

্ষ্যাল্য (১ %-) ব্যাহারক লক্ষ্যাল্য করে ও প্রায় করার ভাষত পুষ্ঠাল тик и тип термени кинишен автем нед ком поли бласафы в 9070 в. .

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18.12.2018

कार करने की सामित*े* 

19.52.2016

Date of Online

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हुंगार/संक्षेत्र, प्रथ⊕्यरीच हु जबकोट हार-पर्याच र

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कर प्राप्त : प्राप्त अवस्थ प्राप्त । कृतक प्राप्त करोड कराव अस्त । प्राप्त कराव : क्षाप्तिक क्षाप्त कराव का अधिक  $a \sim 3.45 \pm 1.51 \times$ 

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ાં કરવામાં કુમ્યુકાંથા માં કુમ્યુકોમાં કું પાસીકા કરવા કું તે મના ભારત અને વાર્યા કર્યો કે તો પણ અને પાસ કર્યા ત્રુપાલ કર્યા કુમાં ત્રુપાલ કે પાસ કું ı.

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্যান্ত্ৰিক আন্তিন্ত্ৰিক আন্তিন্ত্ৰিক কৰিছিল। আনহাত্ৰিক বিষয়ে কৈ বিষয়ে স্থানিক কৰিছিল। আনহাত্ৰিক বিষয়ে বিষয়ে কৰিছিল কৰিছিল। এই বিষয়ে বিশ্বস্থানিক কৰিছিল। এই আনহাত্ৰিক কৰিছিল আহ্বাহ্যাক কৰিছিল। আনহাত্ৰিক ব্যৱস্থানিক কৰিছিল। এই বিষয়ে বিষয়ে বিষয়ে কৰিছিল। এই বিষয়ে বিষয়ে বিষয়ে কৰিছিল। এই বিষয়ে বিষয়ে আনহাত্ৰিক কৰিছিল। এই বিষয়ে in will display the first the latter than the first section of the section of the latter of the first section of t

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- भारत करण करणाल भूगा कर करणाला का भाग भी शांत्र भागाता करणाक केलाव (तात्र केलाव) के तो बाहर हैं। है स १८६१ में १९७१ में १९७१ के अपने का अपने १९७४ में १९०४ में १९०४ में स्वाप्त करणा करणा का स्वाप्त करणा कि हैं। १८६१ में १९७१ में १९७१ में १९७४ में १९७४ में १९०४ में enderenden er vertreiten moter vort, er i kritiken opgivingstyde tale prodeste upforette profitiges op doer die Pille vertreit geging die Pille te popper in die vorteile erent Azzona en op dang der uitgebruik bezeichte die Anglich in der geging der die State (1988).
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- ে প্ৰায়ৰ কৰিছে কৰাৰ কৰাৰ কৰিছে। কিছে ব্যৱস্থা কৰিছে (August August Au
- क कार र अनुसर काम का post में अंदर र अन्तरी है किया की वर्ग किया कि के स्वार Security regards in the constraint of the constr

## <u>ORDER IN APPEAL SE</u>

M/s. Ajanta Manafacturing Ettl., Orpat Nager, 8A - National Highway, Milage – Vandalya, Poet – Samakhiyari, Noor Surajbari Bridge, Taluka - Brachau i (herginafter referred to as "the appelant") filed prosent appeal against Order-In-Original No. 52/2010~11~ dated 10.08J7010~ (fieldinester referred to as fifted Impugned order") passed by the Deputy Commissionar, Control Excise Division, Sandhidham (herdinafter referred to as "the senctioning authority").

The Intelligible is the case are that the appellant was operating in the District of Kultip, availing benefits of Nationalton No. 39/2002-2E dated. 31,07,2001, as amended (hereinafter referred to as "the said notification"). The said notrication was amended vide Notification No. 15/2008 CE dated. 27.03.2008 and Notification No. 33/2008-CD dated 10.05.2008, which attered the method of relocalition of refund by taking into consideration of outy havetie on value addition undertaken in the manufacturing process, by fixing percentage of refund ranging from 15% to 75%, sepending upon the commodity. The appellanti filed dalms for returns of Central Excise Duty, Equiption Cess and Secondary & Higher Faloxiation Georgia the groups of Jury, 2007 to March, 2008, The refunddaims were partially rejected by the Assistant Commissioner of Central Excise, Shuf Vida various refund orders and a lowed reliand of 5% and rejected halarine. refund thirm of 8%. The appellant filled appeals against the said refund orders purfore the Commissionar (Appeals). Rajkot and the Commissioner (Appeals), Karket vice OLA No. 55 to 57/2006/CCMMR/A)/RAC dated 07:03:2006 and OJA. No. 155 to 160/2008/000MMR(A)/RAD dated 27.06.2008 upheid the said refund. orders. The appellant filed appeals against the raid CIAs before the CESTAT. Anmedacad, which wide Order No. A/1556-1856/WZB/AHC/2009 cated 10.05.2009 and Order No. A/2318 2324/WZB/AHD/2009 cased 06.11.2009 remainstration matter. The sanctioning authority vide the impugned order. sanctioned differential refund dialing of its, 4,59,35,571/- but did not senction. amount of Rs. 1,33,76,342/- by holding that the exemption was not admissible. an new products i.e. Telephone Passy Calculator Parks, E-Bike and Alcorinium இதிக்கிற Composite Panets as the safe products manufactured by new plant and machineties installed after 31.12.2005 and also did not sanction Rs. 54,10,610/pertaining to Education Cess and Secondary & Higher Education Cess on the ground that exemption under the said notification was available only to Central. Excise Dury or additional excise duty and the sale notification aid not seven Equilation Cost and Secondary & Higher Education Cost and the appellant was

non contrated for returne of Education Casa and Secondary & Higher Education. Casa.

