

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 131 of 2020 with
WP(C) No. 132 of 2020
WP(C) No. 133 of 2020
WP(C) No. 134 of 2020
WP(C) No. 135 of 2020
WP(C) No. 136 of 2020
WP(C) No. 137 of 2020
WP(C) No. 151 of 2020
WP(C) No. 152 of 2020
WP(C) No. 153 of 2020
WP(C) No. 154 of 2020
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WP(C) No. 230 of 2020



WP(C) No. 231 of 2020

WP(C) No. 232 of 2020

WP(C) No. 233 of 2020

WP(C) No. 241 of 2020

Date of Decision: 22.11.2023

M/s RNB Minerals and Chemicals Pvt. Ltd. & Anr.	vs.	Union of India & 4 Ors.
M/s Vishal Saw Cum Veneer Mills Pvt. Ltd. & Anr.	vs.	Union of India & 4 Ors.
M/s RNB Carbides and Ferro Alloys Ltd. (Unit I) & Anr.	vs.	Union of India & 4 Ors.
M/s RNB Carbides and Ferro Alloys Ltd. (Unit II).	vs.	Union of India & 4 Ors.
M/S Timber Craft and Veneer Products (India) Pvt. Ltd. & Anr.	vs.	Union of India & 4 Ors.
M/S RKB Cements Pvt. Ltd.	vs.	Union of India & 4 Ors.
Green Valliey Industries Ltd.	vs.	Union of India & 4 Ors.
M/s H.M. Cements Pvt. Ltd. & Anr.	vs.	Union of India & 3 Ors.
Bhagwati Syndicate Private Ltd.	vs.	Union of India & 3 Ors.
Pioneer Carbides Pvt. Ltd. & Anr.	vs.	Union of India & 4 Ors.
Megha Technical and Engineers Pvt. Ltd.	vs.	Union of India & 4 Ors.
Star Cement Ltd.	vs.	Union of India & 4 Ors.
Maithan Alloys Ltd.	vs.	Union of India & 3 Ors.
Shyam Century Ferrous Ltd.	vs.	Union of India & 3 Ors.
M/s NTL Steels	vs.	Union of India & 4 Ors.
M/s Ri Bhoi Ispat And Rolling Mills	vs.	Union of India & 4 Ors.
M/s Hills Cement Company Ltd.	vs.	Union of India & 4 Ors.
M/s Commercial Iron and Steel Co. Pvt. Ltd.	vs.	Union of India & 4 Ors.
M/s Bimla Ispat and Alloys Pvt. Ltd.	vs.	Union of India & 4 Ors.
M/s Khasi Alloys Ltd. And Anr.	vs.	Union of India & 4 Ors.
M/s Shillong Ispat and Rolling Mills	vs.	Union of India & 4 Ors.
M/s Virgo Cement Ltd.	vs.	Union of India & 4 Ors.
M/s Nezone Alloys Ltd.	vs.	Union of India & 4 Ors.
M/s Meghalaya Cast and Alloys Pvt. Ltd.	vs.	Union of India & 4 Ors.

Meghalaya Steels Ltd.	vs.	Union of India & 3 Ors.
M/s Pawan Castings (Meghalaya) Pvt. Ltd.	vs.	Union of India & 4 Ors.
M/s Greystone Ispat Ltd.	vs.	Union of India & 4 Ors.
M/s Nalari Ferro Alloys Ltd.	vs.	Union of India & 4 Ors.
M/s Nezone Industries Ltd.	vs.	Union of India & 4 Ors.
M/s Billennium Cement Ltd.	vs.	Union of India & 4 Ors.
M/s Shivani Ispat and Rolling Mills Pvt. Ltd.	vs.	Union of India & 4 Ors.
Meghalaya Mineral Products	vs.	Union of India & 3 Ors.
M/s F.W. Ferro Tech Pvt. Ltd.	vs.	Union of India & 4 Ors.
Meghalaya Cements Limited	vs.	Union of India & 4 Ors.
M/s Greystone Smelters Ltd.	vs.	Union of India & 4 Ors.
M/s Jud Cements Ltd.	vs.	Union of India & 4 Ors.
Anabond Ltd.	vs.	Union of India & 4 Ors.

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Chief Justice (Acting)
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s): Dr. A.K. Saraf, Sr Adv. with
Mr. S.Chanda, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv.

JUDGMENT: Per H.S. Thangkhiew, Chief Justice (Acting) (Oral)

1. These batch of writ petitions being identical and similar are being disposed of by this common order and judgment. The writ petitions have been filed challenging show-cause/demand/recovery notices issued by the respondent No. 4, directing for payment/return of the Cess and Secondary

and Higher Secondary Cess along with interest, which had been refunded to the petitioners. The demand it appears was on the ground that the said refund was erroneous, and made on the basis of a direction of this Court dated 15.10.2018, following the decision of the Supreme Court dated 10.11.2017, passed in ***SRD Nutrients Pvt. Ltd. vs. Commissioner of Central Excise***, which had been subsequently overturned, vide order dated 06.12.2019, passed in the case of ***M/s Unicorn Industries vs. Union of India***.

2. The question raised in these petitions is whether the respondents are entitled to issue the impugned notices for return of the said Cess, since earlier it had been refunded on the basis of then valid law, as laid down by the Supreme Court. Thereafter, when the matters were taken up for final consideration, it was reported to this Court that, the same issue was pending before the Supreme Court, and as such, all these matters were adjourned on many dates, to await the outcome thereof.

3. The matters before the Supreme Court were then disposed of vide order dated 04.07.2022, whereby the subsequent decision of the Supreme Court overruling ***SRD Nutrients (supra)*** in the case of ***M/s Unicorn Industries (supra)***, was held, to not have any bearing on past decisions,

which attained finality. The entire order being relevant for the purposes of these cases is reproduced herein below.

ITEM NO.22

COURT NO.16

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 18051/2023

(Arising out of impugned final judgment and order dated 23-05-2022 in CEA No. 131/2020 passed by the High Court Of Jammu & Kashmir And Ladakh At Jammu)

COMMISSIONER OF CGST AND CENTRAL EXCISE (J AND K) Petitioner(s)

VERSUS

M/S SARASWATI AGRO CHEMICALS PVT. LTD.

Respondent(s)

(IA No.102450/2023-CONDONATION OF DELAY IN FILING and IA No.102451/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

Diary No(s). 17624/2023 (XVI-A)
(FOR ADMISSION and I.R. and IA No.116515/2023-CONDONATION OF DELAY IN FILING and IA No.116516/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 04-07-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. N. Venkataraman, A.S.G.
Mr. Arijit Prasad, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mr. V.C. Bharathi, Adv.
Mr. Ashok Panigrahi, Adv.
Mr. Navanjay Mahapatra, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

We have heard Mr. N. Venkataraman, learned ASG appearing for the petitioner(s) in *extenso*. He pointed out that this Court in the case of SRD Nutrients (P) Limited vs. CCE reported



in (2018) 1 SCC 105, gave a ruling contrary to the judgment previously rendered by a three Judge Bench of this Court in the case of Modi Rubber Ltd. And Anr. vs. Union of India and Others reported in (1986) 4 SCC 66. In a subsequent decision namely, M/s Unicorn Industries vs. Union of India reported in (2020) 3 SCC 492, the judgment passed in SRD Nutrients (P) Limited (supra) was overruled and it was held that the exemption from payment of excise duty under a notification granted would not exempt the payment of education cess and secondary education cess. It was also observed in the said judgment that the judgment passed in SRD Nutrients (P) Limited vs. CCE (supra) was *per incuriam*.

Learned ASG during the course of his submissions has brought to our attention an order passed on 27.09.2021 referring the very decision passed in M/s SRD Nutrients (P) Limited (which has been overruled) to a larger Bench having regard to the fact that the said decision was *per incuriam* inasmuch as it had not considered the earlier judgment of this Court in Modi Rubber Ltd. (supra). Therefore, he submitted that this matter has to be connected with the said matter and the judgment to be passed in line with M/s Unicorn in M/s SRD Nutrients (P) Limited when the Reference is answered would follow in this case also.

We have given our anxious consideration to the submissions made by the learned ASG in light of what has been stated by the High Court in paragraph '74' of the impugned judgment.

In SRD Nutrients (P) Limited (supra) it was held that when payment of Excise Duty is exempt under the Central Excise Act, then the 2% Education Cess and Secondary and Higher Education Cess payable on the aggregate duties of excise will also be exempted. However, later in the case of M/s Unicorn Industries Vs. Union of India reported in (2020) 3 SCC 492, the aforesaid judgment in SRD Nutrients (P) Limited vs. CCE (supra) was overruled and it was held that although the exemption from payment of excise duty under a notification is granted, there is no exemption from payment of education cess. Therefore, the assessee who had paid the excise duty and education cess was not entitled to a refund of the education cess which had been paid. Also where refund had been made pursuant to the judgment in M/s SRD Nutrients (P) Limited, was no longer valid.

