

GAHC010173612020



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

Case No. : WP(C)/5136/2020

M/S PLATINUM ALLOYS PVT. LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 READ WITH THE COMPANIES ACT, 2013 AND
HAVING ITS PRINCIPAL PLACE OF BUSINESS AND ITS FACTORY
SITUATED AT P.O. BHALUKPONG, DIST. WEST KAMENG, ARUNACHAL
PRADESH AND HAVING ONE OF ITS OFFICE AT G.S. ROAD, ABC,
GUWAHATI-781005.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE,
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI.

2:THE SECRETARY
TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAWAN
NEW DELHI.

3:THE COMMISSIONER CGST AND CENTRAL EXCISE
ITANAGAR COMMISSIONERATE
ARUNACHAL PRADESH.

4:THE DY. COMMISSIONER CGST AND CENTRAL EXCISE
GOVT. OF ARUNACHAL PRADESH
SECTOR (A)
ITANAGAR-791110
ARUNACHAL PRADESH.

5:THE ASSTT. COMMISSIONER CGST AND CENTRAL EXCISE

OFFICE OF THE ASSTT. COMMISSIONER OF CENTRAL GST AND CENTRAL

EXCISE
ITANAGAR DIVISION
SECTOR-(A) NAHARLAGUN-791110
ARUNACHAL PRADESH.

6:THE COMMISSIONER CGST AND CENTRAL EXCISE

GST BHAWAN
KEDAR ROAD
GUWAHATI-781001
ASSAM

Advocate for the Petitioner : MS. M L GOPE

Advocate for the Respondent : SC, GST

Linked Case : WP(C)/5125/2020

M/S SATYAM COKES
A PARTNERSHIP FIRM REGD. UNDER THE PROVISIONS OF THE INDIAN
PARTNERSHIP ACT
1932 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AND ITS FACTORY
SITUATED AT N.H. 52
BANDARDEWA
DIST.- PAMPUMPARE
ARUNACHAL PRADESH AND HAVING ONE OF ITS OFFICE AT G.S. ROAD
GHY-05
DIST.- KAMRUP
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW-DELHI

2:THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAWAN
NEW DELHI

3:THE COMMISSIONER
CGST AND CENTRAL EXCISE

ITANAGAR COMMISSIONERATE
ARUNACHAL PRADESH

4:THE DY. COMMISSIONER
CGST AND CENTRAL EXCISE
GOVT. OF ARUNACHAL PRADESH
KAR BHAWAN
ITANAGAR- 791113
ARUNACHAL PRADESH

5:THE ASSTT. COMMISSIONER
CGST AND CENTRAL EXCISE
OFFICE OF THE ASSTT. COMMISSIONER OF CENTRAL GST AND CENTRAL
EXCISE
ITANAGAR DIVISION
SECTOR-A
NAHARLAGUN- 791110
ARUNACHAL PRADESH

6:THE COMMISSIONER
CGST AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GHY-01
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/5434/2020

M/S SATYAM ISPAT (NORTH EAST) LTD.
A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES
ACT 1956 READ WITH THE COMPANIES ACT 2013 AND HAVING ITS
PRINCIPAL PLACE OF BUSINESS AND ITS FACTORY SITUATED AT N.H. 52
BANDARDEWA
DIST. PAPUMPARE
ARUNACHAL PRADESH AND HAVING ONE OF ITS OFFICE AT G.S. ROAD
GUWAHATI 7810005
DIST. KAMRUP
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA MINISTRY OF
FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI

2:THE SECY. TO THE GOVT .OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAWAN
NEW DELHI

3:THE COMMISSIONER CGST AND CENTRAL EXCISE
ITANAGAR COMMISSIONERATE
ARUNACHAL PRADESH.

4:THE DEPUTY COMMISSIONER CGST AND CENTRAL EXCISE
GOVT. OF ARUNACHAL PRADESH
KAR BHAWAN
ITANAGAR 791113
ARUNACHAL PRADESH.

5:THE ASSTT. COMMISSIONER
CGST AND CENTRAL EXCISE
OFFICE OF THE ASSTT. COMMISSIONER OF CENTRAL GST AND CENTRAL
EXCISE
ITANAGAR DIVISION
SECTOR-A NAHARLAGUN 791110
ARUNACHAL PRADESH.

6:THE COMMISSIONER CGST AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI 781001
ASSAM

Advocate for : MS. M L GOPE
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/5446/2020

M/S SUNSHINE INDUSTRIES
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE
INDIAN PARTNERSHIP ACT
1932 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AND ITS FACTORY

SITUATED AT NH 52
BANDARDEWA
DIST PAPUMPARE
ARUNACHAL PRADESH AND HAVING ONE OF ITS OFFICE AT GS ROAD
GUWAHATI 781005 ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI

2:THE SECRETARY TO THE GOVT. OF INDI

MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAWAN
NEW DELHI

3:THE COMMISSIONER CGST AND CENTRAL EXCISE
ITANAGAR COMMISSIONERATE
ARUNACHAL PRADESH

4:THE DEPUTY COMMISSIONER CGST AND CENTRAL EXCISE
GOVT. OF ARUNACHAL PRADESH
KAR BHAWAN
ITANAGAR
791113 ARUNACHAL PRADESH

5:THE ASSISTANT COMMISSIONER
CGST AND CENTRAL EXCISE
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL GST AND
CENTRAL EXCISE
ITANAGAR DIVISION
SECTOR A
NAHARLAGUN

791110 ARUNACHAL PRADESH
6:THE COMMISSIONER GST AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI 781001
ASSAM

Advocate for : MS. M L GOPE

Advocate for : SC
GST appearing for THE UNION OF INDIA AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

For the Petitioner : Ms. M. L Gope, Advocate
: Ms. N. Hawelia, Advocate
For the Respondents : Mr. S. C. Keyal, SC, GST.
Date of Order : **25.01.2023**

ORDER

(Soumitra Saikia, J)

- 1.** Heard Ms. M. L. Gope and Ms. N. Hawelia, learned counsels for the petitioners. Also heard Mr. S. C. Keyal, learned standing counsel for the GST.
- 2.** These writ petitions have been filed by the petitioner which raise common questions of law. All these petitioners had set up their industries for manufacturing under the North East Industrial and Investment Promotion Policy (NEIIPP), 2007 and were entitled to certain exemptions under the said policy which includes exemption from payment of Central Excise Duty. Along with the excise duty as per the laws in force at the relevant point in time, they were also required to pay Education and Secondary and High Education Cess. This Education Cess and Secondary and High Education Cess were required to be calculated on the basis of the excise duty payable. A question had arisen as to whether in view of the exemptions granted to excise duty under the NEIIPP, 2007, the petitioners would also be entitled to exemption from payment of

Education Cess and Secondary and High Education Cess. The said question at the relevant point in time was answered by the Apex Court in *M/S SRD Nutrients Private Limited -Vs- Commissioner of Central Excise, Guwahati* reported in (2018) 1 SCC 105 in terms of which judgment the appellants, therein, were held to be entitled to the refund of Education Cess and Secondary and High Education Cess which was paid along with excise duty once the excise duty itself was exempted from levy. In terms of the said order, the petitioners who were similarly placed manufacturers like the appellants before the Apex Court, also claimed that they were also entitled to be granted the refund by the Central Excise Authority. However, in spite of the Judgment passed by the Apex Court, no refunds were granted to the petitioners by the respondent authorities. Being aggrieved the writ petitioners approached this Court and in pursuance to orders passed by this Court in writ petition the refunds available to the petitioners were sanctioned although the same was appropriated towards other outstanding demands.

3. Thereafter, the Apex Court came to deliver a Judgment in *M/s Unicorn Industries -Vs- Union of India* reported in (2020) 3 SCC 492. By relying on the earlier judgments of the Apex Court rendered in *Union of India & Ors. - Vs- M/s Modi Rubber Limited* reported in (1986) 4 SCC 66 and *Rita Textiles Pvt. Limited and Ors. -Vs- Union of India* reported in (1986) Supp. SCC 557, the Apex Court held that the Judgment in *M/S SRD Nutrients Private Limited (supra)* and *Bajaj Auto Limited -Vs- Union of India* reported in 2019 SCC Online SC 421 limited to be per incuriam. Pursuant to the judgment of the Apex Court in *Unicorn Industries (supra)*, the respondent authorities issued the impugned demand-cum-show cause notices requiring the petitioners to show cause as to why the refund granted to the petitioners on account of Education Cess and Secondary

and Higher Education Cess, the refund should not be recovered from the petitioners. The details of show cause notices to the writ petitioners are as under:-

Sl. No.	WP(C)	Parties Name	Company Address	Items/ Manufactures	Refunded amount	Demand-cum- Show cause notice details	Issued By
1	WP(C)/5136/2020	M/S Platinum Alloys Pvt. Ltd. Vs. UNION OF INDIA & ORS	principal place of business and its factory situated at P.O.- Bhalukpong, Dist- West Kareng, Arunachal Pradesh and having one of its office at G.S. Road, ABC, Guwahati-781005	Excisable commodities viz Ferro Silicon Lumps and Ferro Silicon Slag (Waste)	Rs.49,11,285/-	Dated 05.03.2022 Called upon to show cause to the Deputy Commissioner of the CGST & CX, Iganagar Division within 30 days from the issuance of this notice as to why the amount of Rs. 49,11,285/- (Rupees Forty nine lakhs eleven thousand two hundred eighty five) of Education Cess and Secondary and Higher Education Cess refunded erroneously in the light of the Judgment order dated 10.11.2017 passed by the Hon'ble Supreme Court of India in the matter of M/S SRD Nutrient (P) Ltd. Vs. Commissioner of central Excise, Guwahati in Civil Appeal NO. 2781-2790 of 2019 should not be recovered from them under the provision Section 11A of Central Excise Act, 1944.	Office of the Assistant Commissioner Central GST & CX, Itanagar Division, Sector 'A' Naharlagun- 791110.
2	WP(C)/5125/2020	M/S Satyam Cokes Vs. UNION OF INDIA & ANR	Principal place of business and its factory situated at N.H. 52, Bandardewa, Dist- Pampumpare, Arunachal Pradesh and having its one of its office at G.S. Road, Guwahati-781005, Dist- Kamrup, Assam.	Excisable commodities viz Hard Coke, Coke Breeze and Lam Coke	Rs.1,36,102/-	Dated 06.03.2020 Called upon to show cause to the Deputy Commissioner of the CGST & CX, Iganagar Division within 30 days from the issuance of this notice as to why the amount of Rs1,36,102/- (Rupees One lakh thirty six thousand one hundred and two) of Education Cess and Secondary and Higher Education Cess refunded erroneously in the light of the Judgment order dated 10.11.2017 passed by the Hon'ble Supreme Court of India in the matter of M/S SRD Nutrient (P) Ltd. Vs. Commissioner of central Excise, Guwahati in Civil Appeal NO. 2781-2790 of 2019 should not be recovered from them under the provision Section 11A of Central Excise Act, 1944.	Office of the Assistant Commissioner Central GST & CX, Itanagar Division, Sector 'A' Naharlagun- 791110.
3	WP(C)/5434/2020	M/S. Satyam Ispat (North	Principal place of business and its	excisable goods viz. TMT Bars	1,68,07,340/-	Dated 06.03.2020	Office of the Assistant Commissioner Central GST & CX, Itanagar Division, Sector

	East) Ltd. Vs. UNION OF INDIA & ORS.	factory situated at N.H. 52, Bandardewa , Dist- Pampumpar e, Arunachal Pradesh and having its one of its office at G.S. Road, Guwahati- 781005, Dist- Kamrup, Assam			Called upon to show cause to the Deputy Commissioner of the CGST & CX, Itanagar Division within 30 days from the issuance of this notice as to why the amount of Rs1,68,07,340/- (Rupees One crore sixty eight lakhs seven thousand three hundred and forty) of Education Cess and Secondary and Higher Education Cess refunded erroneously in the light of the Judgment order dated 10.11.2017 passed by the Hon'ble Supreme Court of India in the matter of M/S SRD Nutrient (P) Ltd. Vs. Commissioner of central Excise, Guwahati in Civil Appeal NO. 2781-2790 of 2019 should not be recovered from them under the provision Section 11A of Central Excise Act, 1944.	'A' Naharlagun- 791110.	
4	WP(C) /5446/ 2020	M/S Sunshine Industrie s Vs. UNION OF INDIA & 4 ORS	principal place of business and its factory situated at N.H. 52, Bandardewa , Dist- Pampumpar e, Arunachal Pradesh and having its one of its office at G.S. Road, Guwahati- 781005, Assam	Excisable commoditie s viz Hard Coke, Coke Breeze and Lam Coke	Rs.2,02,27 5/-	Dated 06.03.2020 Called upon to show cause to the Deputy Commissioner of the CGST & CX, Itanagar Division within 30 days from the issuance of this notice as to why the amount of Rs.2,02,275/- (Rupees Two Laakhs two thousand two hundred seventy five) of Education Cess and Secondary and Higher Education Cess refunded erroneously in the light of the Judgment order dated 10.11.2017 passed by the Hon'ble Supreme Court of India in the matter of M/S SRD Nutrient (P) Ltd. Vs. Commissioner of central Excise, Guwahati in Civil Appeal NO. 2781-2790 of 2019 should not be recovered from them under the provision Section 11A of Central Excise Act, 1944.	Office of the Assistant Commissioner Central GST & CX, Itanagar Division, Sector 'A' Naharlagun- 791110