- 3. Aggreed with the impugned order, the appealant pretented the appeal, intervalla, or the grounds as under:
- They had setup taddity to manufacture different kind of electronic products before 31.17.2005, which was not disputed. The perial was done stating that products were manufactured after 31.12.2005 hence not admissible for refund. The appellant argued that they were origible for refund of Rs. 37.26,3247 or products, namely, Telephone Parts. Calculator Parts and Hanging Lamp even if they manufactured after 31.12.2005, the said products were manufactured using machineries installed before 31.12.2005. The appellant relied upon case law of Maena Abendes reported as 2010 (749) ELT 114 (Tf., And), which granted benefit to the products manufactured by the same machineries installed earlier.
- (II) Denia of benefit of exemption of Rs. 96,40.0187- for products 6-8 kes and Attrinium Composite. Panels intendeduced after 31.12.2005 by use of machineries installed after 31.12.2005 by the appearant is not proper. The denial bases on D. O. Letter No. 9/11-37/CCC/Aud 5/2004 pater 15.11.2006 issued by the Office of the Chief Commissioner, Central Exclae, Annedacad is not proper. The sanctioning authority inisinterpreted the D. O. Letter dated 17.10.2001 of Joint Secretary (TRO) which clarified the position based on Investments for the units when the exemption is granted based on value i.e. units which have not invested 20. Crores or above. Thus, the entire solvid of Kucch exemption notification has been studied and extra concident imposed by the said D. O. Letter not justified.
- (iii) The Kutch perkage has a unique condition of investment in plant and machinery and exemption was pased on the pasts of investment and not on the bank of products or expansion or removation as per the first park of the path of the
- (iv) Cut-off date mentioned under para 3 of the notification, which provides that unit must be a new unit and established after issue of the hothication. To make the condition more stringent, the rule makers made it mandatory to take certificate from the office of the Chief Commissioner that the unit is a new unset. The instification nowhere mentioned that exemption will be available to those items only and not the whole unit. The Kutch package makes it abundantly dear that it is applicable to the registered premises and the whole unit and not hother

part of the unit i.e. a particular area.

- (v) The notification indicates that there is no ban in manufolduring a new product over when 31.12.2005 and certying the benefit of exemption to such new products manufactured when \$1.12.2005 is not justified. It is settled law that exemption notifications are to be stoctly consciued and it is impermissible to odd words to a polification. The appellant reletion case laws reported as 2004 (165) ELT 481 (SC) in case of Aukman, Pakkwell Traders; reported as 2005 (181) ELT 154 (SC) in case of Sunder Stees Ltd. and reported as 1983 (33) ELT 1299 (Try, Ltt) in case of Canara Workshop Ltd.
- (vi)—The benefits of the said notification are available to the unit and not only to the products manufactured by the unit as all conditions faid down in the said notification are in respect of a unit. The appearant placed reliance or ratio of the decision of the Homble (ribunal in case of Sunfag Iron & Sleet Co. reported as 2006 (202) SLT 383 (Tr. Mambel) wherein it is held that the benefit of the exemption hot floation was given out the manufacturer and not quo the goods.
- (vii) The appellant relied upon decision of the Han'dle Supreme Court in case of Indian Tehacop Association reported as 2005 (187) ELT 162 (SC) wherein it is nekl that an exemption notification must be construed with regard to object and purpose of Kutch notification was leverall development of Kutch idistrict by attracting investments and industries thereby generating employment and helping in achieving self-sestenance of the population. Adopting a stand that would darry exemption would be contiany to the public interest and would defeat the very purpose of the Kutch notification.
- (viii) The exemption granted under the notification is to the unit and hot like products. The appellant relied upon Croular No. 354/173/2000-TRU (lated 19.12.2002) Under Para 5, it is provided that exemption is given to the unity/Carlony and not to warehouse.
- (ix) The Impugned order is required to the set aside (in the ground of gross violation of principles of natural postico in as much as prior to the passing of the order relating to deduction of Rs. 54,10,910/ towards Education Cess and Securious 8. Higher Education Cess as neither show cause notice non opticituality of personal hearing was given.
- (x) Education Cass, being an excise aboy is refundable as all fourly invahing under the  $Act^*$  is refundable upper Nobijoshop No. 39/2001-CE which refers to

noutly reviable under the Act<sup>3</sup>. The examption under the notification is granted to the extent of duty leviable under the Act and which has been paid office that by way of utilization of convet credit. Thus, actual duty of excise leviable and paid under the Action products is refundable.

