CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2818 of 2012

[Arising out of Order-in-Appeal No. 105-106/CE/APPL/CHD-II(JK)/2012 dated 14.06.2012 passed by the Commissioner (Appeals), C.E. & Cus., Chandigarh-II]

Montage Enterprises Pvt Ltd **......Appellant**
Lane No. 4, Phase I, SIDCO Industrial Complex,
Bari Brahmana, Jammu (J&K)

VERSUS

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

WITH

Excise Appeal No. 2819 of 2012

[Arising out of Order-in-Appeal No. 105-106/CE/APPL/CHD-II(JK)/2012 dated 14.06.2012 passed by the Commissioner (Appeals), C.E. & Cus., Chandigarh-II]

Montage Enterprises Pvt Ltd **......Appellant**
Lane No. 4, Phase I, SIDCO Industrial Complex,
Bari Brahmana, Jammu (J&K)

VERSUS

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

APPEARANCE:

Shri Arvind Arora, Advocate for the Appellant

Shri Raman Mittal and Shri Ravinder Jangu, 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. 60529-60530/2025

DATE OF HEARING: 27.02.2025
DATE OF DECISION: 19.05.2025

S. S. GARG :

These two appeals are directed against a common impugned order dated 14.06.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II, vide which the learned Commissioner (Appeals) 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:

S.No.	Appeal No. :	Period involved	E. Cess	S&H E. Cess	Outward Freight
1.	**E/2818/2012**	December 2010	Rs. 6172/-	Rs. 3096/-	Rs. 9021/-
2.	**E/2819/2012**	November 2010	Rs. 29154/-	Rs. 14580/-	Rs. 40303/-

2. Briefly stated facts of the case are that the appellant are engaged in manufacture of Plastic Film and Plastic Waste falling under Tariff Heading Nos. 39206290 & 39159990 of First Schedule to Central Excise Tariff Act, 1985. The appellant filed refund claims of duty under option of self-credit of duty paid through PLA under area based exemption Notification No. 56/2002-CE dated 14.11.2002. The adjudicating authority rejected the refund claims of the appellant on account of education cess, including secondary & higher education cess, paid through PLA observing that cesses paid under Finance Acts

2004/2007 are not refundable as the Finance Acts have not been specified under the Notification. The adjudicating authority also rejected the refund of duty paid on the element of freight observing that the duty on the element of outward freight was not payable as the outward freight does not form part of the assessable value. Aggrieved by the order of the adjudicating 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. We find that the issues involved in the instant case are:
(i) rejection of refund on account of education cess and secondary & higher education cess paid by the appellant; and (ii) rejection of refund on account of duty paid on outward freight element included in the assessable value.

5. As the issue no. (i), regarding refund of education cess and secondary & higher education cess, is concerned, we find that this issue stands covered by the decision of this Tribunal in the case of **M/s Ind Swift Labs Ltd vs. CCE, Chandigarh – II [vide Final Order No. 60412-60440/2023 dated 19.09.2023]**, wherein the Tribunal has held as under:

> "**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.
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> **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.
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> **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."

5.1 We further find that this Tribunal in the case of **M/s Cadila Pharmaceuticals Ltd vs. CCE & ST, J&K [vide Final Order No. 60076-60084/2025 dated 15.01.2025]** has also followed the decision of **M/s Ind Swift Labs Ltd** (supra)'s case and dismissed the appeals of the assessee.

5.2 Therefore, on this issue, by following the ratios of the above cited decisions, we hold against the appellant.

6. As the issue no. (ii), regarding refund on account of duty paid on outward freight element included in the assessable value, is concerned, we find that in the present case, the sale was effected on FOR basis and no separate freight charge was charged from the buyer

and the freight was included in the assessable value as shown in the invoices which have been produced before us.

6.1 We also find that this issue is covered by the judgment of the Hon'ble High Court of Himachal Pradesh in the case of **M/s Inox Air Products Pvt Ltd [decided on 21.03.2024 in CEA No. 2 of 2019]**, wherein the Hon'ble High Court has held that when there is FOR sale and the assessable value includes freight charge also, in that situation, the assessee is entitled to the CENVAT Credit of service tax. The relevant findings of the Hon'ble High Court of Himachal Pradesh are reproduced as under:

> "**31)** The CBIC, in it's circular dt.8.6.2018 has considered these two decisions and also the decision in Ultra Tech cement (Supra) and had specifically held (as set out in para 23 supra) that in the case of FOR destination sale where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.
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> **32)** This circular binds the respondents though it had been issued by the CBIC on 8.6.2018 after the decision was rendered in the instant case by the CESTAT on 27.2.2018.
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> **33)** In Ranadey Micronutrients etc. vs. Collector of Central Excise [AIR 1997 SC 69] the Supreme Court held that in view of Section 37B of the Central Excise & Salt Act, 1944, instructions issued by the Board in order to ensure uniform practice of assessment of excisable goods throughout the country get statutory status and significance, and they are binding on officers of the Central Excise Department.

34) Similar view was also taken by the Supreme Court in Commissioner of Customs, Calcutta and others vs M/s Indian Oil Corporation Ltd. & another [(2004) 3 SCC 488], Commissioner Of Central Excise, Bolpur vs M/s Ratan Melting & Wire Industries [MANU/SC/8792/2008].

35) We may also point out that the decisions of the Supreme Court in EMCO Ltd. (supra) and M/s Roofit Industries Ltd. (supra) which specifically dealt with FOR contract sales were not referred to or considered in Ultra Tech Cement Ltd. case (supra) and the said case was not a case of FOR contract.

36) Learned counsel for the respondent has also brought to our notice decision rendered in the very case of the appellant in M/s. Inox Air Products Limited vs. Commissioner of GST and Central Excise [Excise Appeal No. 41117/2013 dated 22.02.2024], by the Customs, Excise and Service Tax Appellate Tribunal, Chennai rendered on 22.02.2024, where a plea similar to that one raised by the appellant in the instant case was accepted by the Customs, Excise and Service Tax Appellate Tribunal, Chennai. In the said case, the Tribunal has also held that there is no dispute in the payment of service tax or in regard to the documents and the appellant need not to produce one-to-one co-relation and it has no need to establish nexus of the input services with manufacturing activity.

37) Reliance was also placed by the Tribunal on its Larger Bench decision in M/s Ramco Cements Limited vs. Commissioner of Central Excise, Puducherry [Appeal No. E/40575/2018 decided on 21.12.2023], wherein the Larger Bench had held that the credit availed on outward transportation services is eligible when the freight charges are included in the taxable value.

38) Therefore, we hold on issues mentioned above that the Tribunal was not justified in holding that place of removal for the GTA Services provided under FOR sale contract is the manufacturer's premises and not the place where the goods are sold; that the Tribunal was not justified in holding that the GTA services in the present case are being received beyond the place of removal and therefore not covered within the definition of Input Service under Rule 2(1) of CANVET Credit Rules, 2004.

39) Accordingly, the appeal is allowed and the impugned orders are set aside."

7. In view of our discussion above and by following the ratios of the decisions cited supra, we pass the following order:-

(I) As regards the rejection of refund on account of education cess and secondary & higher education cess, we decide the issue against the appellant.

(II) As regards the rejection of refund on account of duty paid on outward freight element which is included in assessable value, we hold that the appellant is entitled to get the refund of the same.

8. Both the appeals are partially allowed in the above terms.

(Order pronounced in the open court on 19.05.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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