

Levy of Education Cess – Clarification

Subject: Issues relating to imposition of Education Cess on excisable goods and on Imported goods, as pointed out by the trade and the field formations

Government of India, Ministry of Finance, Department of Revenue, New Delhi, letter Vide F.No.345/2/2004-TRU (Pr.) dated. 10.08.2004 is reproduced below for the guidance of the Importer, Clearing Agents, and Trading Public.

146-PN The undersigned is directed to
23.08.2004 state that subsequent to Budget

2004 announcements, a (Chennai) number of representations/references have been received from the trade as well as from the field formations pertaining to imposition of Education Cess on excisable goods and on imported goods. The points raised and the clarifications thereon are as follows.

Issue No. (1): Whether Education Cess on excisable goods is leviable on goods manufactured prior to imposition of Cess but cleared after imposition of such cess?

Clarification: Education Cess on Excisable goods is a new levy. In similar cases, it has been held by the Supreme Court that if a levy is not there at the time the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. Thus, Education Cess is not leviable on excisable goods manufactured prior to imposition of cess but cleared after imposition of such cess.

Issue No. (2): Whether goods that are fully exempted from excise duty/customs duty or are cleared without payment of excise duty/customs duty (such as clearance under bond or fulfillment of certain conditions) would be subjected to Cess.

Clarification: The Education Cess is leviable at the rate of two per cent of the aggregate of all duties of excise/customs (excluding certain duties of customs like anti dumping duty, safe guard duty etc.), **levied and collected**. If goods are fully exempted from excise duty or customs duty, are chargeable to NIL duty or are cleared without payment of duty under specified procedure such as clearance under bond, there is no collection of duty. Thus, no education cess would be leviable on such clearances. In this regard, letter D.O.No.605/54/2004-DBK, dated 21st July, 2004 issued by Member (Customs) may also be referred to.

Issue No. (3): Whether goods (like alcoholic beverages) that do not fall under the Central Excise Tariff be subjected to levy of Education Cess on Excisable goods (as part of CVD), when they are imported into India?

Clarification: As the Education Cess on excisable goods is leviable on goods specified in the First schedule to the Central Excise Tariff Act, goods like alcoholic beverages that are not specified are not subjected to the said Cess.

Issue No.(4): Whether duties/ cesses which either not collected as duty of excise/customs or are collected so but by a Department other than Department of Revenue, should be included for the purposes of calculation of Education Cess?

Clarification: As the Education Cess is calculated on the aggregate **duties of excise/customs** (excluding certain duties of customs like anti dumping duty, safe guard 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 should be taken into account for calculating Education Cess.