- (a) The distinction between excise duly and Education Cess and Secondary 8, Higher Education Cess and Secondary 8 Higher Education Cess are extise duty for all purposes including exemption. Under Scillion 93 (1) of Bhance Bu, 2004, it has been categorically mentioned that Education Cess and Secondary & Pigher Education Cess shall be treated as 'duty of excise', as defined under Rule 2(4) of Contral Excise pulses, 2002 read with Section 3(1) of Central Excise Act, 1944.
- (kii) Under Section 93 (3) of Finance Bill, 2004, it has been specifically field that the provisions of the Central Excise Act, 1944 and the rules made there under, including those reading to refunds and exemption from duties and imposition pensity shall apply in relation to the levy and collection of the foliastion Cess on excisable goods as they sophy in relation to the levy and collected of the dutien of excise on such goods under the Central Excise Act. 1944 or the rules, in short, the provisions of Central Excise Act, 1944 and rules made there under are applicable to Education Cess and Secondary & Eigher Education Cess also.
- (an) The appellant relied upon Board's Choular No. 249/1/2006-CX 4 dated 27.10,2008, wherein Para 3.2(h) states that definition of "duty of excise" given under Hinanco Bio, 7001 gets automatically transformed into Central Excise Act, 1944 and Central Excise Rules, 2057 by virtue of principle of "boardwed act". It is not in dispute that Notification No. 39/7001-CE cated 31.07.2001 grants exemption to routy of excise and hence, Education Cess of all Soil is also refundable and not disallowable on any ground whatspever.
- Notification No. 39/2001-CE does not include Education Coss and Scrondary & Higher Education Coss, is accepted, their question is bound to arise as to whether Education Coss and Secondary & Higher Education Coss and Secondary & Higher Education Coss can be recovered under Section 11A of Central Excise Act. 1944. Section 11A of Central Excise Act. 1944. Section 11A of excise enamedusity refunded. Education Cess and Secondary & Higher Education Cess being outside the purview of definition of 'duty of excise' as

per stand of the department, general of recovery of Education Cass and Secondary & Higher Education Cess errondously refunded cannot be made. under Section 11A of the Central Exase Act, 1944, which empowers their department is recover duty of excise referred to under Section 3 of Central, Excise Act, 1944. In light of adove, show cause notice to be set aside.

- (xx) the appellant relied upon following case laws:
  - Bharat Box Factory Etcl. = 2007 (214) FtT 554 (Trial | D254);
  - Bharet Box Factroy Etd. 2889 (201) LLT 410 (; 3, 4);;
    - Parlice Spring per Luit 1, 2009 (255) FLT 215 (50);
  - . A.A. Agre industries that  $-2000~(200)~{\rm LL}_{\odot}~55~(1r) + {\rm Kokasa});$ Sarabhal Chemicals - 1993 (59) FLT 77 (Triaunal).
- This appeal was kept in Call Book due to appeal field by the 3.1 department in the Harrisle Supreme Court against discision of the Portble. Plot Court of Jammu & Kashmir In case of Bharat Bax Factory Ltd., reported. as 2008 (201) FLT 41S (JRK). The pecision of the Ponthle High Court were approved by the Hoalti's Apox Court and reported as  $2017~(355)~\mathrm{BLT}~481$ . (50). This appeal was, thus, taken out of Call Book in September, 2018 for passing orders.
- Personal hearing in the matter was advended by S/Seri Maherdra B. Joshi, i Excise inerarge and Ishan Bhatt, Advocate, who repureted the grounds of adjical and submitted that returns of Rs. 54,10,810/- of Education Cess and Sacondary & Higher Education Cess is required to be paid to them in view of the Horibe. Supporte Court's order in the case of SRD Numberts Pet, 11c, as they have not taken re-credit; that they don't press for refund of Rs. 96.40,016/- in view of juggements against tham but refund of Rs. 37.36,324% is payable to them in Mew of judgement of the Honicle High Court of Gujarat in the case of Plastonal Incla Ltd. reported as 2014 (3L4) ELT 14 (Guj.) – Para 5.2 and CBEC Circular No.: 110/21/2006-CX.3 dated 10.07.2008. The acpellant vice refler dated 31.10.2015. submitted a copy of this Grouler.
- No one appeared from department despite PH potices served to the Commissionerate...

## Hijdings:

- I have carefully gone through the facts of the case, the impugned order, the grounds of appeal and written as well are automissions made by the appealant. The issues to be decided in the present appeal are
- whether the appellarm is digiale for refund of cerew excise only for products. via, Telephone Parts, Calculator Parts and Hanging camp manufactured after. 31.12.2005 by the plant and machinenes already installed before 31.12.2005;

 $\prod_{i=1}^{n} (1/\sqrt{n}) \int_{\mathbb{R}^n} \int_{\mathbb{R}^n} dx \, dx \, dx = 0$ 

