

GAHC010075542022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2705/2022

UMA POLYMERS LTD

A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT PLOT NO. 49/50, DANUDYOG INDUSTRIAL ESTATE, AMLI, PIPARIA, SILVASA, DN-396230 AND ITS INDUSTRIAL UNIT LOCATED AT, PLOT NO. 19(B) AIIDC, INDUSTRIAL GROWTH CENTRE, CHHAYGAON, CHATTABARI, PHASE 1, KAMRUP, ASSAM- 781123 AND IN THE PRESENT PROCEEDINGS REPRESENTED BY ABHINASH CHANDRA TIWARI, AUTHORISED REPRESENTATIVE.

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF FINANCE,
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI- 110001.

2:SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI- 110017.

3:JOINT SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPTT. OF INDUSTRIAL POLICY AND PROMOTION
UDYOG BHAWAN
NEW DELHI- 110017.

4:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK

NEW DELHI- 110001.

5:THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
5TH FLOOR
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI- 781001.

6:ASSISTANT COMMISSIONER
GST AND CENTRAL EXCISE
GUWAHATI I DIVISION
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI- 781001.

7:THE SUPERINTENDENT (ANTI EVASION)
CENTRAL GOODS AND SERVICE TAX
GUWAHATI

Advocate for the Petitioner : MR. S K AGARWAL

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 29-11-2023

Heard Mr. S.K. Agarwal, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel, GST for all the respondents.

2. The present writ petition has been preferred assailing a Demand Notice dated 15.03.2022 issued by the respondent no. 6 to the petitioner whereby the petitioner has been asked to repay an amount of Rs. 26,10,592/-, already refunded to the petitioner along with interest on the grounds that the industrial unit of the petitioner does not qualify to be an eligible unit as the petitioner

after commencement of commercial production discharged entire liability of Central Excise duty by debiting CENVAT Credit Account for the period of operation till June 2017 and thus, there was no question of availment of exemption in terms of Notification no. 20/2007-CE dated 25.04.2017 and to be eligible for budgetary support under budgetary support scheme notified vide Notification dated 05.10.2017, an industrial unit must be eligible for the benefit of Notification no. 20/2007 dated 25.04.2017 and must be availing the said exemption immediately before 01.07.2017.

3. The learned counsel for the parties have submitted that a batch of writ petitions including a writ petition, W.P.[C] no. 5675/2022 [M/s Sai Enterprises vs. The Union of India and others], involving similar issues like the issues herein, were disposed of by a common order dated 02.03.2023. The relevant excerpts of the said common order dated 02.03.2023 read as under :

2. One of the issues involved in these batch of writ petitions is whether the units who had utilized their CENVAT credit for the purpose of payment of taxes with reference to the exemption notification dated 25.07.2007, but the stage to pay the taxes by cash after exhausting the CENVAT credit was yet to come, can be construed that the units have availed the benefit under the notification dated 25.07.2007, with reference to the subsequent scheme dated 05.10.2017. If the conclusion would have been that this category of units had availed the benefit under the notification dated 25.07.2007, the implication thereof would be that there would be an entitlement to the benefits as provided under the budgetary scheme dated 05.10.2017 and to the contrary, had the decision been otherwise that they are not the units who have availed the benefits, the consequence may be that they would not be entitled to the benefits under the budgetary scheme dated 05.10.2017.

3. A communication dated 22.02.2023 from the Government of India, Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade made by the Director and addressed to the Commissioner, CBIC, D/o Revenue, Ministry of Finance, North Block, New Delhi is placed on record before the Court.
4. A reading of the said communication dated 22.02.2023 makes it discernible that a decision had been taken that even in respect of those units who had paid their tax dues pursuant to the earlier exemption notification dated 25.07.2007 by utilizing the CENVAT credit, but the stage to pay the further taxes by means of cash was yet to come, would be considered by the authorities to be units who have availed the benefits under the earlier exemption notification dated 25.07.2007.
5. As the decision contained in the communication dated 22.02.2023 answers the issue that was before the Court that such units should also be considered to be units who have availed the benefits under the exemption notification dated 25.07.2007, we are of the view that, having accepted the contents of the communication dated 22.02.2023, no further adjudication is required in these batch of writ petitions.
6. The consequence of such units being considered to be units who have availed the benefits under the exemption notification dated 25.07.2007 would be that such units, including the writ petitioners herein, would be entitled to all such entitlements, legal consequences etc of being considered to be units who have availed the benefits under the exemption notification dated 25.07.2007 and the respondent authorities may do the needful accordingly.
7. In view of the above, all the writ petitions stand closed. However, liberty is granted to the writ petitioners to approach again, if so advised. Interim

order, if any, stands vacated.

4. Both Mr. Agarwal and Mr. Keyal have submitted, in unison, that the observations made in the common order dated 02.03.2023 are squarely applicable to the case of the petitioner herein.

5. In view of the similar obtaining fact situation, the instant writ petition is also disposed of in similar terms as the batch of writ petitions were disposed of by the common order dated 02.03.2023 [supra]. The petitioner shall submit a certified copy of this order along with a copy of the common order dated 02.03.2023 before the respondent no. 6 within a period of 2 [two] weeks from today to facilitate the respondent authorities to give due consideration to the case of the petitioner.

JUDGE

Comparing Assistant