CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 85948 of 2020

[Arising out of Order-in-Original No: CC-VA/38/2019-20 Adj(I) dated 26th February 2020 passed by the Commissioner of Customs Excise (Import), Air Cargo Complex, Sahar, Mumbai.]

Commissioner of Customs, Mumbai (Air Cargo Import) **.....Appellant**
Air Cargo Complex, Sahar, Andheri (E), Mumbai - 400099

C J Shah **.....Respondent**
105 Bajaj Bhavan, 10th Floor, Nariman Point, Mumbai 400021

APPEARANCE:

Shri Ram Kumar, Authorised Representative for the appellant
Ms Shamita Patel, Advocate for the respondent

WITH

(i) Customs Appeal No: 85950 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Cadila Healthcare Ltd.);
(ii) Customs Appeal No: 85951 of 2020 (Commissioner of Customs Mumbai (Air Cargo Import) v. Bharat Forge Ltd.);
(iii) Customs Appeal No: 85952 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. USV Pvt Ltd.);
(iv) Customs Appeal No: 85953 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Cummins India Ltd.);
(v) Customs Appeal No: 85954 of 2020 (Commissioner of Customs Mumbai (Air Cargo Import) v. Cipla Ltd.),
(vi) Customs Appeal No: 85955 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Wockhardt Limited);
(vii) Customs Appeal No: 85956 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Aarti Industries);

(viii) Customs Appeal No: 85957 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Raychem RPG Pvt Ltd);
(ix) Customs Appeal No: 85958 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Glenmark Pharmaceuticals Ltd);
(x) Customs Appeal No: 85959 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Siemens Ltd);
(xi) Customs Appeal No: 85960 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Sun Pharmaceutical Industries Ltd);
(xii) Customs Appeal No: 85961 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Reliance Industries Ltd);
(xiii) Customs Appeal No: 85962 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Tata Motors Ltd);
(xiv) Customs Appeal No: 85963 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Sandoz Pvt Ltd);
(xv) Customs Appeal No: 85964 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Larsen & Toubro Ltd);
(xvi) Customs Appeal No: 85965 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. SKF India Ltd),
(xvii) Customs Appeal No: 85966 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Zydus Healthcare Ltd);
(xviii) Customs Appeal No: 85967 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Bajaj Auto Ltd); and
(xix) Customs Appeal No: 85968 of 2020 (Commissioner of Customs Import Mumbai (Air Cargo Import) v. Lupin Ltd).

[Arising out of Order-in-Original No: CC-VA/39 to 57/2019-20 Adj(I) dated 26th February 2020 passed by the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Mumbai.]

APPEARANCE:

Shri Ram Kumar, Authorised Representative for appellants
Shri Akhilesh Kangasia, Advocate, Shri M P Joshi, Advocate, Ms Pratibha Namboodiri, Shri Anil Balani, Ms Shilpa Balani, Advocates for the respondents
None for respondent no. xi, viii , xi, xiv to xvi, xix

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No: 85673-85692/2026

DATE OF HEARING : 01.04.2026
DATE OF DECISION : 13.05.2026

Per: AJAY SHARMA

These appeals have been filed by the Revenue challenging the Orders-in-Original dated 26.02.2020 passed by the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Mumbai, whereby the said Adjudicating Authority, placing reliance upon Circular No. 02/2020-Customs dated 10.01.2020 issued by the Central Board of Indirect Taxes and Customs (CBIC), held that payments of Education Cess, Secondary & Higher Education Cess and Social Welfare Surcharge made through debit in Merchandise Exports from India Scheme (MEIS) duty credit scrips are to be treated as valid discharge of duty liability.

2. The respondents-importers herein had imported various goods and discharged the duty by utilizing MEIS scrips. During audit, it was observed that Social Welfare Surcharge (SWS) from 1.2.2018 onwards @ 10% of BCD and Education Cess (EC) @ 2% and Secondary and Higher Education Cess (SHE)@ 1% prior to 1.2.2018 were also being paid by using MEIS Scrips at the time of import, which as per the department, were not permissible under the governing notifications and the Foreign Trade Policy.

3. Show cause notices were issued to various importers-respondents, listed in the table below, herein under Section 28 read with Section 124 of the Customs Act, 1962, alleging short levy/non-levy of customs duty on account of incorrect discharge of Education Cess (EC), Secondary & Higher Education Cess (SHEC) (prior to 01.02.2018) and Social Welfare Surcharge (SWS) through debit in MEIS duty credit scrips at the time of import:

S. No.	Name of the importer	SCN No.	Differential Duty demanded along with interest (in Rs.)
1.	C.J. Shah	S/16-Audit/230/2018-19/NCH/Circle-E dated 20.09.2019	20,22,967
2.	Cadila Healthcare Ltd.	S/16-Audit/230(CHL)/2018-19/NCH/Circle-E dated 07.10.2019	3,02,28,400
3.	Bharat Forge Ltd.	S/16-Audit/230(Bharat)/2018-19/NCH/Circle-E dated 07.10.2019	1,08,13,988
4.	USV Pvt. Ltd.	S/16-Audit/230(USV)/2018-19/NCH/Circle-E dated 07.10.2019	83,45,634
5.	Cummins India Ltd.	S/16-Audit/230(Cummins)/2018-19/NCH/Circle-E dated 07.10.2019	2,18,12,507
6.	Cipla Ltd.	S/16-Audit/230(Cipla)/2018-19/NCH/Circle-E dated 07.10.2019	4,94,43,220
7.	Wockhardt Ltd.	S/16-Audit/230(WL)/2018-19/NCH/Circle-E dated 07.10.2019	1,30,84,061
8.	Aarti Industries Ltd.	S/16-Audit/230(Aarti)/2018-19/NCH/Circle-E dated 20.11.2019	64,56,723
9.	Reychem RPG Pvt. Ltd.	S/16-Audit/230(Reychem)/2019-20/(SCN 94) NCH/Circle-E	59,46,361

		dated 21.11.2019	
10.	Glenmark Pharmaceuticals Ltd.	S/16-Audit/230(GPL)/2019-20/(SCN 59) NCH/Circle-E dated 21.11.2019	1,93,04,513
11	Siemens Ltd.	S/16-Audit/230 (Siemens) /2019-20/(SCN 94) NCH/Circle-E dated 21.11.2019	4,19,17,411
12	Sun Pharmaceutical Industries Ltd.	S/16-Audit/230(Sun Pharma)/ 2019-20/(SCN 67) NCH/ Circle-E dated 21.11.2019	10,36,16,234
13	Reliance Industries Ltd.	S/16-Audit/230(Reliance) /2019-20/(SCN 65) NCH/Circle-E dated 21.11.2019	2,35,05,359
14	Tata Motors Ltd.	S/16-Audit/230(Tata)/2019-20/(SCN 95) NCH/Circle-E dated 21.11.2019	1,63,92,907
15	Sandoz Pvt. Ltd.	S/16-Audit/230(SPL)/2018-19/(SCN 56) NCH/Circle-E dated 21.11.2019	4,41,62,262
16	Larsen & Toubro Ltd.	S/16-Audit/230(L&TL)/2019-20/(SCN 69) NCH/Circle-E dated 21.11.2019	1,36,59,408
17	SKF India Ltd.	S/16-Audit/230(SKF)/2019-20/(SCN 68) NCH/Circle-E dated 21.11.2019	1,59,54,851
18	Zydus Healthcare Ltd.	S/16-Audit/230(Zydus)/2019-20/(SCN 60) NCH/Circle-E dated 21.11.2019	63,69,644
19	Bajaj Auto Ltd.	S/16-Audit/230(Bajaj)/2019-20/(SCN 66) NCH/Circle-E dated 21.11.2019	94,84,732
20	Lupin Ltd.	S/16-Audit/230(LL)/2019-20/(SCN 94) NCH/Circle-E dated 21.11.2019	3,69,98,385

4. The Adjudicating Authority, however vide impugned Orders-in-Original dated 26.2.2020, dropped the demand by holding that such payments constituted valid discharge of duty, particularly in light of the CBIC Circular dated 10.01.2020.