- (ii) whether the appellant is eligible for refund of central excise outy for new products via. Rike (Chadridgly operated (wo wheeler) and Aluminium Composite (fanal (Shept) manufactured after 31.12.2003 by new plant and machineres installed effect 33.12.2005:
- (iii) whether the appeliant is oligible for refund of Education Cess and Secondary 8. Higher Education Cess under the provisions of Notification No. 39/2001-0E dated 31.07.2001 as amended.
- ű. The appellant was having facility to manufacture different types of electronic goods before 31.12.2005 and it is not disputed. The senctioning authority denied refund claim of Rs. 1.33.76.347/- on the pround that "Asregards the amount of duty paid on new products up, the products producted from the macrineries installed after 31.12.2005, the same is not eligible in the Nort of clarification issued by the Board indefector dated 10.07.2003, hence the some is tiable to be rejerted. Hence the amount of Rs. 1.23,76,347/- obtained by the assessor on distrance on new products for TELFPHONE PARTS. CALCULATOR PARTS. ALUMINIUM COMPOSITE MARNIELS & E BIKE IS refected " The appellant submitted that refund claim of Rs. 1,33,76,342/- involved (i). refund of central excise only of Rs. 37,38,124/- no encourts of Telephonic Parts, Calculates Parts and Hanging Samp which were manufactured after 31,12,2005. by use of machineries installed before 31.12.2005 and (.) retund of central. excise duty of Rs. 56,40,018/- on new products i.e. E-Bikes and A'umin)um Composite Panels which were manufactured after 31.12.2005 by use of new gradningries installed after 3td 2.7005.
- 6.1 The appollant contended that Kollification No. 33/2001-C.E. nowhere specifies that the products manufactured from the newly installed plant and machinetes after cat-off date i.e. 31.12.2005 is not eligible for banefit of area pagic examplion. They further contended that the clarifications issued by the CBEC yidd D.C. F. No. 353/2/2001-TRU dated 17.10.2001 and letter F. No. 337/37/7056-TRU dated 25.04.2006 are not approacle in this matter.
- 6.2 [find that this issue has already been properly discussed by the Homble CESTAT, Amendian adding the case of Rahmani Metals and Tubes Ltd. reported as 2012 (276) ELT 230 (Tri. Africal), in which providers of Notification No. 29/2001-CE has been discussed and it is half that:

<sup>13.</sup> Appendicularly completency promissions made by acts the aldes, we find that installs no abspure about the fact tried the goods, in research of vilials reduced search denied by lower without search manufactured with the machinery installed after 31-12-55. The capturation, in question, is available in respect of macafacturing units, which has made the investments and scarted trees production before \$1-12-55. As such, if such become, analysis and the research of the following and these units is the Kulch.

area, wherein the investment was complete by \$1-12-05. The Countle of the mild reptilization in long-wide medication to the appellant in corporation the goods measurable with the plant and meatimest materials provide sent the sent thin.

- 7. The question which arrive is as to whether subargorist organishs of the unit by installing new neighbor after 21-17-05 would get covered by the said notification of the sand-finite organism of the sand-finite organism of the appellant have remained a second factory of the said area for manufacture of the goods. If the mediancy, installed a second factory which same include, would have been factored in a repeater receive, the tenefit of the notification was solutionally not available to the appellant. As solve, hereby because the second take mill story installed to the covered take mill story installed to the appellant, as solved as entire appearing the arrangeton, would not result in grant of evenyment to the very not turn this.
- It is seen if we see! Topy the conditions of the notifications, it is sleanly mentioned that the horith of notification would be available in respect of those units which have been folly complete prior to 31-12-35 and has worthed their properties prior to the each date. There is notificate in the sale notification as regards extension of the sale date of 31-12-35 in respect of the subsequent instance of pand and machinery. As notify contended by learned SDR, when the notifications are suppositely and meanly by down the coupling, the engine of the same content to extended by referring to the legislables made back nobligations are required to be interpreted to accompanies with the words of the notification.

3. Liver if we go by the legislative interval his same becomes them the venture characters and mathematics taken by the Sovenspeed. The TRO letter F. An. SSS/REGISTATION, found 17-10 of intervals to the Color Communication of Consums. Mathematical scientific characters are desirable supports the Revenue's case. For mathematical approximation, we reproduce the electrostics on usual like  $^{1/2}$ :

Banus in binds	Maw of Chief Commissioner, Customs	Seguna decidan
H. Adventur any extra formation of exemption in terms of the provision to the true para to to be given for the solution any subsequent the against of the unit.	E.C. Low, Verticlere The reference in the Mottlemon being only to the Conglinal matter at the conglinal matter and production of communical production subsequence investment should be ignosed.	We agree The Internor than to keep the operation of the scheme smoke. Giving Pancole of scheeping to meeting the scheme, the acentror of pencits available the point available to point available the point available to point available the point available to point

10. Reference may be made to Circuits that LID/LIDIS/LIDIS/LIDIS/LIDIS detect 16-7-08. The solutions and arouter densitying the leave 6.82 billion. .  $\frac{1}{2000}$   $\frac{1}{$ 

Proper that s=s difference that incredit at around the excellence good operations that the code section approximation of the code of cases for the converse of commercial production for 22-23-2005.

Commons : There would be two situations. First is first among a unit introduces a new product by natality fresh plant, markithary or capital gradu effect the cut off claim in such a situation, exempsion would not be available to this new product. The said new product would be cleared on payment of duty, as applicable, and separate records would be required to be a maintained to debuguish products of himse products which ere eligible for examption.

The other shappen is the one where a mill shall protecting some products (after the cot off shap unity the plant and macrinary installed upto the cot off shap and without any eddeen to the plant and macrinary for example, in these of plants arounded products a unit may commence the production of different products shaply by charging the would and also. In that after, the unit would be eligible for the ferrell of thethersion because the plant and macrinery over libr manufacture, has remained the segme. In this committee, it is further characteristic that propose of computing the arguest value of plant and machinery metabled on the date of commencement of commenced product only and be considered."

