

HIGH COURT OF TRIPURA
AGARTALA
REVIEW PETITION 57 OF 2022

1.Dharampal Premchand Ltd.

(Agartala Unit), having its registered Office at 4873, Chandni Chowk,
New Delhi-110006.

2.M/S Satyapal Shivkumar

(Agartala Unit) as registered partnership firm having
its head office at 7/355 Naya Bans, Delhi-110006.

....Petitioners/Review Applicants.

Vrs.

1.The Commissioner of Central Excise, Shillong,

3rd Floor, CRESCENS Building, M.G. Road, Shillong-793001.

2. Deputy Commissioner of Central Excise and Service Tax,

Now Assistant Commissioner, having his office at Joynagar,
Agartala, District-West Tripura, Pin 799001.

....Respondents.

Present:

For the review petitioners : Mr. Kartik Sundaram, Advocate.
Mr. Kousik Roy, Advocate.
Mr. Rohan Chakraborty, Advocate.

For the respondents : Mr. Paramartha Datta, Advocate.
Mr. S. Chowdhury, Advocate.

Date of hearing & delivery : **21.09.2023**
of Judgment and Order

Whether fit for reporting : Yes

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR.JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

[*Aparesh Kumar Singh, C.J.*]

This review petition is directed against the judgment dated 10th
February, 2020, passed in Writ Appeal No.10 of 2016 which reads as under:

*“This appeal is filed by the Union of India to challenge the
judgment of the learned Single Judge dated 08.01.2016 passed in Writ
Petition (C) No.144/2010. By the impugned judgment the learned Single
Judge was pleased to allow the writ petition setting aside certain*

notifications of withdrawal of tax concessions holding that the petitioner would continue to get the benefit in terms of the promise for grant of exemptions.

*Learned ASG assigned this appeal is reportedly sick. Learned counsel for the respondents has fairly brought to the notice a decision of the Supreme Court in case of **Union of India & Ors. Vrs. Unicorn Industries**, reported in (2019) 10 SCC 575 which squarely covers this issue against the respondents. He, however, clarified that the concerned parties are considering filing curative petitions before the Supreme Court.*

*Presently, the decision of Supreme Court in case of **Unicorn Industries (supra)**, covers the issue. This appeal, therefore, is allowed. The decision of the learned Single Judge is reversed.*

Appeal is disposed of accordingly.”

2. Taking the chronology of events a bit further backwards it needs to be mentioned here that the petitioners had approached the Writ Court against the Notification No.11 of 2007-CE dated 1st March,2007 as that had abrogated the benefits allowed to the petitioners under the Notification No.32/1999-CE and 33/1999-CE dated 8th July, 1999. It was the case of the petitioners that in furtherance of the Notification dated 8th July, 1999 they had made extensive investment in the specified zone, growth centre or the industrial park. The petitioners had also pleaded that under the industrial policy containing O.M. dated 24th December, 1997, issued by the Ministry of Industry, Department of Industrial Policy and Promotion, Government of India, certain incentives were granted to those who established industries in the North Eastern Region in order to give stimulus to the development of industrial infrastructure. Pursuant thereto, a further Notification was issued on 8th July, 1999 granting incentives to new industrial units which commenced commercial production on or after 24th December,1997 and to the category of industrial units those would increase substantially their installed capacity after that date and cleared goods from the units located in the group centre and integrated infrastructure centres. The Notification dated 8th July, 1999 was issued under Section 5A(1) of the Excise Act,1944 read with sub Section (3)

of Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 and sub Section (3) of Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 by exempting the goods specified in the first Schedule and the second Schedule to the Central Excise Tariff Acts. By some amendments in the Notification No.32 of 1999 under Notification No. 33 of 1999 'Pan Masala' was excluded from exemption.

3. The learned Writ Court dealt with the issue extensively taking note of the North-East Industrial Policy, 1997, the exemption notification as well as the notification dated 01.03.2007 withdrawing the benefits, the ratio rendered in the Case of *Motilal Padampat Sugar Mills Co. Ltd. Vrs. State of Uttar Pradesh & Ors.*, reported in *AIR 1979 SC 621*; *R.C. Tobacco Private Ltd. & Anr. Vrs. Union of India & Anr.*, reported in *(2005) 7 SCC 725* and other decisions of the Apex Court. It framed the following issues for consideration:

[36] What has emerges from the contention and counter contention calling for response from this Court may briefly be formulated as under:

(i) Whether the impugned notification dated 01.03.2007, Annexure-L to the writ petition is hit by promissory estoppel by restraining premature withdrawal of the benefits?

(ii) Whether the notification No.69/03-CE dated 25.08.2003, Annexure-H to the writ petition has been completely eclipsed by the notification under No.8/2004-CE dated 21.01.2004, Annexure-I to the writ petition? And

(iii) Whether there is any misuse of process or public interest element justifying the withdrawal of benefits as granted by the NEIP, 1997 by virtue of the notification dated 01.03.2007, Annexure-L to the writ petition?

[37] There cannot be any amount of dispute that by the notification under No. 69/2003-CE dated 25.08.2003 the Central Government had reintroduced in the public interest exemption of excisable goods of the description specified in the Column 3 of the table appended below the said notification and falling within the subheading mentioned therein of the First Schedule to the Central Excise Tariff Act, 1985 subject to the conditions as stated. There is no challenge by the petitioner against the said notification. Even Dr. Saraf, learned Senior Counsel appearing for the petitioner has clearly stated that the petitioners are not claiming any benefit which has been taken away by Section 154 of the Finance Act, 2003. As such it is abundantly clear that the relief as claimed by the petitioners are based on the notification dated 25.08.2003,

Annexure-H to the writ petition or the subsequent amendments and modification as made thereof. The challenge is against premature withdrawal of those incentives provided by the notification dated 25.08.2003 and as modified by the notification No. H/2004 –CE dated 21.01.2004, Annexure-I to the writ petition. It is required to be mentioned that the petitioners have not thrown any challenge against the notification No. 28/2004 –CE dated 09.07.2004 Annexure-J to the writ petition whereby conditions as laid down in Paras (C), (D) and (E) had been modified by way of substitution as stated. These changes are as to the modality of refund of the duty keeping the refundable duty in an Escrow Account as security or collateral. Elaborately the method of investment certification by the designated committee etc. has been provided. The modified condition also provides the consequence of failure in deposit or investment of the amount specified in the condition (B) within the stipulated period. The duty, which is equivalent to the amount, not so deposited or invested in the prescribed manner shall be recoverable from the manufacturer along with interest thereon at the rate specified under Section 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 in force, by forfeiture of the amount in the said Escrow Account. The question therefore is whether the petitioners are entitled to get the benefits in terms of the notification dated 25.08.2003 read with or without notification dated 21.01.2004 for 10 years as promised by the NEIP 1997, or in other words whether the impugned notification dated 01.03.2007, Annexure-L to the writ petition in respect of premature withdrawal of the benefits is hit by promissory estoppel?

The writ petition was allowed holding as under:

[44] According to the respondents, the said notification dated 25.04.2007 Annexure- M to the counter affidavit has been issued solely on consideration of safeguarding public interest having regard to the health hazards relating to consumption of tobacco and tobacco products. It has been implied that the public interest is better served by withdrawing the incentive rather than by continuing with it. The said notification dated 25.04.2007 has not however been challenged in the writ petition. But by filing the rejoinder the petitioners has simply stated that the contents of para No.27(xiv) are a matter of record and do not merit a response. The policy change would not absolve the government from its obligation under the doctrine of promissory estoppel. Whether without raising objection to the notification dated 25.04.2007 the petitioner would still be entitled to get the incentives or not? But the promise has been further extended by the NEIIPP 2007, vide the office memorandum dated 01.04.2007, by providing that “the industrial units which have commenced commercial production on or before 31.03.2007 will continue to get benefits /incentives under NEIP 1997.” The notification dated 25.04.2007 has amended the notifications No.32/99-CE dated 08.07.1999 and 33/99-CE dated 08.07.2007. In the said notification dated 25.04.2007, by way of substitution, the following proviso has been added:

“Provided that the exemption contained in this notification shall not be applicable to pan masala, falling under Chapter 21 of the said First Schedule, goods falling under Chapter 24 of the said First Schedule ; and plastic carry bags of less than 20 microns as specified by the Ministry of Environment and Forests Notification No. S.O. 705 (E), dated the 2nd of

September, 1999 and S.O. 698 (E) dated the
17th of June, 2003.”

This proviso has been substituted in place of the first proviso appearing in the notification No. 32/99-CE dated 08.07.1999. According to this court, the reasons as provided in the counter affidavit in support of such deletion and substitution of the first proviso by the notification No. 21/2007-CE dated 25.04.2007 cannot be brushed aside. Pan masala containing tobacco may cause health hazard as claimed by the respondents. As such, even though the petitioners have not thrown the categorical challenge against the said notification dated 25.04.2007, the said notification will not absolve the respondents from its obligation under the promissory estoppel so far the pan masala without tobacco content is concerned. In view of the saving clause as engrafted in NEIIPP 2007, as the petitioners' units have commenced commercial production on or before 31.12.2007 will continue to get benefits/incentives under NEIP, 1997 in terms of the notification No. 8/2004-CE dated 21.01.2004 subject to the notification dated 25.04.2007. For deposit, the petitioner would get relaxation for purpose of counting limitation in terms of notification 28/2004-C.E. dated 09.07.2004. The limitation would start from this day for compliance of the modality as laid down in the notification No.8/2004-CE dated 21.07.2004 and 28/2004-CE dated 09.07.2004. This court, however, has not made any observation consciously as to the petitioners' entitlement under the scheme. The competent authority would decide the same.

[45] The other point though has been substantially dealt in the preceding part but according to this court it requires a specific response. As raised by the respondents that the notification No.69.03-CE dated 25.08.2003 has been superseded by the notification No. 8/2004-CE dated 21.01.2004, no relief in terms of the said notification dated 25.08.2003 can be granted to the petitioner. On a comparative study of those notifications, this court finds that the notification dated 25.08.2003 has for all purposes merged with the notification dated 21.01.2004. The fundamental provisions made in the notification dated 25.08.2003 have not been debased by the notification dated 21.01.2004. The notification dated 21.01.2004 has expanded the benefit further but with certain restrictive conditions. The petitioners have not challenged the said notification dated 21.01.2004. As corollary thereof, this court is of the view that there had been no eclipse. However this court is constrained to note that while drawing up the writ petition, the petitioners acted casually by not seeking the reliefs in terms of the notification dated 21.1.2004. If it was a legal strategy to get the incentives without compliance of the conditions subsequently imposed by the notifications dated 21.01.2004 and 09.07.2004, the same must fail for not challenging the notifications dated 21.01.2004 and 09.07.2004. Hence, the petitioner would continue to get the benefit in terms of the promise re-extended by para 2 of the Office memorandum dated 01.04.2007 Annexure-K to the writ petition for the remaining period in terms of NEIP, 1997.

[46] Another question that has fallen for consideration of this court is that whether the notification dated 01.03.2007 Annexure-L to the writ petition can survive. As this has been held that the respondents have failed to show that the petitioner has misused the incentives or taken undue advantage, the said notification dated 01.03.2007 is hit by the promissory estoppel. In this regard it would be apposite to say that the dispute as to whether the petitioner would be entitled to get duty

exemption on certification of investment in the social sector in terms of the notifications dated 21.01.2004 and 09.07.2004 is to be verified by the Investment Appraisal Committee (IAC) and on their certification only the exemption can be availed. Hence, absence of “proper investment” as alleged, cannot be termed as misuse or undue advantage. Moreover, the respondents did not assign any public interest for issuing the impugned notification dated 01.03.2007. The cumulative effect is that the notification dated 01.03.2007, Annexure-L to the writ petition, cannot be sustained and accordingly the same is set aside.

Having held so, the writ petition stands allowed to the extent as indicated above, leaving the parties to bear their own costs”.

4. Thereafter a similar challenge to the Notification No.11 of 2007-CE dated 1st March, 2007 was taken up to the Apex Court in Civil Appeals No. 7432/2019 with Nos. 2345 of 2017 and 2346 of 2017. The first one arising from a judgment of the Sikkim High Court whereas the latter two arising from judgments rendered by the Gauhati High Court decided in favour of the writ petitioners on the notification No. 11 of 2007-CE dated 1st March, 2007.

5. Meanwhile, the review petitioners approached the Apex Court being aggrieved by the judgment dated 10th February, 2020 rendered in WA 10 of 2016 in Special Leave to Appeal Civil Nos. 16044/2020. The Apex Court vide judgment dated 14th July, 2022 permitted the review petitioners to file review petition before this Court while making it clear that it has not expressed any opinion either way on the correctness of the submissions made on behalf of the petitioners. The Judgment dated 14th July, 2022 is extracted hereunder:

“Two broad points have been urged before us.

The first is that the statement made by the learned counsel for the petitioner before the High Court that the subject matter of this proceeding is squarely answered against the petitioner(s) in case of Union of India & Ors. Vs. Unicorn Industries reported in 2019 (10) SCC 575 is incorrect. As a matter of fact, in the peculiar facts of the present case, it was possible to distinguish the said decision, including because of application of different notification.

The second point raised is that, in any case, the decision of this Court in Union of India and Ors. Vs. Unicorn Industries (supra) is per incuriam and requires reconsideration.

In deference to the observation made by the Court, Mr. Arvind Datar, learned senior counsel appearing for the petitioner(s) would submit that he has advised the petitioner(s) to first explore the remedy of review petition before the High Court limited to the first contention noted above, namely, that the decision in Unicorn (Supra) is distinguishable in the fact situation of the present case.

We permit the petitioner(s) to file such review petition making it clear that we are not expressing any opinion either way on the correctness of this submission. If that issue is answered against the petitioner(s), the petitioner(s) may take up the matter before this Court to challenge the view taken by the High Court in review petition and in which proceedings (before this Court), it will be open to the petitioner(s) to urge that the decision of Unicorn (Supra) requires reconsideration.

We make it clear that we are not expressing any opinion about the correctness of the submission made even in respect of the second point urged before us by the petitioner(s).

The special leave petition is disposed of accordingly.

Pending application, if any, stand disposed of.”

6. The instant review petition is primarily directed on the first proposition raised before the Apex Court that the decision of the Writ Appellate Court dated 10th February, 2020 in so far as it relied upon the case of **Union of India & Ors. vrs. Unicorn Industries**, reported in (2019) 10 SCC 575 is incorrect. The review petitioners have taken a plea that in the peculiar facts of the present case it was possible to distinguish the said decision because of application of different notifications. In support of the challenge, the review petitioners have *inter alia* urged the following grounds:

“D. That it was not brought to the specific attention of this Hon’ble Court during the proceedings in Writ Appeal No.10 of 2016 that-

- a. the effect of withdrawal by way of exemption notification no. 11/2007-CE dated 01.03.2007, though before the Supreme Court, was not specifically dealt with by the Supreme Court in **UOI vs. Unicorn Industries, 2019 (10) SCC 575**. The Supreme Court therefore did not consider the effect of the scheme introduced vide Notification no. 69/2003-CE dated 25.08.2003 as superseded by Notification No.8/2004-CE dated 21.01.2004 and in terms of which exemption granted was subject to a reinvestment mechanism. The Supreme Court also did not have an opportunity to consider the reasons put forth by the Government (as stated in the counter-affidavit of the Respondents in response to WP No.144 of 2010) that Notification no. 11/2007 –CE dated 01.03.2007 (which withdrew the exemption granted vide Notification No.8/2004-CE)

had been issued in public interest as there was misuse of the operation of the escrow mechanism.

- b. the Hon'ble Supreme Court in **Unicorn Industries (supra)** did not consider the effect of Section 38A of the Central Excise Act or the effect of NEP 2007 Memorandum.*
- c. The Hon'ble Supreme Court in **Unicorn Industries (supra)** only examined the applicability of the doctrine of promissory estoppels on the ground of adverse impact to public health and never examined the doctrine of promissory estoppels qua the reason of alleged misuse of escrow mechanism which is the reasons provided by the Central Government in its counter affidavit to WP No. 144 of 2010.*

F. That Section 154 of the Finance Act, 2003 introduced w.e.f. 14.05.2003 retrospectively withdrew the exemption benefits granted to tobacco and tobacco products vide Notifications issued under Section 5A of the Central Excise Act, 1944, wherein Notification No.32/99-CE and 33/99-CE were amended retrospectively withdrawing the exemption of excise duty on cigarettes and pan masala containing tobacco from 08.07.1999, including jarda scented tobacco from 01.03.2001. However, in spite of the specific enactment of Section 154 of the Finance Act, 2003 removing the exemptions granted to tobacco and tobacco products on public health consideration with retrospective effect from 08.07.1999 (for cigarettes and pan masala) and 01.03.2001 (for jarda scented tobacco), the Government subsequently vide Notification No.69/2003-CE dated 25.08.2003 reintroduced the exemption benefits (50% benefit) to chewing tobacco units, including to the units manufacturing jarda scented tobacco, on inter alia the condition that the amount of duty benefits shall be invested in plant and machinery in a manufacturing unit in the region and such investment shall not be allowed to be withdrawn before expiry of 10 years from the date on which the investment is made. The said benefit was increased to a 100% exemption benefit vide Notification No.8/2004-CE dated 21.01.2004 which superseded Notification No.69/2003-CE. Further, Notification No.28/2004-CE dated 09.07.2004 amended the said Notification No.8/2004-CE and inter-alia mandated that the duty benefit shall be deposited in an escrow account, and that operations including withdrawals from and closure of the escrow account shall be made only with the prior approval of the jurisdictional Commissioner of Central Excise. The Central Government, fully being aware of the legislative policy and the withdrawal of benefits vide Section 154 of the Finance Act, 2003, consciously once again, based on representation from Industry, sought to reintroduce exemption benefit for manufacture of chewing tobacco (including jarda scented tobacco), subject to reinvestment in the region.

G. That Notification No.21/2007-CE dated 25.04.2007 that withdrew exemption benefits under Notification No's. 32/1999-CE and 33/1999-CE dated 08.07.1999, which notifications provided for refund of the excise duty benefits, is factually different from the Impugned Notification No.11/2007-CE dated 01.03.2007 that withdrew benefits under Notification No.8/2004-CE dated 21.01.2004, which notification mandated the deposit of the excise duty benefits in an escrow account and the investment thereof in manufacturing units in the region.

Therefore, in spite of the enactment of Section 154 of the Finance Act, 2003, the government policy was to continue with exemption benefits granted to chewing tobacco manufacturing units and that the scheme of notifications introduced vide Notification No. 69/2003-CE is different from the scheme of notifications introduced vide Notification Nos. 32/1999-CE and 33/1999-CE. This position has also been accepted by the Respondents in their counter-affidavit to WP No.144 of 2010, wherein the Respondents have at paragraph 27(xii) stated that “notification No.69/03-CE dated 25.08.03 is an independent notification which was issued in public interest under sub-section (1) of Section 5A of the Central Excise Act on being persistence representation made by the beneficiary unit for exemption. It is not an amended version of Notification No.32/99-CE dated 08.07.99 and Notification No.33/99-Ce dated 08.07.99.”

H. That the accepted position in the Counter Affidavit filed by the Respondents is that the withdrawal of the Impugned Notification No.11/2007-CE dated 01.03.2007 was due to the alleged misuse of the escrow mechanism. The Counter Affidavit did not mention the supposed adverse health impact of tobacco products as the reason for the withdrawal of the duty benefits. Therefore, it can never be contended that the Impugned Notification No.11/2007-CE dated 01.03.2007 withdrew the duty benefits granted to the Petitioners on account of the supposed adverse health impact posed by tobacco products. That the Hon'ble Supreme Court in **Unicorn Industries (supra)** only considered the aspect of public health, primarily in the context of Notification No.21/2007-CE which withdrew Notification No's. 32/99-CE and 233/99-CE, and did not consider the aspect of alleged misuse of escrow mechanism.

- I. That the Office Memorandum dated 01.04.2007 on North East Industrial and Investment Promotion Policy, 2007 make it clear that the intention of the Central government was to continue with the duty benefits granted to the manufacturing units, which had commenced commercial production on or after 24.12.1997 but not later than 28.02.2001. That in the present case, since the units of the Review Petitioners were set up between November 1999 and August 2000, they were fully entitled to the benefit of exemption. This specific issue was not considered in **Unicorn Industries (supra)** as well as the decision of the Hon'ble Division bench under review.
- J. That the effect of Section 38A of the Central Excise Act,1944, though specifically raised by the Petitioner in the Writ Petition, has not been considered prior to passing of the order-in-review at the writ appeal stage. Section 38A of Central Excise Act,1944, inter-alia provides that, unless a different intention appears, where any notification made or issued under the Central Excise Act is amended, repealed, superseded or rescinded, then, such amendment, repeal, supersession or rescinding shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any notification so amended, repealed, superseded or rescinded. In the present facts, the North East Industrial and Investment Promotion Policy, 2007 specifically states that the exemption benefits will continue to be available to the manufacturing units, which had commenced commercial production on or after

24.12.1997 but not later than 28.02.2001. Therefore, the non-consideration of the applicability of Section 38A of the Central Excise Act, 1944 is an error apparent on the face of the record."

7. Although certain other grounds have been taken in the review petition, but they are not being pressed as according to learned counsel for the petitioners, they are available to be pressed before the Apex Court. Learned counsel for the petitioners, Mr. K. Sundaram has made extensive submissions in support of the grounds to question the impugned judgment rendered by the Writ Appellate Court and submitted that the decision in ***Unicorn Industries*** (Supra) did not apply to the present case. Learned counsel for the petitioners has also drawn the attention of this Court to the stand taken in counter affidavit by the respondent department in particular at paragraph 27-viii, ix, x, xi and xii. Learned counsel for the petitioners has sought to canvass that the decision in the case of ***Unicorn Industries*** (supra) was decided primarily on the issue of prevailing supervening public interest viz-a-viz the right of the petitioners who had made investments under the exemption notifications which have been withdrawn by withdrawal notifications No.21 of 2007, dated 25.04.2007 and 11 of 2007, dated 1st March, 2007, the latter of which is impugned in the writ petition. Further submissions have been advanced that the decision in ***Unicorn Industries*** (supra) was not applicable to the case of the present petitioners as the ground for withdrawal of the impugned notification No.11 of 2007 as projected by the respondents in their counter affidavit was not of supervening public interest, but misuse of the operation of the escrow mechanism by the beneficiary unit. The Hon'ble Supreme Court had taken into consideration only the public interest element that the consumption of 'pan masala' with tobacco or 'pan masala' without tobacco is

hazardous to the human health and, therefore, to curb the consumption, the 2007 notifications thereby included 'pan masala' in Chapter 21 and all products in Chapter 24 i.e. tobacco and manufactured tobacco substitutes, and were put in the negative list. However, it is submitted that the impugned notification has been issued to withdraw the benefits for the reason that the operation of the exemption notification was causing misuse of the escrow mechanism which issue had not been dealt with by the Apex Court in the *Unicorn Industries*. It is submitted that the concession of the learned counsel for the writ petitioners/respondent on law before the appellate Court would not bind the writ petitioners in view of the legal position rendered by the Apex Court in the case of *Director of Elementary Education Vrs. Pramod Kumar Sahoo*, reported in (2019) 10 SCC 674 (para 8 and 11). Therefore, it is submitted that the impugned judgment needs to be revisited.

