# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHANDIGARH

REGIONAL BENCH - COURT NO. I

## Excise Appeal No. 60010 of 2022

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/92-95/21-22 dated 30.11.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**M/s Insecticides India Ltd.** **……Appellant**
Plot No. 11-12, I.i.d Centre
Sicop Battal Ballian Udhampur, J& K, 182101

*VERSUS*

**Commissioner of Central Excise, Goods And Service Tax, Jammu** **……Respondent**
OB-32, Rail Head Complex, Bahu Plaza, Jammu,
Jammu & Kashmir 180012

**WITH**

**(ii) Excise Appeal No. 60011 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/92-95/21-22 dated 30.11.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(iii) Excise Appeal No. 60012 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/92-95/21-22 dated 30.11.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(iv) Excise Appeal No. 60013 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/92-95/21-22 dated 30.11.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(v) Excise Appeal No. 60028 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/96-109/21-22 dated 09.12.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(vi) Excise Appeal No. 60029 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/96-109/21-22 dated 09.12.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(vii) Excise Appeal No. 60030 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/96-109/21-22 dated 09.12.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(viii) Excise Appeal No. 60031 of 2022 (M/s Insecticides India Ltd)**

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/96-109/21-22 dated 09.12.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(ix) Excise Appeal No. 60032 of 2022 (M/s Insecticides India Ltd)**

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/110/21-22 dated 17.12.2021 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**(x) Excise Appeal No. 60059 of 2022 (M/s Insecticides India Ltd)**
[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-/114/21-22 dated 12.01.2022 passed by the Commissioner (Appeals), Central goods & Service Tax, Central Excise & Customs, Jammu]

**APPEARANCE:**

Shri Ajay Jain, Advocate for the Appellant

Shri Aneesh Dewan and Shri Harish Kapoor, Authorized Representatives for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 60441-60450/2025**

DATE OF HEARING: 28.11.2024
DATE OF DECISION: 27.03.2025

These ten appeals have been filed by the appellant directed against the impugned orders passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the refund of Education Cess & Secondary High Education Cess on the basis of the Hon'ble Apex Court Judgments in the case of Unicorn Industries Vs. UOI reported in 2019 (370) ELT 3 (SC). Since the issue involved in all the appeals is identical therefore all the appeals are taken up together for discussion and decision. For the purpose of discussion, we may take the facts of Appeal no. E/60010/2022.

2. Briefly the facts of the present case are that the appellant is having a unit in the state of J & K, are engaged in the manufacture of Insecticides & Pesticides falling under Chapter 38 of the Schedule to CET Act, 1985 and availing the benefit of exemption under Notfn. No. 56/2002-CE dated 14-11-2002 read with Notification No. 01/2010-CE dated 06-02-2010 which grants exemption of excise duty to the units situated in the Jammu & Kashmir. The appellants have been claiming the refund of duty paid by them on their final products in terms of the provisions of aforesaid notification. The present proceedings involved second round of litigation and in the earlier proceedings, the adjudicating authority rejected whole of the amount of refund pertaining to E.Cess & SHE Cess on the basis that E.Cess & SHE Cess has been levied under the Finance Act 2004 and 2007 and the same is not duty of excise and accordingly rejected the refund claim.

Aggrieved by the said order, the appellant filed the appeal against the said orders rejecting the claim pertaining to E.Cess & SHE Cess. The Tribunal relying upon the judgments of the Hon'ble Supreme Court in the case of ***SRD Nutrients Pvt. Ltd Vs. CCE, Guwahati***, reported in ***2017 (355) ELT 481 (SC)*** allowed the appeal of the appellant itself and held that the refund is admissible in respect of E.Cess & SHE Cess. The adjudicating authority instead of implementing the Final Orders passed by the CESTAT, partially implemented the orders at his own and bifurcated the claim in two parts, sanctioned part of the claim whereas either withhold/rejected part refund claim in respect of value addition of E.Cess & SHE Cess and value addition of the basic excise duty.

2.2 The adjudicating authority neither issued any show cause notice/afforded any opportunity of personal hearing nor sought any details/explanation and proceeded to reject part of the claim by adopting a short-cut method on the basis of the report of range officer, by ignoring the decision of the Hon'ble Apex Court and the Hon'ble Tribunal which attained finality so far as the appellant is concerned. Aggrieved by the orders passed by the adjudicating authority rejecting part of the refund claim, the appellant filed the appeal before the Commissioner (Appeals) and challenged only part of the order against the rejection of the claim but the Commissioner (Appeals) instead of deciding the issue involved not only rejected the refund claim rather ordered the recovery of already sanctioned claim on totally erroneous basis by referring to a subsequent judgment of the Supreme Court. Hence, the present appeals.

3. Heard both the parties and perused the record.

4. Ld. Counsel for the appellant submits that the impugned orders are not sustainable in law as the same has been passed by ignoring the Final Order Numbers i.e. 60430-60443/2018, 61667-61675/2018 both dated 06.03.2018 and another final order number 60928-60947/2021 in the appellants own case involving the identical issue wherein the CESTAT has held that the order of the Commissioner (Appeals) is bad in law and directed the adjudicating authority to implement the orders passed by the Tribunal. He further submits that the impugned orders are violative principle of natural justice and nonest in the eyes of law and the findings given on the issue which was not even the subject matter under challenge before the Commissioner (Appeals). He further submits that the orders passed by the Tribunal in the appellant's own case has attained finality as the Department neither challenged the said order nor filed any cross objections before the Appellate Authority. He further submits that neither the sanctioned claim was issue under challenge before the Commissioner (Appeals) nor the Department even raised any such issue neither at the adjudication stage or before the Commissioner (Appeals) or filed any cross objections. He further submits that there was no justification for ordering the recovery of sanctioned claim by

totally overlooking the provisions of Section 11A of the Central Excise Act which provides for recovery of refund sanctioned erroneously.

4.2 He further submits that any settled matter cannot be re-opened merely on the basis of another judgment pronounced at subsequent stage and any subsequent judgment cannot be taken as a basis to unsettle the settled law. He further submits that the Commissioner (Appeals) has erred in passing the impugned order on the basis of subsequent judgment in the case of ***Union of India Vs. Ms. V.V.F Ltd. reported in 2020 (372) ELT 495 (S.C.)*** specially when the appellant was never the party in the said case.

5. On the other hand, Ld. DR justified the impugned order on the ground that the CESTAT allowed the refund of E.Cess & SHE Cess on the basis of the judgments of the Hon'ble Apex Court in the case of SRD Nutrients Pvt. Ltd which was subsequently held as per-incuriam by the Supreme Court in the case of ***M/s Unicorn Industries Vs. UOI reported in 2019 (370) ELT 3 (SC)***. He further submits that the Commissioner (Appeals) has rightly ordered for recovery of E.Cess & SHE Cess already sanctioned by the adjudicating authority by relying upon the decision of the Supreme Court in the case of ***Union of India Vs. V.V.F. Ltd***. cited (Supra).

6. I have heard the submission of both the parties and perused the material on record, the only issue involved in these appeals is whether the appellants are entitled to refund of E.Cess & SHE Cess paid on the final goods. Further, I find that this issue has already

been settled by this Bench in the appellant's own case involving identical issue vide Final Number No. 60928-60947/2021 dated 23.11.2021 wherein it has been held that the orders of the Commissioner (Appeals) is bad in law and the Tribunal has also directed the adjudicating authority to implement the orders passed by the Tribunal in the earlier round of litigation.

7. Further, I find that the Tribunal in the appellant's own case vide Final Order Nos. 60430-60443/2018, 61667-61675/2018 both dated 06.03.2018 and another Final Order number 60928-60947/2021 have allowed the claim of the appellant by relying upon the judgments of the Hon'ble Supreme Court in the case of ***SRD Nutrients Pvt. Ltd*** reported in ***2017 (355) ELT 481***. Further, I find that the appellant was also a party before the Hon'ble Apex Court in the case of SRD Nutrients Pvt. Ltd. I also find that the review filed by the Department in SRD Nutrients Pvt Ltd. was also dismissed by the Hon'ble Supreme Court. Further, I find that before the Commissioner (Appeals) appellant has challenged only part of the adjudication order withholding/rejecting part of the refund claim whereas the Commissioner (Appeals) not only rejected the pending refund claim itself rather ordered for recovery of amount of the already sanctioned claims without any authority of law.

7.2 Further, I find that the final orders passed by CESTAT in the appellant's own case holding that the appellant is entitled for refund in respect of E.Cess & SHE Cess has not been challenged and have attained finality and once the orders of the Tribunal has attained finality then the lower authority are bound by same and cannot re-open and take a different view on the basis of another judgment pronounced at subsequent stage. Further, the findings of the Commissioner (Appeals) passing the impugned order on the basis of the subsequent judgment in the case of Union of India Vs. M/s V.V.F Ltd. cited (Supra) is not sustainable in law because the appellant was never the party in the said case whereas, he was the party before the Hon’ble Apex court in the case of SRD Nutrients Pvt. Ltd. cited (Supra) on the basis of which the Tribunal has given them the relief.

8. Further, I find that the Hon’ble Punjab and Haryana High Court in the case of ***Proxima Steel Forge Private Limited Vs. Union of India, CWP-21975-2024 decided on 03.10.2024*** has observed in 7 & 8 paras as under:

> *7. If subordinate officers do not comply with the appellate orders, it would be something sort of administrative chaos. Such officers are required to be dealt with by the Department in a strict manner, so that they may not create a precedent for others to start insubordination. It also reflects in general public faith in filing appeals, which would be wavered if the appellate orders are not complied with. Litigation is also forced unnecessarily before this Court. Such insubordination requires to be dealt with more strictness.*

*8. Accordingly, we direct the Commissioner to take appropriate departmental action against the concerned Assistant Commissioner, Sewa Ram, for his insubordination, by initiating proceedings for major penalty.*

9. In view of my discussion above, I am of the considered opinion that the impugned orders are not sustainable in law therefore I set aside the same by allowing the appeals of the appellant with consequential relief if any, as per law.

(Order pronounced in the open court on 27.03.2025)

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

Kailash