11. Amountally the confliction because by the self-letter reflects room. For highlighter meen, that the benefit make the sold northwises is intended to be restricted this in show units, which have started commenced proparation or before 22-12-05 and the benefit temporal to contact the benefit temporal to contact and

machinery. To the similar effect is profiter within written by 1821 on 25th April 2000 addressed to the Secretary General, Federation of Engineering Physics, artificities that the holitorian end of the available to those new industrial units, which commences commercial professional effection effect 32-12-05.

In so much as the appellent had admittedly natiated a new second rule will after \$2-\$2-\$65, though in the some findage, which was earlier enjoying the mampion, we are or new that the benefic of the notification would not be available to the specifical in 55 and his the object of the notification was to imply investors for premation at the substances and to complete and it investments before 30-12-05. Allowing of enemption in respect of subsequent instalments of plans and mechanism would defeat the very purpose of assence of the notification and the legislative highly.

- 12. In view of the above, the applied are repetible?
- After issuance of the seid notificetion, the d'artifications dated 17,10,2001; dated 10.07.2008 and dated 25.04.2000 darried that the intendor was to keep the operation of the scheme simple; that penefit of subsequent investments. would not clink complicate the scheme, the quantum of penefit available to a unit. would also keep changing that beneft of Natification No. 39/2001-CE would only be applicable to those new industrial units, which commisses commercial. production before \$1.12,2005. In other words, if a new industrial unit is installed. after 31,12,2005 and commence commercial production after 31,12,2005, then with inqualifial unit is/was not be ellottle to avail exemption under the said. notification. Similarly, if the commercial production of a particular kind of specified abods had not commonced before 31,12,2005, then the benefit of the said notification is/was not available to such coods. It is also de/fied that if any unit introduced a new product by installing fresh plant, machinery or capital. cripds after the cut-officiale, then exemption would not be available to that new i product and the same would be diegred on payment of ducy, as applicable, and sygnate records would be required to be maintained to distinguish production of these products from the products, which were sligible for exemption. These clanifications are issued on Notification No. 39/2001 (Central Excise date). 31.07.2001 and are to be narmoniously road with the provisions of the said. notification only.
- 6.4 In view of the above, I do not find force in the argument of the appellant final They were/are eligible for refund of Rs. 37,26,3247- on the products Thephone Parts, Calculator Parts and Hanging Lamb manufactured after \$1.12,2005 by use of plant and machinery installed before \$1.12,2005.
- 6.5 I find that the appellent was declared in Announe 57/Form R/Application for Refunciof Excise Cuty that they were not eligible for exemption under Notification No. 39/2001-CE for new products viz. 84c (Electrically operated two-wheeler) and Aleminium Composite Pane (Sheet) and their Chim was confined to only those products which were eligible for exemption under

Notification No. 39/2001-CE. I further fine that the appellant agreed at the time of personal hearing that "they don't press for refund of Rs. 96,40,038/- in Wext of Judgessetts against the of Accordingly, I hold that the appellant is anti-eigible for refund of new products viz. E-Bike (Electrically operated two wheeler) and Aluminium Composite Panel (Sheet) manufactured after 31.12.2005 with the help of machineries installed after 31.12.2005.

A. The appallant contented that 'autor of excise' includes Education Cass and Secondary & Higher Education Cess in terms of provisions of Section 93 of the Finance Act, 2004 and Section 138 of the Finance Act, 2007 and hence, that providions of refund and exemption of the Central Excise Act, 1944 are also equally applicable to Education Cess and Secondary & Higher Education Cess; that the exemption under Notification No. 39/2001-CE deads 31,07,2001 is also applicable to Foundtion Cess and Secondary & Higher Soundton Cess and hence, they are cliquate for refund/repredict of Education Cess and Secondary & Higher Education Cess. I find that the appellant, a manufacturing unit squabod in District of Kuton, availed benefit of exemption under Notification No. 39/2001-CE dated 31,07,2001, as amended. The said notification is reproduced as under:

Note the (Superation Linear terms of the expectation of the expectati

In consider of the powers conformed by our scatter (1) of section 5A of the Contral Scalar Act, 1946 (2 of 1944), read with sub-vection (3) of section 3 of the Additional Outlier of Excise (Goods of Special Importance) Act, 1957 (56 of 1957) and sub-vection (3) of section 3 of the Additional Englanding Fourth (50 of 1978), the Contral Government being setished that it is necessary in the public interest so to dit, hereby exempts the youds specified in the First Schooling to the Contral Englanding Todds Act, 1998 (8 of 1986), other shan quods specified in the Innovine expended to this reality of except and theorem who describe the substitute of the additional duty of except, as the one may be, terhible therefore under any or the sold Acts as its equivalent to the amount of duty part by officially of FINAT contractions of goods other their the amount of duty part by officially of FINAT contractions the Children Contractions, 2007.

Provided that in the case of a unit harma an addinal value of investment in clant and inactionary mathigs in the Dictory below replace twenty of the continuous factor of commencement of commencement of commencement also below the first class up to an against to take not exceeding trace the value or such investment from the date of commencement of commercial employees, in Colory on.

