

GAHC010205342021



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

Case No. : WP(C)/6613/2021

M/S FERRA TECH
A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP
ACT, 1932 AND HAVING THEIR REGISTERED OFFICE AT BHIMPARA GAON,
P.O. PAKARIJAN, TINSUKIA-786125, ASSAM AND REPRESENTED THROUGH
THEIR AUTHORIZED PARTNER MR UMESH PATWARI, AGED ABOUT 54
YEARS, SON OF GOVINDLAL PATWARI.

VERSUS

THE UNION OF INDIA AND 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

2:THE PRINCIPAL COMMISSIONER

CGST COMMISSIONERATE
DIBRUGARH
GUWAHATI
MILAN NAGAR 'F' LANE
P.O. C.R. BUILDING
DIBRUGARH-786003
ASSAM

3:THE ASSISTANT COMMISSIONER OF SERVICE TAX

CENTRAL GST DIVISION
TINSUKIA DIBRUGARH ROAD
TINSUKIA-786123
ASSA

For the Petitioner

: Mr. D. Saraf, Advocate.

For the Respondents : Mr. S.C. Keyal, SC, GST.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

22.08.2023

The instant writ petition has been filed by the Petitioner challenging the order in original dated 05.11.2021 as well as for setting aside the show cause notice dated 20.11.2020. The Petitioner also seeks for a direction upon the Respondents to decide the application for fixation of special rate filed by the Petitioner before initiating any process for recovery from the Petitioner as per law.

2. This Court have duly taken note of the demand cum show cause notice dated 20.11.2020. From a perusal of the said show cause notice, it reveals that for the period from December, 2009 to October, 2015 as well as from November, 2015 to June, 2017 an amount of Rs.1,52,55,181/- was disbursed pursuant to the interim order passed by this Court dated 09.12.2016 and the Petitioner herein had also submitted a surety bond/the Solvency Certificate to the jurisdictional Commissioner, of Central Excise and Service Tax, Dibrugarh. It further reveals from the said show cause notice that the Petitioner was directed to show cause as to why the said amount of refund of Rs. 1,52,55,181/- as well as interest and penalty should not be imposed upon the Petitioner.

3. The Petitioner thereupon submitted a show cause reply stating the grounds as to why the Petitioner is not liable.

4. Thereupon an order was passed on 05.11.2021 whereby the

Assistant Commissioner of the Central GST Division, Tinsukia have imposed the demand of Rs. 1,52,55,181/- and had also confirmed the interest at the appropriate rate as per Section 11AA of the Central Excise Act, 1955. However, no penalty was imposed.

5. The Petitioner thereupon filed the instant writ petition challenging the show cause notice as well as the show cause notice dated 20.11.2020 as well as the order dated 05.11.2021.

6. It is also seen that the Petitioner had also submitted an application requesting for fixation of special rate for the various years for which the show cause notice dated 20.11.2020 as well as the impugned order dated 05.11.2021 was passed. This Court finds it relevant to take note of that vide an order dated 10.12.2021, this Court had issued notice and granted some interim protection to the Petitioner.

7. Today when the matter was taken up, Mr. S.C. Keyal, the learned counsel appearing on behalf of the GST Department have produced an order dated 18.08.2022 passed by the Principal Commissioner, Central GST and Central Excise, Commissioner, Dibrugarh. A perusal of the said order reveals that the Petitioner have been granted the special rate at the rate of 52% for the financial year 2009-10 & 2010-11, 55% for the financial year 2011-12, 64% for the financial year 2012-13, 49% for the financial year 2013-14, 52% for the financial year 2016-17 and 47% for the financial year 2017-18. However, vide the said order dated 18.08.2022, the Petitioner's claim in respect to fixation of special rate representing the actual value addition for the financial year 2014-15 was rejected being

barred by para 3(i) of the Notification No. 20/2007-CE dated 25.04.2007.

8. Taking into account that special rate have already been fixed and accordingly the impugned notice dated 20.11.2020 as well as the consequential order dated 05.11.2021 cannot coexist in view of the special rate having been fixed vide the order dated 18.8.2022 for which the impugned notice dated 20.11.2020 as well as the impugned order in original dated 05.11.2021 are set aside and quashed. It is however observed that the setting aside and quashing the impugned notice dated 20.11.2020 as well as the order in original dated 05.11.2021 shall not preclude both the Petitioner and the Respondents to take appropriate steps in terms with the order dated 18.08.2022 passed by the Principal Commissioner, Central GST and Central Excise, Commissioner at Dibrugarh.

9. This Court further finds it relevant to take note of the submission of Mr. D. Saraf, the learned counsel for the Petitioner that vide the order dated 18.08.2022 passed by the Principal Commissioner, Central GST and Central Excise, Commissioner at Dibrugarh, the Petitioner's application for fixation of special rate for the year 2014-15 have been rejected without assigning any reasons.

10. Be that as it may, it being a separate cause of action, the Petitioner would be at liberty to challenge the same, if so advised.

11. The order dated 18.08.2022 so produced by Mr. S.C.Keyal, the learned counsel for the GST is kept on record and marked with the letter "X".

12. With the above observations and directions, the instant petition stands disposed.

JUDGE

Comparing Assistant