CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 58092 of 2013

[Arising out of Order-in-Original No. 44/ST/COMMR/DM/RTK/2012-13 dated 19.02.2013 passed by the Commissioner, Central Excise, Rohtak]

Maruti Suzuki India Ltd **......Appellant**
Finance Division, Palam-Gurgaon Road,
Gurugram, Haryana 122015

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Gurugram **......Respondent**
Plot No. 36-37, Sector 32, Opp Medanta Hospital,
Gurugram, Haryana 122001

<u>APPEARANCE:</u>

Ms. Krati Singh, Ms. Shreya Khunteta and Ms. Samiksha Uniyal, Advocates for the Appellants
Shri Siddharth Jaiswal, Shri Narinder Singh and Shri Yashpal Singh, Authorized Representatives for the Respondent

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

FINAL ORDER NO. 60667/2024

DATE OF HEARING: 13.12.2024
DATE OF DECISION: 13.12.2024

<u>S. S. GARG:</u>

The present appeal is directed against the impugned order dated 19.02.2013 passed by the Commissioner of Central Excise, Rohtak, whereby the learned Commissioner has confirmed the demand of education cess and secondary & higher education cess amounting to Rs.1,64,07,487/- under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Act and also imposed penalties under Sections 77 and 78 of the Act.

2. Briefly stated facts of the present case are that the Appellant is engaged in the manufacture of engine and transmission parts of two-wheeler and four-wheeler motor vehicles and was regularly paying service tax under the categories of 'Consulting Engineering Service' and 'Intellectual Property Service' after availing the benefit of Notification No. 18/2002-ST dated 16.12.2002 and Notification No. 17/2004-ST dated 10.09.2004. As per the said Notifications, exemption was granted from the payment of service tax to the extent of the amount of Research and Development Cess ('R&D cess') paid on transfer or import of technology under Section 3 of the R&D Cess Act, 1986. Accordingly, the Appellant paid the education cess and secondary & higher education cess on the amount of net service tax i.e. service tax after deducting the amount of R&D cess i.e. the exempted amount. Basis on the audit observations, a show cause notice dated 08.04.2011 was issued to the Appellant invoking the extended period of limitation. After following the due process, the learned Commissioner has confirmed the demand raised in the show cause notice alongwith interest and penalties. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.2 The learned Counsel further submits that the issue involved in the instant case is already decided in the favour of the Appellant in the Appellant's own case for the subsequent period. She also submits that the proceedings for the financial year 2014-15 and 2015-16 involving the identical issue have been dropped vide Order-in-Original No. 08/ST/COMMR/VMJ/RTK/2017-18 dated 29.12.2017 and Order-in-Original No. 03/VKR/SUPDT/R-I/N-I/CGSR/GGM/2020-21 dated 23.03.2021. She further submits that the present proceedings have also emanated from the same audit proceedings from which the above stated proceedings have been initiated. She further submits that the department has not filed any appeal against the above stated Orders-in-Original and has accepted the position that the Appellant is not liable to pay the demand of short payment of education cess and secondary & higher education cess raised by the department and the said Orders-in-Original have attained finality. She further submits that it is a settled legal position that the department cannot take contrary stand in proceedings on the same issue for the same assessee. In this regard, the she relies on the following decisions:

- **Commissioner of Central Excise vs. SS Engineers – 2023 (386) ELT 192 (SC)**
- **Rosmerta Technologies Ltd vs. Commissioner of Central Excise – 2020-TIOL-916-CESTAT-CHD (affirmed by the Hon'ble Supreme Court vide order dated 10.07.2023)**

4.3 The learned Counsel further submits that the Commissioner vide impugned order has confirmed the demand of education cess and secondary & higher education cess on the ground that these cesses are levied and collected as service tax and therefore, forms an integral part of the service tax and since the Notifications provide the exemption from the payment of service tax, accordingly, the amount of R&D cess shall be deducted from the amount of service tax including education cess and secondary & higher education cess and not from the amount of the service tax only. She further submits that education cess and secondary & higher education cess should be calculated on the gross service tax i.e. before deduction of R&D cess.

4.4 The learned Counsel further submits that the Appellant is paying service tax under the categories of 'Consulting Engineering Service' and 'Intellectual Property Service' under reverse charge after availing the exemption from service tax to the extent of R&D cess paid under Section 3 of R&D Cess Act on the amount paid to foreign service provider for import of technology under the Notifications. She also submits that the department has not disputed the eligibility of the Appellant to avail the exemption under the Notifications.

4.5 The learned Counsel also refers to the Circular No. 80/10/2004-ST dated 17.9.2004 wherein it has been clarified that in case of partial exemption by way of abatement, education cess shall be calculated on the net tax paid and not the entire amount of service tax payable before the abatement.

4.6 She further submits that the demand in the present case has been incorrectly computed on best judgment basis for the period 2008-09 to 30.09.2010 under Section 72 of the Act. She also submits that the provisions of best judgment assessment under Section 72 are not applicable in the present case because the Appellant had been regularly furnishing returns.

4.7 The learned Counsel also raises the issue of extended period of limitation and submits that the Appellant had a *bona fide* belief that they had correctly discharged the liability of education cess and secondary & higher education cess and the issue involved in the present case is interpretation of complex legal provisions. Therefore, suppression with intention to evade tax cannot be alleged against the Appellant.

5. On the other hand, the learned AR for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record. We find that in the Appellant's own case for the subsequent period pertaining to financial year 2014-15 and 2015-16 involving the identical issue as involved in the present case, the Commissioner vide Order-in-Original No. 08/ST/COMMR/VMJ/RTK/2017-18 dated 29.12.2017 has allowed the benefit in favour of the Appellant and the department has accepted the said order and has not filed any appeal against the same.

Further, in Order-in-Original No. 03/VKR/SUPDT/R-I/N-I/CGSR/GGM/2020-21 dated 23.03.2021, the Adjudicating Authority/Superintendent in para 13 has recorded that the earlier Order-in-Original dated 29.12.2017 has been accepted by the Committee of Chief Commissioners on 16.04.2018 as communicated by the Assistant Commissioner, CCO, Panchkula under letter C.No. CCO/PKL/Review/MSLIL/353/2017/5149 dated 16.08.2018.

7. Since the department has accepted the order of the Commissioner dated 29.12.2017, which has now attained finality and the present proceedings have also arisen on the basis of same audit, therefore, we hold that the issue is squarely covered in favour of the Appellant. Further, we hold that the Appellant had rightly paid the education cess and secondary & higher education cess on the amount of net service tax i.e. service tax after deducting the amount of R&D cess i.e. exempted amount.

8. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable in law, accordingly, we aside the same and allow the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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