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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

STAY Application No. : E/Stay/2509/2009, E/Stay/2510/2009,
Appeal No. : E/2428/2009-EX[DB], E/2429/2009-EX[DB],

Dated: **31/08/2012**

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

SAMRAT FERRO ALLOYS PVT. LTD. , (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/992-993/2012-EX[DB]** , StayOrder No. **SO/1406-1407/2012** dated **30/08/2012** 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
SAMRAT FERRO ALLOYS PVT. LTD. ,
SIDCO INDUSTRIAL COMPLEX,
BARI BRAHMANA, JAMMU, J&K.

2. Advocate(s) / Consultant(s): SH. JATIN MAHAJAN, ADV.,
157, THIRD FLOOR, VINOBHA PURI,
LAJPAT NAGAR-II, N. DELHI-24

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

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 : 09/07/2012.
DATE OF DECISION : 30/8/2012.

Excise Stay Application No. 2509-2510 of 2009 in Appeal No. 2428-2429 of 2009

[Arising out of the Order-in-Appeal No. 447-456/CE/Appl/Chd.II (JK)/2009 dated 19/05/2009 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? :

CCE, Jammu — Appellant

Versus

M/s Samrat Ferro Alloys Pvt. Ltd. — Respondent

Appearance

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

Shri Jatin Mahajan, Advocate - for the Respondent.

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

STAY order No. 1406-1407/2012-Ex(BR)
FINAL Order No. A/992-993/2012-EX(BR) Dated : ____________

Per. Rakesh Kumar :-

The respondent are a unit located in the areas notified under Notification No. 56/2002-CE and are manufacturing the goods covered by this notification and accordingly are availing the exemption under this notification. The exemption Notification No. 56/2002-CE issued under Section 5A of Central Excise Act, 1944, Section 3 (3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957, [hereinafter referred to as AED (GSI) Act] and Section 3 (3) of Additional Duty of Excise (Textile and Textile Articles) Act, 1978 [hereinafter referred to as AED (T&TA) Act] exempts the goods covered by this notification and manufactured and cleared by the units located in the areas covered by this Notification, from the duties leviable under these Acts, to the extent as mentioned in this notification. The point of dispute is as to whether the education cess levied under Section 91 readwith Section 93 of Finance Act, 2004 and Secondary and Higher Education Cess (hereinafter referred to as S&H Cess) levied under Section 136 readwith Section 138 of the Finance Act, 2007 are also covered by this exemption notification for duty exemption. The Jurisdictional Assistant Commissioner by two separate order-in-original, each dated 23/10/08 disallowed the benefit of this exemption in respect of education cess and S&H cess for the months of May, 2008 and June, 2008 on the ground that Notification No. 56/2002-CE does not cover the education cess and S&H cess levied under Section 91 of Finance Act, 2004 and Section 136 of Finance Act, 2007 respectively. On appeal to

Commissioner (Appeals), this order of the Assistant Commissioner was set aside by the Commissioner (Appeals) vide order-in-appeal dated 19/5/09. The Commissioner (Appeals) while setting aside the Assistant Commissioner's orders relied upon the judgment of Division Bench of this Tribunal in the case of **Bharat Box Factory Ltd. vs. CCE, Jammu** reported in **2007 (214) E.L.T. 534 (Tri. - Del.)**. Against this order of the Commissioner (Appeals) these appeals have been filed by the Revenue.

2. Heard both the sides.

3. Shri R.K. Verma, the learned Departmental Representative, assailed the impugned order by reiterating the grounds of appeal and pleaded that not only this issue has been decided against the respondent by the Division Bench of the Tribunal in the case of **CCE, Jammu vs. Jindal Drugs Ltd.** reported in **2011 (267) E.L.T. 653 (Tri. - Del.)**, Hon'ble Guwahati High Court also in the case of **CCE, Shillong vs. Dharampal Satyapal Ltd.** reported in **2012 (275) E.L.T. 71 (Gau.)** has also taken the same view with regard to a similar notification No. 32/1999-CE holding that this exemption does not exempt the education cess and S&H cess, and that same view has been taken by Hon'ble Guwahati High Court in the case of **Prag Bosimi Synthetics Ltd. vs. CCE, Dibrugarh** (judgment dated 29/6/11 in respect of Central Excise Reference application No. 4/2008), wherein Hon'ble High Court has held that Notification No. 32/1999-CE does not exempt NCCD. He,

therefore, pleaded that in view of this, the impugned order is not correct.

