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(2018) 03 GAU CK 0095

In the Gauhati High Court

Case No : WP(C) 2549 of 2016

M/S SWAGATH POLY CRAFTS — APPELLANT

Vs

THE UNION OF INDIA and 5 ORS — RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0095

Hon'ble Judges : ACHINTYA MALLA BUJOR BARUA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1.Heard Ms. S. Kataki, learned counsel for the petitioner and Ms. P. Barua, learned counsel appearing for the Central Excise Department.

2. The petitioner firm was established as an Industry for manufacturing certain plastics moulded furniture, toilet articles, articles for convenience of

packing of goods of plastic etc. The industry was set up under the North East Industrial and Investment Promotion Policy of 2007, which entails

certain benefits in respect of payment of excise duties. The policy as such had provided for 100% refund of excise duties payable to the Union of

India. But later on, by two notifications being Notification No.20/2008 dated 27.03.2008 and 38/2008 dated 10.06.2008, the refund of excise duty was

modified to the extent that it would be applicable only in respect of 15 to 75% of excise duty. The said two notifications are being assailed in this

present writ petition.

3. It has been brought on record that in respect of some other writ petitions assailing the same two notifications, this Court by a judgment and order

dated 24.06.2009 in WP(C) No.2143/2008 and other writ petitions, had set aside the two notifications.

4. As the matter has already been decided by the judgment and order dated 24.06.2009, this Court also pass the same order and accordingly set aside

the two notifications dated 27.03.2008 amd 10.06.2008. But however, the implication of setting aside the two notifications would be that the petitioner

would now be entitled to 100% refund of the excise dues. But juridical notice would also have to be taken that in the meantime, the Union of India had

preferred a writ appeal being WA No.243/2009 against the judgment and order dated 24.06.2009, wherein an interim order was passed that the refund

of the excise duties to be limited to what was provided in the two notifications. In the meantime, in a similar litigation emanating from the Honâ??ble

Gujrat High Court the Honâ??ble Supreme Court by its order of 13.01.2012 in SLP(C) 28194-28201/10 had passed an interim order that 50% of the

refundable excise duty be refunded to the respective claimants. Thereafter, the Division Bench of this Court had dismissed the writ appeal being WA

No.243/2009, against which the Union of India had preferred an appeal before the Honâ??ble Supreme Court, which was numbered as SLP(C)

11878/2015.

5. In the said appeal before the Honâ??ble Supreme Court, a similar interim order dated 07.12.2015 as that of the Honâ??ble Gujrat High

Courtâ??s case was passed, meaning thereby that the authorities would refund 50% of the refundable excise due while the balance part remained

stayed. In the interim order dated 07.12.2015, the Honâ??ble Supreme Court had directed that the claimants be released 50% of the amount due.

6. Accordingly, a question had arisen as to what would be the appropriate interpretation of the expression amount due. The department intended to

give an interpretation that all such amount, which was already released to the petitioners prior to the said two impugned notifications would also be

included in the amount due and accordingly 50% thereof was sought to be calculated. On the other hand, the claimants were of the view that the

amount already refunded is to be excluded while calculating the amount due and 50% ought to be calculated from the balance of the amount that the

department is liable to pay back to the claimants.

7. The Division Bench in its judgment and order dated 01.12.2016 in WP(C) No.269/2016 and other writ petitions, had examined the aforesaid

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question as to what would be the appropriate interpretation of the expression amount due as incorporated in the interim order of the Honâ??ble

Supreme Court dated 07.12.2015.

8. In paragraph-19 of the said judgment, the Division Bench had analyzed a refund order in respect of one of the claimants namely M/s Ozone

Ayurvedics (Unit-II) and arrived at a conclusion that the differential amount was determined by subtracting the amount already refunded by the

impugned notifications and 50% of the deferential due was calculated by the Commissioner to be the amount due. The Division Bench opined that the

said method adopted reflects the correct meaning of the expression amount due as mentioned by the Honâ??ble Supreme Court in its order dated

07.12.2015. In paragraph-21 of the said judgment, the Division Bench was of the view that the determination of the amount due in terms of the interim

order of the Honâ??ble Supreme Court cannot include what was undisputedly paid back as refundable excise duty and that the inclusion of the

amount already refunded was not justified for determining the amount due. Paragraphs-19 and 21 of the said judgment is quoted below:-

â??19.When the refundable amount was calculated for one of the successful litigants i.e. M/s Ozone Ayurvedics (Unit-II), the Asstt. Commissioner

of Central Excise, on the first occasion (09.07.2015) looked at the duty amount paid on clearance of finished goods from the PLA and then took into

account the refundable amount at the lesser specified rate (under the impugned notification dated 27.03.2008). For this unit, the differential amount

was determined by, subtracting from the amount deposited through PLA, the sum already refunded by the impugned notification. Thereafter, in terms

of the interim order passed by the Honâ??ble Supreme Court, 50% of the differential due was calculated by the Commissioner. The methodology in

our opinion, reflects the correct amount due, mentioned by the Honâ??ble Supreme Court, in its order dated 07.12.2015 in the I.A No.3/2015. Hence,

any lesser amount quantified as the payable sum to the petitioners, in our comprehension, do not conform to the interim order passed by the

Honâ??ble Supreme Court and also by the High Court. Having concluded thus, we do not hesitate to declare that the methodology of calculation

made by the Deputy Commissioner on 12.02.2016 to determine the refundable amount is not the correct mode as the authority has unjustly taken into

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account, the undisputed segment of the refundable excise duty, to reach a lesser figure, for making refund to the successful litigant, as an interim

measure.

21. The interim order passed by the Honâ??ble Supreme Court on 07.12.2015 in the I.A No.3/2015 was made applicable by the Gauhati High Court

in all the pending cases and therefore the determination of the amount due in terms of the Courtâ??s interim order, cannot include what was

undisputedly paid back as refundable excise duty, which the manufacturers were entitled to receive, irrespective of the outcome of the litigation.

Therefore inclusion of those already refunded sum, was not justified for determining the amount due. In our understanding, only the differential amount

can be taken into account for deciding what sum to be paid back now to the manufacturer. In other words, 50% of the unpaid amount is the due

amount and this must be refunded to the eligible units, subject to furnishing of solvent surety to the satisfaction of the jurisdictional commissioner. It is

declared so accordingly.â??

9. Accordingly, in view of the interim order of the Honâ??ble Supreme Court dated 07.12.2015 in respect of the other similarly situated writ petitions

wherein also the two notifications were set aside, this Court deems it appropriate that a similar order should also prevail in this writ petition and

accordingly instead of being refunded 100% of the excise duties, for the time being and till the final adjudication by the Honâ??ble Supreme Court in

the other writ petitions, the petitioner shall be refund 50% of the amount due as excise refund. It is further provided that the expression 50% of the

amount due shall be interpreted in the same manner as interpreted by the Division Bench of this Court in its judgment and order dated 01.12.2016 in

WP(C) No.269/2016 and other writ petitions, which would mean that 50% of the differential dues be paid to the petitioner. In terms of the above, the

writ petition stands disposed of.

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