
(2024) 02 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.60060 Of 2022

M/S Jindal Photo Limited

APPELLANT

Vs

Commissioner Of C.E. & S.T. Jammu

RESPONDENT

Date of Decision : 07-02-2024

Acts Referred:

Citation : (2024) 02 CESTAT CK 0006

Hon'ble Judges : S.S. Garg, Member (J)

Bench : Single Bench

Advocate : R.K. Hasija, Shivang Puri, Aneesh Dewan, Narinder Singh, Shivam Syal

Final Decision : Allowed

Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 21.10.2021 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has dismissed the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant during the period from August, 2007 to July, 2009 filed refund claim in respect of Education Cess and S&H Education Cess under exemption Notification No. 56/2002-CE dated 14.11.2002 amounting to Rs. 14,79,272/- through self-credit mode. After following the due process the original authority rejected these claims by holding that their refund claim on account of Education Cess and S&H Education Cess paid through PLA is not admissible to the appellant in terms of the said notification, as the said Education Cesses have been levied under the Finance Act, 2004 & Finance Act, 2007 respectively and not under any of the Acts as mentioned in the said notification. Aggrieved by the said order of rejection, the appellant filed the appeal before the Commissioner who rejected the appeal on account of non deposit of mandatory pre-deposit. Against the said order, the appellant approached the Hon'ble CESTAT and vide its order dated 20.01.2017

and 14.02.2017 the matter was remanded back to the Commissioner (Appeals) for fresh consideration without insisting pre-deposit since it was a case of rejection of refund claim.

3. At the same time, parallel proceedings for recovery of the self-credit/refund erroneously taken by the appellant in respect of Education Cess and S&H Education Cess i.e. on the same matters and overlapping period, were adjudicated vide (5) different show cause notices. This parallel proceedings eventually reached the Hon'ble CESTAT, wherein the entire amount of demand was deposited as pre-deposit and on merits, vide Final Order no. 63301/2018 dated 25.10.2018. It was held that appellant is entitled to take the refund of Education Cess and S&H Education Cess, therefore, the appellant duly applied for refund of amount so deposited as pre-deposit and was granted the same vide order dated 11.03.2019. Further, in compliance of the remand order dated 20.01.2017 and 14.02.2017 of the CESTAT, the Commissioner (Appeals) vide the impugned order dated 21.10.2021 dismissed the appeal of the appellant on merits. Aggrieved by the said order, the appellant has filed the present appeal.

4. Heard both the parties and perused the record.

5. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submits that an amount of Rs. 22,69,936/- has already been refunded to the appellant on the same issue and for overlapping period on the strength of the Hon'ble Supreme Court's decision in SRD Nutrients Vs. CCE reported in 2018 (1) SCC 105. He further submits that once it has been held that the appellant is entitled to refund of Education Cess and S&H Education Cess on the basis of SRD Nutrients case then the department is not entitled to make recovery of the said refunded amount on the basis of subsequent decision of the Hon'ble Supreme Court in the case of Unicorn Industries reported in 2020 (3) SCC 492. He further submits that Hon'ble Supreme Court in the matter of Commissioner of CGST & CE (J&K) vs. M/s Saraswati Agro Chemicals Pvt. Ltd., 2023 (7) TMI 542 has unequivocally held that the decision in Unicorn industries cannot have a bearing on past decisions which had attained finality by following the SRD Nutrients case. Otherwise, it would open a pandora's box of litigation which is against public policy.

6. He also relied upon the decisions of Guwahati High Court in the matter of M/s Topcem India Vs. UOI, WP(C) No. 2918 of 2020 wherein it was also observed that refunds sanctions in terms of the SRD Nutrients judgments cannot be revoked co-laterally by a quasi-judicial authority. It was also held that even though Unicorn Industries judgment holds the SRD Nutrients Judgment to be per incuriam, it will not permit the department to unilaterally revoke or re-open the issue without taking recourse to the remedies available to them before a judicial forum.

7. On the other hand, Ld. DR submits that the impugned order has been passed

by relying upon the latest decision of the Hon'ble Apex Court in the case of Unicorn Industries cited (Supra). He further submits that the case of SRD Nutrients pvt. Ltd. has been held as per incuriam and therefore by following the ratio of the Unicorn Industries, the Ld. Commissioner (Appeals) has rightly held that the appellants are not entitled to refund of Education Cess and S&H Education Cess.