- The exemption contained in this notification shall be given effect to in the following manner, namely >
- (a) The magnification shall suppose a segment of the constraint character than the substant of duty paid by utilization of CLINAs create under the CLINAs Create Kules; 2001, to the Assistant County-shallow up the Deputy Countries when of County Exclusives as the createsty the by the 7th day of the next month is which the duty has been so paid.
- (b) The Assistant Commissions in Deputy Commissions of Control Ended, as the case they be, after each vertication, as he may deem necessary, shall related the arrangly of duty paid street than the amount of duty paid by university of CENVII credit during the material wides continued for the material transfer by the 18th day of the new month.

- (c) If there is thely so the any delay is such weatherfore, the Assistant Commissioner of the Deputy Commissioner of Central Excess, as the case may be, shall refund the amount on provisional basis by the 15th day of the major month to the month moder consideration, and shortalites may adjust the amount of refund by such amount as may be necessary in the full species of the majority of the major
- 7.1 The Education Coss was levied vide of Sections 91 to 93 of Chapter VI of the Finance (No.2) Act, 2004, which read as under:
  - "98. Education Cere. (1) Alchool prejudice to the provisions of sub-tection (11) of section 3, there while he kneed and collected, in accompance with the emissions of this Chapter <u>as succiouse</u> for purposes of the union, a cere in the collection <u>Firstlint Cost,</u> to both the commitment of the Bayeriment is provide and finance universalise quality businessions.
  - (2) The Gentral Guerospiera may, when the appropriation medicity forteness by and inthis behalf, bollies, such number of money of the Education Gent levied under sub-section (31) of section 2 and the Chapter for the purposes specified in sub-section (1), as it may consider necessary.
  - 92. Denomics. The words and expressions used in this Chapter and defined in the Cooksi Exclusives. The words and expressions Act, 1962 (53 of 1967) or Chapter V of the Forence Act, 1964 (32 of 1964), shall have the meanings respectively earlying the three billions Acts or Chapter, as the case may be.
  - 93. Equation Gree on mediable goods: (1) The Equation Gree levied under cardian <u>93. In the case of copyle resplicit</u> in the first Whiches to the Centry) Entire <u>Tentil Att.</u> 1985 (5 of 1995), being goods manufactured at produced, shall be a puty of excise (1) this section referred to as the Education Geos on Artist Playing St. The 1996 of the 1996 of the particular of excise and underline popular duty or escape or any plant they of entry the particular Solution Gree on excitation greats) which he have the central covernment of the (Artistry of Energy Department of Economic, under the provisions of the Central Excise Act. 1991 (1 of 1991) or under any other has for the one through force.
  - (2) The Standard Cess on embedde goods shall be in midlion to any other choice of exact amengeaths on such goods, under the Central Excelledia, 1946 (1 of 1946) or envisional too for the little policy in force.
  - (3) The provisions of the Contago Factor Act, 1946 (1 of 1916) and the spice mode treasurates, recluding those releighes to residuals and exemplates from shapes and registration of periods shall be for as may be, appear to relation to the fixed and existence of the fixed periods of exception of the fixed periods of except on such conduction (in the Contago Contago
- 7.2 The Secondary and Higher Education Coss was levied vice Sections 138 to
- $138~\mathrm{cf}$  Chapter V. of the Hhance Act, 200% which read as under:
  - \*136. Secondary and higher Editionism Gran. (f)—"Million projection to the provisions of sub-vertices (12) at proteon 2, transpolation in larged and cultured, in accordance with the provisions of this Chapter as such arge for proposes of the Unity, a case to be called the Secondary and Higher Souration Case, to talk the commitment or the Government to provide and Researchery and replace advantage.
  - (2) The Control Construction may, once our appropriation made by Bentament by law in this field of the party of money of the Secondary and Higher Education Cossionales under out-section (12) or mation 2 and the Chapter for the purposes specified in sub-section (1) as if they consider mentality.
  - 132. Entirellian. The earth one expressions used in this Chapter and defined in the Central areas Act, 1944 (1 of 1944), the Castonic Act, 1962 (52 of 1962) to Chapter Act, the Finance Act, 1924 (32 of 1994), with most but encountings associately assigned to them in those Acts or Chapter, as the cost may be.
  - 156. Shouldow and Richar Boucotton Case on exacebre goods, +(1) The becoming and rights A has about these halled transportables. LSG, in the case of goods specified in the

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First Schedule to the Control Finise Twiff Art, 1965 (5 of 1965), taking grade manufactured or produced, shall be a duly of examption this saction extended to as the Secondary and Higher Schooling. General excise (including poech), at the rate of one per undigoclouleted on the appropriate of all during of excise (including poech) are section 93 of the Financia (inc. 2) Art, 2004 (25 of 2004), and Secondary and Higher Education Cess on enclosive grade), which are leavest and updated by the Control Controlled in the Higherty of the Control of the Higherty of the Control of the Control of the Art, 1964 (1 of 1964) or or leaves any other law for the financial interest.

- (7) The Secondary and Higher Education Case on excitation goods shall be in addition to any other clubes of excise chargeable on such goods, under the Central Excise Act. 1949 (1 of 1944) on any other than for the Brief being in large and the Education Cess-chargeside under section 23 of the Finance (No. 2) Act. 2019 (23 of 2004).
- (7) The provisions of the Countil Period Act. 1911 (1 of 1941) and the rules made thereunder, including those relating to relative and exemptions from children had impossible of providity and, as for as may be, apply to relation to the cay, and collection of the Secondary and Higher Education Cess on enclosible poods as they apply in relation to the long and collection of the outles of modes on much goods under the Control Erose. Act. 1944 (3 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 surpriargo and wore levied under Section 91 of the Finance (No. 2) Act, 2004 and Section 136 of the Finance Act, 2007 respectively as auty 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, impression of penalty were made applicable to the levy and collection of the Education Cess and Secondary & Higher Education Cess on excise to excise the auth goods ander the Aut.
- 7.7 If 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/recreal of excise duty, education Cess and Secondary and Higher Education Cess were levied on excise duty and when the levy of excise riply itself was exempted by way or refund/recreall, then the Education Cess and Secondary and Higher Education Cess also gut exempted thoraby. In absonce of Central Excise duty, the question of levy of any surcharge or cess or whatever name is called thereupon would not arise. CBEC vide Felter 5. No. 345/2/2004-TRI(%t.) dated 10.08.2004 also darfied that Education Cess is part of excise outy, the relevant portion is as under:

Setter F. No. 245/2/2001 TRU (Ft.) Noted 19 8 2014

The underagned is directed to state that subsequent to Budget, 2004 environmentally, a minute of the selection of the selecti

Prime No. (1) : Mitenher Edination Gess on excendite goods or terratile on goods international prior to imposition of Gess but pleased after imposition of such agos?

Continuition : Education Clear on Encladible grands in a new large. In sampler cases, it has been trained to the Experience Court that it is kery or not there as the those the grands are manuscatured or produced in Enclad it separate the investigation at the magnetic removal of the said grands. There, Education Court is not leavable on an isother grands connuctionated prior to imposition of over but deeper Africa Imposition of some case.

usus tip. (2) ; Wheithin goods that are taky exempted from source they/codings duty at an visual without payment of excise duty/cycloms with (such as distribute under soulor fulfilment of certain (you'll now) would be rubjected to Case.

Clarification: The Emerition Cost is invitable at the rate of the per visit of the appropriate of all nations of armselections: feedballing controls divides on customs like entertientalities duty, safe organization duty, safe organization duty, safe organization duty, safe organization duty, are characteristic to MR duty or and control safebout be attended to MR duty or and control safebout be attended to MR duty or and control safebout be attended to duty. Thus, no provides passed when the levelopie on such distinction in the regard, letter D.O. Hor, programme, area would be levelopie on such distinction. (Continue) may also be entered to

Tenus (iii) (3) : Vinether goods (like Alloholin linuxingus) that an not fell under the Cannol Series Touth be subtained to leave at Education Century an exclusive goods (at both of CVU), when they are imported into India?

Clarification : As the Edwards and Control ordinates goods in leviable on goods apended in the First schools to the Central Excess sent Act, you'd like absorblic leavinges that are may see that are not subjected to the sale Cess.

Typins the (4) is Vinctural authorization which either has collected as duly of associations or are sollected to buy by a Department almos than Department of Systems, shows to included for the parameter of solvels on of Education Cess 1.

Conflication : An the Edigasian Leas is calculated on the pageograph within of exclusioning pageograph and other of exclusioning pageograph and collected by the Description of Research, only such differs which was fall to be exclusive and the such differs which was fall to be pageographed and the such differs which collected by the Description of Research by the Laboratorian of several single by taken the constitution of t

(Empoasis Aupolied).

7.5 CBEC vide Circular No. 134/3/2011/ST dated 03.04.2011 again, clarified that since Education Coss and Security & Higher Education Cess were levied and collected as percentage of renvire tax, no Education Cess and Secondary & Higher Education Cess would be payable, when and wherever service tax is all by virtue of exemption. The said circular was issued in context of service tax matter but the principle was accepted therein by the Board and hence would apply in the present case late. Circular No. 134/3/2011/51 dated 08.04.2011 is reproduced as under:

"Sobjects" — Encouring Grey and Scientific and Higher Scientifica Com - Reg.

Representations make make modern from the nete formations, coaling distriction regarding the explicability of service (an execution to Soundistri Coas (orders to not Education Coas leviable under Finance (No. 2) Act. 2009 and Secondary and Higher Privation Coas leviable under Shance Act, 2007), under notifications where inhole of service text stands exempted Apparently the charie allers in the context of Tribabilis Order in the matter of High Balance Alloys Lat. A CCL, Coasems and Secondarias (2019-110), 100-100-100.

2. The light has been estimated. Through Tribunal's Order raterial above is in letter of casanda, it is inconsistent with the obligy intention of the Government to exempt education (ess in addition to specify of the policy intention as service tax' attends exempted. According to section (ess) of Finance (film. 2) / (5, 7004 and we have (4001) of Finance (itin. 2) / (5, 7004 and we have (4001) of Finance (itin. 2) / (5, 7004 and we have (4001) of Finance (itin. 2) / (5, 7004 and we have (4001) of Finance (itin. 2) / (5, 7004 and we have (4001) of Finance (itin. 3) / (6, 7004 and colorated as parameters as easier express to education case as well, here Education (45) is bosin and colorated as parameters of

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vandra for, when and whomes remote the is hill by virtue of exemption. Education Cess. Would see he NIL