With regard to the reference order made on 27.09.2021 on a miscellaneous application filed by the Revenue seeking to undo the judgment in M/s SRD Nutrients (P) Limited which was overruled in the subsequent judgment of this Court in M/s Unicorn Industries (supra), the question is whether there was a need at all to refer the matter to a larger Bench. This is for two reasons: firstly, such an application could not have been filed after a review petition in M/s SRD Nutrients (P) Limited had been dismissed by this Court. Thus, in substance, by filing the miscellaneous application the revenue was seeking a second review of the said judgment which is impermissible in law (Order XLVII Rule 9 CPC). Secondly, by ignoring the Explanation to Order XLVII Rule 1 of the CPC and the principle that emerges

from the same, what is sought to be contended by learned ASG is that if a judgment is overruled by this Court by a subsequent judgment, then the overruled judgment will have to be reopened and on reopening the said judgment will have to be brought in line with the subsequent judgment which had overruled it. This is not permissible in law for two reasons: firstly, there has to be finality in litigation and that is in the interest of State. Secondly, a person cannot be vexed twice. This is epitomized by the following maxims:

- (i) Nemo debet bis vexari pro una et eadem causa (No man should be vexed twice for the same cause);
- (ii) Interest reipublicae ut sit finis litium (It is in the interest of the State that there should be an end to a litigation); and
- (iii) Res judicata pro veritate occipitur (A judicial decision must be accepted as correct).

These maxims would indicate that there must be an end to litigation otherwise the rights of persons would be in an endless confusion and fluid and justice would suffer.

That is why the explanation to Order XLVII Rule 1 which is a wholesome provision has been inserted to the Code of Civil Procedure. It states that once there is a subsequent judgment overruling an earlier judgment on a point of law, the earlier judgment cannot be reopened or reviewed on the basis of a subsequent judgment.

The contention of the Revenue is that in view of the subsequent judgment of this Court in M/s Unicorn Industries, recoveries could be made from the assessees with regard to the refund of education cess made by the Department or if not paid by the assessee following the judgment in SRD Nutrients (P) Limited. In the above circumstances, appeals were filed before the High Court by the assessees. In the instant case, the High Court had raised the following question of law and answered it against the Revenue:-

"Whether the assessee is liable to return the Education Cess and Secondary & Higher Education Cess on the changed view of law as subsequently laid down by the Full Bench of the Supreme Court in Unicorn Industries vs. Union of India reported in (2020) 3 SCC 492, overruling SRD Nutrients (P) Ltd. vs. CCE (Supra) on the basis of which the aforesaid cess was refunded to the Assessee."

In our view the High Court has rightly answered the aforesaid question. The High Court in the impugned order while considering the judgment passed by this Court in SRD Nutrients (P) Limited (supra) as well as in M/s Unicorn Industries (supra) has observed in Paragraph 74 as under:

"Applying the aforesaid principle in the cases at hand, since the assessee has been held entitled to the refund of the Educational cess and Secondary & Higher Educational cess on the basis of a judgment and order of the Supreme Court in case SRD Nutrients which was in vogue at the relevant time, the appellants are not entitled to make recovery of the said refunded amount on the basis of the subsequent decision of the Supreme Court rendered in the case of Unicorn Industries. If such an action is permitted, it will open a Pandora box and the lis between the parties which had attained finality will never come to an end. This would be against the public policy which envisages providing quietus to litigation at some stage."

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 Nutrients (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 Nutrients (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.

That is exactly what is sought to be done by the reference order dated 27.09.2021. When we read the reference order in light of the what has been discussed, we find that the reference order was unnecessary.

In the circumstances, the Special Leave Petitions are dismissed.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)

(MALEKAR NAGARAJ)
COURT MASTER (NSH)

4. As such, the matter having attained finality, these writ petitions are disposed of, and accordingly the show-cause/demand/recovery notices appearing in all these connected writ petitions stand quashed and set aside.

5. No order as to costs.

(B. Bhattacharjee)
Judge

(H.S. Thangkhiew)
Chief Justice (Acting)

Meghalaya
22.11.2023
"D.Thabab-PS"