8. Learned counsel for the respondents-Union of India has strongly opposed the prayer. He has also submitted that the stand of the Union of India before the Writ Court and throughout in all these proceedings has been the same and common that the withdrawal of exemption notification through notification No.11 of 2007 is on grounds of public interest.

9. We have conferred anxious considerations to the submissions of learned counsel for the parties. We have also gone through the impugned judgment and the judgment of the Writ Court.

10. The present review petition has been filed pursuant to the liberty granted by the Apex court on the first proposition advanced before it that the decision of the Appellate Court relying upon the judgment in the case of *Unicorn Industries* (supra) is incorrect.

11. It needs to be mentioned at the outset that the very notification No. 11 of 2007 dated 1st March, 2007, was also in question before the Apex Court in the case of ***Unicorn Industries*** (supra) apart from the other withdrawal notification No.21 of 2007, dated 25th April, 2007. The Gauhati High Court had struck down the withdrawal notifications in the case of ***M/S Dharampal Satyapal Limited Vrs. Union of India & Ors.***, a sister concern of the present petitioners. The judgment of the Gauhati High Court has also been fairly placed before us i.e. WA No. 81/2011, dated 20th April, 2016 titled as ***M/S Dharampal Satyapal Limited Vrs. Union of India & Ors.*** Para 27 of the judgment incorporates the stand of the respondent authorities in support of the withdrawal notification. The learned court has taken note of the stand of the respondents *inter alia* in the following terms:

“The main reasons given by the respondent authorities are found at para 4(xi) to (xiv) of their counter-affidavit, namely, (i) the appellant misutilized the escrow account in respect of its investment.”

12. As such, the stand of the respondents both before the Gauhati High Court and in the present case as per their counter affidavit before the writ Court has been one and the same. The decision of the Gauhati High Court on the withdrawal notification No. 11 of 2007 was subject matter of challenge before the Apex Court in ***Unicorn Industries*** (supra). It is pertinent to say that based on the same stand of the respondents-Union of India including their contentions that under the exemption notification the mechanism of escrow was being subjected to misuse, the decision in the case of ***Unicorn Industries*** (supra) and other analogous civil appeals was rendered. As such, the instant plea raised by the review petitioners on the above Grounds are not such which are not covered by the ratio rendered by the Apex Court in the case of

Unicorn Industries (supra). It is not that the plea relating to application of Section 38(A) of the Central Excise Act, 1944 was not raised by the writ petitioners as is apparent from reading of paragraph 47 of the writ petition. However, since the very issue relating to the challenge to the withdrawal notification has been dealt with and negated by the Apex Court in the case of *Unicorn Industries* (supra), the appellate Court could not have taken a different view of the matter. Therefore, it cannot be said that the judgment of the writ appellate court dated 10th February, 2020 impugned herein, suffered from any errors apparent on the face of the record in view of the decision of *Unicorn Industries* (supra) covering the very notification involved in the present litigation. As such, the arguments of learned counsel for the petitioners that the judgment of the Apex Court in the *Unicorn Industries* (supra) does not apply to the case of the review petitioner herein cannot be accepted.

13. It is not within the domain of this Court to make any observations as regards the contentions raised by the writ petitioners relating to the decision of the Apex Court in *Unicorn Industries* (supra). As such, we do not find any grounds made out to review the impugned judgment.

The instant review petition is accordingly dismissed.

(ARINDAM LODH),J

(APARESH KUMAR SINGH),CJ

SANJAY GHOSH

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