

GAHC010241332022



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

Case No. : WP(C)/7650/2022

GAIL (INDIA) LIMITED AND 2 ORS
GAIL BHAWAN, 16 BHIKAJI CAMA PLACE, R K PURAM, NEW DELHI-110066

2: BISWAJIT DEBBRAMA
S/O LATE RAM SINGH DEBBARMA
G.M./OIC
GAIL (INDIA) LIMITED
AGARTALA AND LAKWA
VIP ROAD
OPP RADHANAGAR BUS STAND
AGARTALA
TRIPURA(W)-799005

3: GAIL(INDIA) LIMITED
LAKWA
SIVSAGAR
ASSA

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY SECRETARY, MINISTRY OF FINANCE (DEPARTMENT OF
REVENUE), NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI-11011

2:ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIBRUGARH DIVISION
C.R. BUILDING
P.O.-C.R. BUILDING
DIBRUGARH-786003

3:OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL EXCISE DIVISION
JORHAT

STATION GODOWN ROAD
JORHAT-785001

4:COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIBRUGARH DIVISION
C.R. BUILDING
P.O.-C.R. BUILDING
DIBRUGARH-786003

5:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
GOVT. OF INDIA
REPRESENTED BY ITS CHAIRMAN

Advocate for the Petitioner : MR. S MITRA

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

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03-04-2023

Heard Shri S. Mitra, learned counsel for the petitioners. Also heard Shri S. C. Keyal, learned Senior Counsel, Central Board of Indirect Taxes.

Considering the development which had taken place during the pendency of this case and as agreed to by the parties, the instant writ petition is disposed of at the admission stage itself.

Pursuant to a notification dated 08.07.1999, the petitioners which had set up an LPG plant at Lakwa in the district of Sivsagar had applied for refund of an amount of Rs.3,53,67,180/-(Rupees Three Crore Fifty Three Lakh Sixty Seven Thousand One Hundred Eighty).

The said application was rejected vide an order dated 03.05.2002 which was the subject matter of an appeal before the Commissioner (Appeals), Customs and Central Excise. The Appellate Authority however vide order dated 03.07.2002 had allowed the

appeal by holding the petitioners to be eligible for refund. The order of the First Appellate Authority was put to challenge before the CESTAT, Kolkata by the respondent No. 3 which however was closed vide an order dated 11.07.2003 for non-production of certificate of clearance. In the wake of the said development, the respondent No. 3 had sanctioned a refund amount of Rs.19,09,46,113/- (Rupees Nineteen Crore Nine Lakh Fourty Six Thousand One Hundred Thirteen) for the period from March, 2000 to February, 2005 in favour of the petitioners.

It is the case of the petitioners that they are also entitled for interest of the said amount and therefore they had issued a communication dated 19.12.2009 to incorporate interest which was quantified @ Rs. 5,69,08,944.70 (Rupees Five Crore Sixty Nine Lakh Eight Thousand Nine Hundred Forty-four and Seventy paisa). The said request was however negated by the Deputy Commissioner Central Excise, Jorhat by stating that there is no provision under the Central Excise Act or Rule for rectification of a different order. The said decision however was appealed by the petitioners before the Appellate Authority which vide order dated 13.11.2012 had set aside the dismissal order and had held the petitioner to be entitled to interest of Rs.5,69,08,945/- (Rupees Five Crore Sixty Nine Lakh Eight Thousand Nine Hundred Forty Five) on the refunded amount under Section 11BB of the Central Excise Act, 1944. The aforesaid decision was upheld by the CESTAT, Kolkata. Since the amount in question was not paid, the instant writ petition was instituted in the year 2022.

It transpires that the aforesaid issue was raised in a Central Excise Appeal before the Division Bench of this Court which was registered as Central Excise Appeal No. 6/2022. The same appeal was heard alongwith few other matters involving similar issues and was disposed of recently vide an order dated 22.03.2023. The Hon'ble Division Bench was appraised that since an SLP on the issue was pending being SLP No. 016322/2018, any interest paid may be made subject to the outcome of the said SLP by the Hon'ble Supreme Court.

Shri Keyal, the learned Standing Counsel in fact submits that the said order has

been passed recently and the process is already on for disbursement of the interest part and in fact there is hardly any cause of action to be adjudicated.

Upon hearing the parties and on the statement made by the learned Standing Counsel, the instant writ petition is disposed of by holding that the interest which has been directed to be paid may be done expeditiously and within an outer limit of 2 (two) months from today. The said disbursement however shall be subject to the outcome of SLP 016322/2018 pending before the Hon'ble Supreme Court.

The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant