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

Appeal No. E/186/2012-EX[DB]

[Arising out of Order-in-Appeal No. IND/CEX/000/APPL/416 to 422/2011 dated21.10.2011, passed by the Commissioner of Central Excise, Indore]

B.S. Patel **...Appellants**

Vs.

C.C.E., Indore **....Respondent**

Appearance:

None, Advocate for the Appellant

Sh.R.K. Manjhi,DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President

Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing: 10.11.2016

Date of Pronouncement: 23.02.2017

FINAL ORDER NO. 51914/2017-Ex(DB)

Per Ashok K. Arya:

The appellant namely M/s B.S. Patel is in appeal against the Order-in-Appeal no. 416 to 422/2011, dated 18.10.2011 passed by the Commissioner (Appeals) of Central Excise and Customs, Indore. In the impugned Order-in-Appeal, the Commissioner *inter alia* has held as under:-

i. Bidi cess is leviable under Section 3 of the "Beedi Workers Welfare Cess Act, 1976".

ii. From the above, it is clear that provisions of Central Excise Act, 1944 and Rules made there under shall apply to the levy and collection of cess under this Act as they apply in relation to the levy and collection of duties of Excise in respect of manufactured biris under the Act [Central Excise Act, 1944].

iii. This shows that bidi cess is being collected as duty of excise and by Section 3A of Beedi Workers Welfare Cess Act, 1976, provisions of Central Excise Act, 1944 & Rules made there under shall apply in relation to levy and collection of beedi cess as they apply in relation to levy and collection of duties of excise in respect of manufactured biris.

iv. In the instant case the Cess under dispute is being levied as duty of excise under the law in force at the time being.

2. On behalf of the appellants, Shri Pradeep Ashwa, Chartered Accountant has sent the communication dated 29.10.2016 stating that the appellant does not want to attend personal hearing fixed for 10.11.2016 and request for the decision in the matter on the basis of submissions made in the appeal. The main submissions of the appellant in the appeal memorandum and the communication dated 29.10.2016 are as under:

i) The matter has been clarified by the CBEC vide Circular No. 978/2/2014-CX, dated 7.01.2014 F.No. 262/2/2008-CX wherein in para 4 it is clarified that the Education Cess and Secondary and Higher Education Cess are not to be calculated on cesses which are levied under the Acts administered by Department/Ministries other than Ministry of Finance (Department of Revenue) but are only collected by the Department of Revenue in terms of those Acts.

ii) In view of above now it becomes final that education cess is not leviable on Bidi Cess. Therefore, the refund application of the appellant cannot be rejected.
Reliance placed on the following case laws:
 a. Joshi Technologies International vs. UOI 2016 (336) E.L.T. 21 (Guj.).
 b. Cairn India Ltd. vs. CCE, Jaipur-II 2015 (315) E.L.T. 612 (Tri. Del.).
 c. Commr. of C. Ex. & Cus., Visakhapatnam Vs. Andhra Pradesh Fibre Ltd. 2013 (298) E.L.T. 428 (Tri.- Bang).

3. The Ld. AR reiterates the findings given in the impugned order.

4. After having carefully considered the facts on record and the submission of both the sides, the issue is clear, that Education cess (EC) and Secondary Higher Education Cess (SHEC) cannot be computed on the Cesses, which are levied under the Acts

administered by the Departments/Ministries other than the Ministry of Finance (Department of Revenue), though the same are collected by the Department of Revenue as per provisions of those Acts. The matter is covered by Hon'ble Gujarat High court decision in case of *Joshi Technologies Vs. Union of India (Supra)* and CESTAT decision in case of *cair India Ltd (supra),* Since the Beedi cess is the levy of Ministry of labour under the Beedis Worker Welfare Act, 1976, which is administrated by the Ministry of Labour only, though it may be that beedi cess is collected by department of Revenue, and considering CBEC circular No. 978/2/2014-CS dated 7.2.2014 (supra) and the decisions of the Hon'ble Gujarat High court (Supra) and CESTAT (Supra) the Education Cess and SHE cess are not to be calculated for the amount of Beedi cess.

5. Considering above discussions, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

[Pronounced in the open court on 23.02.2017]

(Justice Dr. Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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