4. Being aggrieved, the present writ petitions have been filed.

5. It is submitted that the issues involved in these writ petitions have been dealt with by this Court in a bunch of writ petitions where the lead case is *M/S Topsem India [WP(C) No. 2918/2020]* and other connected writ petitions. The show cause notices issued whereby the recovery was sought to be made under Section 11A of the Central Excise Act were held to be without any jurisdiction and the show cause notices were set aside. This Court held that the refunds

sanctioned in favour of the petitioners were pursuant to orders passed by this High Court relying on *SRD Nutrients Private Limited (supra)*. The said orders of this Court were not assailed by the department by filing writ appeal/review etc. even after the judgment of *Unicorn Industries (supra)* rendered by the Apex Court. The revenue preferred an intra court appeal against the Judgment rendered in these bunches of cases by the Single Bench. Vide Judgment and Order dated 8th October, 2021 rendered in WA No. 162/2021, the Appellate Court upheld the Judgments of the learned Single Judge and dismissed the appeal preferred by the respondent. It is submitted that no further appeal has been preferred against the Judgment dated 8th October, 2021 rendered by the Division Bench in WA No. 162/2021 before the Apex Court. The relevant paragraphs of the Judgment and Order dated 8th October, 2021 rendered by the Appellate Court in WA No. 162/2021 are extracted below:-

“17. The learned Single Judge in his well considered judgment while dealing with all aspects of the matter has come to the conclusion that the demand of the refund is not justified. The learned Single Judge was of the view that merely because M/s SRD Nutrients Private Limited had been held to be per incuriam by the latest judgment of the Hon’ble Apex Court in the case of M/s Unicorn Industries, the refund already been made to the petitioners in terms of M/s SRD Nutrients Private Limited cannot be refunded. As M/s SRD Nutrients Private Limited had been declared to be per incuriam, it loses its precedential value but the Act already been done when the said judgment was a good law cannot be held to be done due to misrepresentation or has been done erroneously or by any fraud. It was also held that the refund was made by judgment of the Hon’ble Apex Court in M/s SRD Nutrients Private Limited as well as by different orders passed by this Court in favour of the petitioners. These orders have not been revoked. Therefore, the revenue cannot now take recourse for recovery of these amounts. Even the judgment given by the Hon’ble Apex Court in the case of M/s SRD Nutrients Private Limited, against which a review was filed and the review petition itself was

dismissed, there was no curative petition and it was only a subsequent judgment that this judgment was declared as per incuriam.

34. We agree with the submissions of the learned counsels for the assessee/petitioners that, under the facts and circumstances of the case, the amount refunded to them cannot be recovered, as it was not refunded to them erroneously, but it was returned to them for the reason that it was the requirement of law; law as it stood at the relevant time. The matter having attained finality cannot be re-opened for the reason that the earlier law has been declared to be "per incuriam".

6. Accordingly, since the issues raised in the present bunch of writ petitions have been answered by this Court in W.A. No. 162/2021, these writ petitions are disposed of in terms of the Judgment and Order dated 8th October, 2021 and the respective demand-cum-show cause notices issued to the petitioners are interfered with and set aside.

7. The writ petitions are accordingly allowed in terms of the above. No order as to cost.

JUDGE

Comparing Assistant