8. After considering the submissions of both the parties I find that in the impugned order the Ld. Commissioner has only relied upon the decision of the Hon'ble Apex Court in the case of Unicorn Industries cited (Supra). Further, I find that the Parallel proceedings for recovery of the self-credit/refund erroneously taken by the appellant in respect of Education Cess and S&H Education Cess during the overlapping period, were adjudicated by the original authority as well as by the appellate authorities of the department and appellant was asked to deposit an amount of Rs. 22,69,936/- . Thereafter, the CESTAT vide its Final Order No. 63301/2018 dated 25.10.2018 held that the appellant is entitled to take the refund of Education Cess and S&H Education Cess in view of the judgment of the Hon'ble Supreme Court in the case of SRD Nutrients Pvt. Ltd. I also find that pursuant to CESTAT's Order dated 25.10.2010, the appellant duly applied for refund of the amount so deposited and was granted by the original authority vide its order dated 11.03.2019 wherein the Original authority has also observed that the appellant is entitled for refund of Education Cess and S&H Education Cess and by following the decisions of the CESTAT, the Original authority has rightly granted the refund.

9. Further, I find that the department filed bunch of appeals including the final order No. 63301/2018 dated 25.10.2018 before the Hon'ble High Court of Jammu and Kashmir and the Hon'ble High Court of Jammu and Kashmir vide its order dated 23.05.2022 has held as under in para 74 & 75:

"74. Applying the aforesaid principle in the cases at hand, since the assessee has been held entitled to the refund of the Educational cess and Secondary & Higher Educational cess on the basis of a judgment and order of the Supreme Court in case SRD Nutrients which was in vogue at the relevant time, the appellants are not entitled to make recovery of the said refunded amount on the basis of the subsequent decision of the Supreme Court rendered in the case of Unicorn Industries. If such an action is permitted, it will open a Pandora box and the lis between the parties which had attained finality will never come to an end. This would be against the public policy which envisages providing quietus to litigation at some stage.

75. In view of the facts and circumstances of the case, we find no merit in these appeals and the same are dismissed, first for the reason, they are barred by limitation, secondly, they are not maintainable and, lastly, the change of opinion of the court in a subsequent matter of another party would not give any leverage to the appellants to reopen the decisions which have attained finality."

10. Further, I also find that the Revenue filed SLP before the Hon'ble Apex Court against the decision of the Jammu and Kashmir High Court dated 23.05.2022, in the case of CGST & CE (J&K) vs. M/s Saraswati Agro and the Hon'ble Apex Court vide its order dated 04.07.2023 has upheld the decision of the High Court of Jammu and Kashmir and dismissed the special writ petition filed by the department.

11. Here, it is pertinent to reproduce the relevant findings of the Hon'ble Apex Court which is reproduced herein below:

"The contention of the Revenue is that in view of the subsequent judgment of this Court in M/s Unicorn Industries, recoveries could be made from the assessees with regard to the refund of education cess made by the Department or if not paid by the assesses following the judgment in SRD Nutrients (P) Limited. In the above circumstances, appeals were filed before the High Court by the assessees. In the instant case, the High Court had raised the following question of law and answered it against the Revenue:-

"Whether the assessee is liable to return the Education Cess and Secondary & Higher Education Cess on the changed view of law as subsequently laid down by the Full Bench of the Supreme Court in Unicorn Industries vs. Union of India reported in (2020) 3 SCC 492, overruling SRD Nutrients (P) Ltd. vs. CCE (Supra) on the basis of which the aforesaid cess was refunded to the Assessee."

12. In our view the High Court has rightly answered the aforesaid question. The High Court in the impugned order while considering the judgment passed by this Court in SRD Nutrients (P) Limited (supra) as well as M/s Unicorn Industries (supra) has observed in Paragraph 74 as under:

"Applying the aforesaid principle in the cases at hand, since the assessee has been held entitled to the refund of the Educational cess and Secondary & Higher Educational cess on the basis of a judgment and order of the Supreme Court in case SRD Nutrients which was in vogue at the relevant time, the appellants are not entitled to make recovery of the said refunded amount on the basis of the subsequent decision of the Supreme Court rendered in the case of Unicorn Industries. If such an action is permitted, it will open a Pandora box and the lis between the parties which had attained finality will never come to an end. This would be against the public policy which envisages providing quietus to litigation at some stage."

In substance, the High Court has stated that the decision in SRD Nutrients (P) Limited (supra) had attained finality and was binding on the parties thereto. Therefore, the subsequent decision of this Court overruling SRD Nutrients (P) Limited (supra) in the case of M/s Unicorn Industries cannot have a bearing on past decisions which had attained finality although they had followed SRD Nutrients (P) Limited (supra), which was subsequently overruled in M/s Unicorn Industries.

Otherwise a pandora's box would be opened and there would be no end to litigation, which is against public policy.

That is exactly what is sought to be done by the reference order dated 27.09.2021. When we read the reference order in light of the what has been discussed, we find that the reference order was unnecessary.

In the circumstances, the Special Leave Petitions are dismissed.

13. Since in the parallel proceedings for recovery of the self-credit/refund in respect of Education Cess and S&H Education Cess has been settled up to the Hon'ble Apex Court and the decision of the Tribunal dated 25.10.2018 holding that the appellant is entitled to the refund of Education Cess and S&H Education Cess and the said order has been complied with by the Revenue.

15. In view of these circumstances the impugned order is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant with consequential relief, if any as per law.