(2021) 05 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (C) No. 2843 Of 2021

M/S Barak Alloy APPELLANT

Vs

Union Of India And 3 Ors RESPONDENT

Date of Decision : 28-05-2021

Acts Referred:

Citation : (2021) 05 GAU CK 0013

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : M L Gope

Final Decision : Disposed Off

Judgement

1. The Court proceedings have been conducted through video-conference.

2. Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, GST.

3. Issue notice, returnable within six weeks.

4. As Mr. Keyal, learned Standing Counsel, GST has accepted notice on behalf of all the respondents, no formal steps be taken for service of notice

upon the respondents. However, extra copies of the writ petition may be furnished to the learned counsel for the respondents by the petitioner.

5. The matter pertains to the challenge of the demand notice dated 30.12.2020 issued to the petitioner by the respondent No.3 demanding refund of

alleged excess amount of the money refunded earlier to the petitioner towards excise duties in terms of the interim order of the Hon'ble Supreme

Court dated 07.12.2015 passed in IA No.3/2015.

6. According to the petitioner, exemption of excise duty was granted to certain industries established/functioning in the State of Assam as an incentive

for the industrial development of this region, to the extent of cent percent, because of which the petitioner also established his industry in Assam.

However, subsequently, some changes were brought in by the Revenue Authorities by reducing the rate of exemption which led to a series of litigation

ultimately reaching the Hon'ble Supreme Court. The Hon'ble Supreme Court repelled the challenge to the changes made in the rate of excise

dutiespayable as provided in the new regime. However, the new fiscal norm as notified under the Notification Nos.17/2008-CE, 18/2008 and 20/2008

dated 27.03.2008 and subsequent Notification No.38/2008 dated 10.06.2008 which were the subject matter of litigation also provided for preparing

special rates by the industrial units under which they were entitled to certain benefits.

7. According to the petitioner, though the petitioner is entitled to special rate to get these benefits and applied for finalizing the same, the authorities

have not considered the same Page No.# 3/4 despite repeated representations submitted in that regard. On the other hand, the authorities are seeking

to recover the money already refunded earlier which was permitted by the Hon'ble Supreme Court on earlier occasion. Accordingly, being aggrieved,

the petitioner has filed this writ petition challenging the demand notice dated 30.12.2020.

8. It has been submitted by Ms. Hawelia, learned counsel for the petitioner, that some similar writ petitions are also pending before this Court claiming

similar relief against the authorities against such similar demand notice issued for refund the amount already released to the industries. In this regard,

learned counsel for the petitioner has drawn attention of this Court to an order passed by this Court in WP(C) No.2566/2021 on 09.04.2021 wherein

this Court passed the following interim order:

8. Pending further order, the Court is inclined to follow the two orders dated 24.03.2021 passed by this Court in WP(C) 1644/2021 and WP(C)

2089/2021 and as an ad interim measure it is provided that the Commissioner of CGST, Dibrugarh (respondent no.2) shall dispose of the application

dated 03.03.2021 submitted by the petitioner, received in the office of the Commissioner on 04.03.2021, for fixation of special rate within a period of 4

(four) weeks from the date of receipt of the certified copy of the order. It is provided that till such decision is taken, no coercive measure be taken against the petitioner pursuant to the demand notice dated 01.01.2021 and 09.02.2021 impugned in this writ petition.

9. Learned counsel for the petitioner has prayed for similar interim relief, to which the Ld. Standing Counsel for the GST has not raised serious

objection.

10. Accordingly, in the meantime, it is directed that the respondent No.2, i.e., Commissioner, Central Goods and Service Tax, Guwahati shall dispose

of the representations submitted by the petitioner including the one dated 02.02.2021 for fixation of special rate within four weeks from the date of

receipt of a certified copy of this order. It is also directed that till such decision is taken by the authorities on consideration of the representation(s)

submitted by the petitioner, the authorities shall not take any coercive action against the petitioner pursuant to the demand notice dated 30.12.2020

challenged in this writ petition.

11. List again along with WP(C) No.2841/2021 on 14.07.2021.