

## **Circular No. 134 /3 / 2011 - ST**

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit**

North Block, New Delhi  
8 th April, 2011

**Subject: - Education Cess and Secondary and Higher Education Cess - reg.**

Representations have been received from the field formations, seeking clarification regarding the applicability of service tax exemption to Education Cess (refers to both Education Cess leviable under Finance (No.2) Act, 2004 and Secondary and Higher Education Cess leviable under Finance Act, 2007), under notifications where 'whole of service tax' stands exempted. Apparently the doubt arises in the context of Tribunal's Order in the matter of *M/s. Balasore Alloys Ltd. Vs CCE, Customs and Service Tax, BBSR-I (2010-TIOL-1659-CESTAT-KOL)*.

2. The issue has been examined. Though Tribunal's Order referred above is in favor of revenue, it is inconsistent with the policy intention of the Government to exempt education cess in addition to service tax, where 'whole of service tax' stands exempted. According to section 95(1) of Finance (No.2) Act, 2004 and section 140(1) of Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess as well. Since Education Cess is levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess would also be NIL.

3. This being the principle, field formations are directed not to initiate proceedings to recover the education cess, where 'whole of service tax' stands exempted under the notification. Extending the same principle, where education cess has been refunded to exporters along with service tax, by virtue of exemption notifications where 'whole of service tax' is exempt, the same need not be recovered.

5. Field formations may be instructed accordingly.

6. Please acknowledge the receipt of this circular. Hindi version to follow.

**F.No.354/42/2011-TRU**

**(J. M. Kennedy)  
Director, TRU**