
(2012) 01 GAU CK 0040

In the Gauhati High Court

Case No : Miscellaneous Case No. 1926 of 2011 in Central Excise Appeal No. 1 of 2008 and Writ Appeals No"s. 394 and 395 of 2010

Dharampal Satyapal Ltd.

APPELLANT

Vs

Commissioner of Customs and Central Excise

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3
Central Excises and Salt Act, 1944 — Section 11A, 14, 5A
Finance Act, 2001 — Section 136
Finance Act, 2011 — Section 72

Citation : (2013) 19 GSTR 97

Hon'ble Judges : Adarsh Kumar Goel, C.J;C.R. Sharma, J

Bench : Division Bench

Advocate : S.K. Medhi, R.K. Bharali and J. Das for the petitioner in M.C. No. 1926 of 2011, K.N. Choudhury, R. Dubey, M. Mahanta and R. Deka for the Appellants in W.A. Nos. 394 and 395 of 2010, for the Appellant; K. Paul, Central Government Counsel, for the respondent in M.C. No. 1926 of 2011, A.K Bhattacharya, S.K. Medhi, J. Das, Dr. Ashok Saraf, Ms. M.L. Gope, Miss. N. Hawelia, A Goel and P. Baruah for the respondents in W.A. No. 394 and 395 of 2010, for the Respondent

Judgement

Adarsh Kumar Goel, C.J.—This order will dispose of Miscellaneous Case No. 1926 of 2011 in Central Excise Appeal No. 1 of 2008, Writ Appeal No. 394 of 2010 and Writ Appeal No. 395 of 2010 as the issue raised in all the three matters is common and between the same parties. Miscellaneous Case No. 1926 of 2011 is an application filed by the assessee seeking implementation of the order of this court dated May 5, 2010 passed in Central Excise Appeal No. 1 of 2008,

2. Writ Appeal No. 394 of 2010 has been filed by the Revenue against the order of the learned single judge dated January 6, 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), issuing certain directions on a writ petition of the assessee for benefits in terms of exemption notifications dated August 25, 2003, January 21, 2004 and July 9, 2004 u/s 5A of the Central Excise Act, 1944 read

with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and the Finance Act, 2001.

3. Writ Appeal No. 395 of 2010 has been filed against the order of the learned single judge dated June 29, 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), issuing further directions in the writ petition of the assessee already decided by the order dated January 6, 2010 See Dharampal Satyapal Ltd. v. Union of India [2011] 2 GSTR 145 (Gauhati)..

4. We have heard Mr. K. N. Choudhury, learned senior counsel, appearing for the appellants and Dr. Ashok Saraf, learned senior counsel, appearing for the respondents.

5. The assessee is engaged in the manufacture of tobacco products falling under Chapter 24 of the Central Excise Tariff Act, 1985. By the above notifications exemption from Central excise was granted subject to certain conditions, mainly, requiring investment to be done in the infrastructure in North Eastern States within stipulated time. It will be appropriate to reproduce the notifications in question which are as under:

Relevant part of Notification No. 69/2003-CE, dated August 25, 2003:

(a) The scheme would, be available only in respect of those units, which would manufacture specified goods, including pan masala;

(b) The manufacturing unit must be located in any of the seven North Eastern States, namely, the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland or Tripura;

(c) The scheme would be applicable to only those units, which had commenced commercial production on or after December 24, 1997, but not later than February 28, 2001;

(d) The unit should have had continued its manufacturing activities after February 28, 2001 and should have had availed of the benefits under earlier Notifications Nos. 32/1999-CE and 33/1999-CE, both dated July 8, 1999;

(e) The sum of duty payable, but for the exemption, would have to be utilised by the manufacturer only for "investment" in "plant and machinery" in a manufacturing unit;

(f) The said "investments" were to be made before expiry of a period of six months from the end of each quarter;

(g) The manufacturer was obliged to furnish, to a committee, within one month of the expiry of the period of six months as described hereinbefore; details of the investments made by the manufacturer;

(h) The said committee was to consist of the Chief Commissioner of Central Excise, Shillong the Principal Secretary of the Department of Industry of the State in which the unit was located and the Principal Secretary of the

Department of Industry of the State in which the investment was made;

(i) The manufacturer was required to prove to the satisfaction of the committee that the investment was made, in plant and machinery, in a manufacturing unit located in any of the seven States aforementioned;

(j) Finally, once the committee (which came to be known as the investment appraisal committee, in short, "the IAC") was satisfied that the "investment" was made in "plant and machinery", in a manufacturing unit in terms of the notification, dated August 25, 2003, aforementioned, it was to issue a certificate to this effect to the manufacturer within a period of three weeks after the period of one month described above;

(k) The certificate, granted by the IAC was to be produced by the manufacturer, within a period of two weeks from the date of issue of the certificate, to the jurisdictional Central Excise Officer; and

(l) The "investment", made under this notification, dated August 25, 2003, was required to be for a period of ten years from the date on which the "investment" was made.

Notification No. 8/2004-Central Excise, dated January 21, 2004

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), and sub-section (3) of section 136 of the Finance Act, 2001 (14 of 2001), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 69/2003-Central Excise, dated 25th August, 2003, published in the Gazette of India, vide G. S. R. 679(E), dated 25th August, 2003, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under sub-heading 2401.90, 2402.00, 2404.41, 2404.49 2404.50 or 2404.99 of the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of the duties of excise, additional duties of excise leviable under the said Central Excise Tariff Act, the Additional Duties of Excise (Goods of Special Importance) Act and the National Calamity Contingent duty leviable thereon under sub-section (1) of section 136 of the said Finance Act, subject to the following conditions, namely:--

(A) the exemption under this notification shall be available only in respect of a unit which,--

(i) is located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland or Tripura;

(ii) had commenced commercial production on or after 24th day of December, 1997, but not later than 28th day of February, 2001;

(iii) had availed of the benefit under the notification of the Government of India

in the Ministry of Finance (Department of Revenue) No. 32/1999-Central Excise, dated 8th July, 1999 (G. S. R. 508(E), dated 8th July, 1999) or No. 33/1999-Central Excise, dated 8th July, 1999 (G. S. R. 509(E), dated 8th July, 1999); and

(iv) has continued its manufacturing activities after 28th day of February, 2001;

(B) an amount equal to the sum of basic excise duty, special excise duty, additional excise duty and National Calamity Contingent duty, payable, but for the exemption in this notification, shall be utilised by the manufacturer only for investment in,--

(i) plant and machinery in a manufacturing unit which is located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland or Tripura; or

(ii) infrastructure or civil works or social projects in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland or Tripura;

(C) the investment in terms of condition (B) shall be made before the expiry of six months from the end of each quarter;

(D) the manufacturer shall provide all details relating to the investment made in terms of condition (B), within one month after the expiry of the period of six months referred to in condition (C), to a committee consisting of, the Chief Commissioner of Central Excise, Shillong, the Principal Secretary of the Department of Industry of the State concerned, in which the unit is located and the Principal Secretary of the Department of Industry of the State in which the investment is made, and shall have to prove to the satisfaction of the said committee that the investment has been made for the purpose specified in condition (B);

(E) if the committee referred to in condition (D) is satisfied that the investment as specified in condition (B), has been made, it shall issue a certificate to this effect to the manufacturer within a period of three weeks after the expiry of one month referred to in condition (D), which shall be produced by the manufacturer, within a period of two weeks from the date of issue of such certificate, to the jurisdictional Central Excise Officer;

(F) the investment made under this notification shall not be allowed to be withdrawn before the expiry of ten years from the date on which the investment is made except in a case where the investment withdrawn is reinvested in the same manner as specified in this notification, in any one of the States mentioned in condition (A):

Provided that if the investment made under this notification is withdrawn before the expiry of ten years and is not reinvested as mentioned above, the duty which is equal to the amount so withdrawn and not so reinvested shall be paid by the manufacturer on the date on which the investment is withdrawn.

