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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/1125/2012-EX[DB]

Dated: **09/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. & S.T.-Meerut-ii
OPPOSITE SHAHEED
SMARAK...DELHI ROAD...BHANSALI
GROUND, MEERUT,

(Appellant)

C.C.E. & S.T.-Meerut-ii

VS

(Respondent)

Century Pulp And Papers
Ghanshyamdham

I am directed to transmit herewith a certified copy of Final Order No. **A/794/2012-EX[DB]** dated **04/07/2012** 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
Century Pulp And Papers
Ghanshyamdham
Lalkuan Distt Nainital, Uttarakhand.

2. **Advocate(s) / Consultant(s):** SH ASHISH VAISH
146, 4TH FLOOR, TOWER A,
THE CORENTHUM, SECTOR-62,
NOIDA-201301

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: 04.07.2012

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. 1125 of 2012
(Arising out of order-in-Appeal No. 17-CE/MRT-II/CEX/2012 dated 25.01.2012 passed by the Commissioner (Appeals) Central Excise, Meerut-II).

CCE, Meerut — Appellants

Vs.

M/s Century Pulp and Papers — Respondent

Present Shri Nagesh Pathak, AR for the appellant.
Present Sh. Ashish Vaish, Advocate for the respondent.

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

FINAL Order No. A/794/2012-EX (BR)

Per. Justice Ajit Bharihoke (Oral):

This appeal is directed against the order-in-appeal No. 17-CE/MRT-II/CEX/2012 dated 25.01.2012 whereby the Commissioner (Appeals) allowed the appeal of the assessee against order-in-original dated 24.10.2011 whereby the jurisdictional Assistant Commissioner confirmed demand of duty amounting to Rs. 2,04,427/- with interest and also imposed penalty of equal amount on the assessee.

2. The short issue involved in this case is whether for the purpose of computing the education cess and higher education cess, the paper cess levied by Ministry of Industry under the Industries (Development and Regulation Act, 1951) is to be taken into account as duty of excise.

3. The jurisdictional Assistant Commissioner took the view that the paper cess though levied by the Ministry of Industry is recovered as excise duty by the Finance Ministry, Department of Revenue, as such it is inclusive in the definition of excise duty for the purpose of computing the education cess.

4. The appellant aggrieved of order-in-original preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) relying upon the judgement of Tribunal in the matter of Andhra Pradesh Paper Mills Ltd. vs. CCE&C, Visakhapatnam-II – 2009 (235) ELT 474 (Tri. Bang.) held that for the purpose of computing of education cess, and higher education cess the paper cess levied by the Ministry of Industry cannot be taken into account as it is neither the excise duty or additional excise duty. Thus, he

allowed the appeal and set aside the order-in-original. It is against the aforesaid order the department has approached the Tribunal.

5. Shri Nagesh Pathak, ld. AR for the department has assailed the impugned order on the plea that it is passed ignoring Section 93 of the Finance Act, 2004 which provides that education cess levied under section 93 of the Act in case of the specified goods shall be calculated on aggregate of all duties of excise including special duty of excise or any duty of excise excluding education cess which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue). Ld. AR submits that the paper cess is also levied and collected by the Ministry of Finance (Department of Revenue), as such it is to be included in the excise duty for the purpose of computing education cess and higher education cess.

6. Sh. Ashish Vaish, ld. Advocate appearing for the appellant has argued in support of the impugned order. He has drawn our attention to the Board's clarificatory letter F. No.345/2/2004-TRU(Pt.) dated 10.8.2004 in the matter.

7. The issue is no more res-integra. The coordinate bench of CESTAT in the matter of Andhra Pradesh Paper Mills (supra), on consideration of this legal issue has concluded that paper cess shall not be taken into account for computing the education cess and higher education cess. The relevant observation of the Tribunal is reproduced thus:-

> *"6. On a very careful consideration of the issue, we find that while reproducing Section 93, the Commissioner (Appeals) has omitted certain important words which come after Central Government. The words which are omitted are which are levied and collected by the Central Government in the Ministry of Finance, Department of Revenue. These words have been*

omitted. Once these words are there, it is very clear that two conditions have to be fulfilled for inclusion of the Cess. The first condition as per the clarification is that Cess should be levied and collected as duty of Excise/ Customs. In this case, it is satisfied as the Cess on paper may be considered as duty of Excise. But, there is another condition by which the Cess should be levied and collected by the Department of Revenue. Obviously, paper cess is not levied by the Department of Revenue, it is levied by the Department of Industrial Development, Ministry of Commerce and Industry. Therefore, the second condition is not satisfied fully. No doubt it is collected by the Department of Revenue, but not levied by it. Hence, paper cess is not includable. We find that the Board's clarification is in consonance with Section 93. There is no ambiguity. Hence, we are of the view that the Cess on paper is not includable in the calculation of the Education Cess. It is not necessary for us to discuss the case-laws relied on by both sides, as the law itself is very clear. In view of the above, we do not find any merit in the impugned orders and the same are set aside by allowing the appeals with consequential relief.

E/Stay/368/2008 in E/527/2007	*- The Commissioner of Central Excise & customs Visakhapatnam-II. Visakhapatnam v. Andhra Pradesh Paper Mills Pvt. Ltd.*

7. The stay application and appeal filed by revenue are taken up together for disposal as per law. This revenue appeal is filed against Order-in-Appeal No. 10/2008 (C-II) C.E. dated 11.4.2008 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam, wherein the Commissioner (A) has allowed the appeal of the assessee by relying on the decision of Cehnnai Tribunal in the case of M/s Tafe Ltd. vs. CCE, madurai- 2008 (222) ELT 80 (Tri. Chennai). The issue is the revenue appeal and the party's appeals are one and the same. In view of the findings given above in respect of party's appeals are squarely application to this case also. Therefore, we have no other option but to uphold the Commissioner (A)'s order and reject the revenue's appeal."

Similar view was taken by the Tribunal in the matter of **Tafe Ltd. vs. Commissioner – 2008 (222) ELT 80 (Tribunal)** and in the matter of **Bombay Burmah Trading Corpn. Ltd. vs. CCE, Tirunelveli -2008 (221) ELT 105 (Tri. Chennai)**.

8. Sh. Nagesh Pathak, ld. AR has failed to give any plausible reason for disagreeing with the above referred judgements of the Tribunal, therefore, going by the aforesaid judgements, we do not find any reason to interfere with the impugned order.

9. Appeal is therefore dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant