

A subsequent change in opinion cannot have a bearing on past decisions that had attained finality – SC

25 July 2023



Summary

The Supreme Court (SC) affirmed the decision of the Jammu and Kashmir (J&K) High Court (HC), wherein the HC held that the subsequent decision of the SC, overruling SRD Nutrients (P) Limited in the case of M/s Unicorn Industries, could not have a bearing on past decisions that had attained finality. If such action was permitted, it would open a Pandora's box, and the suit between the parties that had attained finality would never be resolved, which would be against public policy.

The SC also stated that once a subsequent judgement overrules an earlier judgement on the point of law, the earlier judgement cannot be reopened or reviewed based on the ensuing judgement. Further, relying on maxims in this regard, the SC cited that there must be an end to litigation; otherwise, the persons' rights would be in perpetual flux and confusion, and justice would suffer.

Facts of the case

- The government of India, in order to encourage commercial activity in industrially backward areas, decided to grant tax exemptions to newly manufacturing units set up in Jammu & Kashmir, wherein those units were entitled to 100% exemption from excise duty for a period of 10 years from the date of commencement of production.
- The manufacturers were entitled to a refund of 100% of duty paid in cash or balance of duty paid in cash, i.e., other than by utilising the central value-added tax (CENVAT) credit. Such levy of excise duty was accompanied by EC and SHEC at the rates of 2% and 1%, respectively, calculated on the aggregate of all excise duties.
- In this context, an issue arose as to whether the EC and SHEC collected under the Finance Act, along with the excise duty levied and collected under the CEA, are also to be refunded in view of the exemption.
- This issue was heard by the SC in the matter of SRD Nutrients (P) Limited, wherein it had been held that the EC and SHEC levied on excise duty partakes the character of excise duty. Further, the government vide circulars also clarified that EC and SHEC would not be payable where the excise duty is exempted. Accordingly, the Customs Excise and Service Tax Appellate Tribunal (CESTAT) held that the manufacturers are entitled to a refund of the EC and SHEC.
- Subsequently, the SC, in the case of Unicorn Industries, overruled its judgement passed in SRD Nutrients (P) Limited. The department ('appellants') preferred an appeal before the HC to establish whether the assessee ('respondents') would be liable to refund the EC and SHEC owing to the change in the SC's position.

J&K HC observations and order [CEA 10/2020, order dated 23 May 2022]

- **No appeal can be filed before the HC if the amount involved is less than INR 1 crore:** The HC observed that in terms of the National Litigation Policy, an appeal is not maintainable before the HC where the amount involved is less than INR one crore. The circular categorically clarified that the department cannot file any appeal if the amount involved is less than INR 1 crore. Additionally, since the cause of action in each appeal is distinct, the monetary limit specified in the circular is in the context of a single appeal, and the cumulative amount cannot be taken together. Therefore, the appeal was not maintainable.
- **Appeal lies to HC since the issue pertains to the refund of cess:** The HC affirmed that the appeal against the CESTAT order was rightly preferred before the HC, as the question involves the refund of cess and not a determination of the rate of excise duty or value of goods for assessment.
- **A subsequent change of law is not a sufficient cause for condoning delay in filing appeal:** The HC rejected the appellants' contention that the appeal was filed in view of the SC's change of position. The HC noted that the appellants did not file an appeal within 180 days of service of orders and rather proceeded to refund in concordance with the SC's decision in SRD Nutrients (P) Limited. Further, the HC agreed with the respondent's position that the Limitation Act cannot be invoked to calculate delay where the limitation is provided in special legislation. Hence, the HC found it imprudent and unjustifiable to condone

the delay based on the settled precedents.

- **Final and conclusive decision cannot be reopened:** The HC stated that where the limitation period has expired long back, the case is not liable to be revived solely because of a subsequent change in opinion, as this would lead to no finality to any decision.
- **Bonafide benefit/refund cannot be recovered:** The HC concluded that where a refund/benefit has been lawfully obtained, or the party has not been unjustly enriched, it could not be recovered owing to a subsequent change in opinion. Therefore, the HC denied recovery of the legitimate benefit of refund.

SC observations and order [SLP (C) No. 18051/2023, order dated 04 July 2023]

- **Second review of the same judgement is not permissible in law:** The SC cited Order XLVII Rule 1 of the Code of Civil Procedure and stated that filing an appeal by the Revenue for seeking a second review of the judgement is impermissible in law.
- **Subsequent change in the law cannot re-open overruled judgement:** The SC stated that a subsequent change in opinion, owing to the overruling of the judgement, cannot result in the reopening of the said overruled judgement. The SC agreed with the HC that there should be a finality in litigation. The SC further held that a person cannot be vexed twice for the same cause and there must be an end to litigation, otherwise the rights of person would be in endless confusion and justice would suffer. Hence, the SC

confirmed the HC's decision and dismissed the petition.

Our comments

In the present case, the SC has applied the doctrine of prospective overruling. The term 'overruling' refers to the act of overturning a legal precedent, whereas 'perspective' refers to the changes taking effect in the future. Under this doctrine, the court's decision applies to the cases arising in the future only and has no effect on past cases that had attained finality; otherwise, it would not be in the interest of justice.

This doctrine has evolved over the years and has been employed in favour of taxpayers and the department. Earlier, in the case of Mafatlal Industries Limited, the Apex Court had held that a manufacturer who paid excise duty but failed to claim a refund before the adjudicating authorities or the appellate authorities, and did not file an appeal against the order, cannot claim a refund of duty based on a subsequent decision of the court taking a contrary view. A similar position was taken in the case of Indian Cement Limited, wherein the SC had held that the state is not liable to refund the amount collected under the provisions of an act that has been declared unconstitutional.

The present ruling is in favour of the taxpayers and shall set precedence in similar matters.

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