CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 56 of 2016

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-358-359-15-16 dated 28.10.2015 passed by the Commissioner (Appeals), CE & Cus., Chandigarh-II]

Sun Pharma Laboratories Limited **......Appellant**
6-9, Kartholi, Bari Brahmana,
SIDCO Industrial Complex, Jammu

VERSUS

Commissioner of Central Excise and Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex, Jammu

WITH

Excise Appeal No. 57 of 2016

[Arising out of Order-in-Appeal No. JNK-EXCUS-000-APP-358-359-15-16 dated 28.10.2015 passed by the Commissioner (Appeals), CE & Cus., Chandigarh-II]

Sun Pharma Laboratories Limited **......Appellant**
6-9, Kartholi, Bari Brahmana,
SIDCO Industrial Complex, Jammu

VERSUS

Commissioner of Central Excise and Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex, Jammu

APPEARANCE:

Shri Ashok Nawal, Cost Accountant for the Appellant

Shri Harish Kapoor, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60505-60506/2025

DATE OF HEARING: 24.04.2025
DATE OF DECISION: 29.04.2025

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

These two appeals are directed against a common impugned order dated 28.10.2015 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II, vide which the learned Commissioner has rejected the appeal of the appellant and upheld the Order-in-Original. Since the issue involved in these two appeals is identical, therefore, both the appeals are taken up together for discussion and decision. The details of both the appeals are given herein below:

Appeal No. :	E/56/2016	E/57/2016
Period of dispute	Apr 2012 to Jan 2013	June 2013 to Nov 2013
Demand	Rs. 30,74,424/- with interest	Rs. 3,05,316/-
Penalty	Rs. 30,74,424/-	-
SCN dated	16.04.2013	26.06.2014
OIO No.	33/JC/JK/2014-15 dated 24.02.2015	11/CE/AC/J/D/15 dated 07.05.2015
OIA No.	JNK-EXCUS-000-APP-358-359-15-16 dated 28.10.2015	JNK-EXCUS-000-APP-358-359-15-16 dated 28.10.2015

2. Briefly stated facts of the case are that the appellant are engaged in manufacture of P&P Medicines falling under Tariff Heading Nos. 30049099 & 30039090 of First Schedule to Central Excise Tariff Act, 1985. The appellant were operating under area based exemption Notification No. 56/2002-CE dated 14.11.2002. In these two appeals, demand has been raised by issuing show cause notices for recovery of refund claim rejected by the jurisdictional Central Excise officer on

the ground of rejection of refund of education cess and secondary & higher education cess. The original authority confirmed the demand by holding that education cess and secondary & higher education cess are not duties of excise and therefore, for payment of education cess and secondary & higher education cess, CENVAT Credit of basic excise duty cannot be used. Aggrieved by the order of original authority, the appellant filed appeal before the Commissioner (Appeals), who has rejected their appeal. Hence, the present appeals.

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

4. The learned Consultant 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 and by ignoring the binding judicial precedents. The learned Consultant further submits that in the appellant's own case for the previous period, the Tribunal vide its Final Order No. 62207/2018 dated 22.03.2018 (in Appeal No. E/53579/2014) and Final Orders Nos. 63644-63649/2018 dated 06.12.2018 (in Appeal Nos. E/54465/2015 & E/54221-54225/2015), by relying upon the decision of the Hon'ble Apex Court in the case of SRD Nutrients Pvt Ltd vs. CCE, Guwahati – 2017 (355) ELT 481 (SC), has held that the appellant are entitled to the refund on account of education cess and secondary & higher education cess. The learned Consultant further submits that the issue of rejection of refund claim was finally settled in favour of the appellant and therefore, the show cause notice seeking recovery of the said refund becomes infructuous. Further, the learned Consultant relies on the judgment of the Hon'ble Apex Court

in the case of Commr of CGST, Jammu vs. Saraswati Agro Chemicals Pvt Ltd – 2023 (386) ELT 193 (SC).

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

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the issue involved in the instant case is no more *res integra* and has been settled in favour of the appellant in their own case for the previous period as cited supra.

7. Further, we find that vide the impugned order, the learned Commissioner (Appeals) has rejected the appeal of the appellant by holding that the appellant are not entitled to refund of education cess and secondary & higher education cess. We find that this issue has been settled by the Hon'ble Apex Court in the case of SRD Nutrients Pvt Ltd (supra) which has been subsequently followed in various final orders passed by this Tribunal viz. the Final Order Nos. 60547-60556/2018 dated 06.03.2018, Final Order Nos. 62157-621912/2018 dated 23.03.2018 and Final Orders Nos. 62650-62651/2018 dated 28.08.2018. Following the above said final orders, in the appellant's own case of the previous period, the Tribunal set aside the order of Commissioner (Appeals) and allowed the appeals of the appellant.

8. Further, we find that the Hon'ble Apex Court in the case of Commr of CGST, Jammu vs. Saraswati Agro Chemicals Pvt Ltd (supra), has held as under:

> "Merely that decision in SRD Nutrients Pvt Ltd (supra) was subsequently overruled, reference to Larger Bench vide order dated 27-9-2021 as reported in 2021 (378) ELT 579 (SC) on a miscellaneous application filed by Revenue seeking to undo aforesaid decision was unnecessary in view of Explanation to Order XLVII Rule 1 of Code of Civil Procedure, 1908 which provides that an earlier judgment cannot be reopened or reviewed to bring it in line with subsequent judgment overruling it – After all, there has to be finality in litigation and a person cannot be vexed twice."

9. In view of our discussion above and by following the ratios of the various decisions of the Tribunal in the appellant's own cases as cited above, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same and allow both the appeals of the appellant.

(Order pronounced in the open court on .04.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi