

Jumbo Trumpets...

Effect of Over-ruling

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In this interesting judgment, the impact of overruling on the overruled judgment has been discussed.

The judgment in **Modi Rubber Ltd (SC) (1986) 4 SCC 66** held that an exemption given for Basic Excise Duty (BED) does not extend to Special Excise Duty (SED). Subsequent judgment in **SRD Nutrients (P) Ltd (SC) (2018) 1 SCC 105** gave a contrary ruling that when BED is exempted, Education Cess (EC) is also exempted. This was given without considering ratio of Modi Rubber Ltd. In 2020, the Apex Court rendered another landmark judgment in the case of **Unicorn Industries (2020) 3 SCC 492** and after considering the ratio of Modi Rubber Ltd *supra*, had held that exemption from BED would not exempt payment of Education and Secondary Education Cess. In the above Unicorn judgement, the Supreme Court observed that the judgment in SRD *supra*, is *per incuriam* as it did not consider Modi Rubber Ltd judgement.

This gave rise to a anomaly, wherein, those who had claimed refund after the favorable judgment in SRD Nutrients (decided in 2018) was made to repay the amounts following judgment in Unicorn (decided in 2020), which was in favour of the Revenue. When the aggrieved parties approached the High court, it has been held that, recoveries cannot be made based on the judgment in the Unicorn case as the overruling does not affect the finality of earlier judgment in SRD case.



When the matter came up before the Supreme Court, it was contended on behalf of the Revenue that, if a judgment is overruled by the Supreme Court in a subsequent judgment, then the overruled judgment has to be re-opened and same has to be brought in line with the subsequent judgment which overruled it.

This argument has been rejected by the Supreme Court on the principle that *“no man should be vexed twice for same cause”* and in the interest of justice there should be finality to the litigation and a judicial decision must be accepted as correct. The Court therefore referred to Order XLVII Rule 1 of CPC that if there is a subsequent judgment overruling an earlier judgment on a point of law, earlier judgment cannot be reopened or reviewed on basis of subsequent judgment.

Commr of CGST & Central Excise Vs. Saraswathi Agro Chemical Pvt. Ltd
SLP (Civil) No. 18051/2023 pronounced on 04.07.23

