

E/ 58315 to 58320/2013 , E/ 58322 to 58324, 60726-60727/ 2013 And
E/ 51789-51794/ 2015, E/60069, 60410-60420/ 2018

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 58315 Of 2013**

[Arising out of OIA No. 292-293/CE/Apl/Chd-II(J&K)/2013 dated 03.06.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**M/s Ind Swift Labs Ltd**  
Industrial Growth Centre, Sambha (J&K)

**: Appellant (s)**

Vs

**Commissioner of Central  
Excise, Chandigarh-II**  
Plot No. 19, C.R. Building, Sector-17-C  
Chandigarh-160017

**: Respondent (s)**

With

- 2. Excise Appeal No. 58316 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 3. Excise Appeal No. 58317 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 4. Excise Appeal No. 58318 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 5. Excise Appeal No. 58319 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 6. Excise Appeal No. 58320 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 7. Excise Appeal No. 58322 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 8. Excise Appeal No. 58323 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 9. Excise Appeal No. 58324 of 2013 [M/s Ind Swift Labs Ltd]**  
[Arising out of OIA No. 150-167/CE/Apl/Chd-II(J&K)/2013 dated 26.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

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- 10. Excise Appeal No. 60726 of 2013 [Shree Balaji Alloys]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-122-125/13-14 dated 30.07.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 11. Excise Appeal No. 60727 of 2013 [Shree Balaji Alloys]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-122-125/13-14 dated 30.07.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 12. Excise Appeal No. 51789 of 2015 [Howco Petrofer LIP vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-943-948-14-15 dated 19.02.2015 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 13. Excise Appeal No. 51790 of 2015 [Howco Petrofer LIP vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-943-948-14-15 dated 19.02.2015 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 14. Excise Appeal No. 51791 of 2015 [Howco Petrofer LIP vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-943-948-14-15 dated 19.02.2015 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 15. Excise Appeal No. 51792 of 2015 [Howco Petrofer LIP vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-943-948-14-15 dated 19.02.2015 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 16. Excise Appeal No. 51793 of 2015 [Howco Petrofer LIP vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-943-948-14-15 dated 19.02.2015 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 17. Excise Appeal No. 51794 of 2015 [Howco Petrofer LIP vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-943-948-14-15 dated 19.02.2015 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 18. Excise Appeal No. 60069 of 2018 [J & K Pigments Ltd. vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-24-17-18 dated 28.09.2017 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 19. Excise Appeal No. 60410 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 20. Excise Appeal No. 60411 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**  
[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]
- 21. Excise Appeal No. 60412 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

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[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**22. Excise Appeal No. 60413 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**23. Excise Appeal No. 60414 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**24. Excise Appeal No. 60415 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**25. Excise Appeal No. 60416 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**26. Excise Appeal No. 60417 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**27. Excise Appeal No. 60418 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**28. Excise Appeal No. 60419 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**29. Excise Appeal No. 60420 of 2018 [PBI Metals Private Limited vs. CCE & ST- Jammu & Kashmir]**

[Arising out of OIA No. JNK-EXCUS-000-APP-203-213-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh]

**APPEARANCE:**

Shri Veer Singh, Shri Naveen Bindal, Shri Vikrant Kackaria, Shri Rajat Mittal  
Advocates for the Appellant

Shri Rajeev Gupta, Shri Siddharth Jaiswal, Shri Nikhil Kumar Singh, Shri Aneesh Dewan, Shri Harish Kapoor, Shri Narinder Singh, Shri Shivam Syal,  
DRs for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)  
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/60412-60440/2023**

Date of Hearing:19.09.2023

Date of Decision:19.09.2023

**Per : S. S. GARG**

The above mentioned 29 Appeals filed by the different appellants are taken up together for discussion and decision. The only issue involved in all these appeals is "whether the refund of education cess and secondary and higher education cess" which was paid along with excise duty in terms of Notification No. 56/2002-CE dated 14.11.2002 as amended is admissible or not.

2. Heard both the parties and perused the records.

3. In all these cases cited above, the refund claim was rejected by the Adjudicating Authority and the order of the Adjudicating Authority has been upheld by the Ld. Commissioner (Appeals). Aggrieved by the order of the Ld. Commissioner (Appeals), these appellants have filed these appeals against the impugned orders.

2. The appellants are registered in the state of Jammu & Kashmir and were availing benefit of area based exemption under Notification No. 56/2002-CE dated 14.11.2002. The said notification provides mechanism to give effect to aforesaid exemption by way of refund of duty paid through PLA. As per the procedure, the manufacturer avails Cenvat Credit of duty/cess paid by them on inputs and utilises whole of the CENVAT credit available with them on last day of the month for payment of Central Excise duty and Cess. The balance amount of duty is paid in cash and on application of refund, the refund is granted for payment of Central Excise made in cash only. The refund is granted by way of cash or by way of self credit in PLA. The above said

issue is no more res-integra and stands finally decided by the decision of the Hon'ble Supreme Court in the case of M/s Unicorn Industries vs. Union of India reported as 2019 (370) ELT 3 (S.C) wherein the Hon'ble Apex Court, after considering the provisions of Notification No. 71/2003-CE dated 09.09.2003 has held that a notification has to be issued for providing exemption under the said source of power and that in the absence of notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted.

3. Further, we note that the provisions of Notification No. 56/2002-CE dated 14.11.2002 are ***pari-materia*** to the provisions of Notification No. 71/2003-CE dated 09.09.2003. It is pertinent to reproduce the relevant findings of the case of M/s Unicorn Industries cited (supra) which are reproduced herein below:-

“39. Rule 8 of Central Excise Rules, 1944, authorises the Central Government to grant an exemption to any excisable goods from the whole or any part of duty leviable on such goods. Rule 8 is extracted hereunder :

“8. **Power to authorise an exemption from duty in special cases.** - (1) The Central Government may from time to time, by notification in the official Gazette, exempt (subject to such conditions as may be specified in the notification) any excisable goods from the whole or any part of duty leviable on such goods.

(2) The Central Board of Excise and Customs may by special order in each case exempt from the payment of duty, under circumstances of an exceptional nature, any excisable goods.”

The word ‘duty’ is defined under Rule 2(v) to mean the duty as levied under the Act.

**40.** Notification dated 9-9-2003 issued in the present case makes it clear that exemption was granted under Section 5A of the Act of 1944, concerning additional duties under the Act of 1957 and additional duties of excise under the Act of 1978. It was questioned on the ground that it provided for limited exemption only under the Acts referred to therein. There is no reference to the Finance Act, 2001 by which NCCD was imposed, and the Finance Acts of 2004 and 2007 were not in vogue. The notification was questioned on the ground that it should have included other duties also. The notification could not have contemplated the inclusion of education cess and secondary and higher education cess imposed by the Finance Acts of 2004 and 2007 in the nature of the duty of excise. The duty on NCCD, education cess and secondary and higher education cess are in the nature of additional excise duty and it would not mean that exemption notification dated 9-9-2003 covers them particularly when there is no reference to the notification issued under the Finance Act, 2001. There was no question of granting exemption related to cess was not in vogue at the relevant time imposed later on vide Section 91 of the Act of 2004 and Section 126 of the Act of 2007. The provisions of Act of 1944 and the Rules made thereunder shall be applicable to refund, and the exemption is only a reference to the source of power to exempt the NCCD, education cess, secondary and higher education cess. A notification has to be issued for providing exemption under the said source of power. In the absence of a notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted. The High Court was right in relying upon the decision of three-Judge Bench of this Court in *Modi Rubber Limited* (supra), which has been followed by another three-Judge Bench of this Court in *Rita Textiles Private Limited* (supra).

**41.** The Circular of 2004 issued based on the interpretation of the provisions made by one of the Customs Officers, is of no avail as such Circular has no force of law and cannot be said to be binding on the Court. Similarly, the Circular issued by Central Board of Excise and Customs in 2011, is of no avail as it relates to service tax and has no force of law and cannot be said to be binding concerning the interpretation of the provisions by the Courts. The reason employed in *SRD Nutrients Private Limited* (supra) that there was nil excise duty, as such, additional duty cannot be charged, is also equally unacceptable as additional duty can always be determined and merely exemption granted in respect of a particular excise duty, cannot come in the

way of determination of yet another duty based thereupon. The proposition urged that simply because one kind of duty is exempted, other kinds of duties automatically fall, cannot be accepted as there is no difficulty in making the computation of additional duties, which are payable under NCCD, education cess, secondary and higher education cess. Moreover, statutory notification must cover specifically the duty exempted. When a particular kind of duty is exempted, other types of duty or cess imposed by different legislation for a different purpose cannot be said to have been exempted.

**42.** The decision of Larger Bench is binding on the Smaller Bench has been held by this Court in several decisions such as *Mahanagar Railway Vendors' Union v. Union of India & Ors.*, (1994) Suppl. 1 SCC 609, *State of Maharashtra & Ors. v. Mana Adim Jamat Mandal*, AIR 2006 SC 3446 and *State of Uttar Pradesh & Ors. v. Ajay Kumar Sharma & Ors.*, (2016) 15 SCC 289. The decision rendered in ignorance of a binding precedent and/or ignorance of a provision has been held to be *per incuriam* in *Subhash Chandra & Ors. v. Delhi Subordinate Services Selection Board & Ors.*, (2009) 15 SCC 458, *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129, and *Central Board of Dawoodi Bohra Community & Ors. v. State of Maharashtra & Ors.*, (2005) 2 SCC 673 = [2010 \(254\) E.L.T. 196](#) (S.C.). It was held that a smaller bench could not disagree with the view taken by a Larger Bench.

**43.** Thus, it is clear that before the Division Bench deciding *SRD Nutrients Private Limited* and *Bajaj Auto Limited* (supra), the previous binding decisions of three-Judge Bench in *Modi Rubber* (supra) and *Rita Textiles Private Limited* (supra) were not placed for consideration. Thus, the decisions in *SRD Nutrients Private Limited* and *Bajaj Auto Limited* (supra) are clearly *per incuriam*. The decisions in *Modi Rubber* (supra) and *Rita Textiles Private Limited* (supra) are binding on us being of Coordinate Bench, and we respectfully follow them. We did not find any ground to take a different view.

**44.** Resultantly, we have no hesitation in dismissing the appeals. The judgment and order of the High Court are upheld, and the appeals are dismissed. No costs.”

3. By following the ratio of the decision in the case of M/s Unicorn Industries cited (supra), we are of the considered opinion that there is

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no infirmity in the impugned order vide which the refund of the education cess and higher secondary education cess has been denied. We uphold the impugned orders by dismissing all the appeals of the appellants.

*(Operative part of the order pronounced in the open Court)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.