CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 53219 of 2015

[Arising out of Order-in-Original No. 07-08/SG/ST/DL-IV/2015-16 dated 29.05.2015 passed by the Commissioner of Service Tax, Delhi-IV, Gurgaon]

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

VERSUS

Commissioner of Central Excise and Service Tax, Gurgaon-II **......Respondent**
Plot No. 36-37, Sector 32,
Gurugram 122001, Haryana

APPEARANCE:

Ms. Krati Singh and Ms. Samiksha Uniyal, Advocates for the Appellant

Mr. Siddharth Jaiswal, Mr. Narinder Singh and Mr. 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. 61467/2025

DATE OF HEARING: 29.09.2025
DATE OF DECISION: 07.10.2025

S. S. GARG:

The present appeal is directed against impugned order dated 29.05.2015 passed by the Commissioner of Service Tax, Gurgaon, whereby the learned Commissioner has confirmed the demand of

Education Cess and Secondary & Higher Education Cess of Rs.1,41,98,371/- under Section 73 of the Finance Act along with interest under Section 75; penalty of Rs.8,83,481/- under Section 76 of the Act and penalty of Rs.10,000/- under Section 77 of the Act were also imposed.

2. Briefly stated facts of the present case are that the appellant is engaged in manufacturing of engine and transmission parts of two-wheeler and four-wheeler motor vehicles. During the audit of the records of the appellant by the Accountant General, Haryana for the period 2005-06 to 2007-08, it was observed that the appellant had been receiving 'Consulting Engineering Services' from foreign service provider viz. M/s Suzuki Motor Corporation Japan, who have no office in India, therefore, the appellant being a recipient of the services, is liable to pay service tax.

2.1 Further, in the present case, the Revenue has raised the demand of Education Cess and Secondary & Higher Education Cess on service tax exempted through Notification Nos. 18/2002-ST dated 16.12.2002, 17/2004-ST dated 10.09.2004 and 14/2012-ST dated 17.03.2012.

2.2 On the basis of the audit and in continuation to the show cause notices issued for the previous period, the present show cause notices were issued proposing the demand of short paid Education Cess and Secondary & Higher Education Cess amounting to Rs.1,41,98,371/- for the relevant period along with interest and penalties. The said demand was calculated based on Best Judgment assessment under

Section 72 of the Act for the period October 2011 to March 2012. However, as per the department, Education Cess and Secondary & Higher Education Cess should be calculated on gross amount of service tax i.e. service tax inclusive of the amount of R&D Cess, and not on the net amount of service tax. After following the due process, the learned Commissioner confirmed the said demand along with interest and penalties. Hence, the present appeal.

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

4. The learned Counsel for the appellant submits that the issue involved in the present case is already decided in favour of the appellant by this Tribunal for the previous period as well as by the lower authorities for the subsequent period. In this regard, she provides the period-wise details of the orders in favour of the appellant, which are as under:

Period	**Order**	**Passed by**
October 2005 to September 2010	Maruti Suzuki India Ltd vs. CCE & CGST, Gurugram – 2025 (1) TMI 78 CESTAT Chandigarh	CESTAT Chandigarh
October 2010 to September 2011	Order-in-Appeal No. 65/ST/APPEAL-II/MK/GGM/2017 dated 31.03.2017	Appellate Authority
2014-15	Order-in-Original No. 08/ST/COMMR/VMJ/RTK/2017-18 dated 29.12.2017	Adjudicating Authority
2015-16	Order-in-Original No. 03/VKR/SUPDT/R-I/N-I/CGSR /GGM/2020-21 dated 23.03.2021	Adjudicating Authority

She further submits that present proceedings have been emanated from the same audit proceedings from which the above stated proceedings have been initiated. She also submits that the department has not filed any appeal against the above cited orders. She also submits that in fact, in Order-in-Original dated 23.03.2021, it has been recorded at para no. 13 that earlier Order-in-Original dated 29.12.2017 has been accepted by the Committee of Chief Commissioners. She further submits that all these above cited orders show that the department has accepted the position that Education Cess and Secondary & Higher Education Cess are payable on the net service tax i.e. service tax after deducting R&D Cess and therefore, the said orders have attained finality.

4.1 She further submits that it is a settled law that the department cannot take contrary stands in proceedings on the same issue for an assessee. For this, she relies on the following cases:

- CCE, Pune-II vs. SS Engineers – 2023 (386) ELT 192 (SC)
- Rosmerta Technologies Ltd vs. CCE & ST, LTU, Delhi – (2023) 8 Centax 183 (Tri. Chan.) [Affirmed by the Hon'ble Supreme Court in 2023 (385) ELT 808 (SC)]

4.2 She also submits that there is no short payment of Education Cess and Secondary & Higher Education Cess as the demand has been computed based on Best Judgment assessment for the period October 2011 to March 2012. She also submits that the entire exercise is revenue neutral.

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 as well as decisions relied upon by the appellant, we find that the issue involved in the present case is

no longer *res integra* and has been settled in favour of the appellant in their own case by this Tribunal vide Final Order No. 60667/2024 dated 13.12.2024 in Service Tax Appeal No. 58092 of 2013 *[citation: 2025 (1) TMI 78 CESTAT Chandigarh]*, wherein this Tribunal has held as under:

> "**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/NI/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.
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> **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."

Further, we find that for the subsequent period, even the lower authorities have given the relief to the appellant and have held that the Education Cess and Secondary & Higher Education Cess is to be paid on the net service tax. We also find that the department has accepted the said orders as no appeal has been filed by the Revenue and therefore, the said orders have attained finality.

7. In view of our discussion above and by following the ratios of the above cited decisions, we are of the considered opinion that the impugned order is not sustainable in law, therefore, we set aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 07.10.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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