CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 27.06.2017

Ex. Appeal Nos. 1009 to 1015 of 2011 & Ex. Appeal No. 193 of 2012
(Arising out of order in Appeal No. IND/36-42/2011 dated 01.02.2011; and IND/CEX/000/APP/430/2011 dated 08.11.2011passed by the Commissioner of Central Excise (Appeals) New Delhi).

M/s Ultratech Cement Ltd. Appellant

Vs.

CCE, Indore Respondent

Appearance:

Sh. Hemant Bajaj, Advocate for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 54463 – 54470/ 2017

Per: **Justice (Dr.) Satish Chandra**:

All these appeals have been filed by the appellants against the order in appeal No. IND/36-42/2011 dated 01.02.2011; and IND/CEX/000/APP/430/2011 dated 08.11.2011passed by the Commissioner (Appeals) Customs & Central Excise Indore. The period of dispute is from July, 2004 to October, 2010.

2. In the present appeals, the main dispute is pertaining to the demand on education cess and secondary and higher education cess by taking into consideration the other cesses which were imposed under the different statutes by the different Ministries other than the Ministry of Finance.

3. Brief facts of the case are that, the appellant is engaged in the manufacture of cement which is subject to excise duties. Cement is also subject to levy of cess

under the provisions of Industries (Development & Regulation) Act, 1951. Appellant is also paying Limestone & Dolomite Cess as per the provisions of Section 3 & 4 of the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 as well as the cement cess leviable as per the Notification dated 24.02.1993 issued by the Government of India, Ministry of Industries (Department of Industrial Development) under Section 9(1) of the Industries (Development& Regulations) Act, 1951.

4. The appellant is paying all the cesses. The issue is pertaining to the computation of Education Cess and Secondary & Higher Education Cess which is payable on the aggregate of all duties of excise levied & collected by the Central Government in the Ministry of Finance (Department of Revenue). Ld. Counsel for the appellant Sh. Hemant Bajaj submitted that education cess is levied in terms of Section 93 of the Finance (No. 2) Act, 2004. As per the above section only the duty of excise levied and collected in the Ministry of Finance (Department of Revenue) is to be considered for collecting such education cess. The other cesses which are being paid by the appellant are levied by the Ministries of Industries as well as Labour and hence are not required to be included. This view has also been settled in the Tribunal decisions in ***Commissioner vs. Sahakari Khand Udyog Mandli Ltd. – 2011 (263) ELT 34 (Guj.)***, ***B. S. Patel vs. CCE, Indore vide final Order No. 51914/2017 –EX(DB) dt. 23.12.2017*** and ***Bombay Burmah Trading Corpn. Ltd. vs. CCE, Tiruchirapalli – 2008 (221) ELT 105 (Tri. Chennai).*** has also upheld this view.

5. After hearing both sides and on perusal of record, it appears that the Ministry of Finance (Department of Revenue) vide its circular No. 345/2/2004-TRU dated 10.08.2004 has dealt with the following issues:

> "***Issue No. (4)****: Whether duties / cesses which either not collected as duty of excise/ customs or are collected so but by a Department other than*

> *Department of Revenue, should be included for the purposes of calculation of Education Cess?*
>
> ***Clarification** : As the Education Cess is calculated on the aggregate **duties of excise/ customs** (excluding certain duties of customs like anti-dumping duty, safe guard duty etc.) **levied and collected by the Department of Revenue**, only such duties, which are (a) levied and collected as duties of excise / customs and (b) are both levied and collected by the Department of Revenue should be taken into account for calculating Education Cess".*

5. Revenue is of the view that for determination of the aggregate of all duties of excise, the cesses levied by the Ministries of Industry and Labour are required to be included. After going through the cases cited, we find that the issue stands decided in favour of the appellant in the case of ***B. S. Patel v. CCE, Indore*** vide Final Order No. 51914/2017-EX (DB) dated 23.02.2017 wherein it has been held as under:

> "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 Department / 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 Beedies 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".*

6. By following the ratio laid-down, we set aside the impugned order and allow all the appeals.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	Justice (Dr.) Satish Chandra) President

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