G.S. Karki

Under Secretary to the Government of India

Notification No. 28/2004, dated July 9, 2004

G. S. R.... (E).--In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 136 of the Finance Act, 2001 (14 of 2001), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 8/2004-Central Excise, dated 21st January, 2004 and published in the Gazette of India, vide number G. S. R. 60(E), dated 21st January, 2004, namely:--

In the said notification, in the conditions, for conditions (C), (D) and (E), the following shall be substituted, namely:--

(C) the investment in terms of condition (B) shall be made in the following manner, namely:--

(i) an amount equal to the sum of basic excise duty, special excise duty, additional excise duty and National Calamity Contingent duty, payable in a quarter, but for the exemption under this notification, shall be deposited by the manufacturer within sixty days from the end of the quarter, in an escrow account opened by the manufacturer, for this purpose, in a bank authorised for excise duty collection;

(ii) operations including withdrawals from and closure of the said escrow account shall be made with the prior approval of the jurisdictional Commissioner of Central Excise, taking into account the conditions specified in this notification and to safeguard the revenue;

(iii) the manufacturer shall, pending investment in the manner specified in condition (B), execute a bond, as may be specified by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, binding himself to pay on demand an amount equal to the amount referred to in clause (i) along with interest thereon at the rate specified u/s 11AB of the Central Excise Act, 1944, and not so invested, in terms of condition (B), with the amount lying in balance in the said escrow account as security or collateral;

(iv) the amount deposited in the said escrow account, in terms of clause (i), shall be invested, in the manner specified in condition (B), within two years from the date of its deposit in such account;

(v) the amounts withdrawn from the escrow account shall be invested for the purposes specified in condition (B) within sixty days of its withdrawal from such account;

(D) the manufacturer shall,--

(i) submit a quarterly statement, within sixty days from the end of the relevant quarter to a committee, consisting of the Chief Commissioner of Central Excise, Shillong, the Principal Secretary in the Department of Industry of the State concerned in which the unit is located and the Principal Secretary in the Department of Industry of the State in which the investment is being made, giving details of deposits made in and withdrawal made from, the escrow account, along with details of investment, made during the quarter;

(ii) provide all details relating to the investment made in terms of condition (B), not later than one month after the expiry of the period of two years referred to in condition (C), to the said committee;

(iii) prove to the satisfaction of the said committee that the investment has been made for the purposes specified in condition (B); (E) if the committee referred to in condition (D) is satisfied that the investment as specified in condition (B), has been made, it shall issue a certificate to this effect to the manufacturer within a period of one month from the receipt of the details as referred to in condition (D), and on the issuance of which, the liability of the manufacturer shall stand discharged to the extent of investment so certified;

(EA) if the manufacturer fails to make the deposit or does not invest the amount specified in condition (B), within the stipulated period and in the manner, then, the duty which is equivalent to the amount not so deposited or invested shall be recoverable from the manufacturer along with interest thereon at the rate specified u/s 11AB of the Central Excise Act 1944, and without prejudice to any action that may be taken under the provisions of the said Act or any other law for the time being in force, by forfeiture of amount in the said escrow account.

G.S. Karki

Under Secretary to the Government of India.

6. The Revenue issued the notice dated July 29, 2005 u/s 11A of the Act asking the assessee to show cause why the Central excise duty for the period from July 9, 2004 to September 30, 2004 should not be recovered with interest and penalty as the assessee claimed exemption without complying with the conditions for the exemption. After adjudication, the adjudicating authority confirmed the demand with interest and also levied penalty. On appeal, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) set aside the order of the Revenue authority and upheld the plea of the assessee that the conditions for exemption had been duly complied with. On further appeal of the Revenue, this court upheld the view taken by the CESTAT with the following observations and findings:

15. The undisputed facts of the case also reveal that the Department by its letter dated December 8, 2004 had intimated the respondent-company that a separate escrow account in respect of the Agartala unit should be opened by it and

accordingly, a separate account, i.e., Account No. 01000051403 was opened to which account an amount of Rs. 8,64,38,636 was transferred from the main account, i.e., Account No. 01000051400. The Department was informed of the said facts by the respondent-company by letter dated January 10, 2005. No objection was taken by the Department at that stage with regard to the transfer. That apart, the transfer was from one escrow account to another escrow account which was opened on the advice of the Department. Such a transfer, therefore, cannot be understood to be a withdrawal or operation of the escrow account by the respondent-company, within the meaning of Notification No. 8/2004-CE read with Notification No. 28/2004-CE. If the Department itself had advised the respondent-company to open a separate escrow account in respect of the Agartala unit after it was informed that the amount equivalent to the duty in respect of both the Guwahati and the Agartala units were deposited in one escrow account, it is axiomatic that the Department had really ordered for transfer of the amount of duty in respect of the Agartala unit to the separate escrow account which was directed to be opened.

16. Coming to the transfer of the amount of Rs. 26.58 crores from the escrow account No. 01000051400 to a corporate liquid term deposit account so as to earn interest, the said transfer was made by the respondent-company unilaterally. The question, therefore, that has to be answered by the court is whether the said transfer made to the corporate liquid term deposit account was prohibited by Notification No. 8/2004-CE read with Notification No. 28/2004-CE.

17. The contention of the respondent-company that the transfer was to a corporate liquid term deposit account which was linked to the escrow account and that the said transaction was within the umbrella of the escrow account cannot be brushed aside, inasmuch as, the statement of the bank manager recorded in the proceedings u/s 14 of the Central Excise Act, had clearly indicated that a corporate liquid term deposit account can be brought under an escrow arrangement and that, in the present case, the corporate liquid term deposit account was linked to the current account No. 01000051400 and the interest earned also came under the purview of the escrow account. However, the fact remains that the said transfer to the corporate liquid term deposit account was made, as stated by the bank manager, without the knowledge of the Central Excise Department. Under the notification bearing No. 28/2004-CE "operations including withdrawal and closure of the escrow account" require prior approval of the jurisdictional Commissioner of Excise, in a situation where the corporate liquid term deposit account was linked to the escrow account and the interest earned became a part of the escrow account, as stated by the bank manager, the transfer that had taken place must be understood to be a notional transfer and the money in the escrow account has to be understood to be always available, specifically when the bank manager in his statement had stated that the bank was at all material times aware as to how the proceeds were to be utilised/appropriated and the specific role of the Central excise authorities in this regard. The subsequent stand taken by the Union of India through the Union

Minister of State for Finance in the letter dated July 31, 2006 as well as the decision of the Central Board of Excise and Customs, details of which have been noticed, in fact, vindicates the stand taken by the respondent-bank. We do not see how the benefit of the said decisions permitting the amounts lying in an escrow account to earn interest should be refused to the respondent-company merely because such decisions were taken at a point of time subsequent to the actions initiated against the respondent. Coupled with the aforesaid fact is the additional fact recorded by the learned Tribunal that, in the present case, no part of the amount lying in the escrow account(s) or any part of the interest earned on the said amount was appropriated or utilised by the respondent-company. In the above facts, we are of the view that the learned Tribunal was perfectly justified in coming to the conclusion that the respondent-company had substantially fulfilled and complied with the requirements of Notification No. 8/2004-CE read with Notification No. 28/2004-CE and that the orders passed by the learned Commissioner confirming the demand and levying penalty were unjustified.

