केन्द्रीय उत्पाद शुल्क (अपील) का कार्यालय, क्षेत्रीय [illegible] केन्द्रीय उत्पाद शुल्क
OFFICE OF THE COMMISSIONER (APPEALS), CENTRAL EXCISE [illegible]

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[illegible]

[illegible]	[illegible]	Date:
[illegible] 06.03.2020	235/2018-19 236/2018-19 237/2018-19	13.03.2019

[illegible]

[illegible]-EXCUS-000-APP-001-TO-003-2019

[illegible] Date of hearing	21.01.2019	[illegible] Date of issue	22.01.2019

[illegible] Passed by [illegible] Commissioner (Appeals), Central Excise, Rajkot

i [illegible]

ii [illegible]

iii [illegible]

iv [illegible]

v [illegible]

vi [illegible]

:: ORDER IN APPEAL ::

The Commissioner, Central Excise, Rajkot (hereinafter referred to as "the department") has filed present appeals No. (i) V2/4/EA2/RA1/2009; (ii) V2/5/EA2/RA1/2009 and (iii) V2/6/EA2/RA1/2009 against Order-in-Original No. (i) 235/2008-09; (ii) 236/2008-09 and 237/2008-09 dt. dated 13.02.2009 (hereinafter referred to as "the impugned orders") respectively passed by the Assistant Commissioner, Central Excise Division, Gandhidham (hereinafter referred to as "the sanctioning authority") in the matter of M/s. Gian Electronics Pvt. Limited, Survey No. 113, Village: Varsamedi Taluka: Anjar, District: Kutch (hereinafter referred to as "the respondent").

2. The brief facts of the case are that the respondent was operating in the District of Kutch, availing benefits of Notification No. 39/2001-CE dated 31.07.2001, as amended (hereinafter referred to as "the said notification"). The said notification was amended vide Notification No. 16/2008-CE dated 27.03.2008 and Notification No. 32/2008-CE dated 10.06.2008, which altered the method of calculation of refund by taking into consideration of duty payable on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity. The respondent filed claims for refund of Central Excise Duty, Education Cess and Secondary & Higher Education Cess for the months of September, 2008; October, 2008 and November, 2008 respectively. The sanctioning authority vide the impugned orders sanctioned the refund claims, pertaining to Basic Excise Duty, Education Cess and Secondary & Higher Education Cess.

3. Aggrieved with the impugned orders, the department preferred these appeals, inter-alia, on the grounds as under:

(i) Refund on the products namely (i) Fully Automatic Washing Machine (CETH 8450 1100); (ii) Electric Motor (other than 45W & 125W)(CETH 8501 2019/8501 5190) and (iii) Parts of Washing Machine (CETH 8450 9090) which were added/manufactured after 31.12.2005 is not admissible since the manufacture of the said products has not taken place before the cut off date according to Point No. 1 of Board's letter F. No. 110/21/2006-CX3 dated 10.07.2008. The respondent stated to have started production on 29.12.2005. It is seen that manufacture of said products has not taken places before the cut off date; as per the Board's clarification dated 10.07.2008, the respondent would be eligible for the benefit of the notification for the plant and machinery used for manufacture which has remained the same; the plant and machinery used for manufacture of the said products were never used before 31.12.2005, the cut off date and, hence, these products do not accord the exemption under the said

notification; and

(iii) Refund of Education Cess and Secondary & Higher Education Cess is not admissible since the same is not payable by Notification No. 39/2001-CE dated 31.07.2001, as amended.

4. The appeal was filed by the appellant on the ground that appeal has been filed by the department before the Hon'ble Supreme Court against decision of the Hon'ble High Court of Bombay in case of Bharat Box Factory Ltd. reported as [illegible] but the decision of the Hon'ble High Court was approved by the Hon'ble Supreme Court and reported as 2017 (355) ELT 181 (SC). These matters were taken out of Call Book for passing appropriate orders. Personal hearing was given to the declared respondent/appellant as well as respondent but no one attended on the given dates and hence, I proceed to decide these appeals pending since 2009 due to Call Book procedure.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, Appeal Memorandum filed by the respondent, Memorandum of Cross Objections submitted by the respondent. The issues to be decided are

(i) whether the respondent is eligible for refund for goods viz. (i) Fully Automatic Washing Machine (CETH 8450[illegible]); (ii) Electric Motor (other than 45W & 125W)(CETH 8501[illegible]); and (iii) Parts of Washing Machine (CETH 84509090) manufactured after 31.12.2005 by the plant and machineries already installed before 31.12.2005; and

(ii) whether the respondent is eligible for refund of Education Cess and Secondary & Higher Education Cess in view of the provisions of Notification No. 39/2001-CE dated 31.07.2001 as amended.

6. The sanctioning authority held that the products namely (i) Fully Automatic Washing Machine (CETH 8450[illegible]); (ii) Electric Motor (other than 45W & 125W) (CETH 8501[illegible]); and (iii) Parts of Washing Machine (CETH 84509090) manufactured after 31.12.2005, were manufactured from the plant and machinery installed upto the cut off dated i.e. 31.12.2005 but the commercial production of the same started after 31.12.2005 only.

6.1 I find that the said issue was lately discussed by the Hon'ble CESTAT, Ahmedabad in case of Rasmani Metals and Tubes Ltd. reported as 2012 (276) ELT 230 (Tri. - Ahmd.), in which provisions of Notification No. 39/2001-CE has been discussed and it is read as under:

> *"5. After carefully considering submissions made by both the sides, we find that there is no dispute about the fact that the goods in respect of which refund claims stand rejected by lower authorities, were manufactured with the machinery installed after 31.12.2005. The notification, as discussed above is relevant to manufacturing units, which had made*

the investment and started their production before 31-12-05. As such, it can be reasonably concluded that the legislature intended to cover only those units in the notified area, wherein the investment was complete by 31.12.05. The benefit of the said notification is solely restricted to the appellant in respect of the goods manufactured with the plant and machinery installed prior to the said date.

7. The question which arises is as to whether subsequent expansion of the unit by installing new machines after 31-12-05 would get covered by the said notification or not. Admittedly the period falls after 31-12-05. If viewed from another angle, it can be reasonably assumed as if the appellant have installed a second factory in the said area for manufacture of the goods. If the machines, instead of being installed in the same factory, would have been installed in a separate factory, the benefit of this notification was admittedly not available to the appellant. As such, merely because the second unit was still located in the same factory, which was earlier enjoying the exemption, would not result in grant of exemption to the second unit as well.

8. Even if viewed from the conditions of the notification, it is clearly mentioned that the benefit of exemption would be available in respect of those units which have been fully complete prior to 31-12-05 and has started their production prior to the said date. There is nothing in the said notification to signify extension of the said date of 31-12-05 in respect of the subsequent investment of plant and machinery. As rightly contended by learned SDR, when the notification are unambiguous and clearly bring out the intention, the scope of the same cannot be extended by referring to the legislative intent. Such notifications are required to be interpreted in accordance with the words of the notification.

9. Even if we go on the legislative intent, the same becomes clear from the various circulars and clarifications issued by the Government. The TRU letter F. No. 336/13/92-TRU dated 17-12-93 addressed to the Chief Commissioner of Customs, Vadodara wherein certain clarifications sought by the Chief Commissioner vide the Board's letter. For better appreciation, we reproduce the clarification on issue No. 4 :-

Point in Issue	Issue of Chief Commissioner Customs & C. Ex., Vadodara	Clarification
4. Whether the units should be exempted in terms of the proviso to the said para 8 or the unit should be granted exemption regardless the capacity of the unit	The exemption to the small scale units should only be for the original unit as envisaged in para one of the said trade notice and not for the unit which has undergone substantial expansion after the said date.	We agree. The intention was to keep the exemption to the small scale units. Going beyond of envisaged investments would not only constitute the misuse of the notification but would also defeat the purpose."

10. Reference may be made to Circular No. 510/11/2000-CX.3, dated 19.7.00. The relevant part of said circular clarifying the issue is as under :-

"Point No. 1 : Whether the benefit of exemption would be available to person/industry that the units starts manufacturing after the cut off date for the commencement of commercial production i.e. 31-12-2005.

Comments : There would be two situations. First is that where a unit introduces a new product by installing fresh plant, machinery or capital goods after the cut off date. In such a situation, exemption would not be available to the new product. The said new product would be cleared on payment of duty as applicable and accurate records would be required to be maintained to distinguish production of these products from the products which are eligible for exemption.

The other situation is the one where a unit starts producing some products after the cut off date using the plant and machinery installed upto the cut off date and without any addition to the plant and machinery. For example, in case of plastic moulded products a unit may commence the production of different products simply by changing the mould and dies. In that case, the unit would be eligible for the benefit of Notification because the plant and machinery used for manufacture has remained the same. In this connection, it is further clarified that for the purpose of computing the original value of plant and machinery, the value of plant and machinery installed on the date of commencement of commercial production only shall be considered."

11. Admittedly the clarification issued by the said letter reflects upon the legislative intent that the benefit under the said notification is intended to be restricted only to those units, which have started commercial production on before 31-12-05 and the benefit cannot be extended to the products manufactured by subsidy from plant and machinery. In the similar effect is another letter written by TRU on 25th April 2000 addressed to the Secretary General, Federation of Industries of India, wherein that the benefit of the notification would not be available to those new industrial units, which commence commercial production after 31-12-05.

In as much as the appellant had already availed a new exemption notification 12/12-03, though in the same industry which was duly replaces the exemption, he did not also get the benefit of the exemption which can be available to the appellant as it would defeat the object of the said scheme which is for promotion of the North area and to complete work / investment before 31.12.05. Allowing of exemption in respect of subsequent activities in the industry would defeat the very purpose of issuance of the notification and is required to be set aside.

12. In view of the above, the impugned order is set aside

5.2 I find that after issuance of Notification No. 39/2001-CE dated 31.07.2001, clarifications dated 17.10.2001 and dated 10.07.2008 clarified that the intention was to keep the operation of the scheme simple; that benefit of subsequent investments would not only complicate the scheme, the quantum of benefit available to any unit would also vary greatly; that the benefit of Notification No. 39/2001-CE would be only be applicable to those new industrial units, which commence commercial production before 31.12.2005. In other words, if a new industrial unit commences commercial production after 31.12.2005, then such industrial unit was is not eligible to avail exemption under the said notification. Also, if commercial production of a particular product had not commenced on or before 31.12.2005, then the benefit of the said notification would not be available to such goods. It is also clarified that if any unit introduced a new product by installing fresh plant, machinery or capital goods after the cut-off date, then exemption would not be available to that new product and the same would be cleared on payment of duty, as applicable, and separate records would be required to be maintained to distinguish production of these products from the products which were eligible for exemption. These clarifications were issued on the Notification No. 39/2001-Central Excise dated 31.07.2001 and are to be harmoniously read with the provisions of the said notification. Therefore, if the product (i) Fully Automatic Washing Machine (CETH 84501.00); (ii) Electric Motor (other than 15W & 125W) (CETH 85011019/85015190) and (iii) Parts of Washing Machine (CETH 84509090) were commercially produced/manufactured after 31.12.2005, then the benefit of the Notification No. 39/2001-CE dated 31.07.2001, as amended, is not available to the appellant.

6.3 In view of the above, I find force in the argument of the department that the respondent was not eligible for refund for products namely (i) Fully Automatic Washing Machine (CETH 84501100); (ii) Electric Motor (other than 45W & 125W) (CETH 85011019/85015190) and (iii) Parts of Washing Machine (CETH 84509090) manufactured after 31.12.2005 by use of plant and machinery invoices before 31.12.2005. Therefore, the impugned orders sanctioning the refund for products namely (i) Fully Automatic Washing Machine (CETH 84501100); (ii) Electric Motor (other than 15W & 125W) (CETH

-7-

85012010/85015190) and (iii) Parts of Washing Machine (CETH 84509090) are not correct and required to be set aside and I do so.

7. Regarding Education Cess and Secondary & Higher Education Cess, I find that the respondent, a manufacturing unit situated in District of Kutch, availed benefit of exemption under Notification No. 39/2001-CE dated 31.07.2001, as amended. The said notification is reproduced as under:

'Kutch (Gujarat) — Exemption to excisable goods (except those specified in Annexure) and cleared from units in Kutch District of Gujarat

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than goods specified in the Annexure appended to this notification and cleared from a unit located in Kutch district of Gujarat from so much of the duty of excise or the additional duty of excise, as the case may be, leviable thereon under any of the said Acts as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2001 :

Provided that in the case of a unit having an original value of investment in plant and machinery installed in the factory below rupees twenty crore as on the date of commencement of commercial production, the exemption contained herein shall apply only for the first clearances up to an aggregate value not exceeding twice the value of such investment from the date of commencement of commercial production, in each year.

2. The exemption contained in this notification shall be given effect to in the following manner, namely :-

(a) The manufacturer shall submit a statement of the duty paid other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2001, to the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, by the 5th day of the next month in which the duty has been so paid;

(b) The Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, after such verification, as he may deem necessary, shall refund the amount of duty paid other than the amount of duty paid by utilization of CENVAT credit during the month under consideration to the manufacturer by the 15th day of the next month;

(c) If there is likely to be any delay in such verification, the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th day of the next month to the month under consideration, and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refund sanctioned in the manner aforesaid.'

7.1 The Education Cess was levied vide of Sections 91 to 93 of Chapter VI of the Finance (No.2) Act, 2004, which read as under:

'91. Education Cess - (1) Without prejudice to the provisions of sub-section (2) of section 2, there shall be levied and collected in accordance with the provisions of this Chapter as specified for purposes of the Union, a cess to be called the Education Cess on the aggregate of the duties of excise and the additional duties of excise leviable under any of the Acts specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and the duties of customs leviable under the Customs Act, 1962 (52 of 1962) or Chapter V of the Finance Act, 1994 (32 of 1994), and have the meanings respectively assigned to them in those Acts or Chapter, as the case may be.

92. Education Cess on excisable goods. - (1) The Education Cess levied under section 91, in the case of goods specified in the First Schedule to the Central Excise Tariff Act,

Act, 1944 (1 of 1944), being goods ... in addition to any duties of excise on the goods specified in the First Schedule to the Central Excise Act, 1985 (5 of 1986), which are leviable thereon under any other law for the time being in force and collected in like manner, a duty of excise to be known as the Secondary and Higher Education Cess on all excisable goods, which are produced or manufactured in India, at the rate of two per cent. calculated on the aggregate of the duties of excise specified in the First Schedule to the Central Excise Act, 1985 (5 of 1986) leviable on such goods under any law for the time being in force:

Provided that the Secondary and Higher Education Cess shall not be levied on such goods which are exempt from the whole of the duties of excise leviable thereon.

(2) The Secondary and Higher Education Cess on excisable goods which are produced or manufactured in India, and which are chargeable to the duty of excise under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), shall be in addition to the duties of excise specified in the First Schedule to the Central Excise Act, 1985 (5 of 1986) and the Secondary and Higher Education Cess chargeable under sub-section (1), but shall not be chargeable on the goods which are exempt from the whole of the duties of excise leviable thereon under any law for the time being in force.

(3) The Secondary and Higher Education Cess on excisable goods which are produced or manufactured in India, and which are chargeable to the additional duty of customs leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), shall be in addition to the duties of customs specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the Secondary and Higher Education Cess chargeable under sub-section (2), but shall not be chargeable on the goods which are exempt from the whole of the additional duty of customs leviable thereon under any law for the time being in force.

(4) The Secondary and Higher Education Cess on excisable goods which are produced or manufactured in India, and which are chargeable to the duty of customs under section 12 of the Customs Tariff Act, 1975 (51 of 1975), shall be in addition to the duties of customs specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the Secondary and Higher Education Cess chargeable under sub-section (3), but shall not be chargeable on the goods which are exempt from the whole of the duties of customs leviable thereon under any law for the time being in force.

(5) The provisions of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Secondary and Higher Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, as the case may be."

7.2 The Secondary and Higher Education Cess was levied vide Sections 136 to 138 of Chapter VI of the Finance Act, 2007 which reads as under:

"136. Secondary and Higher Education Cess. — (1) Without prejudice to the provisions of sub-section (2) of section 3, there shall be levied and collected in accordance with the provisions of this Chapter and rules for the purposes of the Union, a cess to be called the Secondary and Higher Education Cess, to fund the commitment of the Government to provide and finance secondary and higher education.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums out of proceeds of the Secondary and Higher Education Cess levied under sub-section (1) of section 3 and this Chapter for the purposes specified in sub-section (1) as it may consider necessary.

137. Definitions. — The words and expressions used in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) or Chapter V of the Finance Act, 1994 (32 of 1994), shall have the meanings respectively assigned to them in those Acts or Chapter, as the case may be.

138. Secondary and Higher Education Cess on excisable goods. — (1) The Secondary and Higher Education Cess levied under section 136, in the case of goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), being goods manufactured or produced, shall be a duty of excise (in this section referred to as the Secondary and Higher Education Cess on excisable goods), at the rate of one per cent., calculated on the aggregate of all duties of excise (including special duty of excise or any other duty of excise but excluding Education Cess chargeable under section 95 of the Finance (No. 2) Act, 2004 (23 of 2004) and Secondary and Higher Education Cess on imported goods) which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue) under the provisions of the Central Excise Act, 1944 (1 of 1944) or under any other law for the time being in force.

(2) The Secondary and Higher Education Cess on excisable goods shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force and the Education Cess chargeable under section 95 of the Finance (No. 2) Act, 2004 (23 of 2004).

(3) The provisions of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Secondary and Higher Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, as the case may be."

7.3 Thus, the Education Cess and Secondary & Higher Education Cess were in nature of surcharge and were levied under Section 91 of the Finance (No. 2) Act, 2004 and Section 126 of the Finance Act, 2007 respectively as duty of excise at the rate of 2% and 1% respectively to be calculated on the aggregate of all duties of excise, which are levied and collected by the Central Government. The provisions of the Act and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty were made

applicable to the levy and collection of the Education Cess and Secondary & Higher Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Act.

7.4 I find that Notification No. 39/2001-CE dated 31.07.2001 had granted total (100%) exemption from levy of excise duty by way of refund/recredit of normal duty, Education Cess and Secondary and Higher Education Cess were levied on excise duty and when the levy of excise duty itself was exempted by way of refund/recredit, then the Education Cess and Secondary and Higher Education Cess also got exempted thereby. In absence of Central Excise duty, the question of levy of any surcharge or cess or whatever name is called thereon would not arise. CBEC vide Letter F. No. 345/2/2004-TRU(Pt.) dated 10.08.2004 also clarifies that Education Cess is part of excise duty, the relevant portion is as under:

"Letter F. No. 345/2/2004-TRU (Pt.), dated 10.8.2004

The undersigned is directed to state that subsequent to Budget, 2004 announcements, a number of representations/references have been received from the trade as well as from the field formations pertaining to imposition of Education Cess on excisable goods and on imported goods. The points raised and the clarifications thereof are as follows.

Issue No. (2) : Whether Education Cess on excisable goods is leviable on goods manufactured prior to imposition of Cess but cleared after imposition of such cess?

Clarification : Education Cess on excisable goods is a new levy. In similar cases, it has been held by the Supreme Court that if a levy is not there at the time the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. Thus, Education Cess is not leviable on excisable goods manufactured prior to imposition of cess but cleared after imposition of such cess.

Issue No. (3) : Whether goods that are duly exempted from excise duty/countervailing duty or are cleared without payment of excise duty/countervailing duty from bonded warehouse or factory of manufacture (warehousing) would be subjected to Cess.

Clarification : The Education Cess is imposed at the rate of two per cent of the aggregate of all duties of customs (including duties of customs specified in the First Schedule to the Customs Tariff Act, 1975) or excise duties, as the case may be, levied and collected, in respect of goods are duly exempted from excise duty or customs duty, are chargeable to duty or are cleared without payment of duty under specified procedure such as clearance under bond. Cess is to be collected at the time of clearance of goods, as payable on such clearance. In this regard, letter C.B.E. No. 105/54/2004-CX6, dated 21st July, 2004 issued by Member (Customs) may also be referred to.

Issue No. (4) : Whether goods (like alcoholic beverages) that do not fall under the Central Excise Tariff are subjected to levy of Education Cess on excisable goods (as part of CVD), when they are imported into India?

Clarification : As the Education Cess on excisable goods is leviable on goods specified in the First Schedule to the Central Excise Tariff Act, goods like alcoholic beverages that are not specified are not subjected to the said Cess.

Issue No. (5) : Whether duties/cesses which were not collected as duty of customs/excise (including cesses) or are collected 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 collected on the aggregate duties of customs/excise (including cesses) of goods the accordingly duty, such goods that are levied and collected by the Department of Revenue, only such duties which are (a) levied and collected as duties of customs/excise and (b) are both levied and collected by the Department of Revenue should be taken into account for calculating Education Cess."

(Emphasis supplied)

7.5 CBEC vide Circular No. 134/3/2011-ST dated 08.04.2011 again clarified

that since Education Cess and Secondary & Higher Education Cess were levied and collected as percentage of service tax, no Education Cess and Secondary & Higher Education Cess would be payable, inter alia, and moreover service tax is nil by virtue of exemption. The ratio is laid down in context of service tax matter but the principle was accepted generally by the Board and hence would apply in the present case also. Circular No. 345/8/2011-ST dated 08.04.2011 is reproduced as under:

7.6 In view of above, Education Cess and Secondary & Higher Education Cess were part of the Central Excise duty and since the central excise duty was exempted by way of refund, Education Cess and Secondary & Higher Education Cess would also be exempted by way of refund. This view finds support from the judgement of the Hon'ble Supreme Court in the case of SRD Nutrients Pvt. Ltd., reported as 2017 (355) ELT 481 (SC), wherein it has held that,

(Emphasis supplied)

7.7 In view of above, I hold that the respondent is eligible for refund of Education Cess and Secondary & Higher Education Cess.

8. Accordingly, I uphold the impugned orders and reject appeals related to Education Cess and Secondary & Higher Education Cess in respect of the products where refund has already been sanctioned by the sanctioning authority. However, I allow appeals related to refund for products namely, (i) Fully Automatic Washing Machine (CETH 84501100), (ii) Electric Motor (other than 45W & 125W) (CETH 85011019/85015190) and (iii) Parts of Washing Machine (CETH 84509090), commercial production of which started after 31.12.2005 only and set aside the impugned orders in this regard and order for recovery of the refund of the duty granted in the respective on these products.

९ डिपार्टमेंट द्वारा फाइल की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the Department are disposed off as above.

(कुमार संजय)
आयुक्त (अपील्स)

By Regd. Post AD.

To,

The Commissioner, CGST & Central आयुक्त, केंद्रीय वस्तु एवं सेवा कर एवं केंद्रीय उत्पाद शुल्क, Excise, Kutch Commissionerate, कच्छ कमिश्नरेट, गांधीधाम,
Gandhidham

M/s. Gren Electronics Pvt. Limited, प्लॉट नं. 113, सर्वे नं. 113, गांव: वरसमेडी, तालुका: अंजार, जिला: कच्छ,
Survey No. 113, Village: Varsamedi, Taluka: Anjar, District: Kutch

Copy to:

1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information please.

2) The Assistant Commissioner, CGST & Central Excise, Division-Anjar, Gandhidham for further necessary action.

3) Guard File.

4) F. No. V2/5/BAZ/RAJ/2015

5) F. No. V2/6/DA2/RAJ/2015