tribunal in the matter of **CCE, Jammu vs. Jindal Drugs Ltd.** (supra) to the effect that education cess and S&H Education Cess. Education Cess paid by the assessee covered under Notification No. 56/2002-CE in cash through PLA is not refundable under the Notification. He, however, has contended that the levy of education cess and S&H Education Cess on the goods manufactured in Jammu & Kashmir in violation of Article 370 of Constitution of India because the consent of the Government of Jammu & Kashmir has not been obtained by the Central Government with respect to the levy of

Education Cess and S&H Education Cess. Thus, the aforesaid cess has been paid under mistaken impression, as such, it is liable to be refundable.

9. We have considered the submission made by learned Counsel for the appellant. The argument put forth by the appellant is misconceived, firstly, for the reason that in this appeal, we are only concerned with the legality of rejection of refund order within the parameters of Notification No. 56/2002-CE. If at all, there is any force in the contention of the appellant, that the collection of education cess and S&H cess is without the authority of law, the appellant could apply for refund of erroneously paid excise duty under Section 11B of the Central Excise Act, 1944. Otherwise also, admittedly the excise duty as well as education cess and S&H Education Cess paid by the appellant at the time of removal of excisable goods from his unit has been passed on to the customers, therefore, any refund of the excise duty or education cess given to the appellant would amount to unjust enrichment, which is not permissible, in view of Section 11B of the Central Excise Act which provides that refund in term of the provision shall be allowed if the incidence of duty paid erroneously has not been passed on to any other person. Thus, viewing from any angle, the claim of the appellant for the refund of Education Cess and S&H Education Cess is not sustainable. Thus, we are of the view that the refund claim in respect of the aforesaid cess in terms of exemption Notification No. 56/2002-CE has been rightly rejected by the authorities and

there is no cause for interference with the impugned order-in-appeal.

10. In view of the above, appeal is dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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