

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.1308/2025

M/s Coromandel International Limited (Unit-II)
(Through Unit Head, Sunil Kumar Age 47)
Lane No.4, Phase-I, SIDCO Industrial Complex,
Bari-Brahmana, Jammu-181133
(Jammu & Kashmir)

...Petitioners(s)

Through:- Mr. Gautam Chugh, Advocate

Versus

1. Union of India
Through the Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110 001
2. Assistant/Deputy Commissioner,
Central Goods & Services Division,
OB-32, Rail Head Complex, Jammu

...Respondent(s)

Through:- Mr. Dheeraj Nanda, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT (Oral)

17.09.2025

Sanjeev Kumar J

1. The petitioner has filed this petition under Article 226 of the Constitution of India to seek a writ, order or direction in the nature of writ of mandamus directing the respondents to release the refund of Education Cess and Secondary & Higher Education (SHE) Cess along with applicable interest in compliance with the

judgment passed by the Custom Excise and Service Tax Appellate Tribunal [“CESTAT”], Chandigarh.

2. Briefly stated, the facts leading to the filing of the instant petition are that the petitioner is engaged in the manufacturing of goods falling under Chapter heading 38 of the Customs Tariff Act, 1962 and is holding GST Registration vide GSTIN No. 01AAACC7852K1ZR. Allured by the package of incentives declared by the Government of India to promote industrial development in Jammu & Kashmir, which included exemption from the payment of excise or additional duty of excise in terms of Notification No.56/2002-CE dated 14.11.2002, the petitioner set up a new unit for manufacture of pesticides and commenced commercial production with effect from 2nd February, 2007. The petitioner was, thus, entitled to exemption (by way of refund) in terms of the exemption notification No.56 of 2002 (supra) in respect of the goods manufactured by him for a period of ten years from the date of commencement of commercial production.
3. The petitioner, who was entitled to the benefit of excise duty refund in terms of the exemption notification No.56/2002, continued to be sanctioned his claims for refund w.e.f. 2nd February, 2007. In the year, 2010, notification No.01/2010-CE dated 06.02.2010 was issued by the Government of India exempting specified goods from excise duty, manufactured and cleared from a unit located in Jammu & Kashmir. The benefit of

exemption was, however, available to both, the new industrial units or the industrial units existing before 6th February, 2010 that had undertaken substantial expansion as per norms.

4. In the notification No.01/2010 (supra) it was also provided that the duty payable on the value addition would be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the description specified in Column No.3 of the Table appended with the Notification. Be that as it is, the petitioner-Unit qualified for exemption under Notification No.56/2002-CE, as amended, and was availing the refund of excise duty paid in cash. There is, however, a dispute with regard to the refund of education cess and secondary and higher education cess payable in addition to the excise duty.
5. The issue as to whether the education cess and secondary and higher education cess is also a duty of excise, came up for consideration before a two-Judge Bench of the Hon'ble Supreme Court in the case of **SRD Nutrients Pvt. Ltd. v. Commissioner of Central Excise, Guwahati, (2018) 1 SCC 105**. In the judgment delivered on 10.11.2017, Hon'ble Supreme held that the levy of the cesses is in the nature of surcharge and when the primary tax i.e. the basic Excise Duty itself is exempted, such additional levies like the cesses also cannot be collected.
6. The petitioner, who had been denied the refund on account of education cess and secondary and higher education cess agitated

its case before CESTAT, Chandigarh in different appeals. The appeals filed by the petitioner were allowed by the CESTAT and placing reliance upon a judgment of the Supreme Court in **SRD Nutrients Pvt. Ltd.** (supra), the orders of the excise authorities rejecting the claims for refund of education cess and secondary and higher education cess were set aside.

7. Feeling aggrieved, the Revenue challenged the orders of CESTAT before this Court by filing Central Excise Appeals. A Division Bench of this Court vide its judgment dated 23rd May, 2022 dismissed the Revenue's appeals in the case of the petitioner along with various other appeals filed against similarly situated industrial units. The judgment of the Division Bench of this Court dated 23rd May, 2022 passed in the case of M/s Saraswati Agro Chemicals Pvt. Ltd. was called in question by the Revenue before Hon'ble the Supreme Court by filing Special Leave Petition. Vide order dated 04.07.2023, Hon'ble Supreme Court dismissed the SLP by upholding the judgment of this Court.
8. So far as the petitioner is concerned, no SLP was preferred against the judgment in his cases by the Division Bench of this Court. The judgment passed by the CESTAT and upheld by the Division Bench of this Court, thus, attained finality paving the way for refund of the education cess and SHE cess. The petitioner approached the respondents vide reminder letter dated 04.01.2024 with a request to release the refund of education cess and

secondary and higher education cess. Another letter was served upon the respondents on 7th May, 2024 with the same request.

9. When repeated requests and reminders made by the petitioner to the respondents did not yield any fruitful results, instant petition was filed seeking a mandamus to the respondents to perform their statutory duty of refunding the education cess and secondary and higher education cess to the petitioner in compliance with the judgment(s) passed by the CESTAT as upheld by a Division Bench of this Court.
10. The relief prayed for in the writ petition is sought by the petitioner on the strength of the judgment of the CESTAT having attained finality and also that there was no legal impediment in releasing the refund in favour of the petitioner on account of education and secondary and higher education cess.
11. On being put on notice, a status report on behalf of respondent No.2 qua the subject matter of the petition has been filed. The said status report was passed on to us in the open Court and the same has been taken on record. From a reading of the status report filed by the respondents, it is evident that the respondents do not deny the fact that the judgment passed by the CESTAT, Chandigarh in favour of the petitioner for refund of education and secondary & higher education cess has attained finality. However, it is submitted that since the Revenue has moved an application before the Hon'ble Supreme Court seeking modification of the judgment

dated 10.11.2017 rendered in the case of M/s SRD Nutrients Pvt. Ltd, as such, consideration of this matter should be deferred awaiting outcome of the aforesaid application.

12. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that merely because an application i.e. Miscellaneous Application No.2043-2-52/2020 filed in the case of M/s SRD Nutrients Pvt. Ltd is pending consideration of the Supreme Court, consideration of this matter cannot be deferred. We will state our reasons hereinafter at an appropriate place.
13. Suffice it to say that the orders passed by the respondents rejecting the claim of the petitioner for refund of education and secondary & higher education cess have been set aside by the CESTAT vide final order dated 06.03.2018 passed in Appeal Nos. E/53252/2015 to E/53259/2015 titled Coromandel International Ltd. v. C.C.E. and S.T. Jammu & Kashmir and final order No.A/60981-60993/2018-EX[DB] dated 08.03.2018 in Appeal Nos. E/53252/2015 to E/53259/2015 titled Coromandel International Ltd. v. C.C.E. & S.T. Jammu & Kashmir. The CESTAT has held the petitioner entitled to the refund claim pertaining to education and secondary & higher education cess.
14. Undoubtedly, the CESTAT passed its judgment placing reliance upon a judgment of the Supreme Court dated 10.11.2017 passed in the case of M/s SRD Nutrients Pvt. Ltd. (supra). It is also not in

dispute that the order of the CESTAT passed in the case of the petitioner and similar orders passed in identical matters by the CESTAT were subject matter of challenge in various appeals before this Court. A Division Bench of this Court vide judgment dated 23.05.2022 disposed of the Excise Appeals including the appeals filed against the petitioner by holding in paragraph Nos.75 and 76 as under:

“75. In view of the facts and circumstances of the case, we find no merit in these appeals and the same are dismissed, first for the reason, they are barred by limitation, secondly, they are not maintainable and, lastly, the change of opinion of the Court in a subsequent matter of another party would not give any leverage to the appellants to reopen the decisions which have attained finality.

76. The appeals are dismissed as aforesaid with no order as to costs.”

15. The Revenue did not take any further proceedings insofar as the judgment passed by the Division Bench of this Court in favour of the petitioner is concerned. However, in one of the cases i.e. M/s Saraswati Agro Chemicals Ltd., the Revenue filed SLP before the Supreme Court challenging the final judgment and order of the Division Bench of this Court dated 23rd May, 2022 passed in CEA No.131/2020. The SLP was, however, dismissed by the Supreme Court vide its order dated 4th July, 2023.
16. The argument of the learned counsel appearing for the Revenue that the ruling given by the Supreme Court in SRD Nutrients Pvt. Ltd's case (supra) was contrary to the judgment previously

rendered by a three-Judge Bench of the Supreme Court in the case of **Union of India and others v. Modi Rubber Limited, (1986) 4 SCC 66** and that subsequently Hon'ble the Supreme Court overruled the judgment passed in **SRD Nutrients Pvt. Ltd** case (supra) in a decision rendered in **M/s Unicorn Industries v. Union of India and others, (2020) 3 SCC 492** and, therefore, the judgment passed in **SRD Nutrients Pvt. Ltd** (supra) was *per incuriam* and was not accepted by the Hon'ble Supreme Court. Rejecting the aforesaid argument, Hon'ble Supreme Court also dismissed the miscellaneous application filed by the Revenue seeking to undo the judgment in **M/s SRD Nutrients Pvt. Ltd.**, which was subsequently overruled in **M/s Unicorn Industries** (supra).

17. The request made by the learned counsel for the respondents to seek reference of the matter to a larger Bench was also rejected on the ground that no such application could have been filed after the review petition filed in the case of **M/s SRD Nutrients Pvt. Ltd.** had been dismissed by the Supreme Court. It was clearly pointed by the Hon'ble Supreme Court that filing of miscellaneous application seeking to undo the judgment in **M/s SRD Nutrients Pvt. Ltd** was essentially a second application for seeking review of the judgment. It was clearly held that once there is a subsequent judgment overruling the earlier judgment on a point of law, earlier

judgment cannot be re-opened or reviewed on the basis of a subsequent judgment.

18. In conclusion, Hon'ble Supreme Court upheld the decision of this Court holding that the decision in M/s SRD Nutrients Pvt. Ltd. (supra) had attained finality and was binding on the parties thereto and, therefore, a subsequent decision of the Supreme Court in M/s Unicorn Industries (supra) cannot have a bearing on past decision, which had attained finality, although, these decisions had followed M/s SRD Nutrients Pvt. Ltd. (supra) which was subsequently overruled in M/s Unicorn Industries (supra).
19. The case on hand is fully covered by the judgment of Hon'ble Supreme Court dated 4th July, 2023 passed in the case of M/s Saraswati Agro Chemicals Pvt. Ltd. (supra). The judgment passed by the CESTAT following M/s SRD Nutrients Pvt. Ltd. (supra) has long back attained finality when it was upheld by the Division Bench of this Court while dismissing a bunch of appeals vide its order and judgment dated 23rd May, 2022.
20. The respondents do not deny the legal and factual position, but would submit that in view of the pendency of the miscellaneous application No. 2043-2052 of 2020 seeking once again modification of the judgment dated 10.11.2017 passed in M/s SRD Nutrients Pvt. Ltd. (supra), this Court should defer its consideration.

21. Without commenting upon the merits of the miscellaneous application, which is pending consideration of the Supreme Court, suffice it to say that the order passed by the Supreme Court dated 04.07.2023 in the case of M/s Saraswati Agro Chemicals Pvt. Ltd. (supra) covers the case of the petitioners and there is hardly any necessity to wait for the disposal of the miscellaneous application, stated to be pending consideration of the Supreme Court.
22. For all these reasons, we find merit in this petition and the same is, accordingly, allowed. The respondents are directed to release the refund of education and secondary & higher education cess along with applicable interest in favour of the petitioner in terms of the final order(s) of the CESTAT, Chandigarh passed in the case(s) of the petitioner. Let the needful be done within a period of two months from the date a copy of this order is served upon the respondents by the petitioner.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
17.09.2025
Vinod, PS

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No