IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

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(1) D.B. CENTRAL EXCISE APPEAL NO.33/2015

APPELLANT :

Union of India through the Commissioner, Central Excise, Jaipur-II, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur (Rajasthan).

VERSUS

RESPONDENTS :

1.M/s Cairn Energy India Pvt. Ltd., Village-Nagana Via Kawas, National High Way No.112, District Barmer (Raj.).

2.The Custom, Excise and Service Tax Appellate Tribunal, Principal Bench, West Block No.2, R.K.Puram, New Delhi, through its Registrar.

(2) D.B. CIVIL WRIT PETITION NO.9656/2014

PETITIONER :

Cairn India Limited,

(Formerly Cairn Energy India Pty. Ltd.)

Corporate Office at : 3rd & 4th Floor, Vipul Plaza, Suncity, Sector 54, Gurgaon, Haryana – 122002.

VERSUS

RESPONDENTS :

1.Union of India, through Secretary (Revenue), Department of Revenue, Ministry of Finance, North Block, New Delhi – 110001.

2.Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi – 110001.

3.Commissioner of Central Excise and Service Tax, Jodhpur, HQ at NCR Building, Statute Circle, C Scheme, Jaipur, Rajasthan – 302005.

DATE OF JUDGMENT :: 19th OCTOBER, 2016

<u>HON'BLE MR. JUSTICE GOVIND MATHUR</u>
<u>HON'BLE MR. JUSTICE KAILASH CHANDRA SHARMA</u>

Mr. Vipul Singhvi, for the appellant.
Mr. Rohan Shah]
Mr. Alok Yadav]
Mr. Kumar Visalaksha] for Cairn Industries.
Mr. Ramit Mehta]
(In Excise Appeal No.33/2015)

Mr. Rohan Shah]
Mr. Alok Yadav]
Mr. Kumar Visalaksha] for Cairn Industries.
Mr. Ramit Mehta]
Mr. Vipul Singhvi, for the respondents.
(In Writ Petition No.9656/2014)

<u>JUDGMENT</u>

<u>BY THE COURT</u> : (PER HON'BLE MATHUR,J.)
<u>REPORTABLE</u>

On examination of the judgment impugned, passed by learned Customs, Excise and Service Tax

Appellate Tribunal, we are satisfied that this appeal involves a substantial question of law in following terms:-

> "WHETHER the Customs, Excise and Service Tax Appellate Tribunal is justified under the order dated July 24, 2014, by arriving at the conclusion that respondent Cairn India Limited is not liable to pay any cess in terms of Section 91 read with Section 93 of the Finance Act, 2004 and Section 136 read with Section 138 of the Finance Act, 2007, being the cess as per Section 15(1) of the Oil Industries (Development) Act, 1974, is said to be not levied and collected by the Ministry of Finance (Department of Revenue)?"

Admit.

With consent of counsel for the parties, the appeal is heard for final disposal at this stage.

This appeal, under Section 35-G of the Central Excise Act, 1944, is before us to examine correctness of the order dated July 24, 2014, passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), New Delhi in Appeal No.E/59688/2013-EX(DB).

By the order aforesaid learned Tribunal set aside the order dated May 8, 2013, passed by the Commissioner of Central Excise (Appeals), Jaipur-II, while arriving at the conclusion that in terms of the provisions of Section 91 read with Section 93 of the Finance Act, 2004 and Section 136 read with Section 138 of the Finance Act, 2007, for the purpose of charging education cess and secondary and higher education cess, the excise duty would include only those cess as duty of excise which are levied by the Ministry of Finance, Department of Revenue. Since the oil cess is levied by the Ministry of Petroleum, even though it is collected by the Ministry of Finance as excise duty, the same cannot be included in the duty of excise for the purpose of education cess.