5. At the outset, it is pertinent to note that the Revenue has not challenged the acceptance of payment of Social Welfare

Surcharge (SWS) through MEIS scrips for past cases, in view of the CBIC Circular dated 10.01.2020 read with Notification dated 10.02.2020 and these appeals are restricted only to the issue whether Education Cess and Secondary & Higher Education Cess (prior to 01.02.2018) could validly be discharged through debit in MEIS duty credit scrips?

6. The learned Authorised Representative for Revenue contended that as per *Foreign Trade Policy 2015-20* and *Notification No. 24/2015-Cus dated 08.04.2015*, utilization of MEIS scrips was restricted to Social Welfare Surcharge, Basic Customs Duty and specified additional duties of customs. There was no explicit provision permitting debit of Education Cess and Secondary & Higher Education Cess through MEIS scrips. While past payments of Social Welfare Surcharge were regularized through subsequent Circular dated 10.1.2020, no such relaxation exists for Education Cess and Secondary & Higher Education Cess. Consequently, such payments are to be treated as non-payment of duty, recoverable under Section 28 of the Customs Act, 1962.

7. We have heard learned Authorised Representative appearing for Revenue and learned counsel appearing for respective importers in these appeals and have gone though the case records alongwith the synopsis/written submissions placed on record. The entire controversy lies in the interpretation and

applicability of Clause 11 of CBIC Circular No. 02/2020-Customs dated 10.01.2020, which reads as under:

> *"11. With regard to the past cases of debits of SWS already made in duty credit scrips, it has been decided by the Board that for ease of doing business, such past cases should not be disturbed and the payments made through debit in duty credit scrips may be accepted as revenue duly collected and recoveries in cash not be insisted for these cases."*

8. Although the Circular explicitly refers to Social Welfare Surcharge, the underlying principle adopted by the Board is one of administrative pragmatism and certainty, namely, that past payments made through MEIS scrips should not be disturbed, and such payments should be treated as valid discharge of duty.

9. It is not in dispute that the imports in question pertain to a period prior to issuance of the Circular dated 10.01.2020 and the importers had actually discharged the duty liability, including Education Cess and Secondary & Higher Education Cess, albeit through MEIS scrips. There is no allegation of suppression, fraud, or mis-declaration on part of the importers.

10. The issue is no longer res integra. Identical issue came up for consideration before the Hon'ble High Court of Madras in *KTV Health Food Pvt. Ltd. vs. Commissioner of Customs (Preventive), Tiruchirappalli; 2022 (381) ELT 66 (Mad.)*, wherein the Hon'ble High Court while interpreting the aforesaid Circular dated 10.1.2020, held that payments made through MEIS scrips towards Education Cess and Secondary & Higher Education Cess for past periods cannot be disturbed and are to be treated as

valid discharge of duty. The relevant paragraphs of the said decision are extracted hereunder:-

"xxx xxx xxx

19. When that was considered, the Customs department has come to a conclusion that, if at all any duty or additional duty had been paid using scrips that could be accepted as a payment of the revenue and insofar as the other payments like the education cess or higher education or secondary education cess are concerned, the same cannot be treated as form part of the customs duty or additional customs duty. Therefore, since it is a different component, that kind of benefit under Clause 11 of Circular No. 2/2020, cannot be extended to the petitioner.