- 3. This being the principle. Rest formations are alreated not to include proceedings to recover the education case, where 'where is set of set one tank finds the restliction. Eulerality the same principle, among advantage case has been refunded to exportion along with service tax, by time of exemption restlictions where 'while it service (as' is evening, the same times not to recovered?"
- Were part of the Central Excise duty and since the central excise outy was exempled by way of return, Education Cess and Secondary & Higher Education Cess would also be exempted by way of return. Education Cess and Secondary & Higher Education Cess would also be exempted by way of return. This view finds support from the judgement of the Honbie Supreme Court in the case of SRD Nucleotis Pvt. Ltd. reported as 2017 (355) ILT 48: (SC), wherein it has field that:
  - 170. One against that cleany emerges from the reading of these (no climbia) is that the Government (bell into lake), the position that where which at excise duty or betwee tax is recognized, must the Soundton Cost well as Secondary and Highly Education Cost would not be payable. These circulars are highly on the Copartment.
  - 21. Eyen piliteringes one one of the spinion that it is more authors' so except the afforesait peoples on continu by the filming of Finance in the Albertal Chillian. Серевыем Сень (у. ст. учи) у приру. В точком также серевыем явля але вершеей то тех exerce duty have to shell our Education Cass at 1969. This Shiration Greek is introduced by Sie trend 67 to 63 of the Filance (No. 2) Act. 2004. As per Section 91 (Section Education) Case & the suickering united the assertion is to pay, Section 91 makes a clear trict this Education Cess is payable on levice-side growth feet in 1949/01 of goods condition in the first Schedule to the Central Furth Turbl Act, 1925. Further, this Education Cess is so be revised in the and calculated on the apprepare of all children of excise which the level and subjected by the Sentral Covernment under the provisions of Central Excur-Act, 19 M or under any other law for the time being in flower fich section (3) of Scition. \$3 supergies that the monitors of the Control Excise Act, 1944 and the rules medisharesmean metuding these related to refunds and clubbs, etc., shall as for an anny haexplicit in relation to two and collection of Education Com on codinate godes. <u>A gament</u> making of these providence would amply demonstrate that Education Cons. -- 4. proclemes in ignoral \$1.20% on the duries of excise which are payable under the fat. If can, therapping, no meanly interned than when there is no excise char payable, as it is enempted, their entire has be ear Education Cogs as each, transmit as Education Cour. of this is to be calculated on the engineen of makes of makes. These cannot be any Note that the content is a second of the content of
  - 74. For the efficients research, we about those appears and holy that the appearance were entitled to refund of advantage time and appears they be to refund our poid along with each out; and, over the exists duty track was appearance from level. There shall, however, be no order as to con."

(Sayahasis supplied).

- 7.8 It is naecless to say that the refund of the Fouralion Crew and Secondary 8. Higher Education Cess paid on new products i.e. Telephone Parts, Calculator Parts, C-Rike and Aluminium Composite Panels manufactured with the help of machineries Installed after 31.12.2005, is not admissible to the appellant. However, it is not transpired from the occurrence available on records that whether the said amount of Rs. 54,10,810/- contained purificin of Education Cess.

and Secondary & Higher Education Cass paid for manufacture of new products be. Telephone Parts, Calculator Parts, ErBike and Aluminium Ouropokie Panels manufactured with the help of machineries installed after 31.12.2005 or not. Hence, the handloning authority is directed to verify as to whether retund of its. 54.10,810/- being refund of Education Cass and Secondary & Higher Education Cass covers Education Cass and Secondary & Higher Education Cass paid on new products manufactured with the help of machineries installed after 31.12.2005 and if so, the refund amount of Rs. 54,10,810/- snall be reduced to this extensi

- Accordingly, I allow appeal related to Education Coss and Secondary 6 Higher Education Cess it respect of products where refund of central excise outy was allowed earlier. However, I reject appeal related to refund of Rs. 96.40,018/- on the new products E-Bike and Alumin'um Composite Panel and of Rs. 37.38,324/- on the products Telephone Parts. Calculator Parts and Hanging Lamp commercial production of which started after 31.12.2005 only and uphold the impugned order in this regard.
- अपीलकर्ता द्वारा दर्ज की गई अपील का लिपटाचा उपरोक्त तरीके से किया जाता है।
- 9. The appeal filled by the appollant stanes disposed off in above terms.

Walley Topicale

अं`्री.-्`्रीऽः (कुमार संतोष) आयुक्त (अपील्स)

By Regal Post AD.

To,

Mys. Ajanta Manufacturing Unit., Omal. Nagar. 8A – Nadona Highway, Village -- Vanchive, Post – Samekhiyari, Near. Surajbar Biloge, Taluka - Rhariyay

मे. अवंता वैनुफेक्टुरिंग ती., ऑस्पट नगर, ४ए – नेराजन हाड़वे, गाँव – वॉधिंगा, पोस्ट – सावखियारी, सुरजनारी पत्र

के पास, तालका – शवाउ,

## Capy in:

- The Chief Commissioner, CGST & Central Excise, Anniedation 75mg,
  Ahmedabad for his kind information please
- 2) The Commissioner, CGST & Control Excise, Kutch Commissionerate, Sacribidhum für geruggany action,
- The Assistant Commissioner, CGST 9 Control Extract Division-Bhachu, Sändhidham for further recessory action.
- 4½ Guard File,