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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/89/2012 - EX[DB] & E/S/94/2012-EX

Dated: **15/05/12**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,**M/S KRISHAK SAHAKARI SUGAR KARKHANA MARYADIT,**
NARAINPURA, RAGHOGARH, DISTT. GUNA (M.P.)

M/S KRISHAK SAHAKARI SUGAR KARKHANA MARYADIT, (Appellant)

VS

C.C.E. INDORE (Respondent)

I am directed to transmit herewith a certified copy of **Final Order No.** A/564/2012 & S.O. NO.803/2012-**EX|DB|** dated 10-5-12 passed by the Tribunal under section **35-C(1) of the Central Excise and Salt 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. Advocate(s) / Consultant(s):
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-3
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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi
COURT-I

Date of hearing/ decision: 10.05.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. 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 should 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 Departmental authorities?	

Excise Appeal No. 89 of 2012 with Excise Stay No. 94 of 2012
(Arising out of order-in-appeal No. IND/CEX/000/261/2011 dated 22.06.2011 passed by the Commissioner (Appeals-I), Central Excise & Customs, Indore).

M/s Krishak Sahkari Sugar Karkhana Maryadit Appellants

Vs.

CCE, Indore Respondent

Present Sh. Ashutosh Upadhyay, Advocate for the appellant.
Present S.R. Meena, AR for the respondent

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

STAY Order No. 803/2012-EX(DB)
FINAL Order No. A/ 564/2012-EX (DB)

Per. Rakesh Kumar:

The point of dispute in this appeal as to whether education cess leviable under Section 93 of the Finance Act, 2004 and higher education cess leviable under Section 136, 137 & 138 of the Finance Act, 2007, is chargeable on the sugar cess which is collected under Sugar Development Fund Act, 1982. The department was of the view that the education cess and higher education cess is chargeable on the sugar cess and accordingly the Assistant Commissioner vide order-in-original dated 31.01.2011 confirmed the demand against the appellant alongwith interest and also imposed penalty. The order dated 31.01.2011 of the original authority was upheld by the Commissioner (Appeals) vide order in appeal dated 05.07.2011 against which appellant have filed this appeal alongwith stay application.

2. Heard both sides. Though this matter was listed for hearing of stay application only, after hearing the same for some time, we were of the view that the same can be taken up for final disposal. Accordingly, the requirement of pre-deposit of duty demand, interest and penalty is waived under section 35F and with the consent of both the sides the matter is heard for final disposal.

3. Shri Ashutosh Uppadhyay, Advocate, the learned Counsel for the appellant pleaded that the issue involved in this case stands settled in the Appellant's favour by the judgement of Gujarat High Court in the case of **Commissioner vs. Sahkari Khand Udyog Mandal Ltd. reported in 2011 (263) ELT 34 = 2010 (03) LCX 0290,** wherein the Hon'ble High Court held that the education cess cannot be charged on the sugar cess collected under the Sugar Development Fund Act, 1982. He also submitted that this judgement has been followed by the Tribunal in its final order No.

505/2011-Ex. Dated 13.06.2011 in the appellant's own case. He, therefore, pleaded that the impugned order is not correct.

4. Shri S.R. Meena, Ld. Sr. Departmental Representative defended the impugned order reiterating the finding of CCE(Appeals) and cites and the single Member judgement of the Tribunal in the case of **CCE, Vapi vs. R.A. Shaikh Paper Mills Pvt. Ltd. reported in 2008 (228) ELT 59 (Tri. Ahmd.)** wherein it was held that education cess and higher education cess is chargeable on paper cess levied and collected under Section 9 of Industries (Development and Regulation) Act, 1951.

5. We have carefully considered the submissions from both sides and perused the record. We find that the issue involved in this case is squarely covered by the judgement of Hon'ble Gujarat High Court in the case of **Commissioner vs. Sahkari Khand Udyog Mandal Ltd.** (supra) wherein Hon'ble Gujarat High Court has held that the education cess is not chargeable on sugar cess collected under Sugar Development Fund Act, 1981.

6. In view of this, impugned order is not sustainable. The same is set aside. Appeal as well as stay application are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant