(2021) 09 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4215 Of 2021

M/S Superlite Aac Block Industry — APPELLANT

Vs

Union Of India And 2 Ors — RESPONDENT

Date of Decision : 13-09-2021

Acts Referred:

Citation : (2021) 09 GAU CK 0032

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : D Sahu

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. Sahu, learned counsel for the petitioner, Mr. SC Keyal, learned counsel for the respondents in the GST Department as well as Mr. K Gogoi, learned counsel for the respondent No.1 being the Union of India.

2. The petitioner M/s Superlite AAC Block Industry is a public partnership firm formed under the Partnership Act, 1932 and carrying on manufacturing of excisable goods such as ACC Blocks, Fly Ash Blocks etc. The petitioner claims for an exemption against payment of excise duties under the North East Industrial Investment Promotion Policy, 2007 (in short NEIIP, 2007). As per the Northeastern Industrial Policy, the petitioner was earlier entitled to an exemption to excise duty to certain extent.

3. By the notifications No.17/2008-CE dated 27.03.2008 and No.31/2008-CE dated 10.06.2008, certain modification was brought in by the respondent authorities to the exemption that was made available to the petitioner under the North Eastern Industrial Policy. The validity and vires of the notifications by which such modification was brought in regarding the entitlement of exemption of excise duties was assailed by some other similarly aggrieved manufacturers by way of WP(C) No.1789/2008 and other writ petitions. WP(C) No.1789/2008 was given a final consideration by the judgment dated 24.06.2009, by which the

notifications impugned dated 27.03.2008 and 10.06.2008 were held to be not sustainable in law and were accordingly set aside and quashed. The intra-Court appeal that was carried against the judgment of the learned Single Judge by the respondent authorities which was numbered as WA No. 243/2009, resulted in the judgment dated 20.11.2014, by which the judgment rendered by the learned Single Judge was upheld, meaning thereby that the interference with the notifications impugned was sustained. The respondents in the Union of India carried an appeal before the Supreme Court against the judgment in the writ appeal resulting in SLP No.11878/2015. In the said proceeding, the Supreme Court had passed an interim order dated 07.12.2015, wherein the following as extracted was provided:-

"Pending further orders, we direct that subject to the petitioners releasing 50% of the amount due to the respondent in terms of the impugned judgment on the respondents' furnishing solvent surety to the satisfaction of the jurisdictional commissioner, the operation of the impugned judgment shall remain stayed."

4. In terms of the order dated 07.12.2015 of the Supreme Court, the respondent GST Department was required to release 50% of the amount that was due to the assessee during the pendency of the appeal before the Supreme Court. The said interim order was passed in an appeal by the Union of India against an assessee namely M/s Kamakhya Cosmetics and Pharmaceuticals and others. The Division Bench of this Court in Raj Coke Industries -vs-Union of India, reported in 2017 (349) ELT 120 (GAU), by a judgment dated 01.12.2016 had provided that the benefit of being paid the 50% of the amount involved as provided by the Supreme Court in its order dated 07.12.2015 would be applicable to all such similarly situated assesses.

5. In the meantime, the Supreme Court had given its final consideration to the appeal preferred by the respondent Union of India in the GST Department and by the order dated 22.04.2020 in Civil Appeal No.2256-2263 of 2020 arising out of SLP(C) No.28194-28201-2010 and other similar appeals and interfered with the judgment of the Division Bench dated 20.11.2014 in WA No. 243/2009 and other writ appeals and other similar judgments passed by the other High Courts.

6. Consequently, the writ petitions filed by the assesses before the respective High Courts assailing the impugned notifications dated 27.03.2008 and 10.06.2008 stood dismissed. The Supreme Court also clarified that the judgment shall not affect the amount of excise duties already refunded prior to the two impugned notifications providing for modification of excise duty exemption and such refunds are not to be re-opened. It was also provided that the pending refund applications are to be decided as per the impugned notifications bringing in the modification. The implication of the judgment dated 22.04.2020 of the Supreme Court in Civil Appeal No. No.2256-2263 of 2020 arising out of SLP(C) No.28194-28201-2010 and other similar appeals would be that the excise duty exemption granted under the Northeastern Industrial Policy of 1997 which was earlier available would now be not available to the assessees.

7. In the resultant situation, there is also a requirement under the law for the assessees to refund the 50% amount that as was paid to them pursuant to the interim order dated 07.12.2015 of the Supreme Court.

8. The petitioner claims that they are entitled to the fixation of a special rate in terms of the Notification No. 20/2007-CE dated 25.04.2007 as amended in the event they exercise their option not to avail the special rates specified in the tables in the said notification and for the purpose of availing a special rate, the petitioner is required to apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition. The time provided for filing such application for fixing of the special rate is provided in the notifications itself to be 30th September of that given financial year.

9. In the circumstance, the petitioner assessee has been issued a demand notice to return back 50% of the amount which was refunded as per the earlier interim order of the Supreme Court. In the aforesaid circumstance, the petitioner claim that under the Notification No.20/2007-CE dated 25.04.2007, they are entitled for a special rate to be fixed by the authorities on the basis of the value additions that had been made to the product concerned. The grievance of the petitioner in this writ petition is that the application of the petitioner for fixing of the special rate which was made on 13.06.2021, has not yet been given a final consideration by the Principal Commissioner, GST, Guwahati.

10. Considering the limited grievance raised, we dispose of this writ petition directing the Principal Commissioner of GST, Guwahati to pass a reasoned order on the application of the petitioner dated 13.06.2021 requesting for fixation of a special rate. By requiring the Principal Commissioner, GST, Guwahati to pass an order we mean that the Principal Commissioner, GST may pass any reasoned order as may be advisable under the law by either accepting or rejecting the request made by the petitioner. In doing so, the Principal Commissioner, GST, Guwahati may pass any order as deemed appropriate under the law.

11. The requirement of passing the reasoned order be done within a period of one month from the date of receipt of a certified copy of this order.

12. Writ petition stands disposed of in the above terms.