7. After the judgment of this court dated May 5, 2010, the assessee sought its implementation. The application for implementation of the order was rejected vide the order dated June 1, 2011 with the following observations:

4.3 in that context it is seen that section 72 of the Finance Act, 2011 has provided for retrospective amendment of Notification Nos. 8/2004-CE, dated January 21, 2004 as amended by Notification No. 28/2004-CE, dated July 9, 2004 wherein time line provided for withdrawal from the escrow account has been made four years in place of two years from the date of deposit. As any withdrawal has to be examined within the scope of the amended notification, this amount of Rs. 8.70 crore transferred to C.L.T.D. account was permissible for withdrawal/investment up to November 25, 2008 because the same was deposited in the escrow account on November 25, 2004. Hence, this amount cannot be allowed for withdrawal as it is beyond the time line prescribed in the amended notification. Further, I find that no benefit arising from the earlier judgment passed by the hon'ble High Court and the CESTAT, as mentioned above can be given to the assessee in view of sub-section (6) of section 72 of the Finance Act, 2011 which reads as follows (page 21 of 8 GSTR (St.)):

(6) No suit or other proceedings shall be instituted, maintained or continued in any court, Tribunal or any other authority for any action taken or anything done or omitted to be done, in respect of the said notifications and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the amendments made in the said notifications had been in force at all material times.

5. in view of the above, I do not permit withdrawal of Rs. 8.70 crore, inclusive of interest accrued thereon/from escrow account as per the application dated June 25, 2010 filed by M/s. Dharampal Satyapal Ltd. Agartala.

8. Learned counsel for the assessee submits that the Commissioner, Central Excise, was not justified in rejecting the application for implementation of the order of this court only on the ground that under the Finance Act, 2011, there is a retrospective amendment of the exemption notification providing for longer period for withdrawal of, the amount from the escrow account as the said amendment does not in any way put further conditions for the exemption but only relaxes the existing conditions.

9. W. P. (C) No. 591 of 2008 was filed by the assessee challenging the freezing of the escrow accounts, of the assessee on the ground that the assessee had failed to make investment within the period stipulated in the exemption notification, while W. P. (C) No. 2814 of 2008 and W. P. (C) No. 1048 of 2008 were filed questioning the decision of the investment appraisal committee on the issue of compliance of conditions for investment and consequential demand notices for recovery of the excise duty dues as claimed by the Department. Dealing with the issues raised in the writ petitions/the learned single judge recorded the following findings (pages 213, 217 and 235 of 2 GSTR):

Thus, the "forfeiture", in the present cases, on the direction of the superior authority/suffered from complete non-application of mind inasmuch as it is not respondent No. 2, who has applied his mind to the facts of the present case and decided to forfeit the amount; rather, he merely carried out the directions given by his superior authority; whereas the law made respondent No. 2 responsible to take a decision on this aspect consciously and after fully applying his mind. This was obviously not possible without giving a notice to the petitioners to have their say in the matter and when respondent No. 2 has acted at the behest of his superior officer and not according to his own decision reached after applying his mind dispassionately and after taking into consideration all the relevant facts presented before him, such a decision and the action, taken on the basis of such decision, cannot be sustained. This apart, the petitioners also have considerable force in their submission that in respect of a part of the amount, which has been appropriated in the manner, as aforesaid, by respondent No. 2, the CESTAT, Kolkata, had already granted stay and the stay order was still in operation, when the "forfeiture" was done. The respondents have not even made an attempt to explain this aspect of the petitioners' case. Thus, the petitioners have great substance in their contention that the action of respondent No. 2 has been suffering from, if not malice in fact, malice in law,

It is, thus, clear that the Government of Assam was of the view that establishment of a five star hotel is an important infrastructural requirement for the development of not only tourism, but also IT industries. Undoubtedly, therefore, the said hotel project stood approved, in principle, by the IAC by its letter, dated March 12, 2007. The relevant portion of the proceedings of the IAC approving, in principle, the proposal for establishment of the said "hotel project" reads as under:

The investment, appraisal committee constituted under Notification No. 4/2004-

CE, dated January 21, 2004, in its meeting held on March 1, 2007, at Guwahati decided to accept in principle, the proposal submitted by you vide the letter dated September 12, 2006, regarding setting up of a five star hotel as a joint venture with the Government of Assam under claim of "investment" in the infrastructure category in terms of Notification No. 8/2004-CE, dated January 21, 2004, subject to examination and acceptance of the project report,"

