



- आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क *
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास, आमबाबाडि,
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(32)/02,03&04/EA-2/Ahd-I/2016-17 / 1088-92
Stay Appl.No. NA/2015-16

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-072 to 074-2016-17
दिनांक Date : 28-02-2017 जारी करने की तारीख Date of Issue 27/3/17

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Addl./Deputy COMMR., Div-III, केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं 22-30/CX-
I/Ahmd/ADC/PMR/2016 दिनांक: 12-04-2016, & MP/02,04 to 08/DC/2016-17 दिनांक: 15-04-2016,
से सृजित

Arising out of Order-in-Original No. 22-30/CX-I/Ahmd/ADC/PMR/2016 dated: 12-04-2016, &
MP/02,04 to 08/DC/2016-17 dated: 15-04-2016 issued by Addl./Deputy COMMR., Div-III,
Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M./s Meghmani Dyes & Intermediates Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में विल्ट अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

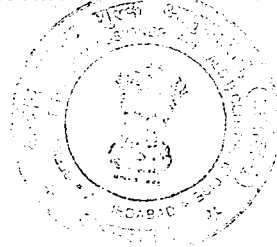
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

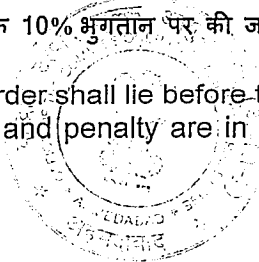
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

Assistant Commissioner, Central Excise, Division-III, Ahmedabad-I has filed 03 [three] appeals against the below mentioned OIOs setting aside demand of education cess [EC] and Secondary and higher secondary education cess [SHEC] against M/s. Meghmani Dyes and Intermediates Limited [Unit[II] and Meghmani Industries Limited [Unit-II]. The details of the appeals are as follows:

Table-I

Sr. No.	OIO No. & date	Name of the appellant	Period involved	Amount involved (Rs.)	Review order no. & date, passed by Principal Commissioner, Central Excise, Ahmedabad-I	Appeal Nos.
1	22-30/CX-1 Ahmd /ADC/PMR/2016 dated 12.4.2016 dated	Meghmani Industries Limited	April 2009 to March 2011	1,16,74,895/-	2/2016 dtd 29.6.2016	2/Ahd-I/EA-2/2016-17
		Meghmani Dyes & Intermediates Limited	April 2009 to September 2012			
2	MP/02/DC/2016-17 dated	Meghmani Industries Limited	April 2011 to October 2011	3,36,515/-	3/2016 dated 29.6.2016	3/Ahd-I/EA-2/2016-17
3	MP/04 to 08/DC/2016-17 dated 15.4.2016	Meghmani Dyes & Intermediates Limited	October 2012 to February 2015	15,96,812/-	4/2016 dated 29.6.2016	4/Ahd-I/EA-2/2016-17

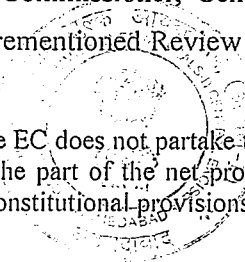
These three departmental appeals are being dealt with together as they involve similar matter.

2. A total of 15 show cause notices were issued to the aforementioned two appellants alleging that the appellant had not correctly discharged the EC and SHEC on the goods cleared into DTA. The notice against the appellant, [an 100% EOU] therefore, proposed demand of EC and SHEC, along with interest and further proposed penalty under Rule 25 of the Central Excise Rules, 2002.

3. Consequent to a direction from the Hon'ble High Court of Gujarat, vide its order dated 23.2.2016, these notices were adjudicated by the Additional Commissioner, Central Excise, Ahmedabad-I [in respect of Sr. No. 1] and Deputy Commissioner, Central Excise, Division III, Ahmedabad-I, in respect of Sr. No. 2 and Sr. No. 3, supra. The adjudicating authority relying on various case laws, dropped the proceedings, initiated against the appellants.

4. Feeling aggrieved, Principal Commissioner, Central Excise, Ahmedabad-I, reviewed the three impugned OIOs, as listed above, in terms of Section 35E(2) of the Central Excise Act, 1944 and directed the Assistant Commissioner, Central Excise, Division III, Ahmedabad-I to file an appeal. In the aforementioned Review Orders, the following points have been raised:

- (a) the adjudicating authority overlooked the fact that the EC does not partake the character of the Central Excise duty in as much as it is not the part of the net proceeds of the divisible proof of apportionable taxes based on the Constitutional provisions;



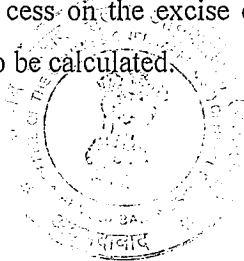
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- (b) that adjudicating authority relied on the case of Sarla Performance Fibers Limited [2010(253) ELT 203], which was not accepted by the department on merits;
 - (c) that in the case of Kemorock Industries and Exports Limited [2015(319)ELT 132], passed by the Hon'ble Tribunal, department has preferred an appeal before the Hon'ble Supreme Court of India, which has been admitted;
 - (d) that the relevant statutes governing the EOU scheme has to be integrally examined and applied undoubtedly, however, the point of inter se distinction cannot be by passed on the plea of isolated interpretation;
 - (e) that the duty paid by 100% EOU for making clearance into DTA is a duty of excise; that education cess has to be levied on such excise duty in addition to excise duty as per the provisions of clause 83 of the Finance (No. 2) Bill 2004, hence whatever duty of excise the appellant is required to pay, education cess is in addition to the same and the fact that customs duty was paid with education cess will not alter the position.

5. Appellant filed their counter written submissions wherein they made the following arguments:

- that the duty payable by the appellant on DTA clearances is duty of excise; that the quantum of duty is to be decided based on the aggregate duty of customs leviable on similar goods imported into India; that on the duty so calculated there is no scope for any further addition by treating the same as basic excise duty as the law provides for payment of duty equal to the aggregate of customs duty only;
- that in their own case in respect of the first two show cause notice, though it was confirmed at the original and first appellate stage, the Hon'ble Tribunal vide its order no. A/323-327/2010 dated 19.4.2010, ruled in their favour; the Tax Appeal against the order before the Hon'ble High Court and Hon'ble Supreme Court have been dismissed;
- that the notice was adjudicated since the appellants had approached the High Court of Gujarat to quash the periodical show cause notice and the High Court vide its order dated 17.7.2015, directed the department to adjudicate the notices;
- that the Hon'ble Tribunal in the case of Sarla Performance, *ibid*, has held that the collection of EC and SHEC for the third time is not legal; that EC is a surcharge and once the tax rate is enhanced the section imposing gets exhausted; that this has been reiterated by the Larger Bench of the Tribunal;
- that the duty payable BED, EC and SHEC has already been paid and there is no short payment of duty or cess;
- the duty payable by an 100% EOU on DTA clearances are duties of excise but the quantum needs to be decided as provided under section 3(1)(b) of Central Excise Act, 1944, subject to notification No. 23/2003-CE dated 31.3.2003 and therefore there is no reason to treat the same as Basic or other excise duties;
- that the matter has been considered at various judicial forum;
- that the appeal filed in the case of Kemrock Industries, *ibid*, cannot be a deterrent for the adjudicating authority to follow the binding precedent as per the direction of Gujarat High Court.

6. Personal hearing in respect of all the three appeals was held on 16.2.2017 wherein Shri Manohar Maheshwari, Senior General Manager(Commercial), appeared on behalf of both the appellants. He reiterated the counter written submissions submitted by the appellant.

7. I have gone through the facts of the case, the department's review order, the counter submissions of the appellants and submissions made during the course of personal hearing. Broadly, the issue in the present appeal is how education cess and secondary and higher secondary education cess on the excise duty chargeable on the goods cleared by 100% EOU into DTA, is to be calculated.



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8. To understand the dispute, the department's view, as reflected in the show cause notice is that the appellants, an 100% EOU should have discharged the duties as follows:

Table-2

1	Transaction Value	
2	Basic Customs Duty	on transaction value
3	Additional Customs duty [CVD]	on transaction value + Basic Customs duty
4	EC and SHEC	on CVD
5	EC and SHEC	On aggregate of customs duty i.e. [BCD +CVD+(EC+SHEC on CVD)]
6	EC and SHEC	On BCD +CVD+(EC+SHEC on CVD) + (EC and SHEC as at (5) above)

The appellants were not paying the EC and SHEC mentioned at (6) in the table above. Therefore, the issue to be decided primarily is whether EC and SHEC is to be levied again in respect of DTA clearances of a 100% EOU, on the aggregate of duties of customs [6 above] which already includes the EC and SHEC. The departmental view that the duty paid by 100% EOU for making clearance into DTA is a duty of excise and that EC and SHEC has to be levied on such excise duty in addition to excise duty as per the provisions of clause 83 of the Finance No. 2 Bill 2004, hence whatever duty of excise the appellant is required to pay the EC and SHEC is in addition to it and the fact that, customs duty was paid with EC and SHEC, will not alter the position.

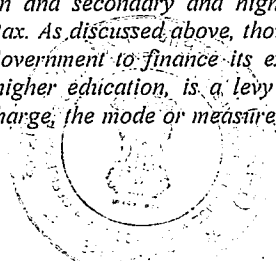
9. The issue is no longer res integra, the matter having been assailed before the Tribunal, the High Court and the Supreme Court on a number of occasion. Before dwelling any further, I would like to discuss the case laws, wherein the Tribunal and High Court, has passed its judgement in the matter, viz.

[a] Kumar Arch Tech Private Limited [2013(290) ELT 372 (Tri-LB)]. The Larger bench of the Tribunal, wherein the question posed before the Larger Bench for decision was:

"Whether education cess and S&H cess are chargeable on DTA clearance made by 100% EOU even if such cesses were added while calculating the aggregate duties of customs payable under the Customs Act or any other law in force at the time imported or like goods."

The Hon'ble Tribunal concluded as follows:

10. However, we are not in agreement with the stand of the Revenue for another reason. The charging provisions of education cess and S&H cess are Section 91 of the Finance Act, 2004 and Section 136 of the Finance Act, 2007 respectively according to which, this levy is a 'cess' levied as surcharge to enable the Central Government to finance its commitment to provide universalized quality of basic education and secondary and higher education. Surcharge on a tax means additional tax on that tax. As discussed above, though education cess and S&H cess being cess to enable the Government to finance its expenditure on providing basic education and secondary and higher education, is a levy different and distinct from the tax on which it is levied as surcharge, the mode or measure of this levy is



[Handwritten signature]

surcharge at the rate of 2% and 1% on the existing levies i.e. the taxes being collected by the Government as -

- (a) Central excise duties under Central Excise Act, 1944 or any other law in force;
- (b) customs duties under Customs Act, 1962 read with Customs Tariff Act, 1975 or any other law in force; and
- (c) Service tax levied under Section 66 of the Finance Act, 1994.

Since the cess levied as surcharge under Section 91 of Finance Act, 2004 and Section 136 of Finance Act, 2007 has to be on the existing levies, the existing levies, obviously, would not include this cess. For this reason only, Sections 93 & 94 of Finance Act, 2004 and Sections 138 and 139 of Finance Act, 2007 while defining the measure of education cess and S&H cess in respect of excisable goods and imported goods respectively, specifically provide that the aggregate of duties of excise or aggregate of duties of customs levied by the Central Government in the Ministry of Finance (Deptt. of Revenue), on which this cess is to be levied as surcharge, would not include the education cess and S&H cess. Thus, the intention of the legislature was never to charge education cess on education cess. In fact this is not permissible from very mode of this levy as prescribed in Section 91 of the Finance Act, 2004 and Section 136 of the Finance Act, 2007, as when a new tax is introduced as surcharge on the existing levies, the base on which the new levy as surcharge is to be calculated will include only the existing levies, not the new levy. If the Revenue's stand is accepted, and on the sum of Basic customs duty and Adtl. Customs duty, first "cess on imported goods" under Section 94 of Finance Act, 2004 and Section 139 of Finance Act, 2007 is charged as duty of customs and on the aggregate of duties of customs, "cess on excisable goods," under Section 93 of Finance Act, 2004 and Section 138 of Finance Act, 2007 is charged, it would amount to charging education cess on education cess for which there is no sanction in law. Apex Court in case of Jain Brothers v. U.O.I., reported in (1970) 77 ITR 107 has held that there can be no objection for double taxation if the legislature has distinctly enacted it, but while interpreting general words of taxation, the same cannot be so interpreted as to tax the subject twice over to the same tax. In our view, it is this principle which has to be kept in mind while calculating education cess and S&H cess on DTA clearances of a 100% EOU. Since the DTA clearance of a 100% EOU attract central excise duty and in terms of proviso to Section 3(1) of Central Excise Act, 1944, the measure of the excise duty leviable is aggregate of duties of customs charged on import of like goods into India under Customs Act, 1962 read with Indian Customs Tariff Act, 1975 or any other law for the time being in force, this aggregate of duties of customs on which education cess under Section 93 of Finance Act, 2004 and S&H cess under Section 138 of Finance Act, 2007 is to be charged, would not include education cess and S&H cess under Section 94 of Finance Act, 2004 and Section 139 of Finance Act, 2007. In other words, the education cess and S&H cess would be chargeable only once under Section 93 of Finance Act, 2004 and Section 138 of Finance Act, 2007 on the sum of basic customs duty and Additional customs duty.

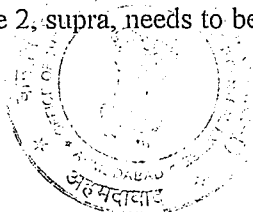
[b] M/s. Sarla Performance Fibers Limited [2010(253) ELT 203]. The Hon'ble Tribunal in this case, in a similar matter held as follows:

In fact this is the ground on which the department has proceeded to add education cess once again after arriving at aggregate of customs duties. The answer to this is the conclusion drawn by us with regard to the contention that education cess is only a surcharge and is in the nature of enhancement of duties. Therefore, once education cess is added to the customs duties to arrive at aggregate of customs duties, the question of charging education cess again does not arise. Because once it is an enhancement, it is part of the relevant type of the duty. What is required for the purpose of proviso to Section 3 of Central Excise Act, 1944 is to arrive at aggregate of customs duties and once we take a view that education cess is part of the customs duty and is an enhancement, the question of adding it again does not arise.

The departmental appeal against this order before the Hon'ble Supreme Court was dismissed on delay.

[c] In Order No. A/323-327/WZB/AHD/2010 in the appellants case, the Hon'ble Tribunal held in favour of the appellant by relying on the case of M/s. Sarla Performance, ibid, and further stated that once the measure of customs duty equivalent to central excise duty leviable on the like goods has been worked out, question of levying education cess separately in respect of clearances by 100% EOU to DTA does not arise.

10. The issue as is evident stands settled by a higher appellate authority, that no further EC and SHEC as at Sr. No. 6 of table 2, supra, needs to be paid. Therefore, as a



subordinate appellate authority, I am bound to follow the stand taken by the higher authority more so in view of the judgement of the Hon'ble Supreme Court in the case of Kamlakshi Finance Corporation Ltd [1991(55)ELT 433(SC)] wherein it was held that *"the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.* Even otherwise, the department in its review order, except for stating that the orders of the Hon'ble Tribunal were not accepted on merits and that in the case of M/s. Kemrock Industries and Exports Limited, a Civil Appeal filed by the department, is pending before the Apex Court, has not been able to refute the findings of the Hon'ble Tribunal in the matter. Nowhere is it on record, that in the aforementioned appeal, the matter has been stayed by the Hon'ble Supreme Court.

11. In view of the foregoing, following the judgement of the Hon'ble Tribunal in the case of M/s. Sarla Performance Fibers Limited [2010(253) ELT 203] and Kumar Arch Tech Private Limited [2013(290) ELT 372 (Tri-LB)], I find that the adjudicating authority was correct in dropping the proceedings initiated against the appellants vide the impugned orders listed at table-1, supra. The three departmental appeals, are therefore, set aside.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 28.02.2017

Attested

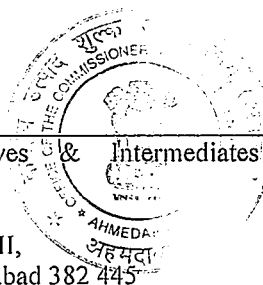
Vinod

(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.

To,

M/s. Meghmani Industries Limited, Unit-II, 100% EOU, Plot No. 27, Phase-I, GIDC, Vatwa, Ahmedabad 382 445	M/s. Meghmani Dyes & Intermediates Limited, Unit-II, 100% EOU, Plot No. 100/A, Phase-II, GIDC, Vatwa, Ahmedabad 382 445
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Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad-I.
3. The Deputy/Assistant Commissioner, Central Excise, Division III, Ahmedabad-I.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad-III
- ✓ 5. Guard File.
6. P.A.

