

Education Cess – Levy for *Generation next*

Dwarakanath
(A Citizen who wishes to pay Education Cess)

With the introduction of Education Cess as a duty of Excise on excisable goods vide clause 81 read with clause 83 of the Finance Bill (No.2) 2004, the Hon'ble Finance Minister has taken a step, which is going to help not only the younger generations enormously, but also going to be the beacon light to the generations to come. It is a known fact that "Knowledge is power" and by utilization of the huge funds that are going to be available to the Government by the imposition of this Cess to impart education (knowledge), the power of this country's youth is going to be so huge, it will make India a super power within no time. Immediately, my mind reverted to the first step taken by Neil Armstrong on the moon, which was aptly described as a gigantic leap in the field of human race. It is not the intention of this author to discuss the socio-economic implications of the Cess now imposed, but it is only a minor attempt to bring to the notice of the authorities that the fascicles of the law requires some more attention.

In the first place, when the very purpose of imposition of Cess is for a noble cause and with a far sighted nation building attempt, there should not be any Credit facility, for, the very purpose of Credit facility introduced by the doyen of the Finance Ministers of this country, was to avert cascading effects of tax. In the instant case, there should not be any such cascading effect, after all, the very purpose of this levy is different and if credit is allowed, I am sure, the very purpose is defeated. Let there be Cess, which will allow the Government to build this nation on a strong foundation, without any inhibitions.

Why there should be an ambiguity in law and promptly the Consultants and Advocates raise and answer unanimously to run our kitchen fires. When the Education Cess was introduced, by and large, there was no ill feeling towards the same from the trade, as was expressed in the case of increase in Service Tax from 8% to 10%. However, when the time came to discharge the same, though there was no ill feeling, there was an all-round confusion at the field formation levels. Instances have come to notice, where assessee's desire to discharge the said liability from the Cenvat Credit accrued on account of BED etc. and the departmental officers issuing instructions in a different manner, albeit, orally. A simple reading of the CENVAT Credit Rules, 2002 reveal that though there is a clause in sub-rule (6) of Rule-3 of CENVAT Credit Rules, 2002 which bars utilization of Credit accrued on Education Cess towards discharge of any other duty liability, there is no such clause 'vice-versa'. When there is no such clause, then discharging the Education Cess liability from the Cenvat Credit accrued on account of BED etc. appears to be correct in law. After all, as the popular maxim goes, ***" whatever is not prohibited, is always permitted"***.