Coming to the direction given by respondent No. 2 to the bankers not to allow the petitioners to operate the escrow accounts, suffice it to point out that no such blanket exercise of power is tractable to the notification under consideration. By definition, an escrow account is nothing, but an account, which the banker(s) holds in trust. In such circumstances, except as has been provided under the terms of the agreement governing such account, no other action can be taken. When the withdrawal of money from these accounts was not possible without permission from the jurisdictional Commissioner, the question of directing the bankers not to let the petitioners operate the account was wholly illegal, for, the effect of such an order would be that even deposit of such amounts, (which the petitioners may, on a future date, seek to claim as exemption) in the escrow account, by the petitioners, would not be possible. Such is not the scheme of the notification; otherwise also, (as already indicated in the interim order passed by the court) when withdrawal of money was not possible from the said account without permission from the jurisdictional Commissioner, no such order was either needed or ought to have been passed. In fact, it is not discernible from the materials on record as to why such a direction freezing the account was given, when the manufacturer has a period of two years to make "investment" of the amount withdrawn.

10. As a consequence of the above findings W. P. (C) No. 591 of 2008 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), was allowed with the following directions (page 288 of 2 GSTR):

W. P. (C) No. 591/2008

(i) The impugned actions taken by respondent No. 2, namely, the Commissioner of Central Excise, Shillong, in "forfeiting" the sums of Rs. 57,61,37,536 (rupees fifty-seven crore sixty-one lakhs thirty-seven thousand five hundred thirty-six only), Rs. 28,55,14,172 (rupees twenty eight crores fifty five lakhs fourteen thousand one hundred and seventy two) and Rs. 30,35,24,690 (rupees thirty crores thirty-five lakhs twenty-four thousand six hundred and ninety only) from the escrow accounts of the petitioners maintained by respondents Nos. 3 and 4, namely, State Bank of India, New Guwahati Branch, Guwahati, and Branch Manager, State Bank of India, Main Bazaar Branch, Agartala, respectively, and the directions given, or requests made, by respondent No. 2 to transfer the said amounts of money from the escrow accounts of the petitioners maintained by respondents Nos. 3 and 4 towards payment of duty and the consequential actions, taken by respondents Nos. 3 and 4, in carrying out the directions so given, and/or the request so made, by respondent No. 2 are hereby set aside

and quashed.

(ii) The impugned actions of respondent No. 2, namely, Commissioner of Central Excise, Shillong, in freezing the escrow account Nos. 10566984064 and 10566984086 of petitioner No. 1, escrow account No. 10815025848 of petitioner No. 2 and escrow account No. 10815028838 of petitioner No. 3 maintained by respondents Nos. 3 and 4 and/or prohibiting the petitioners from operating their respective accounts aforementioned and/or directing respondents Nos. 3 and 4 not to let the petitioners operate their respective accounts aforementioned are hereby set aside and quashed and, in consequence thereof, it is further directed that while computing the period of investment of two years from the date of deposit under the notification, dated January 21, 2004, read with the notification, dated July 9, 2004, the period, during which the said accounts remained frozen and inoperative, shall be excluded,

(iii) Respondent No. 2 is hereby directed to consider, and decide, in the light of the discussions held above within a period of one month from today all the applications made by the petitioners, seeking withdrawal of money from their respective escrow accounts for the purpose of making investments on their various projects, including the project of five star hotel.

11. Learned counsel for the Revenue has not questioned the above findings recorded by the learned single judge in W. P. (C) No. 591 of 2008 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), nor the findings recorded by this court in Central Excise Appeal No. 1 of 2008 have been assailed. Only contention raised is. that in view of the Finance Act, 2011, the basis of the judgment of. the learned single judge and of the Division Bench of this court stands removed and the judgments have become unimplementable. For this proposition, reliance has. been placed on the judgment of the hon"ble Supreme Court in R.C. Tobacco Pvt. Ltd. and Another etc. Vs. Union of India (UOI) and Others, . It was further submitted that the order of the learned single judge dated June 29, 2010 passed in Misc. Case No. 479 of 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), , amounted to review and further directions on subsequent cause of action which was not at issue. The said directions are as under (page 35 of 11 GSTR);

By making this application, the applicant has also sought for allowing them to file fresh withdrawal applications for making under the notification, investments of the amounts, which would be made available to them pursuant to the judgment and the order, dated January 6, 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), , aforementioned. In this regard, it needs to be noted that as a result of freezing of the accounts as well as in consequence of the act of forfeiture of diverse sums of money lying in the escrow accounts of the petitioners-applicants, the petitioners-applicants could not make withdrawal applications for making investments. As the respondents' action of freezing the money lying in the petitioner-applicants' escrow accounts as well as the respondents' action in appropriating the amounts, lying in the petitioner-applicants escrow accounts, by way of forfeiture, have already been held to be

illegal and have been set aside, it logically follows that the petitioners-applicants were estopped from making their withdrawal applications, because of the said illegal acts of the respondents. In such circumstances, if the fruits of the orders are to be made available to the petitioners-applicants, it must, as a corollary, follow that the petitioners-applicants be allowed to make their withdrawal applications for making, under the notification, investments of the amounts, which would be made available to them pursuant to this court's judgment and the order, dated January 6, 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), . It is, therefore, directed that for the purpose of making the withdrawal applications, the periods, during which the escrow accounts had remained frozen as well as the periods, during which diverse sums of money had stood appropriated by forfeiture of the amounts, shall be kept excluded,

Coming to the question of the hotel project, it needs to be noted that by way of an interim order, dated September 30, 2008, the court had allowed the petitioners-applicants to proceed with the construction of the hotel subject to the outcome of the writ petition and since this court has already held that the petitioners-applicants' hotel project stood approved on principle, by the IAC, and when the petitioners' hotel project satisfies the conditions of investment on infrastructure, it becomes clear that the respondents are, now, required to pass appropriate order(s), in this regard, so as to enable the petitioners-applicants receive the benefit of the findings of this court and the directions given in this regard.

The directions, contained above, it may be noted, having not been consciously denied, though the petitioners-applicants were entitled to, ought to have been given and it is this error, which was apparent on the face of the record and which has, now, been corrected. Such directions, one must reiterate, shall be made available to the petitioners-applicants so that they can enjoy the fruits of the directions already passed, in their favour, in their writ petitions."

Learned counsel relies upon the judgment of the hon'ble Supreme Court in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, to the effect that by filing a miscellaneous application in a decided writ petition proceedings could not be revived in respect of events taken place after long lapse.

12. Learned counsel for the assessee opposed the above submission and submitted that the directions of the learned single judge in defreezing of escrow accounts and permitting appropriation are justified. Investment in a hotel was permissible under the conditions of exemption as rightly held by the impugned judgment. Since the Revenue has not assailed the said finding, there is no occasion to hold back. The binding effect of the directions cannot be held to have been nullified merely-because of the retrospective: amendment by the Finance Act, 2011. It was further submitted that a clarificatory direction could be issued by the learned single judge even after the writ petition was decided and the order dated June 29, 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), thus was fully justified. The view taken in State of Uttar Pradesh Vs.

Brahm Datt Sharma and Another, was distinguishable on the principle laid down in the subsequent judgment in K.A. Ansari and Another Vs. Indian Airlines Ltd., .

13. Thus, the question which requires determination is whether the Finance Act, 2011 has the effect of nullifying the judgments of this court and whether the order of the learned single judge giving further directions, after decision of the writ petition, is without jurisdiction.

14. In our view, both the questions have to be answered against the Revenue and in favour of the assessee.

15. If a retrospective amendment changes the law on which a judgment is based in such a way as to create a conflict in the judgment and the changed law, the retrospective changed law may prevail and to that extent the judgment may stand nullified. However, when there is no conflict in the judgment and the retrospectively enacted law, there is no reason to hold that the judgment stands nullified. In the present case, there is no reason to hold that the Finance Act, 2011, has the effect of nullifying the basis of the judgment of the learned single judge and the Division Bench. Unlike the situation in R. C. Tobacco P. Ltd. [2005] 5 RC 481, the retrospective amendment in question does not adversely affect the exemption granted by the three notifications. It only makes the conditions more liberal by giving longer time for compliance. There is no conflict in the applicability of the retrospective amendment and the judgments of this court. The amendment in question is as follows (page 20 of 8 GSTR (St.)):

72.(1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue) number G. S. R. 679(E), dated August 25, 2003, number G. S. R. 60(E), dated January 21, 2004 and number G. S. R. 419(E), dated July 9, 2004 (hereinafter referred to as the said notifications), issued under sub-section (1) of section 5A of the Central Excise Act, 1944, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (3) of the Ninth Schedule, on and from the corresponding date specified in column (4) of that Schedule, against each of the notifications specified in column (2) of that Schedule.

(2) Where a manufacturer avails the benefit of exemption provided under the said notifications as amended by sub-section (1), he shall, within a period of six months from the date on which the Finance Bill, 2011 See [2011] 7 GSTR (St.) 36 receives the assent of President, provide details relating to the investments made in terms of condition (B) specified in notifications number G. S. R. 679(E), dated August 25, 2003 and number G. S. R. 60(E), dated January 21, 2004, as subsequently amended by number G. S. R. 419(E), dated July 9, 2004, to the investment appraisal committee.

(3) The investment appraisal committee shall, on receipt of details under sub-section (2) and on being satisfied that the investment, as specified in condition (B) referred to in sub-section (2), has been made, issue the certificate in accordance with condition (E) specified in the said notifications as soon as

possible but not later than the 31st day of December, 2012.

(4) Any amount lying or remaining unutilised in the escrow account (referred to in notification number G. S. R. 419(E), dated July 9, 2004) on or after 31st day of December, 2012 shall stand forfeited and be appropriated to the account of the Central Government.

(5) Recovery of any duty along with applicable interest which has not been paid but was liable to be paid as if the benefits under the said notifications had not been made available on account of non-issue of certificate by the investment appraisal committee or on any other account, shall be made within a period of one year from 31st day of December, 2012 and the provisions of the Central Excise Act, 1944 shall apply for such recovery.

16. It is clear from the text of the amendment that the same does not in any way conflict with the finding recorded by the learned single judge or by the Division Bench of this court, unlike the situation which was dealt with by the hon''ble Supreme Court in R. C. Tobacco P. Ltd. [2005] 5 RC 481 where the judgment giving benefit of exemption was in conflict with the retrospective amendment withdrawing the exemption,

17. Nothing has been pointed out on behalf of the appellant to show that the order of the learned single judge dated June 29, 2010 See Dharampal Satyapal Ltd. Vs. Union of India (UOI), goes beyond clarification of the direction already given. The same is not thus, liable to be quashed on the ground that it is beyond the inherent jurisdiction of the court to clarify its direction. The subsequent direction is not on a fresh cause of action nor by way of fresh adjudication.

18. Accordingly, we do not find any merit in Writ Appeals Nos. 394/2010 and 395/2010 and in the stand of the Revenue that the judgments of this court are rendered inexecutable. It is, however, made clear that the Finance Act, 2011 See [2011] 8 GSTR (St.) 1 will be fully applicable and the parties will act in accordance with the terms and conditions for exemption as modified by the said Act. The Revenue may, now, deal with the matter in accordance with the judgments of this court by applying the amendment to the exemption notifications vide the Finance Act, 2011 See [2011] 8 GSTR (St.) 1. The matter may be finalised within three months from the date of receipt of a copy of this order. The miscellaneous case and the appeals stand disposed of accordingly.

1 See [2011] 8 GSTR (St.) 1.