HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No.2058/2024

Reserved on 16.09.2026.
Pronounced on 21 .09.2026
Uploaded on 22 .09.2026

Full judgment is pronounced

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Biostadt India Ltd. ..... Petitioner (s)

Through :- Mr Pranav Kohli Sr. Advocate with
Mr. Arun Dev Singh Advocate
Ms. Rounak Gupta Advocate
Mr. Vineet Nagla Advocate (though v.c).

V/s

Union of India and others .....Respondent(s)

Through :- Mr. Dheeraj Nanda Sr. CGSC

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

<u>JUDGMENT</u>

Sanjeev Kumar J

1 1 Impugned in the present writ petition is a show cause notice dated 22.04.2024 issued by the Deputy Commissioner, Central Goods and Services Tax Division-1, OB-32, Rail Head Complex, Jammu-respondent No. 4 herein, whereby the petitioner-firm has been called upon to show cause as to why (i) the refund of Education Cess of Rs. 1,35,26,979 as Education Cess and Rs. 67,63,906/- as S&H Education Cess repaid by it, and (ii) refund of Rs. 83,24,783 on account of Education Cess and Rs. 41,62,569 on account of S&H Higher Education Cess kept pending should not be rejected.

2. The petitioner submitted a claim of Education Cess and S&H Cess for the period April 2008 to March 2009 and December 2010 till April 2016. The jurisdictional Commissionerate rejected the claim of the petitioner for the refund of aforesaid Cess. Feeling aggrieved, the petitioner filed a statutory appeal before the CESTAT, Chandigarh. The petitioner was held entitled to refund by the CESTAT in light of the law laid down by the Hon'ble Supreme Court in the case of **SRD Nutrients Pvt. Ltd. vs. Commissioner of Central Excise, 2018 (1) SCC 105**, wherein it was held that an assessee would be entitled to refund of Education/Higher Education Cess which it had paid along with the excise duty, once the excise duty itself was exempted. The Education/Higher Education Cess was treated as part of excise duty and, therefore, refundable in terms of Exemption Notification No. 56/2002-CE dated 14.11.2002. The orders passed by the CESTAT holding the petitioner entitled to refund of the cess were called in question by the Revenue before this Court by filing statutory appeals, which were clubbed together under the lead case CEA No. 05 of 2018 titled '*Commissioner of CGST Central Excise Jammu vs. Sun Pharma Laboratories Ltd'*. These appeals were held not maintainable by this Court and, accordingly, were returned to the Revenue, so as to enable it to present the same before the competent Court of jurisdiction, i.e., Hon'ble Supreme Court of India.

3 It seems that after dismissal of the appeals filed by the Revenue against the orders of CESTAT before this Court, some belated appeals have been preferred before the Hon'ble Supreme Court which are reportedly pending adjudication.Mr. Pranav Kohli, learned Senior Counsel appearing for the petitioner, however, submitted that only in three cases, the Revenue has approached the Supreme Court for assailing the orders of refund passed by the CESTAT, Chandigarh.

4 On the dismissal of the appeals filed before this Court by the Revenue, the refunds as per the CESTAT orders were granted in favour of the petitioner, purportedly in light of the law laid down by the Hon'ble Supreme Court in **SRD Nutrients Pvt. Ltd** (supra). The judgment passed by the Supreme Court in the said case was later declared *per incuriam* by a three-Judge Bench of the Supreme Court in the case of **Unicorn Industries vs. Union of India and others, *2020 (3) SCC 492.*** The Supreme Court found the judgment rendered in **SRD Nutrients *Pvt. Ltd*.**(supra) contrary to the law declared by a Larger Bench (a three-Judge Bench) in the case of **Union of India & ors vs M/S Modi Rubber Limited, 1986 (4) SCC 56**.

5 We are told that the Revenue has once again approached the Supreme Court seeking review of the judgment passed in *Unicorn Industries,* Pvt. Ltd., (supra), but there is no order passed by the Supreme Court.

6 It seems that after the judgment in *Unicorn Industries Pvt. Ltd (supra)* was delivered by the Supreme Court and the law laid down in *SRD Nutrients* Pvt. Ltd (supra) was held bad in the eye of law, the Revenue issued show cause notices dated 03.12.2020 and 31.12.2020 seeking recovery of cess which stood refunded to the petitioner pursuant to the CESTAT orders. The petitioner complied with the orders and deposited the refunded amount of cess with the Revenue under protest, as is evident from the application filed by the petitioner before the Revenue on 10.04.2021. Upon reversing the refund amount of cess to the Revenue under protest, the petitioner filed WP(C) No. 888/2021 challenging the show cause notices of 2020 (supra). The writ petition came to be disposed of by this Court vide order dated 01.03.2023. Before the Division Bench hearing WP(C) No. 888/2021, learned counsel for the Revenue made a statement that the notices of 2020 (supra) were only protective notices issued to save the limitation and would be given effect

to only after the appeals pending against the CESTAT orders were decided by the Supreme Court.

7 This Court, having regard to the controversy involved and the submissions made at the Bar, disposed of the petition by providing that the impugned show cause notices shall remain dormant and shall not be given effect to till the litigation between the parties pending before the Supreme Court was finally disposed of. It is pertinent to mention here that these notices, for deposit of the refunded cess in view of the law laid down in *Unicorn Industries Pvt. Ltd (supra)*, stood already complied with by the petitioner, who had reversed the refund of cess to the Revenue, though under protest. The judgment dated 23.05.2022 passed by the Supreme Court in the case of **Commissioner of CGST and Central Excise (J&K) vs. M/s Sarswati Agro Chemicals Ltd.** (SLP No. 18051/2023) prompted the petitioner to approach the Revenue for seeking refund of the education and higher education cess which the petitioner had reversed pursuant to the notices of 2020 (supra) and the judgment passed by the Supreme Court in *Unicorn Industries Pvt. Ltd (supra)*. The application filed by the petitoner was considered by the Deputy Commissioner concerned and it was decided not to refund the cess claimed by the petitioner and to put it on a show cause notice to explain as to why the refund applications preferred by the petitioner be not rejected. The show cause notice dated 22.04.2024 impugned in the petition was, thus, served upon the petitioner by the Deputy Commissioner concerned. Although it was open to the petitioner to reply to the show cause notice, yet, in the peculiar facts and circumstances and regard being had to the position of law settled in *Sarswati Agro Chemicals Ltd (supra).*, the petitioner directly knocked the doors of this Court through the medium of instant petition.

8 The rejection of claim for refund of cess through the medium of a show cause notice dated 22.04.2024 issued by the Deputy Commissioner concerned is assailed by the petitioner on the ground that, in view of law laid down by the Supreme Court in *M/s Sarswati Agro Chemicals Ltd.*, followed by this Court in judgment dated 17.09.2025 passed in WP(C) No. 1308/2025 titled **M/s Coromandel International Ltd. vs. Union of India and another** and **Lupin Ltd., EPIP Kartholi SIDCO vs. Union of India** (WP(C) No. 416/2021 decided on 03.08.2023), the refund of education cess/higher education cess which was released in favour of the assessees pursuant to the law laid down in *SRD Nutrients Pvt. Ltd.* could not be recovered on the strength of *M/s Unicorn Industries Pvt. Ltd (supra)*.

9 *Per contra,* Mr. Dheeraj Nanda, learned counsel for the Revenue, would argue that, in view of the law laid down by the Supreme Court in ***M/s Unicorn Industries Pvt. Ltd***, which reiterated the position of law declared by the Supreme Court in *Modi Rubber Ltd.(supra),* the petitioner was never entitled to refund, particularly when the refund of cess pertains to the year prior to passing of the judgment in *SRD Nutrients Pvt. Ltd (supra)*. He would further argue that the petitioner cannot claim refund of the amount paid by it to the Revenue on account of cess and higher education cess till the appeals filed by the Revenue against the CESTAT orders are disposed of by the Supreme Court and the review petition seeking recall of the judgment rendered in *SRD Nutrients Pvt. Ltd.* is considered and decided.

10 Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that, in view of the law laid down by the Supreme Court in ***M/s Sarswati Agro Chemicals India Ltd***., followed by this Court in a couple of judgments, the petitioner would be entitled to the refund of

cess and higher education cess which it had received under the CESTAT orders but paid back under protest pursuant to the show cause notices of 2020 (supra) issued by the Revenue in light of legal position enunciated by the Supreme Court in *Unicorn Industries Pvt. Ltd*. The Supreme Court has already clarified that the refunds which stood settled on the basis of decision and law *in vogue* at the relevant time, i.e., *SRD Nutrients Pvt. Ltd*, which allowed refund of cess which was earlier levied by the Revenue, were not recoverable on the change of law by the Larger Bench judgment of the Supreme Court in *M/s Unicorn Industries Pvt. Ltd*.

11 We were confronted with somewhat similar position in *M/s Coromandel International Ltd.(supra)*, in which this Court has noticed that there was an attempt made by the respondents to come out of the effect of *SRD Nutrients Pvt. Ltd.* The Revenue filed a miscellaneous application before the Supreme Court to undo the judgment in *M/s SRD Nutrients Pvt. Ltd.*, which was subsequently overruled in *M/s Unicorn Industries Pvt .Ltd*, but the same was dismissed by the Supreme Court. The Revenue also made a request to the Supreme Court to make a reference to a Larger Bench, but the same too was rejected by the Supreme Court on the ground that no such application was maintainable after the review petition filed in the case of *M/s SRD Nutrients Pvt. Ltd.* stood dismissed by the Supreme Court. It was pointed out by the Supreme Court that filing of a miscellaneous application seeking to undo the judgment of *M/s SRD Nutrients Pvt. Ltd.* was essentially a second application for seeking review of the judgment. It was, thus, clearly held that once there is a subsequent judgment overruling the earlier judgment on a point of law, the earlier judgment can neither be reopened nor reviewed on the basis of subsequent judgment. In conclusion, the Supreme Court upheld the decision of the Court holding that the decision in *M/s SRD Nutrients*

Pvt. Ltd. had attained finality and was binding on the parties thereto for the period it held the field.

12 In the case of *M/s Sarswati Agro Chemicals Ltd.*, the Supreme Court made the position clear in the following terms:

> "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".

13 Applying the ratio of the judgment rendered in *Sarswati Agro Chemicals Ltd.* to the facts of the present case, we find that the CESTAT orders holding the petitioner entitled to refund of cess on the strength of *SRD Nutrients Pvt. Ltd.* have virtually attained finality except that some belated appeals against some of the orders passed by CESTAT in the case of the petitioner are still *sub judice*.

14 We also cannot lose sight of the fact that, in compliance with the CESTAT orders, the amount of cess charged by the Revenue was at one point of time refunded to the petitioner. It was, however, asked to redeposit the same by issuing the notices in the year 2020 due to change of law in *M/s Unicorn Industries* Pvt. Ltd (supra). We are aware that three belated appeals are pending before the Supreme Court in which the CESTAT orders of refund based upon the judgment of *SRD Nutrients Pvt. Ltd.* are still pending adjudication before the Supreme Court. We are also aware that the assessees similarly situated with the petitioner have been permitted to retain the refund of cess received by them in view of the law laid

down in *SRD Nutrients Pvt. Ltd.* by following the clarification given by the Supreme Court in *Sarswati Agro Chemicals Ltd*.

15 With a view to balance of equities and to maintain parity, as also to safeguard the interest of Revenue, we propose to dispose of this petition by providing as under:

> "(i) The petitioner shall be entitled to refund of the entire amount of Education Cess and Higher Education Cess which was paid back to the Revenue under protest in response to the show cause notices dated 03.12.2020 and 31.12.2020.
>
> **(ii)** The release/refund of the amount in terms of the CESTAT orders shall remain subject to the outcome of the appeals, if any, pending before the Supreme Court against the orders of refund passed by the CESTAT in the case of the petitioner.
>
> **(iii)** The release/refund of the Education Cess and Higher Education Cess shall further be subject to the petitioner furnishing a bank guarantee of an equivalent amount from a Nationalised Bank in favour of the Revenue, with a stipulation that the Revenue shall be entitled to encash the bank guarantee in the event the Revenue ultimately succeeds before the Supreme Court and the refund orders passed by the CESTAT in the case of the petitioner are set aside, quashed or modified, and;.
>
> **(iv)** The release/refund of the amount directed hereinabove shall further remain subject to any order that may be passed by the Supreme Court in any review application or other proceedings on the subject instituted by the Revenue before it.

Ordered accordingly and petition is disposed of.

(SHAHZAD AZEEM)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
21 .09.2026
SANJEEV

Whether judgment is speaking:Yes
Whether judgment is reportable: Yes

Sanjeev Kumar
2026.09.22 12:59
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