

**HIGH COURT OF SIKKIM**  
Record of Proceedings

**Tax App. No. 02/2020**

THE COMMISSIONER OF CENTRAL  
EXCISE, SILIGURI

APPELLANT (S)

VERSUS

M/S ZYDUS HEALTHCARE

RESPONDENT (S)

For Appellant : Mr. B.K. Gupta, Advocate

For Respondent : Mr. Rahul Tangri, Advocate  
Ms. Gita Bista, Advocate

**Date: 05/04/2021**

**CORAM :**

**HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.**  
**HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

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**ORDER (O R A L)**

*PER J.K. MAHESHWARI, CJ*

This appeal arising out of order dated 24.10.2019 passed in Excise Appeal No. 75003 of 2017 with Excise Appeal No. 75004 of 2017 by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (for short, CESTAT) is filed by the Appellant.

2. Learned counsel appearing on behalf of the Respondent has raised preliminary objections *inter alia* contending that the value as involved in the present case is of Rs.63.00 lakhs, however, as per National Litigation Policy dated 22.08.2019, if value of any appeal is less than Rupees One Crore, the appeal to the High Court is not maintainable. Second objection is raised that the present matter pertains to refund of Education Cess and Higher Education Cess which were paid along with Excise Duty, however, the said subject matter covers Section 35L and not under Section 35G of the Central Excise Act, 1944 (for short, the Act), therefore, this appeal is not maintainable before the High Court.

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3. On the other hand, learned counsel appearing on behalf of the Appellant-Revenue has made an attempt to satisfy this Court that the appeal under Section 35G of the Act is maintainable because the order passed by the CESTAT is illegal and passed prior to the subsequent judgment of Supreme Court in the case of ***M/s Unicorn Industries vs. Union of India and Others*** in ***Civil Appeal No. 9237 of 2019 arising out of S.L.P (C) No.21622 of 2012***, on 06.12.2019, therefore, this appeal is maintainable.

4. After hearing the learned counsel for both the parties, we find much substance in the preliminary objections as raised by the learned counsel representing the Respondent.

5. At present learned counsel representing the Appellant-Revenue facing difficulty regarding agreed proposal made before the CESTAT of applicability of the judgment of the ***SRD Nutrients Private Ltd. Vs.CCE***, reported in ***2017 (TIOL) 416 (S.C.)*** and relying on the same the order was passed. Later the said judgment has been modified by the Hon'ble Apex Court in the case of ***M/s Unicorn Industries vs. Union of India and Others*** (supra). However, the counsel for the Appellant-Revenue requests for filing a petition for rectification before the CESTAT, the said prayer appears to be justifiable.

6. In view of the foregoing, we dispose of this appeal, as requested by the counsel representing the Appellant-Revenue with a liberty to take appropriate recourse of law for rectification of the order of the CESTAT.

**Judge**

**Chief Justice**