4. Shri Jatin Mahajan, Advocate, the learned Counsel for the respondent, relying upon the judgments of the Tribunal in the cases of **Bharat Box Factory Ltd. vs. CCE, Jammu** (supra), and also in the case of **Cyrus Surfactants Pvt. Ltd. vs. CCE, Jammu** reported in **2007 (215) E.L.T. 55 (Tri. - Del.)**, pleaded that the Notification No. 56/2002-CE is available in respect of education cess and S&H cess also, though the same are levied under Finance Act, 2004 and Finance Act, 2007 respectively, that in view of this, if another Division Bench has a different view on this issue, the matter must be referred to a Larger Bench, that in terms of Board's instructions vide letter dated 345/2/2004-TRU (Pt.) dated 10/8/04 when any goods are fully exempt from excise duty or are cleared without payment of duty for export under bond, no education cess would be levied in respect of the same, that in view of this Circular of the Board, when any goods are even partly exempt from Basic Excise duty under this notification, the same exemption would also be available in respect of education cess and S&H cess and that in view of this, there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records.

6. We find that the issue involved in this case stands decided against the respondent by a detailed judgment of the Tribunal in

the case of **CCE, Jammu vs. Jindal Drugs Ltd.** (supra), wherein the Tribunal relying upon the Apex Court's judgment in the case of **Union of India vs. Modi Rubber Ltd.** reported in **1986 (25) E.L.T. 849 (S.C.)** had held that Notification No. 56/2002-CE is not applicable to education cess levied under Section 91 readwith Section 93 of Finance Act, 2004. Though, the Tribunal in the case of **Bharat Box Factory Ltd. vs. CCE, Jammu** (supra) and **Cyrus Surfactants Pvt. Ltd. vs. CCE, Jammu** (supra) had taken a contrary view, we find that in these judgments of the Tribunal, the Apex court's judgment in the case of **Union of India vs. Modi Rubber Ltd.** (supra) has not been considered. In the case of **Union of India vs. Modi Rubber Ltd.** (supra), the Apex court had held that the words "duty of excise" in the Notification No. 123/74-CE dated 1/8/74 and 27/81-CE dated 1/3/81 issued under Rule 8 (1) of Central Excise Rules, 1944 (corresponding to Section 5A of Central Excise Act, 1944) would not cover the Special Excise duty leviable under Finance Act, 1978 and AED (GSI) levied under AED (GSI) Act, 1957. In our view, when the Notification No. 56/2002-CE specifically exempts only the duties levied under Section 3 (1) of Central Excise Act, 1944 and the Additional Excise Duties levied under AED (GSI) Act, 1957 and AED (T&TA) Act, 1978, there is no scope for doubt that this notification would not cover the education cess levied under Section 91 readwith Section 93 of Finance Act, 1994. We find that same view had been taken by Hon'ble Guwahati High Court in the case of **CCE, Shillong vs. Dharampal Satyapal Ltd.** (supra), wherein Hon'ble High Court held that Notification

No. 32/1999-CE dated 8/7/99 (which is similar to Notification No. 56/2002-CE) does not exempt the education cess. Earlier Hon'ble Guwahati High Court in the case of **CCE, Shillong vs. Dharampal Satyapal Ltd.** (supra) [judgment dated 29/6/11 in respect of reference application No. 4/2008] had held that Notification No. 32/1999-CE does not exempt the NCCD {National Calamity Contingent Duty} leviable under Section 136 of Finance Act, 2001 which is also levied by the way of surcharge as a duty of excise. In view of the judgments of the Apex Court and Hon'ble Guwahati High Court on the issue involved in this case, there is no need to refer the issue to a Larger Bench.

7. We therefore, hold that the impugned order is not correct. The same is set aside and on this point, the order-in-original passed by the original Adjudicating Authority are restored. The Revenue's appeals are allowed.

(Order pronounced in open court on 20/8/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK