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कार भागक केंद्रम् भारम् र स्वरूक् स्वरूप अवस्थित है। है जा उससे से साम स्वरूप सम्बद्धान साम सामान्यक समान्य स् - - - .

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as ស៊ីសុន្តរី (ទី១ កែរ ស៊ីសុខកែរីភ្លាមី) ប្រជាជាប្រធាតុបានត្រាក់ ក្រឡាយបានក្រោយសហគមនេះ គារកមក គឺ (ការ ក្រសួល Nazana-Asturi ins Circles (Index Index Index

্তিক নামুক্তি কুল্যুকি চাইনুনামত্ত্ৰীয়া কৰা কলেও এছে তেখালোকা কৰিব পাৰেল কালা গাঁ কিবলতে কালাকলৈ ব্যাহিত কৰি বিবাহৰ সংগ্ৰহণ বাবে বাবে বিবাহৰ jı.

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प्रकृतिक मुख्यान अस्त कर्षात्र (1905) । हम् के 100 कुछ प्रकृति के स्थान क्षेत्र के ती कि के प्रकृति कर महस्तान सकत विकास करणाम् के प्रकृतिक असम्बद्धात्र के प्रकृतिक के कि कार्यक के कि तो कार्यक अस्ति के तिकास महस्तान आसीमा श्रास्त किस्त के सम्बद्धात्र करणा कि के कि के कि अपने अस्ति के सम्मान के असमित महस्ति के दिस्त दिस्त के कि कि के किस्त के स्थान

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(a) Simplifying a significant matter that it may be added to a local to the significant of the significan j: 'I

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M/s. Excel Orop Care Limited, 205-209, Bhilly-Mundra Road, Galud, Near Kara Villago, Rhuj - Kulobh, Pin Code | 370 k30 (hereinalter referred to as "the appellant") filed this appeal against Order- r-Origina. No. 123 unit 24/2010-2011 Bullett 27,05,20 it (hereinafter referred to as "the Impugned order") resistative the Deputy Commissioner, Central Excisa Division, Generalization (hereinafter referred to as "the sanctoning collisinity").

- The brief facts of the case are that the objectival was operating in the 2. present of Kurch, exailing benefits of Notification No. 39/2001-02 dated. 31.07.2001, as amended (received)er releated to as it to said notification'). The said nettreation was emended view Notification No. 16/2008-CE dated. 27.03.2009 and Notification No. 33/2008 CE pages 10.06.2008, which eltered the method of rangulation of refund by taking into consideration of duty payable (4) value addition andertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75% depending upon the commodity. The appellant filed claim of Rs. 48.18,739/4 for month of May, 2007 & June, 2007 for refund of Central Excise Duby, Education Cess and Secondary and Higher Education Cost. paid on manufactural quark through PLA. The sanctioning authority vide the impugned order satisfied Rs. 41,53,8597 ; pertiining to Basic Excise Duly but aid not sanction Rs. 1,62,880/- pertaining to Education Coss and Screedkey & Higher Education Cless on the ground that exemption under the said notification. was available only so Germa. Except Duty or additional excise duty and the said. notification did not cover adaction Coss and Secondary & Higher Foundier CHA. and hence the appellant was not contiled for refund of Crice-ion Cass and Secondary & Higher Education Cess and the excess execute of Rev. 1,62,590/taken by the appellant needs to be reversed and bold by them along with interest.
- 3. Aggreved with the impagned order, the appellant preferred bits appear, with airs on the grounds as under:
- (i) Notification No. 19/2001-CT is squed in Terms of sub-section (1) of Section SA of the Control Proise Art, 18/11 and with sub-section (3) of Section 3 of the Additional Duties of Excise (Boods of Special Importance) Act, 1957 and sub-section (3) of the Additional Duties of Excise (Textiles and Textor Articles). Act, 1976. The said Notification No. 35/2003-CE as amended, exempts excise addy reviable under the Central Excise Act, 1944, additional excise duty knowledge. Additional Duties of Excise (Goods of Special Importance) Add,1957 and

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manufactured and cleared in the specified area for which the wip holification is explicable.

- (ii) As per Sertion 93(3) of the Hinance Act, 2004 simulates that the provisions of the Central Excess Act, 1944 and the rules made them under, including those relating to refunds and exemptions from detics and imposition of panalty shall, as far as may be, apply in relation to the lawy and collection of the Education Cess on excisable goods.
- (iii) The appellant relied on pecisions of the Honfelt CTSTAT in case of Bharatieux Pactory (ii), reported as 2007-1100-1509 CESTAT DEL and Surpharmaceutical Industries apported as 2006-TIOU-1444-CESTAT-DEL witerein the Hotfelt CESTAT held that Education Greatis apprexise duty and relund of excise duty should also include refund of Education Costs.
- (iv) The appellant also relies on following case laws:

Samrat Lerro Albys Std. + 2009-1800-2/5540091A - Dubj

- Cyclis & rfectages Pv., Ltd. 2007-TD0C-1627-CE9TAT-Swineger;
- Denoware Symbox Dtd. 2007-1101-55-410-RVd-Cs.
- 4. This appeal was kept in Call Book due to appeal Red by High department in a similar case in the Bookble Supreme Court against decision of the Bookble High Court of Jammu & Kashmir in case of Bharat Box Factory Llo. reported as 2008 (231) EUL 436 (J&K). The decision of the Hor/bir High Court was approved by the Hor/bir Apex Court and reported as 2017 (355) EUL 481 (50). This appeal was, thus, taken not of Call Book in October, 2018 for passing orders. No nine appeared for Possonal Hearing In the matter.
- A.1 The appellant was given apportunity for personal hearing hull the yip of not avail. Since, the issue is settled by the Hon'ble Apek much as stated above. I proceed to decide this appeal on merits.

Eludings:

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- 5. If have carefully gime formulabilitic facts of the respect to moughed orders, grounds of appear and written as well and sebmissions made by the appearant. The issue to be decided in the present appear is as to weether the appellant is unjible for refund of Education Cess and Secondary & Higher Education Cess under the provisions of Notification No. 39/2001-CE called 31.07.2001 (we amended, or otherwise.
- 6. The appellant contended that to dy of excise includes Education Sess and Securidary & Higher Education Cess in terms of provisions or Sottlen 98 of the

Finance Act, 2004 and Section 138 of the Finance Act, 2007 and horse, the provisions of referred and examplion of the Central Section Act, 1944 are also equally applicable to education Cess and Secondary & Higher Education Cess; that the exemption under Noofication No. 39/2001 UB duted 31,07,2001 is about applicable to Education Cess and Secondary & Higher Education Cess and horses, they are eligible for refund/repreciable Education Cess and Secondary & Higher Education Cess. I find that the appearant, a manufacturing unit vibrates in DISMO of Bullon, availed benefit of exemption under Notification No. 39/2001 CE dated 31.07.2001, as an encore. The said hollikal on is reproduced as under:

"Kildelin (Cuprint)" — Exemplian na exclusata queda l'ulucati thave specified in Annestice) : und desned fram Units in Notal, Listrat of Gajaret

In everyone of the powers conferred by satementian (1) of section (A of the Central Section Act, 1961 (1 of 1961), read with two section (5) of section 3 of the Admitional Daties of Excise (Goods of Section College in Act, 1962 (89 of 1967) and sub-action (3) of section 3 of the Admitional Outlier of Excise Fraction and Femiles Interest Act, 1976 (8) of 1975), the General College in the Excise Fraction and Femiles (6) of the public interest to be do increase exempts the quada specified in the Fract Schedule to the General Excise Table Act, 1965 (8 of 1966) other than given a great sympletic in the sum-attention appeared in this northeather and cleared member and tested to the outlier of the outly of cleared or the admitishment of the college through artifectures of the section of the section of the section of the section of the amount of the outlier of the outlier of goods other than the amount of outly paid by attitudes at CFIVAT feeds under the CENVAT feeds when the Atless 2002 is

Principal that in the case of a soft basing on original value of investment as plant and true filtery matched in the factory below rupees twenty cross on the date of communities of communities production in that with the exception consolers involve that spots only for the fact descended on to an appreciate value not exceeding twice the value or size investment from the order of communities of community productions in the law is given.

- Z_{i} . This exclusions contained in this matters is not the given effect to a tile following manner, namely γ
- (e) The menularizars shall submit a scalament of the duty pain office than the amount of cuty pain by utilization of CENVAT needs which the CENVAT Could Rule, 2001, to the Assaular Country of the large transcription of Central Rules, as the large transcription of Central Rules, as the large transcription is the fill day of the next month in which the duty has been so bein.
- (0) The Artistant Commissioner or Regardy Commissioner of Central Engage, as the case may be after such remindation, as he may open necessary, shall return the emount of duty part of uniformized of FRACT medications for months for months are the months of the such day of the next month.
- (2) If there is Pitaly to be any decay in more well-action, the Aminous Commissions of the Digital Commissions of Capturi harpey as the case may be placed effort the enough on provincial bears by she late day of she next morth to the month under consideration, and Pictuation may argued the amount of refined by entry amount as may be receivery in the addressed refunds admissible to the menulacturer?
- 7. The Boucation Cess was levied vide of Sedions 91 to 93 of Chapter VI of the Finance (No.2) Adj. 2504, with read as invien:
 - *1. Coloration Case. (1) Atthesis aroundles to the provisions of sub-metter (1) of northern 2. Nitro. Well be invited and reflected, to a conference with the provisions of the Original <u>as examplement</u> for purposes of the Dison <u>in case to be called two Scination Cases</u> to fulfill the commitment of the Government to provide and thence universaled supply basis advantage.
 - (L) The Central Covernment may, effective appropriation made by Paylyment by Ianum, the behalf indicate soon some of money of the solution Cess levied mater solutions (L1) at section 2 and two Chapter for the purposes specified in sub-section (L), as it may accepted that water.

- 17. Definition The words and encreasures used in the Chapter and different to the Control Bease Act, 1964 (1 of 1944), the Charlest Act, 1962 (20 of 1962) or Charles Act, the Foundative Act, 1961 (32 of 1963), and have the meanings respectively sudiginal to them in those Acts or Chapter, so the control may be
- 93 Familiary Constant sectional growth (1) The Education Constant problem of the State of Society of Society of the Society of Socie
- (2) The Entertion Case on exclusive queue that he in editions to any other duties of excee charges the on such grack, in the Charles Enter Art. 1961 (1 of 1941) or any other new for the time being in ferce.
- (3) The provisions of the Sentral Labora 7 to 1944 (3 of 1944) and the rates made instrument, including frame relating to returnly and examplians from auties and instrument of penalty shall be for as may be about a relation to the levy and collection of the Separation Costs on explosing groups on they apply in program to the device the kiny and table the order of the device of the first order of growing option line (length group Act, 1944 or the rates of the case may be.)
- - "S26. Satisfiedly and Higher Education 19-4. (1) "William progratice to the provisions of softweething (12) of section 2, there shall be leved and collected, in accordance with the provisions of this Coopies on summings for proposes of the toking a result be called the favorable and Higher Education Coopies to fulfill the commutation of the Government to provide and finance according and higher named for.
 - (2) The Central Government they offer due appropriation made by Partiament by Inw. In this babbil, office, such some of sensely of the Secondary and Higher Education Seastimed under soft-second (12) of section 1 and the Engineer for the purposes specified to the sodion (1) of the purposes.
 - 137. Detroition. The words and expressions used in this Chatter and adfined by the Detroit Excluded by 1964 (1 of 1964), the Contour Fig. 1962 (5.1 of 1964) or Chanter 7 of the Phonon Fig. 1964, 1964 (1.2 of 1964). With those the methodical region (maly energy energy to these includes Arts or Chapter, we the one may be.
 - 2.9). Secondary and Higher Education Cost on exclassic queds. (1) The Resource your Higher Education Cost in Not make iteration (56, at the reset of your), specified in the First father his in the Central Excellent Act, 1985 to at 1985), being queds manufactured or produced, and he is outly of excita (in his each or effected in an inequality stall Higher Education Cost on entire branch at the rate of one per conduction stall distribution of excellent control entire of excellent or other acts of excellent of the entire entire the excellent of the Entire (in 2) Act, 3000 to 3 of 2000 and (incomplete acts of the Education Cost of Entire (in the Education of Entire (in the Education of Entire in the Education of Education
 - 77. The Ecconder's and Higher Harmiton first on exclosion, goods shall be in sufficiently, any other states of excess discretizate on such quarty under the Central Excess for, 1966 (1) of 1966 for any subset out for the tions bother in door and the Harmiton Greek chargeable under section 63 of the Improe (No. 2) Act, 2004 (23 of 2044).
 - (3) The provisions of the Central Ender Art. 1941 of 1969 and the date thereforeer, including throse relating to refunds and exemptions from duties and Expendition of possibly state, as the as may be, apply a realism to the fact any and extension of the beconders and higher Education Gets on example greate as they apply at relation to the fact and collection of the duties of extens on such gapes under the Central Exclusion Act, 1944 (1 of 1944) or the rules made thereumier, as the one may be.
- $7.2\,$ Thus, the Education Coss and Secondary & Higher Donalion Casa were in

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nature of surpliange and were levied under Section 91 of the Finance (No. 2) Adjugged and Section 130 of the Sinance Act. 2007 respectively as duty of caces all the rate of 2% and 1% respectively to be calculated on the aggregate of all dudes of excise, which are levied and collected by the Central Government. The provisions of the Actions the rules made theraunder, including those relating to refunds and exemptions from quites and imposition of panalty were made applicable to the levy and collection of the Education Gos and Secondary will digited Education Cess on excisable goods as they apply in relation to the levy and sollection such solds under the Act.

7.3 If find that Notification No. 39/2001-CB cated 31.07.2003 and granted bital (100%) excliption from levy of excise duty by way of refundanceeds of excise buty. Education Coss and Secondary and Higher Education Cless were revised on excise duty and when the levy of excise duty itself was exempted by way of refund/hedrecil, then the Education Cess and Secondary and Higher Education Cess as a got exempted hereby. In absorber of Cechra Excise only, the purelion of levy of any subharge on uses or whotever name as Good thereupon would not urise. CBSC vide Letter F. No. 045/2/2004 (RI/PL) dated 10.06,2004 also derified that Education Cess is part of excise buty, the relevant bortion is as under:

"Letter A. No. 359/2/3009 TOU (Tt.) Institut (S.R. 2004

The underlygned is directed to state that subsequent to Endget, 2004 announcement, a substitut of mynithmical light-lefterence, in the pecifical direction of experiences pecifically references. He held formation the pecific pecific and and an experience pecific growth and an experience of the policy carried and the configuration thereon are at follows.

Fosce No. (2) : Whether Education Cost on instruction grows is tradable on gapenmanufactures actor to historical content of the engine type of year cases.

Charlement i Education Cess on Exceptive gappe to a more large in similar range. A line specification bold by the Eugenesia Charle Not 10 large in the almost on the time the goods are instrument in copyring et in Implic, a common be leaved at the stage of common of the said gappin. Thus, Education Care is not leviable on excitable conds manufactured prior to imposition of area with closured affect by making of and cooks.

Here No. (x). Vinetter games that are fully introduced large suring chipy furthers dely or the Charlest indition payment of entire dely/sustaines dely (such as degreened under sand or followed of verteen conditional would be subjected to form.

Onlike after a <u>Title Education Case or language of the rate</u> of t<u>itle</u> per control for expendent of all educations of engagements of the expendent of the exp

Essue No. (7) . Whiches you'll like abstrale tenorages, that you're fell under the Control Essue Traff in 2006-101 to the pert of Thomas the an exclusive points for part of This, when they are important in the pert

Charleston: At the Editorian Cess on exceptive going is levelue on godes specified in the Prot sandare to the Central Drase Tariff Act, godes fire attained on not suppose to the sold Cost.

Issue $Re_{i}(\theta)$: Whether distinguished within within an extension as duty of exclanguations on the applicable of but by a Department when their Department of Regional Department of Regional Department of Regional Department of the Regional Department of the Regional Department of the Regional Department of the Regional Department Department of the Regional Department Department of the Regional Department of the Regional Department of the Regional Department of the Regional Department Department of the Regional Department of

Electrophics : As the Parentian Descript education on the prepaying district of a engagement of the control of

(Emphasis supplied).

That since Education Coss and Secondary & Pigher Education Cess were levied and collected as percentage of service tux, no Education Cess which Secondary & Higher Education Cess would be payable, when and wherever service tux is of by virtue of exemption. The said directlar was issued in context of service tax matter but the principle was eccepted therein by the Board and hence would apply in the longers (see also. Circular No. 134/3/2011/ST called 08.04.2011 is reproduced as under:

"Endgen: Listication Cess and Secondary and Higher Education Com - Reg.

Acordonatetions have meen anotherd from the rick formalisms, symboly plants along the Republic III applicability of service the exemption to Education Cess prefers to both Education Cess prefers to both Education Cess in table under France (No. 1) Act, 2004 and Secondary and elegant Filliation Cess involved under France 4ct. 2004 (under replacement where twitted of service said stands exempted. Apparently the doubt where in the control of Tringgal's Centre in the matter of Mix Relayable Nicos (at v. 100, Cestons and Service Lan BESR 1 (2010-1100-1504-113) (Acts) = 2010 (20) S.T.F. 508 (Tringgal).

- 7. The name has been exemined. Though thousands Order reference whose is to face of resemble. A 15 inconsistent with the policy whenlier of the Government is exempted but within a section and in which every local there whole of source has struck everyold. According to region \$1(1) of Finance (No. 3) Any 2504 and section \$1(4) of Finance Act. 2507, Education Cost and Finance (No. 3) Any they was transfer form on building and trained as everyold the same applicant and when a mole of source has a veryold the same applicant education costs as well filter Finance tests of length and colorated as proceeding of source for which and otherwise senses tests this by tomat of coloration between between senses tests this by tomat of coloration between between senses tests this by tomat of coloration between between senses tests this by tomat of coloration.
- 2. This holing the principle, field increasing and alreaded not to hillion proceedings to percent the education case, among families of which for sound, exampled under the notification. Extending the sound proceeds, where according to the hear refunded to difficulties where which are to written of exception modifications where where of section has been consisted in the sound of sections are to be sectional."
- 7.5 In view of acove, Dilucid on Goss and Secondary & Higher Distriction Cossivere part of the Centre. Excise duty and since the central excess duty was itself 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 final order of the Hanfele Septemb Court in the mass of SRD Nutrients Pvt. Ltd. reported as 2017 (355) ELT 481 (SC), wherein it has been held that:
 - *20. Our expect that denote emerges from the reading of these term our own is that the consistency is that the converted that the position that subject which of events duty or Service Tax is exception, that the many time are self-ar therefore and Higher Energian Consistency for the position. They are contain one beginning on the Department.
 - The Fixen ofference, we are or the opinion that it is more tarbanic to version the ininference position as clarified by the Ministry of Finance St. Inc. Ministry of the

Education Cere is on eacher the μ . It means that those assesses who are remited to may axiona dury have to shell out Education Cent by Self. This Followition Cast is introduced By SAURAS OF M. 93 of the Engage Mile. 2) ALL 2004, As you find the Milestell Education deux is the purcharge width the reservoir to be pay. Socioto to makes a clear (the may Return to the in proposition in the expectable pages) for the property of the grown specifical. in the first schedule to the Cennel Fig. in: This fact, 1985, Further, the Education Cash in ω by leviet is 25% and coindated on the appreciate of all divides of exists which are iarned and collected by the Central Congruenced under the providers or Central Lines. Arry, 1944 or under any other two for the time being in Asiae, (althoughly) (5) of Station. 93 provides that the provincial of the Countil Exists Act, 1964 and the roles were Opening light, including those control to related and dates, etc., shall at far at 1907 beapplica in calculation to very and collection of Calcothia. Give the Collection gradult is agailing of these providence visuals among gamenutade that Education Qen in th summerce, in lensed on 2% on the divises of govern which are payable under the Act, as and humature, he comey transpot that when there is no excise they benefit, or it is <u>erremental. Diene vandid not die eine Edingsj</u>og (Chik die Wall, Nobelsich an Education <u>Liebe</u> ල් මති හි fo he calculated on th<u>e pagements of culture of exceler, there camp</u>e, he my <u>sambense viden beskribns fiself is fli</u>tt.

24. If or the elemental resonar, we also these access and toki that the appellant where multima na sufunci ali Educazioni Cres anci Higher Educationi Cres evaca ego pela giona. with exceed outly once the exceed data need was exempted from levy. There shall, marketikos sa no osatoras ne cari. 1

(Emphasis supplied).

- Я. In were of the above facts and legal position, I hold that the appellant is eligible for refund of Rs. 1.02,680/Lof Education Cess and Secondary & Higher Education Cess. Accordingly, I allow the appear filed by the appellant and set as de the impugned order to this extent.
- अमीलकर्ता द्यारा दल की गई अमील का निषट्य उपरोक्त त्वीक से किया जाला है।
- 9, The appeal filed by the appeliant stands disposed off in above terms,

Ography Wishman

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अञ्चल (अपील्या)

By Road, Post AD.

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M/A. Txus: Stop Cure Limited. 205- मि, एक्सेल क्रॉप केर औ_{र,} **205-209**, कुल-209. Shuj Mundre Road, Gajos, Near Kord Village, Bhuj - Kutorih, Pir Code - मुंदरा रोड, शाओध, केरा गाँव के पास, गुज -कारका, जिल्लाहरू - अस्य ४३०,

Copy Ide

- 1; The Chief Commissioner, COSI & Central Excist, Ahmedabad Zone, Ahmedabad for his kind information blease.
- The Commissioner, CCSC & Central Bodse, Kultin Commissioneralls, i Gandaideam for necessary action.
- 3) The Assistant Commissioner, CCST & Central Excise, Division-Rhej, Co. กับเวลาอากระธรรมหมายตะเรา...

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