CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 56220 of 2013

[Arising out of Order-in-Appeal No. 187-188/CE/Appeal/Chd-II(JK)/2012 dated 30.11.2012passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Shiva Mint Industries **......Appellant**
Sidco Industrial Complex,
Bari Brahmana, Jammu,
Jammu & Kashmir-180002

VERSUS

Commissioner of Central Excise, **......Respondent**
Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir-180012

WITH

Excise Appeal No. 56221 of 2013

[Arising out of Order-in-Appeal No. 187-188/CE/Appeal/Chd-II(JK)/2012 dated 30.11.2012passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Shiva Mint Industries **......Appellant**
Sidco Industrial Complex,
Bari Brahmana, Jammu,
Jammu & Kashmir-180002

VERSUS

Commissioner of Central Excise, **......Respondent**
Jammu & Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir-180012

APPEARANCE:

Shri Prakash Shah and Shri Mohit Rawal, Advocates for the Appellant

Shri G.D. Bansal, 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.60305-60306/2026

DATE OF HEARING: 26.02.2026
DATE OF DECISION: 13.04.2026

P. ANJANI KUMAR :

M/s Shiva Mint Industries (earlier known as M/s Ambika International), the appellants have filed these appeals challenging the impugned orders dated 15.09.2011 and 30.11.2012.

2. Brief issue involved in the appeals is that the appellants are engaged in the manufacture of menthol, de-mentholized oil and rectified pipertia and are availing benefit of the area-based exemption notification no. 56/2002-Central Excise dated 14.11.2002 as amended. The appellants filed refund claims for the months of June-September2007 and July, 2009. During the scrutiny of refund claims it was observed that the appellants had taken inadmissible self-credit of Education Cess and Secondary and Higher Education Cess. Accordingly, the appellants were issued Show Cause notices to deny the refund of Rs. 42,92,535/- availed in the form of the self-credit along with interest and penalty. Separate orders were also issued to deny the inadmissible credit of EC & SHEC availed by the appellants. The adjudicating authority vide Orders in Original dated 02.06.2008, 18.11.2008 and 14.11.2008 confirmed the demands and the same were upheld by the impugned orders.

3. Shri Prakash Shah and Shri Mohit Rawal, Learned Counsels for the appellants submits that once the refund of EC & SHEC are rejected by the department no separate proceedings for recovery of the same can be initiated in the absence of any evidence of utilization of the same; in any event learned Assistant Commissioner has given a categorical finding vide orders-in-Original that the appellant has reversed inadmissible credit of EC & SHEC or the same is recovered by adjusting it against the refund of excess duty; once alleged inadmissible credit is recovered the same cannot be recovered again by the current proceedings. He further submits that the Show Cause Notices have been issued invoking Section 11(A) of the Central Excise Act, 1944 which has no applicability to the current proceedings. Accordingly, penalty and interest under Section 11(AB) cannot be levied.

4. Shri G.D. Bansal, learned Authorized Representative for the Revenue reiterates the findings of the case.

5. Heard both sides and perused the records of the case. We find that the issue relates to admissibility of EC & SHEC for the refund in terms of the notification 56/2002 dated 14.11.2002. We find that the issue has been settled by the Hon'ble Supreme Court in the case of Unicorn Industries, 2019 (370) ELT 3(SC), wherein, the apex court after considering the provisions of the notification no. 71/2003 -CE dated 09.09.2003 has held that when the notification does not provide for refund of EC & SHEC, they cannot be said to have been exempted. The provisions of notification no. 56/2002-Central Excise

dated 14.11.2002 being *pari materia* to the notification considered by the Hon'ble apex court, the ratio of the case of Unicorn Industries is fairly applicable. This bench vide Final Order No. A/60412-60440/2023 dated 19.09.2023 held in the case of Ind Swift Lab Ltd that the appellants therein are not eligible for the refund of EC & SHEC. Therefore, we find that the appellants do not have any case in their favor as far as the merits of the case are concerned.

6. Coming to the submission of the appellants that the refund claimed by them on account of EC & SHEC has been reversed by them in the PLA account. Therefore, the Show Cause notices issued to deny the CENVAT Credit availed on EC & SHEC are redundant. We find that though the adjudicating authority has recorded the submissions of the appellants that the inadmissible refund availed by them, as it pertains to the credit on EC & SHEC, has been reversed by them. However, we find that there is no finding either by the original authority or by the first appellate authority that the demanded refund has already been reversed by the appellants.

7. We find that Hon'ble supreme Court in the case of Saraswati Agro Chemicals Pvt Ltd, 2023 (386) ELT 193 (SC) has held that

> 11. In substance, the High Court has stated that the decision in SRD Nutrients (P) Limited (supra) had attained finality and was binding on the parties thereto. Therefore, the subsequent decision of this Court overruling SRD Nutrient (P) Limited (supra) in the case of M/s Unicorn Industries cannot have a bearing on past decisions which had attained finality although they had followed SRD Nutrient (P) Limited (supra), which was subsequently overruled in M/s Unicorn Industries.

> Otherwise, a pandora's box would be opened and there would be no end to litigation, which is against public policy.

8. In view of the above, we find that repeated litigation would defeat the interest of justice. We find that there was no need to demand back the refund once the inadmissible credit has been reversed. However, we find that the fact of reversal needs to be verified. Thus, we find that the issue should go back to the original authority to verify the reversal made by the appellants. Subject to such verification, the impugned demand stands vacated and the appeals are allowed accordingly by way of remand for verification of the fact that the appellants have reversed the excess credit on account of EC & SHEC availed by them. It is directed that such verification be completed within four weeks of receipt of this order.

(Order pronounced in the open court on 13/04/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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