

F.No.276/187/2018-CX.8A Part  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect taxes & Customs)  
Legal Cell  
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Wing 5 'C' HUDCO-VISHALA Building  
Bhikaji Cama Place, R.K. Puram  
New Delhi, the 09<sup>th</sup> January'2020

**Instruction**

To,

1. All Principal Chief Commissioners/ Chief Commissioners of Customs & GST
2. All Principal Director Generals/ Director Generals of Customs & GST
3. <webmaster.cbec@icegate.gov.in>

Sir/Madam,

Sub: Judgement dated 06.12.2019 passed by Hon'ble Supreme Court in Civil Appeal No. 9237/2019 in the case of M/s Unicorn Industries v. Union of India -reg

The undersigned has been directed to refer to the subject judgment, wherein the Hon'ble Supreme Court has held that National Calamity Contingent Duty (NCCD), education cess and secondary & higher education cess would be leviable even if the Central Excise duty or Customs duty was exempted. Thus, the Hon'ble Supreme Court has declared the judgment in the case of Bajaj Auto Limited v. Union of India, in Civil Appeal No. 3239/2019, as *per incuriam*. The judgments are available on Supreme Court website.

2. In the case of Bajaj Auto Limited (supra), the Hon'ble Supreme Court held that once the excise duty is exempted, NCCD, levied as an excise duty cannot partake a different character and thus, would be entitled to the benefit of the exemption notification. Consequently, several assesseees across the country discontinued payment of NCCD on tobacco products and started challenging the levy of NCCD on these products as the basic excise duty on the said products was exempted with effect from 01.07.2017. Accordingly, to sustain the levy of NCCD on crude petroleum and tobacco products, it was decided to levy a nominal basic excise duty on all the goods which are subject to the levy of NCCD vide Notification No. 03/2019- Central Excise dated 06.07.2019.

3. Hon'ble Supreme Court in the subject judgment has held that in absence of specific notification "*containing an exemption to such additional duties in nature of education cess and secondary and higher education cess*", they cannot be said to have been exempted. The relevant portions of the subject judgment are reproduced hereunder

*"41...The reason employed in SRD Nutrients Private Limited (supra) that there was nil excise duty, as such, additional duty cannot be charged, is also equally unacceptable as additional duty can always be determined and merely exemption granted in respect of a particular excise duty, cannot come in the way of determination of yet another duty based thereupon. **The proposition urged that simply because one kind of duty is exempted, other kinds of duties automatically fall, cannot be accepted as there is no difficulty in making the computation of additional duties, which are payable under NCCD, education cess, secondary and higher education cess.** Moreover, statutory notification must cover specifically*

*the duty exempted. When a particular kind of duty is exempted, other types of duty or cess imposed by different legislation for a different purpose cannot be said to have been exempted.*

...

43. Thus, it is clear that before the Division Bench deciding SRD Nutrients Private Limited and Bajaj Auto Limited (supra), the previous binding decisions of three-Judge Bench in Modi Rubber (supra) and Rita Textiles Private Limited (supra) were not placed for consideration. **Thus, the decisions in SRD Nutrients Private Limited and Bajaj Auto Limited (supra) are clearly per incuriam.**" (emphasis supplied)

4. Accordingly, it is requested that

i) Field formations under your jurisdiction may be directed to initiate recovery of duties, including NCCD, in cases where the assesseees were not paying the same on the strength of the previous judgments, specifically the judgment in the case of Bajaj Auto Limited (supra). The issue has implications for GST revenue also, as NCCD forms part of value on which GST is calculated.

ii) The subject judgment may be brought to the notice of the Hon'ble Courts, wherein the similar issue is pending. Any interim or final order decided against the revenue may be contested by filing statutory appeal, writ appeal or review petition, as the case may be, in consultation with the Standing Counsel. If the same is not possible, a self-contained SLP proposal may be forwarded to Board, as per extant instructions.

5. The contents of this Instruction may also be brought to the notice of all field formations under your jurisdiction.

Yours faithfully,

(Anish Gupta)  
OSD (Legal)

Copy to:

Joint Secretary, TRU-I, Department of Revenue, North Block, New Delhi-110001 with respect to OM dated 24.12.2019 vide F.No. 354/206/2019-TRU