

GAHC010112772020



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

Case No. : WP(C)/3863/2020

M/S. GODREJ CONSUMER PRODUCTS LTD.
FORMERLY GODREJ HOUSEHOLD PRODUCTS LTD. AND BEFORE THAT
KNOWN AS GODREJ SARA LEE LTD. A LIMITED LIABILITY COMPANY
WITHIN THE MEEANIG OF THE COMPANIES ACT, 1956,AND HAVING
REGISTERED OFFICE AT PIROJSHANAGAR, EASTERN EXPRESS, HIGHWAY,
VIKHROLI (E), MUMBAI-400079 AND ITS REGISTERD PLACE OF BUSINESS
AND FACTORY AT A12 B2, MINI INDUSTRIAL ESTATE, KALAPAHAR,
GUWAHATI-781016, ASSAM

VERSUS

UNION OF INDIA AND 2 ORS.
THROUGH THE FINANCE SECRETARY MINISTRY OF FINANCE,HAVING
HIS OFFICE AT NORTH BLOCK, NEW DELHI-1100001

2:THE COMMISSIONER
GUWAHATI
O/O THE CENTRAL GOODS AND SERVICE TAX
GUWAHATI
GST. BHAVAN
KEDAR ROAD
GUWAHATI
ASSAM

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI DIVISION GUWAHATI
ASSA

Advocate for the Petitioner : MS. M L GOPE

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

Linked Case : WP(C)/3869/2020

M/S. GODREJ CONSUMER PRODUCTS LTD.
A LIMITED LIABILITY COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT
1956
AND HAVING ITS REGISTERED OFFICE AT PIROJSHANAGAR
EASTERN EXPRESS
HIGHWAY
VIKHROLI (E)
MUMBAI-400079 AND ITS REGISTERD PLACE OF BUSINESS AND FACTORY
AT SHED NO. 9 TO 12
BYE LANE NO. 1
BAMUNIMAIDAN INDUSTRIAL ESTATE
GUWAHATI - 781021
ASSAM

VERSUS

UNION OF INDIA AND 2 ORS.
THROUGH THE FINANCE SECRETARY MINISTRY OF FINANCE
HAVING HIS OFFICE AT NORTH BLOCK
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GUWAHATI
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CENTRAL GOODS AND SERVICE TAX
GUWAHATI DIVISION GUWAHATI
ASSAM

Advocate for : MS. M L GOPE
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

10.02.2023

Heard Ms. N. Hawelia, learned counsel for the petitioners and Ms. M. Devi, learned counsel appears on behalf of Mr. S.C. Keyal, learned counsel for the GST.

2. The petitioner in W.P(C) No. 3869/2020 is engaged in the manufacture of excisable products namely Mosquito Repellents (Coil and Liquidator) vide registration Number AAAC1921CXM020 under the brand name Good Night refill and GEL Mat etc. under CTH 38089191 and the petitioner in W.P(C) No. 3869/2020 is engaged in the manufacture of excisable products namely Hair Dye, Shaving Cream etc vide Registration No. AAAC1921CXM003 under CTH 33071010. The petitioners have valid Central Excise Department registration.

3. It is the contention of the petitioners that it has established its units in Assam pursuant to the Industrial Policy introduced by the Ministry of Finance, Government of India 1997 and which was subsequently extended in the year 2007. The petitioners are eligible Industries for the benefits available under the Industrial Policy of 1997 and which was subsequently extended in 2007. The benefit of Central Excise refund initially granted was 100% of the duty paid. Subsequently vide Notification dated 27.03.2008 and 10.06.2008 the benefit of refund was curtailed to the extent of value additions.

4. Under the said Notification, the duty payable on the value addition should be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the descriptions specified in the table prescribed under Paragraph-2A of the said Notification. As per the said

Notification, there was also a provision permitting those manufacturers who did not opt to avail the rates specified under Paragraph-2A, to apply for special rate representing the actual value addition in respect of any goods manufactured and cleared under the Notification if the manufacture finds that four-fifty of the ratio of actual value addition in the production or manufacture of the said goods to the value of the said goods, is more than the rates specified in the said table expressed as a percentage. These Notifications, i.e., Notifications dated 27.03.2008 and 10.06.2008 came to be challenged in a series of writ petitions before this High Court whereby the writ petitions were allowed and the notifications dated 27.03.2008 and 16.06.2008 were interfered with and set aside. The intra-Court appeals filed by the Revenue were dismissed and the order of the learned Single Judge upheld. The Revenue, thereafter filed appeals before the Apex Court assailing the orders of this High Court. Ultimately all these matters along with other similar matters across the country were heard together and were disposed of by Judgment rendered by the Apex Court in ***Union of India & Anr. Vs. M/S V.V.F Limited & Anr.*** reported in **(2020) 20 SCC 57.**

5. It is pertinent to mention here that during the pendency of the hearing before the Apex Court by way of an interim order, 50% of the refund was directed to be released by the Excise Department upon furnishing of solvency certificates by the concerned manufactures. The petitioners were also granted 50% of the provisional refund in terms of the interim orders passed by the Apex Court. In addition the petitioner also availed the benefit of the special rate as specified under the Notifications and submitted applications for special rate for all the years from 2008 onwards. It is also submitted that the special rate applications for the financial year 2010-11 was rejected for one of the units by

the Commissioner, Central Excise vide order dated 14.02.2014. Against the said order, an appeal was preferred before CESTAT, Kolkata and the CESTAT remanded the matter back to the adjudicating authority to decide the issues afresh vide order dated 22.03.2018. It is contended that other special rate applications are currently pending before the Commissioner, Central Excise.

6. The present writ petitions have been filed on an apprehension that the department will proceed to issue a Demand Notice for recovery of the 50% of the refund claims granted to the petitioners by virtue of the interim order passed by the Apex Court. The petitioner's apprehension is based on the action of Department in issuing similar Demand Notices to other manufacturers pursuant to the Judgment and Order dated 22.04.2020 passed by the Apex Court in V.V.F. Limited (Supra). It is the submission of the learned counsel for the petitioners that since there is a provision for filing application for special rate in the Notification dated 27.03.2008 read with Notification dated 10.06.2008 and the petitioners having filed several special rate applications and the same are presently pending before the Commissioner, directions should be issued by this Court to the Department, not to issue any notice for demand and recovery of any excise duty refunded in terms of the interim order dated 22.04.2020 passed by the Apex Court without first deciding on the special rate applications filed by the petitioners. On the basis of the statements and contentions made, these writ petitions have been preferred with the following prayers:

- (i) *A writ in the nature of Mandamus be issued commanding the Respondent authorities to act according to law and to not initiate/ act upon any recovery proceedings till the special rate applications have been adjudicated by the respondent No. 2 as the same would be contrary to the provisions of the Central Excise Act, 1944 as well as Article 265 of the Constitution of India;*

- (ii) *A further writ in the nature of Mandamus be issued commanding Respondent No. 2 to adjudicate the special rate applications strictly on merits without being hyper technical, at the earliest in light of the hardships faced by the petitioner;*
- (iii) *A writ in the nature of Mandamus be issued restraining the Respondents from taking any action or step in pursuance to the surety bonds relying on judgment dated 22.04.2020 unless the final amount due from the assessee is determined and the adjustments to be made are finalized by Respondent No. 2 or the Appellate Authorities which may have to adjudicate the Appeals in the further, if any;*
- (iv) *An interim order of injunction and/or stay be passed restraining the Respondents and/or their men, agents servants from taking any steps and/or any coercive steps against the petitioner for enactment and/or implementing the judgment dated 22.04.2020.*
- (v) *An interim order of injunction and/or stay be passed restraining the Respondents and /or their men, agents, servants from recovering the 50% duty from the petitioner without deciding the special rate application of the petitioner and/or directing the respondent authorities not to dismiss the special rate application mechanically and decide the same on merits;*
- (vi) *An interim order of injunction and/or stay be passed restraining the Respondents and/or their men, agents, servants from approaching the sureties without sending a prior Notice to the petitioner;*
- (vii) *A writ in the nature of Mandamus do issue to direct the respondent No. 2 to adjudicate the special rate application at length with proper application of mind and by following the principles of natural justice instead of cursorily rejecting the same;*
- (viii) *A writ in the nature of Mandamus to direct the Respondent No. 2 not to demand any interest, if any, which is not payable in accordance with the provisions of the Central Excise Act, 1944;*
- (ix) *Leave to furnish such additional facts, information as may be relevant to determine the issue as also pray for allowing the additional grounds taken above and/or suitable add, alter, amend the same;*

(x) Such further and/or other order or orders be passed and/or direction or directions be given as to this Hon'ble Court may be deem fit and proper."

7. Mr. S.C. Keyal, learned Standing Counsel, GST has submitted that the special rate applications which were pending before the Commissioner has since been decided and are no longer pending as contended by the petitioner. It is the submission of the learned Standing Counsel that the orders passed by the Commissioner on the special rate applications have been communicated to the petitioners by the Department.

8. Ms N. Hawelia, learned counsel for the petitioners, however, submits that no such instructions have been furnished to her by her clients and therefore the matter was differed on 07.02.2023 enabling both counsels to obtain required instructions.

9. When the matter was called upon, Mr. S. C. Keyal, learned Standing Counsel has furnished a copy the order dated 15.07.2022 by which the Special Rate Application 2008-09, 2010-11 and 2011-12 have been decided by the Commissioner. By the said adjudication, the entire refund amount of Rs. 11,52,10,051/- was held to be liable to be appropriated towards recovery of sums due to the Government in the manner discussed in Paragraphs No 9, 10 and 11 in the order. The relevant portions of the order is extracted below:

"7. The assessee is a factory which was in existence prior to 01.04.2007 and was availing exemption under Notification No. 32/99-CE dated 08.07.1999, as amended prior to availing the exemption under the said Notification as an expanded unit in terms para-5(b) of the said Notification. Both these Notifications i.e., Notification No. 32/99-CE dated 08.07.1999 as well as Notification No. 20/07-CE dated 25.04.2007, were amended vide Notification No. 17/2008-CE & 20/2008-CE both dated 27.03.2008 respectively, vide which refund of duty payable on value addition was prescribed. The assessee, alongwith other assesses of this Commissionarate had challenged the said amending Notification and the case ultimately reached the Hon'ble Supreme Court. During the course of the pendency of the case, the assessee was sanctioned, as an interim measure, refund representing 50% of the unpaid amount of duty paid in cash (PLA) apart from

eligible amount already sanctioned in accordance with Notification No. 32/99-CE dated 08.07.1999 & the said Notification in compliance to the interim Order dated 07.12.2015 of Hon'ble Supreme Court passed in I.A. No. 3/2015 filed by Union of India in SLP(C) No. 11878/2015 in the case of Union of India and Ors. Vs. M/S Kamkhya Cosmetics & Pharmaceuticals & Ors [which was tagged with an already pending case on similar issue viz ; VVF Ltd & ors in SLP(C) Nos. 28194-28201 of 2010 vide order dated 24.09.2015], arising out of the final judgment and order dated 20.11.2014 passed in W.A. No. 243/2009 by the Hon'ble Gauhati High Court and in pursuance to order dated 01.12.2016 of the Hon'ble Gauhati High Court in W.P.(C) No. 269/2016 subject to the final decision of the Hon'ble Supreme Court of India in SLP(C) No. 11878/2015 mentioned above. Details of the refund representing 50% of the unpaid amount, sanctioned to the assessee is as in Table-E below:

Sl. No.	Refund Order No.	Date	Period	Amount sanctioned (in Rs.)
1	2	3	4	5
1.	R-1850/ACG/2013-14	28.01.2017	April '08 to March '12	85056673.00
Total Sanctioned				85056673.00

8. The Hon'ble Supreme Court of India eventually has decided the case in favour of revenue vide common order dated 22.04.2020 passed in S.L.P.(C) Nos.28194-28201/2010. Consequently, the amount of refund so sanctioned to the assessee, as in TABLE-E (Col.5) above, became unjust and the same is thus liable to be recovered from the assessee alongwith applicable interest.

9. Apprehending coercive action by the department for recovery of the amount as in Col. 5 of TABLE-E above, the assessee approached the Hon'ble Gauhati High Court and filed Writ Petition (C) No.3863 of 2020 seeking injunction of the Hon'ble Court restraining the department from initiating recovery proceedings till the pending Special Rate applications filed by the assessee are decided by the department. As the Special Rate applications filed by the assessee have since been disposed off by the competent authority and the instant refund is an offshoot of the same, there appears no bar in recovering the said amount alongwith applicable interest to the extent covered from the admissible refund amount determined as in TABLE-D(Col.4) above.

10. Further an amount of Rs.9,18,67,560.00 was also sanctioned to another unit of the assessee viz; M/s. Godrej Consumer Products Ltd. located at APDC Complex, CITI Kalapahar, Guwahati-781016, Assam having Central Excise Registration No.AABCG3365JEM016 (hereinafter referred to as "the APDC unit of the assessee"), being refund of 50% of the balance amount of duty paid in cash (PLA) for the period from April '08 to deember '2016 in terms of the Orders of the Hon'ble Supreme Court & Hon'ble Gauhati High Court as referred to in Para-7 above. The said

sanctioned amount of Rs. 9,18,67,560.00 also became unjust & recoverable from the APDC unit of the assessee alongwith applicable interest on Hon'ble Supreme Court of India deciding the S.L.P(C) Nos. 28194-28201/2010 in favour of revenue vide Order dated 22.04.2020, as discussed in Para-8 above. Accordingly, an amount of Rs. 5,09,60,442.00 was proposed to be appropriated towards recovery of the said Govt. dues from the arrear of Refubnd accrued to the APDC unit of the assessee arising out of Special Rate fixed by the Principal Commissioner for Mosquito Repellent Coils falling within Chapter-38 manufactured and cleared by the them during 2008-09, 2010-11, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18 (April-June' 2017). Thus, an amount of Rs. 4,09,07,118.00 alongwith applicable interest, remained unpaid to be recovered from the APDC unit of the assessee. As both, the assessee as well as the APDC unit of the assessee are the manufacturing units of the same Company there appears no restriction in appropriating outstanding dues of the APDC unit of the assessee from the sanctioned refund amount of the assessee. Accordingly, the outstanding recoverable amount of Rs. 4,09,07,118.00 alongwith applicable interest of the APDC unit of the assessee is recoverable to the extent covered from the admissible refund amount determined as in TABLE-D (Col.4) above.

11. Thus, the details of the recoveries to be made from the amount in Col.4 of TABLE-D are as in TABLE-F below:

TABLE-F

AMOUNT AVAILABL E FOR RECOVER Y [Col.4 of TABLE-D]	Amount Recoverable		Recoveries		Balance amount recoverable	
	1.	2.	3.	4.	5.	6.
115210051. 00	85056673. 00	40907118.00 (+) applicable interest on Rs. 91867560.00	8505 6673. 00	30153378. 00	Applicable interest on Rs. 85056673. 00	Rs. 10753740 (+) applicable interest on Rs. 91867560. 00

12. In view of above, the entire refundable amount of Rs. 1152120051.00 (Col.4 of TABLE-D) is liable to be appropriated towards recovery of sums due to Government in the manner discussed in Para-9, 10 & 11 above.

13. Accordingly, I pass the following order.

ORDER

I hereby sanction **Rs. 11,52,10,051/- (Rupees Eleven crores fifty-two lakhs ten thousand fifty-one)** only as arrear of refund of excise duty paid for Mosquito Repellent Refill/Matt falling under Chapter Sub-38 of the Central Excise Tariff Act, 1985, manufactured and cleared by the assessee during 2008-09, 2010-11 & 2011-12, consequent to Special Rate fixed by Principal Commissioner, Central Excise & Service Tax, Guwahati vide Orders as mentioned in Para-2

(TABLE-A) above.

*I, however, appropriate the entire amount of **Rs. 11,52,10,051/- (Rupees Eleven crores fifty-two lakhs ten thousand fifty-one)** towards recovery of the sums due to Government in the manner as discussed in Para-9,10 & 11 above.*

I also order for recovery of the outstanding amount as in Col. 6 & 7 of TABLE-F above from the assessee & the APDC unit of the assessee.”

10. In view of the order passed by the Department, the apprehension raised by the petitioners regarding any demand and recovery likely to be resorted to by the Department without first deciding the special rate applications filed by the petitioners is no longer an issue which requires any adjudication.

11. Under the circumstances, this Court is of the view that no further or any effective order is necessary at this stage in view of order dated 15.07.2022 rendered by the Commissioner, Central Excise passed on the special rate applications preferred by the petitioners.

12. Needless to say that it is always open to the petitioners to assail the order dated 15.07.2022 before any appropriate forum if the needs so arises.

13. In that view of the matter, these writ petitions are accordingly disposed of in terms of the above.

JUDGE

Comparing Assistant