The factual background, giving rise to present litigation, is that M/s Cairn Energy India Private Limited (hereinafter referred to as the company), the respondent No.1 herein, is a company incorporated under the Companies Act, 1956, and is involved in the business of exploration, development and production of crude oil and natural gas. The company and the Government of India entered into a production sharing contract on 15.5.1995. As per the terms of the production sharing contract, the company conducts petroleum operations at Rajasthan Block/RJ/OM/90/1 and produces crude oil falling under Chapter XXVII of first Schedule to the Central Excise Tariff Act, 1985.

The production of crude oil does not attract excise duty, but national calamity contingent duty alongwith applicable cess on the quantity of crude oil received by the oil refinery is required to be paid as per the Oil Industries (Development) Act, 1974.

The company discharged its revenue liability as stated above, but did not pay education cess and secondary and higher secondary education cess, hence, by a notice to show cause dated 30.11.2000, it was called upon to show cause and explain as to why -

1. Education Cess Rs.14,53,971/- and Secondary & Higher Education Cess Rs.7,26,986/- (Total amounting to Rs.21,80,957/-) not paid on Oil Cess should not be recovered from them under Section 11A(1) of the Central Excise Act, 1944 along with interest thereon under Section 11AB ibid.

2. Penalty should not be imposed upon them under Rule 25 of the Central Excise Rules, 2002 for contravention of Rule 4, 6 and 8 of the Central Excise Rules, 2002 read with provisions of Section 91 to 93 of the Finance (No.2) Act, 2004 and Section 136 to 138 of the Finance Act, 2007.

The company was further directed to produce, at the time of showing cause, all evidence, documentary or otherwise, upon which it intend to carry in support of its defence. The company responded the issue with following explanation -

1. education cess and secondary and higher education cess is to be levied and collected by the Central Government in the Ministry of Finance, Department of Revenue, from only those aggregate duties of excise which are levied and collected by this department;

2. the empowerment of levy cess on production of crude oil is with the Ministry of Petroleum derived from the provision of the Oil Industries (Development) Act, 1974; and

3. the mandate of the Department of Revenue is only with regard to collection of cess on production of crude oil from the subject parties and in the absence of power to levy and collect the cess on production of crude oil, the Department of Revenue cannot levy and collect education cess and secondary and higher education cess.

The Additional Commissioner, Central Excise, under the order dated 28.3.2011, after examining the defence extended by the company, held that the education cess levied under Section 93 of the Finance Act, 2004 and secondary and higher education cess levied under Section 137 of the Finance Act, 2007, are chargeable on oil cess as it is also in the nature of duty of excise, therefore, the charge raised against the company stands proved. Accordingly, the demand was confirmed.

An appeal preferred by the company, giving challenge to the order passed by the Additional Commissioner, Central Excise, came to be rejected by the Commissioner (Appeals) vide order dated 8.5.2013 with a finding that the oil cess is levied and collected as excise duty as mentioned in Section 15 of Chapter-

III of the Oil Industries (Development) Act, 1974 and all the provisions of Central Excise Act, 1944 and the Rules made thereunder are applicable. The authority to levy and collect oil cess being passed on to the Ministry of Finance, the education cess and secondary and higher education cess are chargeable from the company.

A challenge was further given by the company to the order passed by the Commissioner of Central Excise (Appeals) by way of filing an appeal before the Tribunal. The Tribunal under the order impugned dated July 24, 2014 accepted the appeal by arriving at the conclusion that in terms of the provisions of Section 91 read with Section 93 of the Finance Act, 2004 and Section 136 read with Section 138 of the Finance Act, 2007, for the purpose of charging education cess and secondary and higher education cess, the excise duty would include only those cess levied as duty of excise which are levied by the Ministry of Finance, Department of Revenue. Since the oil cess is levied by the Ministry of Petroleum, even though it is collected by the Ministry of Finance as excise duty, the same cannot be included in the duty of excise for the purpose of education cess.

Learned Tribunal, while accepting the appeal, heavily relied upon a Division Bench judgment of Gujarat High Court in the case of Commissioner v. Sahakari Khand Udyog Mandi Ltd., reported in 2011 (263) ELT 34 (Gujarat) (MANU/GJ/1598/2010). In the case aforesaid a Division Bench of Gujarat High Court adjudicated following substantial questions of law:-

> "(A) Whether the Learned Tribunal is justified in the eye of law in holding that the Education Cess is not leviable upon the Sugar Cess as the Sugar Cess is levied by the Ministry of Consumer Affairs, Food & Public Distribution rather than by the Ministry of Finance, Government of India?
>
> (B) Whether the Learned Tribunal is justified in the eyes of law in holding that the Sugar Cess is not the duty of excise, though collected by the Department of revenue, so as to attract the Education cess thereupon?
>
> (C) Whether the Education Cess is leviable upon the Sugar Cess in view of Section 3 of the Sugar Cess Act, 1982."

The Division Bench, while negativating the argument advanced on behalf of the revenue, held that the education cess is leviable at the prescribed rate on the aggregate of all duties of excise and, therefore, would also include the cess levied and collected under the provisions of Sugar Cess Act, 1982. The observations and findings arrived by the Gujarat High Court are as under:-

> **6.** Under Section 3(1) of the Cess Act, a provision is made for imposition of cess and it is specifically provided that "There shall be levied and collected as a cess". Meaning thereby, the levy and collection is of a cess for the purposes of the Sugar Development Fund Act, 1982. Thereafter, the provision goes on to state, what should be the rate at which the cess is to be levied and for sake of convenience, the same is described as duty of excise. In the event it was a central excise duty, as contended, the rate would have been provided in the Tariff Act and not in this provision.
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> **7.** Similarly, when one reads sub-section (2) of Section 3 of the Cess Act, it becomes clear that what is levied under sub-section (1) is in addition to the duty of excise leviable on sugar under the Central Excise Act, 1944, or any other law for the time being in force. Once again, pointing out to the Scheme which is distinct from the provisions of the Central Excise Act read with the Tariff Act. When one reads sub-section (4) of Section 3

of the Cess Act, it becomes clear that for the purposes of levy and collection of the cess levied under sub-section (1) of Section 3 of the Cess Act, the procedural provisions relatable to levy and collection of the duty of excise, provisions relating to refund and exemption from duty, etc., are made applicable by invoking principle of incorporation. In other words, instead of bodily repeating the provisions of levy and collection of cess by this provision, the provisions under the Central Excise Act and the Rules thereunder have been incorporated and are to be read as part and parcel of the Cess Act. By adopting this legislative procedure, the legislature has used a well known legislative tool, but from the said exercise, it cannot be inferred or stated that the sugar cess imposed under the provisions of the Cess Act assume the characteristic of central excise duty so as to warrant calculation of education cess on the amount of cess so collected.

8. Section 4 of the Cess Act is again an inherent indicator when it provides that the proceeds of the duty of excise levied under Section 3 (sugar cess) shall be credited to the Consolidated Fund of India. For the purposes of utilization of the said fund, one has to consider provisions of Sugar Development Fund Act, 1982 simultaneously to ascertain as to whether the sugar cess is in fact and in law only a cess or is a duty of central excise.

9. Under the Sugar Development Fund Act, 1982, 'fund' means sugar development fund formed under Section 3 of the said Act, Under sub-section (2) of Section 3 of the Sugar Development Fund Act, 1982, it is provided that an amount equivalent to the cess collected under the Cess Act, reduced by the cost of collection, together with any moneys received by the Central Government for the purposes of the Sugar Development Fund Act, shall, after due appropriation made by parliament by law be credited to the sugar development fund. To put it differently, amount which was collected by way of sugar cess under the Cess Act is in the first instance, credited to the Consolidated Fund of India and thereafter, by due appropriation made by the parliament by law credited to the sugar de-

10. For the present, it is not necessary to consider other provisions of the Sugar Development Fund Act, 1982 relating to application of the sugar development fund etc. Suffice it to state that the Cess Act and the Sugar Development Fund Act both have been brought on the statute book simultaneously on the same day and operate as a consolidated scheme and the provisions of both the Acts have to be read together. On such conjoint reading, it is apparent that a plain reading by itself would indicate that the sugar cess levied and collected cannot be equated with duty of central excise and therefore, cannot be treated to be part and parcel of the amount on which education cess has to be calculated."

Before us, while questioning correctness of the order passed by the Tribunal, the arguments advanced by learned counsel for the appellant are that-

1. the Tribunal erred while relying upon the law laid down in the case of Commissioner v. Sahakari Khand Udyog Mandi Ltd., as in the case aforesaid the Gujarat High Court was dealing with the provisions of Sugar Cess Act, 1982, whereas in the case in hand the oil cess is made applicable as per Section 15 of the Oil Industries (Development) Act, 1974. The provisions of the Act of 1974 are quite different than the provision of the Sugar Cess Act, 1982.

2. by virtue of deeming provisions as provided under Section 15(4) of the Oil Industries (Development) Act, 1974, it is to be legally construed that the oil cess is nothing but excise duty.

While pressing the arguments above, it is emphasised by Shri Vipul Singhvi, learned counsel for the appellant, that the provisions of the Act of 1974 as well as the Act of 2004 and the Act of 2007, must be interpreted by taking take care of the legislative intent. The education cess was introduced as a consequence to the National Common Minimum Programme of United Progressive Alliance Government to have a complete education and health plan, and for that purpose the education cess and secondary and higher education cess was introduced. The relevant portion of the National Common Minimum Programme, as cited on behalf of the appellant, reads as under:-

> "The UPA government pledges to raise public spending in education to least 6% of GDP with at least half this amount being spent of primary and secondary sectors. This will be done in a phased manner,
>
> The UPA government will introduce a cess on all central taxes to finance the commitment to universalize access to quality basic education. A National Commission on Education will be set up to allocate resources and monitor programmes."

In the same lines, the Finance Minister, while placing the annual budget on the floor of Lok Sabha, referred the government policy with regard to education in following words:-

> **"Education**
> **22.** In my scheme of things, no issue enjoys a higher priority than providing basic education to all children. The NCMP mandates Government to levy an education cess. I propose to levy a cess of 2 per cent. The new cess will yield about Rs.4000 – 5000 crore in a full year. The whole of the amount collected as cess will be earmarked for education, which will naturally include providing a nutritious cooked midday meal. If primary education and the nutritious cooked meal scheme can work hand in hand, I believe there will be a new dawn for the poor children of India.
>
> **23.** I am concerned about the quality of technical education in the country. Lest I be misunderstood, I am not referring to the IITs but to the ITIs; ITIs are the training ground for skilled manpower. The skills imparted by ITIs must keep pace with the technological demands of industry and the expanding universe of knowledge. There is only one benchmark for our technicians – and that is

the world standard. In order to produce technicians of world standard, Government proposes to launch a programme in the Central sector to upgrade 500 ITIs over the next 5 years at the rate of 100 ITIs a year. Appropriate infrastructure and equipment will be provided, the syllabi will be upgraded and new trades will be introduced. This is an area where I welcome Chambers of Commerce and Industry to join hands with the Government and create a public-private partnership model for designing and implementing the scheme. The selection of the ITIs will be cone in consultation with the State Governments.

24. An education loan scheme has been in operation since April 2001 under which loans up to Rs.7.50 lakh and Rs.15 lakh are available for professional courses within the country and abroad, respectively. The requirement of collateral was dispensed with for loans up to Rs.4 lakh. I am happy to say that commercial banks have now agreed to waive the need for collateral for loans up to Rs.7.5 lakh, if a satisfactory guarantee is provided on behalf of the student. Thus, no student admitted to any professional course, including courses in IITs, IIMs and medical colleges, will be deprived of the opportunity to study because of lack of funds.

With this factual background, the education cess was introduced under the Act of 2004 as per Sections 91 and 93, which are as under:-

> "**91. Education Cess.--** (1)Without prejudice to the provisions of sub-section(11) of section 2, there shall be levied and collected, in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the Education Cess, to fulfil the commitment of the Government to provide and finance universalised quality basic education.
>
> (2)The Central Government, may after due appropriation made by Parliament by law in this behalf, utilise, such sums of money of the Education Cess levied under sub-section (1) of section 2 and this Chapter for the purposes specified in sub-section (1), as it may consider necessary.
>
> **93. Education Cess or 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, 1985 (5 of 1986), being goods manufactured or produced, shall be a duty of excise (in this section referred to as the Education Cess on excisable goods), at the rate of two 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 on excisable 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 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.

(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 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 or the rules, s the case may be."

Under the Finance Act, 2007, this legislature introduced secondary and higher education cess as per Sections 136 and 138, which are as under:-

"**136. Secondary and Higher Education Cess.--** (1)Without prejudice to the provisions of sub-section (12) of section 2, there shall be levied and collected, in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the Secondary and Higher Education Cess, to fulfil the commitment of the Government to provide and finance secondary and higher education.

(2)The Central Government may, after due appreciation made by Parliament by law in this behalf, utilise, such sums of money of the Secondary and Higher Education Cess levied under sub-section(12) of section 2 and this Chapter for the purposes specified in sub-section(1) as it may consider necessary."

"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 1985), 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 93 of the Finance (No.2) Act, 2004 (23 of 2004) and Secondary and Higher Education Cess on excisable 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 93 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.”

It is asserted that exclusion of the respondent industry from levy of education cess on the count that the duties of excise as per Section 15 of the Act of 1974 are neither levied nor collected in accordance with the Act of 2004, shall be highly technical and against the legislative intent to introduce the education cess.

Per contra, as per the respondent, the education cess is applicable only, if levied and collected in accordance with the Central Excise Act, 1944, the Customs Act, 1962 or Chapter V of the Finance Act, 1994. The excise duty under Section 15 of the Act of 1974 is not levied in any of the enactment aforesaid, though collected by the Department of Revenue being a mechanism adopted to make the process of collection easy. It is emphasised that the provisions in question are quite clear and are conveying their meaning, as such, those are not required to be interpreted as desired by counsel for the appellant. According to learned counsel, Section 92 of the Act of 2004 in quite unambiguous terms provides that the words and expressions used in Chapter VI of the Act of 2004 and defining the Central Excise Act, 1944, the Customs Act, 1962 or Chapter V of the Finance Act, 1994, shall have the meaning respectively assigned to them in those Act or Chapter, as the case may be. The legislature, if was intending to include the Act of 1974 also in it, then a specific reference of that should have been given, but that is absent, which clearly indicates the intent of legislature to exclude the application of education cess on the excise duties referred under Section 15 of the Act of 1974.

The cess in question has been introduced under the Finance Act, 2004 and the Finance Act, 2007. Under the Act of 2004, it is in the name of Education Cess, whereas under the Act of 2007, it is termed as Secondary and Higher Education Cess. Under the Act of 2004 as well as under the Act of 2007 the cess is required to be treated as a duty of excise @ 1%, calculated on the aggregate of all duties of excise 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 or under any other law for the time being in force.

The purpose of the cess in question is to yield about Rs.4000 – 5000 crores per year, which is to be earmarked for education. The education, as per the policy applicable, is not simple teaching, but includes nutritious meals in primary school sector and further for establishing skill and employment oriented educational institutions. The cess under the Act of 2004 as well as under the Act of 2007 refers to be levied on the duties of excise 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 or under any other law for the time being in force.

Learned Tribunal, under the order dated July 24, 2014, while relying upon the judgment of Gujarat High Court in the case of Commissioner v. Sahakari Khand Udyog Mandi Ltd., held that the education cess is not leviable upon the liability created under Section 15 of the Act of 1974 being not levied by the Ministry of Finance (Department of Revenue), Government of India. The Tribunal, while arriving at the conclusion as above, did not examine the scope of levying cess under the Act of 2004 and under the Act of 2007. The Tribunal simply arrived at the conclusion by relying the judgment of Gujarat High Court with total discussions as under:-

> "5. We have considered the submissions from both the sides and perused the records. In terms of the provisions of Section 91 read with section 93 of the Finance Act, 2004 and Section 136 read with section 138 of the Finance Act, 2007, for the purpose of charging education cess and secondary and higher education cess, the excise duty would include only those cess levied on duty of excise, which are levied by the Ministry of Finance, Department of Revenue. Since the oil cess is levied by the Ministry of Petroleum, even though it is collected by the Ministry of Finance as excise duty, the same can not be included in the duty of excise for the purpose of education cess. Same view has been taken by the Gujarat High Court in the case of **Sahakari Khand Udyog Mandi Ltd. (supra).** In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed."

It is pertinent to notice that in the case of Commissioner v. Sahakari Khand Udyog Mandi Ltd., the Division Bench of Gujarat High Court was dealing with the provisions of Sugar Cess Act, 1982 and the Sugar Development Fund Act, 1982, the enactments introduced simultaneously. Under the Sugar Cess Act, 1982, the cess was introduced only to have a fund as per provisions of Sugar Development Fund Act, 1982. The relevant discussions in this regard is made by the Division Bench of Gujarat High Court in para 10 of its judgment, which is already quoted in preceding paras.

In the instant matter we are examining provision of Section 15(1) of the Act of 1974, and on its perusal, that appears to be para-materia to Section 3 of the Sugar Cess Act, but it is not so. The Sugar Cess Act, 1982 provides for cess with a purpose of the Sugar Development Fund Act, 1982, as a duty of excise on all sugar produced at any sugar factory in India and further Section 4 of the Sugar Cess Act, 1982 pertains to crediting of sugar cess proceeds to consolidated fund of India. There is no provision akin to Section 4 of the Sugar Cess Act, 1982 and absence of such a provision changes the complete complexion of Section 15 of the Act of 1974. Pertinent to notice that under the Act of 1974, as per Section 16, the duty of excise levied shall be first credited to the consolidated fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf, so provides, pay to the Board from time to time, from out of such proceeds, after deducting expenses of commercial and such sums of money as it may think fit for being utilised exclusively for the purpose of this Act. Under Section 16, a broad discretion is available with the Central Government for necessary allocation of excise. On the other hand, under the Sugar Cess Act, the entire duty shall mandatorily go to consolidated fund required to be maintained as per the Sugar Development Fund Act, 1982. Learned Tribunal without examining this aspect of the matter decided the appeal by applying the law laid down in the case of Commissioner v. Sahakari Khand Udyog Mandi Ltd., that is apparently erroneous.

Now coming to the issue as to whether any education cess/secondary and higher education cess could have been levied from the appellant or not as per provisions of the Act of 2004 and the Act of 2007. The sole emphasis of learned counsel for the respondents is that under Section 15 of the Act of 1974 the cess is levied by the Department of Petroleum, hence, it does not fulfil the requirement of imposing cess as per provisions of the Act of 2004 and the Act of 2007, where the cess can be imposed if that is levied and collected by the Department of Finance.

Learned counsel has also placed reliance upon the Government of India, Ministry of Finance (Department of Revenue) Letter F.No.345/2/2004-TRU (Pt.), dated 10.8.2004, clarifying that the education cess is calculated on the aggregate duties of excise/customs (excluding certain duties of customs like anti-dumping duty, safeguard duty etc.) levied and collected by the Department of Revenue, only such duties which are (a)levied and collected as duties of excise/customs, and (b)are both levied and collected by the Department of Revenue. Reliance is also placed upon a letter, Circular No.978/2/2014-CX, dated 7.1.2014, reiterating that the education cess and secondary and higher education cess are not to be calculated on the cesses which are levied under the Acts administered by Department/Ministries other than Ministry of Finance (Department of Revenue), but are only collected by the Department of Revenue in terms of those Acts. According to learned counsel, the cess levied under Section 15(1) of the Act of 1974 is administered by the Ministry of Petroleum and Ministry of Finance (Department of Revenue) is only a collecting agency, as such, the same cannot be a subject for education and secondary and higher education cess.