20. In aid of the said decision taken, the Customs department has heavily relied upon the decision in Unicorn Industries case, cited supra. The relevant portion of the Unicorn Industries case has already been quoted above, where the issue was, the assessee sought for exemption under Notification No. 71/2003 of Central Excise. While deciding the same, the Hon'ble Supreme Court has made it clear that the notification dated 9-9-2003, issued in that case made it clear that exemption was granted under Section 5A of the 1944 Act, concerning additional duties under the Act of 1957 and the additional duties of excise under the Act of 1978. It was further held in that judgment that, since there has been no reference to the Finance Act, 2001 by which NCCD was imposed and the Finance Acts of 2004 and 2007 were not in vogue.

21. Therefore, the Hon'ble Supreme Court has negated the plea raised therein in the said Unicorn Industries case, for the specific reason that, since the Finance Act, 2004 and 2007 are post Notification No. 71/2003, Central Excise regime, therefore, that kind of benefit unless and until is specifically included in the notification, such kind of benefit cannot be expected and therefore, it was negated.

22. Here in the case in hand, it is no doubt that, the exemption Notification No. 24/2015 is dated 8-4-2015 i.e., well after the Finance Act, 2004 and 2007. In the 2004 Finance Act, Section 91 deals with education cess and Section 93 made it clear that, the education cess levied under Section 91 in the case of goods specified in the First Schedule to the Central Excise Tariff Act, 1985, being goods manufactured or produced, shall be a duty of excise. Therefore, insofar as the Central Excise is concerned, the education cess imposed under Section 91 of the Finance Act, 2004 was to be treated as a duty of excise, in view of Section 93. Similarly, a provision is available under Section 94 of the very same Finance Act, 2004, which reads thus :

> *"94. Education Cess on imported goods. - (1) The Education Cess levied under section 91, in the case of goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India, shall be a duty of customs (in this section referred to as the Education Cess on imported goods), at the rate of two per cent., calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under section 12 of the Customs Act, 1962 and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including -*
>
> *(a) the safeguard duty referred to in Sections 8B and 8C of the Customs Tariff Act, 1975;*
>
> *(b) the countervailing duty referred to in Section 9 of the Customs Tariff Act, 1975;*
>
> *(c) the anti-dumping duty referred to in Section 9A of the Customs Tariff Act, 1975; and*
>
> *(d) the Education Cess on imported goods.*
>
> *(2) The Education Cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the*

Customs Act, 1962 or any other law for the time being in force.

(3) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be."

23. Like that, insofar as the secondary and higher education cess is concerned, that has been brought in only under Finance Act, 2007, where the relevant provision is Sections 126 and 129 which are extracted hereunder :

"126. (1) Without prejudice to the provisions of sub-section (12) of Section 2, there shall be levied and collected, in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the Secondary and Higher Education Cess, to fulfil the commitment of the Government to provide and finance secondary and higher education.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise, such sums of money of the secondary and Higher Education Cess levied under sub-section (12) of section 2 and this Chapter for the purposes specified in sub-section (1) as it may consider necessary.

129. (1) The Secondary and Higher Education Cess levied under section 126, in the case of goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India, shall be a duty of customs (in this section referred to as the Secondary and Higher Education Cess on imported goods), at the rate of one per cent., calculated on the aggregate of duties of customs which are levied and collected

by the Central Government in the Ministry of Finance (Department of Revenue), under section 12 of the Customs Act, 1962 and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including -

(a) the additional duty referred to in sub-section (5) of section 3 of the Customs Tariff Act, 1975;
(b) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;
(c) the countervailing duty referred to in section 9 of the Customs Tariff Act, 1975;
(d) the anti-dumping duty referred to in section 9A of the Customs Tariff Act, 1975; and
(e) the Education Cess chargeable under section 94 of the Finance (No. 2) Act, 2004 and Secondary and Higher Education Cess on imported goods.

(2) The Secondary and Higher Education Cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force and the Education Cess chargeable under section 94 of the Finance (No. 2) Act, 2004.

(3) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Secondary and Higher Education Cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations made thereunder, as the case may be."

24. In Section 126 of the Finance Act, 2007, a cess to be called the Secondary and Higher Education Cess, to fulfil the commitment of the Government to provide and finance secondary and higher education

shall be levied. Therefore, the levy of secondary or higher education cess was first introduced in Finance Act, 2007, by the aforesaid Section 126. In the very same Finance Act, Section 129 makes it clear that the secondary and higher education cess levied under Section 126, in the case of goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India, shall be as duty of customs at the rate of one per cent calculated on the aggregated of duties of customs. Exactly similar wordings, pari materia to Sections 91 and 93 is available in Section 129 of Finance Act, 2007. Therefore, the effect of these provisions of Finance Act, 2004 and 2007 is that, the education cess at the rate of 2% and higher and secondary education at the rate of 1% imposed under Finance Act, 2004 and 2007, respectively are to be treated as part of the duty of customs."

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26. When such a circular was issued by the Customs Department and the same having been implemented in respect of various people like the petitioner, the benefit of the said circular cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty and therefore, the benefit conferred under Clause 11 of the said circular cannot be made available to the petitioner. The said view taken by the respondent/Customs Department, in the considered opinion of this Court, in view of the aforestated legal position, is untenable and unacceptable.

27. The quoting of the Hon'ble Supreme Court judgment in Unicorn Industries case is a wrong fitment of the citation, as the issue decided in the said case, in fact the principle enunciated in that case if it is culled out, certainly would support the case of the petitioner and not the respondent. Therefore, this Court has no hesitation to state that, the reasons stated in the impugned order rejecting to give the benefit under Circular No. 2/2020 is not

supported by any legal basis. Therefore, the said reasons are unsustainable and therefore, based on such reason, since the rejection has been made through the impugned order, it is also equally unsustainable. Hence, it is liable to be interfered with.

28. In view of the aforesaid discussions, this Court is inclined to pass the following orders :

"The impugned order is hereby quashed. As a sequel, there shall be a direction to the respondent to give the benefit of Clause 11 of Circular No. 2/2020, dated 10-1-2020 to the petitioner."

11. Further, this Tribunal in *Wellknown Polyester Ltd. vs. Commissioner of Customs, Mumbai; 2023(6) TMI 911 -CESTAT Mumbai* following the aforesaid decision (supra) of Hon'ble Madras High Court, categorically held that in view of clause 11 of the Board's Circular dated 10.1.2020, there is no justification for insisting in cash payments towards Education Cess and Secondary & Higher Education Cess where such amounts have already been debited through MEIS scrips. The relevant paragraphs of the said decision are extracted hereunder:-

"2. The issue involved herein is whether the Education Cess and Secondary Higher Education cess can be debited through MEIS/SEIS scrips in view of clarification issued vide Board's Circular No.02/2020-Cus. dated 10.01.2020?

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5. Therefore according to me the issue involved herein is no more res judicata and in view of clause 11 of the Board's circular dated 10.1.2020, which permits the payment made through debit in duty credit scrips for past cases, there is no justification for insisting in cash payment towards education cess

and secondary & higher education cess and accordingly the issue is decided in favour of the appellant herein. Resultantly the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any"

12. It is also noteworthy that nothing has been placed before us to demonstrate that the aforesaid decisions have been stayed, reversed, or set aside by any superior forum.

13. In light of the above discussion, we find that the Adjudicating Authority has correctly applied the CBIC Circular dated 10.01.2020 and the payments made by the importers through debit in MEIS duty credit scrips towards Education Cess and Secondary & Higher Education Cess, for the relevant past period, constitute valid discharge of duty liability. The attempt by Revenue to recover the same in cash would lead to double recovery, which is impermissible in law.

14. Respectfully following the binding precedents, we find no infirmity in the impugned orders. Accordingly, the appeals filed by the Revenue are dismissed.

(Pronounced in open Court on 13.05.2026)

(Ajay Sharma)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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