

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40031 of 2013

[Arising out of Order-in-Appeal No.34 & 35/2012 (TRY) dated 31.08.2012 passed by Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

M//s. Chemplast Sanmar Ltd. : **Appellant**
No.9, Cathedral Road,
Chennai 600 086.

VERSUS

The Commissioner of Customs, : **Respondent**
No.1, Williams Road,
Cantonment,
Tiruchirapalli 620 001.

CUSTOMS APPEAL No.40032 of 2013

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VERSUS

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Tiruchirapalli 620 001.

APPEARANCE:

Ms. Varshitha, Advocate
For the Appellant

Shri S. Balakumar, Assistant Commissioner (A.R.)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40112-40113 / 2023

DATE OF HEARING: 01.03.2023

DATE OF PRONOUNCEMENT: 07.03.2023

Per: Ms. SULEKHA BEEVI C.S

Brief facts are that the appellant filed two Bills of Entry both dated 27.07.2011 for clearance of 51700 MTs and 33000 MTs of Steaming (Non-coking) coal in bulk. The Bills of Entry were provisionally assessed and the cargo was cleared. At the time of finalization of assessment, the adjudicating authority included the clean energy cess i.e. Rs.50 per MT with the Basic Customs Duty for the calculation of Customs Education Cess and Higher Education Cess and demanded differential duty of Rs.77,550/- and Rs.4,950/- with interest. Against this order, appellants filed appeal before Commissioner (Appeals) who dismissed the appeal. The appellant is now before the Tribunal.

2. Ld. Counsel Ms. Varshitha appeared and argued for the appellant and she was fair enough to concede that the issue stands covered against the assessee in their own case vide Tribunal's Final Order No.40244-40260/2018 dated 31.01.2018.

3. Ld. A.R Shri S. Balakumar appeared for the Department.

4. Heard both sides.

5. The appellant had contended before the authorities below that as per Section 83 (3) of Chapter VII , Section 83 (5) of Chapter VII of the Finance Act, 2010, Section 94 of the Finance Act, 2004, Section 138 &

Section 139 of the Finance Act, 2007 read with Notification No.28/2010-CE and No.29/2011-CE both dated 22.06.2010, imported coal would not attract Customs Education Cess and Higher Education Cess; that the adjudicating had erred by including the clean energy cess component with Basic Customs Duty for the purpose of calculation of Customs Educational Cess and Higher Education Cess. The issue stands covered in the appellant's own case which was disposed with a batch of other cases by the Tribunal on 31.01.2018. The relevant paragraphs Tribunal's order are reproduced as under :

“4. We have heard both sides and perused the appeal records. In fact, we note that the original authority in one of the orders dt. 28.03.2014 elaborately discussed legal provision with model calculation before arriving at the final conclusion. Since we are in full agreement with the legal analysis and factual finding of the lower authorities, the relevant portion of the order is reproduced below :

“19.1. Having clarified about the levy and exemption of Education Cess (2%) and Secondary & Higher Education Cess (1%) on Clean Energy Cess as duty of Excise it is pertinent to explain the levy and collection of Education Cess (2%) and Higher Education Cess (1%) on Clean Energy Cess as **duty of Customs** during provisional assessment though the levy and collection was not protested by the importer.

19.2 Education Cess of 2% on Customs Duty is levied vide **Section 81 (1) of Finance Act, 2004** and imposed on goods imported into India specified in the First Schedule to the Customs Tariff Act, 1975 as per **Section 84 (1) of Finance Act, 2004** that read as follows.

“The Education Cess levied under Section 81, in the case of goods specified in the **First Schedule to the Customs Tariff Act, 1975** being goods imported into India shall be a duty of customs (in this section referred to as the Education Cess on imported goods), at the rate of two percent, calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under section 12 of the Customs Act, 1962 and any sum chargeable on such goods under any

other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including –

- (a) the safeguard duty referred to in section 8B and 8C of the Customs Tariff Act.,1975;
- (b) The countervailing duty referred to in section 9 of the Customs Tariff Act, 1975;
- (c) The anti-dumping duty referred to in section 9A of the Customs Tariff Act, 1975; and
- (d) the Education Cess on imported goods

and as per **Section 84 (2) of the Finance Act, 2004**, the Education Cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962.

19.3. The Clean Energy Cess is levied as duty of excise and is applicable to imported goods by virtue of Section 3(1) of Customs Tariff Act, 1975 in the form of additional duty of Customs and as such it is clear Clean Energy Cess on imported goods is levied as **additional** duty of Customs under Section 3 (1) of Customs Tariff Act, 1975 and therefore becomes duty of Customs.

19.4. Accordingly, it is amply clear that Education Cess levied under Section 81(1) of Finance Act, 2004 on imported goods specified in First Schedule to the Customs Tariff Act, 1975 into India at the rate of 2% on aggregate duty of Customs levied under Section 12 of Customs Act, 1962 as per Section 84 (1) read with Section 84 (2) of Finance Act, 2004 will also levied on Clean Energy Cess as being part of aggregate of Customs".

5. Following illustration has also been provided by the original authority :

"20.3.2 ILLUSTRATION

Duty	Exemption Notification & Effective Rate	Duty
a. Assessable value (CIF + Landing charges)	---	100
b. Basic Customs Duty (BCD) 10%	---	10.00
Value for CVD (A+B)	---	110.00
CVD equivalent to Central Excise duty 10%	---	11.00
Education Cess on CVD 2%	Nil vide 28/2010 dt.22.6.2010	0

Sec. and Higher Educational Cess on CVD 1%	Nil vide 29/2010 dt.22.6.2010	0
Customs duty for calculation of Cess	---	21
Customs Educational Cess 2%	---	0.42
Customs S&HE Cess 1%	---	0.21
Value for SAD	---	121.64
SAD @ 4%	---	4.865
Total Duty		26.495

The table and illustration supra clearly depicts Education Cess and Secondary & Education Cess as duty of Excise and duty of Customs are two different levies and as such Education Cess and Secondary & Education Cess as duty of excise is exempted but not as duty as Customs.”

6. We are in full agreement with the analysis made by the lower authorities and find no merit at all in the submissions made by the appellant. The legal provisions for calculation of aggregate duty of Customs and Education and Higher Education Cess leviable on such duty of customs are clear and there is no ambiguity in the same. The case laws mentioned have also been examined. As rightly concluded by the lower authorities, we find none of them are relevant to the dispute at hand.”

6. Following the same, we find no merit in these appeals. Appeals filed by the appellants are dismissed.

(pronounced in open court 07.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
 MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
 MEMBER (TECHNICAL)