We do not find any merit in the arguments advanced.

A plain reading of the provisions of Section 93 of the Act of 2004 and Section 138 of the Act of 2007 makes it abundantly clear that education cess/secondary and higher education cess can very well be levied and collected by the Central Government in the Ministry of Finance (Department of Revenue) under the provisions of the Central Excise Act, 1944 or under any other law for the time being in force. The respondent is subjected to a cess under the Act of 1974, a law in force at the time of enforcing the Act of 2004 and the Act of 2007. A Division Bench of Gujarat High Court in the case of Commissioner v. Sahakari Khand Udyog Mandi Ltd., while examining provisions of the Sugar Cess Act, observed that a legislature adopted the legislative procedure given under the Central Excise Act, 1944 to collect levy as per Sugar Cess Act, but due to that it cannot be inferred or stated that the Sugar Cess imposed under the provisions of the Sugar Cess Act assumed the characteristic of central excise duty so as to warrant calculation of education cess on the amount of cess so collected. No doubt, under the Act of 1974 also the procedure given under the Act of 1944 has been adopted, but the cess sought to be collected under the Act of 1974 is not exclusively for the purposes of that Act only. As already stated, the use of the cess collected is well within the broad discretion of the Central Government as per the appropriation made by law by the Parliament. It would also be appropriate to notice that Section 91 and 136 of the Acts of 2004 and 2007 respectively provide nature and scope of the cess. Section 93 and 138 of the Acts of 2004 and 2007 respectively provide the application of cess and procedure to quantify and recover it. As per Section 93 and 138 of the Acts aforesaid, the cess is a duty of excise which is to be levied and collected by the Central Government in the Ministry of Finance under provisions of the Central Excise Act, 1944 or under any other law for time being in force. The scope of the provisions referred above is quite wide and that covers levy and collection of all excisable goods under provisions of the Central Excise Act, 1944 or even under any other law for time being in force. In light of this provision also we do not find any wrong in applying the cess in question upon the excise duty referred under Section 15(1) of the Act of 1974.

In light of whatever discussed above, we do not find any reason to escape the respondent from application of education/secondary and higher education cess under the Act of 2004 and the Act of 2007 respectively. The Customs, Excise and Service Tax Appellate Tribunal, under the judgment dated July 24, 2014, erred while arriving at the conclusion that respondent M/s Cairn India Ltd. is not liable to pay any cess in terms of Section 91 read with Section 93 of the Finance Act, 2004 and Section 136 read with Section 138 of the Finance Act, 2007, being not levied and collected by the Ministry of Finance (Department of Revenue).

The appeal, as such, deserves acceptance. Accordingly, the same is allowed. The judgment dated July 24, 2014, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No.E/59688/2013-EX(DB), M/s. Cairn India Ltd. v. CCE, Jaipur-II, is declared illegal and is set aside. The order dated 8.5.2013, passed by the Commissioner (Appeals), confirming the order passed by the Additional Commissioner dated 3.6.2011 stands restored.

D.B. CIVIL WRIT PETITION NO.9656/2014

This writ petition is preferred to have a direction for the respondents to refund all the education cess and secondary and higher education cess paid by the petitioner under protest. The refund is claimed in view of the fact that the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, vide order dated July 24, 2014 declared levy of education cess and secondary and higher education cess upon the petitioner erroneous.

In view of the fact that we have already set aside the order passed by the Tribunal, therefore, the claim for refund does not survive.

The writ petition is dismissed accordingly.

(KAILASH CHANDRA SHARMA),J. (GOVIND MATHUR),J.

MathuriaKK/PS