(2018) 10 GAU CK 0003

In the Gauhati High Court

Case No : Civil Writ Petition No.4868 Of 2018

M/S. Ozone Ayurvedics APPELLANT

Vs

Union Of India And 5 Ors RESPONDENT

Date of Decision : 01-10-2018

Acts Referred:

Citation : (2018) 10 GAU CK 0003

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : N. Mech, N. Hawelia, S.C Keyal

Final Decision : Disposed Off

Judgement

1. Heard Ms. N. Mech, learned counsel appearing on behalf of Ms. N. Hawelia, learned counsel for the petitioner and Mr. S.C Keyal, learned ASGI

for the respondents in the Ministry of Finance and Ministry of Commerce and Industries of the Government of India, as well as the authorities in the

office of the Commissioner of Central Excise and Goods and Services Tax at Guwahati.

2. The petitioner is an industrial unit located within the State of Assam and claims to be entitled to certain benefits as regards exemption from excise

duty as per North East Industrial and Investment Promotion Policy (NEIIPP), 2007 as announced on 01.04.2007 and the subsequent notifications of

the Central Government for the purpose. As per the said policy, exemptions as regards excise duty were applicable to such industrial units, which had

commenced their commercial production on or after 01.04.2007 and also in respect of such industrial units, which were in existence prior to

01.04.2007, but had undertaken substantial expansion by way of increase in the installed capacity after the said date.

3. As per the Finance Act of 2004, an education cess and a higher education cess was levied on all excisable goods in addition to any other duties of

excise chargeable on such goods under the Central Excise Act of 1944. Accordingly the petitioner, apart from the excise duty, had also paid the

education cess and the higher education cess as introduced by the Finance Act of 2004.

4. Under the industrial policy of 2007, the petitioner accordingly claimed a refund of the excise duty paid as admissible under the policy and upon being

subjected to the necessary process, the required amount of excise duties paid were refunded.

5. As the refund of excise duty was a specific provision in the North East Industrial and Investment Promotion Policy, 2007, a question had arisen as

to whether the education cess and the higher education cess paid on all excisable goods were also subjected to a refund under the said Policy of 2007,

or in other words, whether the education cess and higher education cess were a part of the excise duty.

6. The said issue was finally decided by the Honâ??ble Supreme Court in Civil Appeal Nos.2781-2790 of 2010 (M/s SRD Nutrients Private Limited

â?"vs- Commissioner of Central Excise, Guwahati) and other similar civil appeals, by its judgment and order dated 10.11.2017.

7. In its judgment and order, the Honâ??ble Supreme Court arrived at a conclusion that the education cess and the higher education cess levied @

2% of the excise duty would partake the character of excise duty itself. Accordingly, it was held that the appellants therein were entitled to a refund

of the education cess and the higher education cess, which was paid along with the excise duty, once the excise duty itself was exempted from levy.

8. In this writ petition, by relying upon the aforesaid judgment of the Honâ??ble Supreme Court, the petitioner claims for a direction for refunding the

education cess and the higher education cess as stood exempted in terms of Notification No.32/99 dated 08.07.1999 read with 20/2007 for the period

from 2011-2012 to 2014-2015. Mr. S.C Keyal, learned ASGI appearing for the Ministry of Finance, Government of India, Ministry of Commerce,

Government of India as well as the authorities in the Excise and Goods and Services Tax Department, upon instruction, submits that in the instant case also, by following the pronouncement of the Honâ??ble Supreme Court in M/s SRD Nutrients Private Limited â?"vs- Commissioner of Central

Excise, Guwahati, the authorities are bound to refund the education cess and the higher education cess paid by the petitioner from 2011-2012 to 2014-

2015.

9. In this respect, Ms. N. Mech, learned counsel for the petitioner also refers to an order dated 02.08.2018 of the Division Bench of the High Court of

Meghalaya, wherein also in a similar circumstance and upon an agreement being reached between the parties, a direction was issued to the

respondents therein to refund the education cess and the higher education cess, which was collected by the respondent authorities from the appellant

therein along with the excise duty for the given period.

10. Accordingly, in view of the consensus reached between the parties, this Court directs the respondents in the Department of Excise/Goods and

Services Tax of the Government of India, more particularly the respondent Nos. 4 to 6 to make an appropriate calculation and thereupon refund the

education cess and the higher education cess paid by the petitioner from 2011-2012 to 2014-2015.

11. As agreed by Mr. SC Keyal, learned ASGI, the aforesaid process of refund be undertaken and completed, leading to refund of the education and

higher education cess, within a period of 05(five) months from the date of receipt of a certified copy of this order. In terms of the above, the writ

petition stands disposed of.

