

GAHC010018192016



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

Case No. : WP(C)/3565/2016

M/S. BRAHMAPUTRA CARBON LTD. and ANR.
HAVING ITS REGISTERED OFFICE AT INDUSTRIAL ESTATE, NEW
BONGAIGAON, P.O. and DIST.- BONGAIGAON.

2: SANJIB KUMAR BARUAH
S/O- LT. D.P. BARUAH
LANE NO. 2
ADARSHAPUR
KAHILIPARA
GHY- 19
AUTHORIZED REPRESENTATIVE OF PETITIONER NO. 1

VERSUS

THE UNION OF INDIA and 3 ORS
MINISTRY OF FINANCE CENTRAL EXCISE, NEW DELHI.

2:THE COMMISSIONER OF CENTRAL EXCISE
GUWAHATI COMMISSIONARATE
BHANGAGARH
G.S. ROAD
GHY- 5.

3:THE DY. COMMISSIONER OF CENTRAL EXCISE
DHUBRI DIVISION
DHUBRI- 783301.

4:THE ASSTT. COMMISSIONER
CENTRAL EXCISE
DHUBRI DIVISION
DHUBRI- 783301

Advocate for the Petitioner : MR.A DAS

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

Linked Case : WP(C)/3572/2016

M/S. BRAHMAPUTRA CARBON LTD. and ANR.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 AND HAVING ITS REGD. OFFICE AT INDUSTRIAL ESTATE
NEW BONGAIGAON
P.O. and DIST- BONGAIGAON

2: SANJIB KUMAR BARUAH
S/O LT. D.P. BARUAH
LANE NO.2
ADARSHAPUR
KAHILIPARA
GHY-19
AUTHORIZED REPRESENTATIVE OF PETITIONER NO.1
VERSUS

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MINISTRY OF FINANCE
CENTRAL EXCISE
NEW DELHI

2:THE COMMISSIONER OF CENTRAL EXCISE
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DHUBRI DIVISION
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CENTRAL EXCISE
DHUBRI DIVISION
DHUBRI-783301

Advocate for : MR.S K MEDHI
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA and 3 ORS

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 29-05-2023

Heard Mr. K.N. Choudhury, the learned Senior Counsel assisted by Mr. A. Das, learned counsel appears on behalf of the petitioners and Mr. S.C. Keyal, learned counsel appears on behalf of the GST.

2. Both the writ petitions relates to the same question of law as to whether the petitioners would be entitled to the interest on the refunds under section 11BB of the Central Excise Act, 1944.

3. This very question have already been settled by the Division Bench of this Court in the case of *Amalgamated Plantation Private Limited -Vs- Union of India reported in 2013 (2) GLT 413*, wherein it was held that section 11BB of the Central Excise Act, 1944 does not exclude the claim of refund made in terms with the Notification dated 08.07.1999 and therefore, the petitioners therein were held to be entitled under the provisions of the Central Excise Act, 1944 to the interest on the Excise duty refunded to them.

4. The learned counsel appears on behalf of the GST has drawn the attention to the order dated 22.03.2023, passed by the Division Bench of this Court in the case of *Union of India -Vs- Panparag India Limited* in Writ Appeal No. 102/2022, wherein the Division Bench taking into account that an appeal has already been preferred by the Revenue before the Supreme Court which has been registered and numbered as SLP No. 016322/2018 directed the Appellant department to make payment on the interest of delayed refunds to the respondent therein within a period of 2 (two) months from the date of the said order passed by the Division Bench. However, an clear observation was made that the respondents therein shall furnish an undertaking that in case the Revenue succeed in the

aforesaid SLP, the interest amount paid under the order shall be reimbursed to the concerned department.

5. The attention of this Court was drawn to this aspect of the matter on 26.05.2023 when the learned counsel appearing on behalf of the petitioner sought for some accommodation so that the instructions could be obtained as to whether the petitioners herein would be inclined to give an undertaking in the manner which have been directed by the Division Bench in the case of Panparag (supra).

6. Today Mr. K.N. Choudhury, the learned Senior counsel upon instructions from Mr. A. Das, submits that the petitioners are also willing to give similar undertaking to the effect that the petitioners are willing to reimburse the interest amount, if paid, by the Department in pursuance to the order passed by this Court in the eventuality, the SLP so filed before the Supreme Court is allowed in favour of the Revenue.

7. Taking into account the above, this Court disposes both the writ petitions thereby directing the respondent authorities to disburse the amount of interest to which the petitioners would be entitled to on its refunds within a period of 2 (two) months from the date of furnishing a certified copy of the instant order along with an undertaking that the petitioners would reimburse the amount so paid on interest on the refunds, if the revenue succeed in SLP No. 016322/2018.

8. With the above observations, both the petitions disposed of.

JUDGE

Comparing Assistant