GAHC010250232022

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

Case : WP(C)/7913/2022

M/S KAMAKHYA POWER SOLUTIONS
A PARTNERSHIP FIRM REGD. UNDER THE PROVISIONS OF THE INDIAN PARTNERSHIP ACT
1932 AND HAVING ITS OFFICE AND FACTORY AT 15TH MILE
G.S.ROAD
BYRNIHAT
KAMRUP
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
THROUGH THE FINANCE SECRETARY
MINISTRY OF FINANCE
HAVING HIS OFFICE AT NORTH BLOCK
NEW DELHI- 110001

2:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI
OFFICE OF THE CENTRAL GOODS AND SERVICE TAX
GUWAHATI
ASSAM
3:THE ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
CENTRAL GST DIVISION
GST BHAWAN
KEDAR ROAD
GUWAHATI-01
ASSAM
4:THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN

KEDAR ROAD
GUWAHATI
ASSAM
5:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REP. BY ITS CHAIRMAN
DEPTT. OF REVENUE
MINISTRY OF FINANCE
NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI- 110001

Advocate for : MS. M L GOPE
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

02.02.2023

Heard Ms. N. Hawelia, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned standing counsel for the GST

2. The petitioner is a partnership firm registered under the provisions of the Indian Partnership Act, 1932. It has its office and manufacturing unit at 15th Mile, G.S. Road, Byrnihat, Kamrup, Assam. The petitioner is engaged in the manufacture of Lead Ingots, Remelted Lead Ingots from the said unit. By this writ petition, the petitioner seeks to challenge the order No. 08/SR/PR.COMMR./2021-2022 dated 30.08.2021 passed by the Principal Commissioner, GST, Guwahati rejecting the application of the petitioner for special rate as barred by limitation.

3. The relevant facts in brief are that in terms of the Government of India, the North East Policy Resolution issued under O.M. dated 24.12.1997, various incentives were offered under the said industrial policy resolution. Amongst the various incentives offered, the policy provided for 100% exemption of Central Excise duty paid. In order to implement the Industrial Policy Resolution, the respondent authority, namely, the Central Excise Department issued Notification No. 32/99-CE and 33/99-CE dated 08.07.1999 whereby the Central Excise Exemptions were granted in respect of all excisable goods cleared from a unit located in the Growth or Integrated Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial area or Commercial Estate, as the case may be. The exemptions contained were made applicable only to new industrial units which commenced their industrial production on or after the 24th Day of December, 1997 or to existing industrial units before the 24th December, 1997 but which undertook substantial expansion by way of increase in the installed capacity by not less than 25% on or after the 24th day of December, 1997. The said exemptions were applicable to any of the eligible industrial units for a period not exceeding 10 years from the date of publication of the notification in the official Gazette or from the date of commencement of commercial production which ever was later. The petitioner herein had availed area-based exemption under the Notification No.

32/99-CE dated 08.07.1999. Thereafter vide notification No. 35/2001-CE dated 29.06.2001, the exemptions given under the Notification dated 08.07.1999 were amended to the extent that the assessee will get refund of the duty which it has paid in cash after exhausting the CENVAT Credit.

4. Upon expiry of 10 years of the Industrial Policy Resolution, the Government of India on 01.04.2007 announced a new policy named North-East Industrial and Investment Promotion Policy (NEIIPP), 2007. Under the said Policy, the Government of India approved a package of fiscal concessions for the North East Region. Under the various fiscal concessions, there was 100% excise duty exemption which was to be continued on finished products made in the North-Eastern Region, as was available under the NEIP, 1997. Several notifications were issued by the Central Excise Department specifying the procedure as well as the manner of availing the excise duty. By notification No. 17/2008-CE dated 27.03.2008 and Notification No. 38/2008-CE dated 10.06.2008, the exemptions granted were further modified to the extent of duty payable on value addition on specified goods which are cleared from the units. By the said notifications, it was provided that instead of 100% of the refund of excise duty paid, the refund would be subjected to the value addition and as per the rates provided in the notification in respect of different categories of goods as provided therein.

5. Under Clause- 3(1) of the Notification No. 20/2008-CE dated 27.03.2008, an option was provided to the manufacturers that notwithstanding anything contained in the said notification, the manufacturer shall have the option not to avail the rates specified in the table provided in the said notification but instead may apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, if the manufacturer finds that four-fifth 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 rate specified in the said table contained in the notification.

6. Meanwhile, the said notification of granting exemption only to the value addition made by the manufacturer was assailed before this Court as well as several High Courts across the Country. The writ petitions filed by the manufacturers were allowed by the Single Judge Bench of this Court and were also upheld by the Division Bench of this Court holding that the curtailment of excise exemption is not permissible in terms of the promise made under the Industrial Policy. The Notification dated 27.03.2008 was accordingly interfered with and set aside by this Court. An appeal was carried to the Supreme Court by

the Renenue. During the currency of the appeal, initially an interim order was passed by the Apex Court whereby it was directed that 50% of the refund claimed by the petitioners in terms of the Judgments of the High Courts, was to be refunded to the petitioner subject to furnishing of solvency certificate. Subsequently, the Supreme Court vide Judgment and Order dated 22.04.2020 rendered in (Union of India –vs- VVF Limited) set aside the Judgments of the High Courts including of this Court and the notification dated 27.03.2008 was restored. The Apex Court held that the subsequent notification dated 27.03.2008 did not alter the position but was merely clarificatory in nature. Pursuant to the Judgment of the Apex Court rendered in ***VVF Limited (Supra)***, the petitioner, being eligible in terms of the said Clause-3(1) of the Notification No. 20/2008-CE dated 27.03.2008, made its application claiming that the percentage of value addition made by the manufacturer on the goods produced by them from their units makes them eligible for a special rate as provided under the said notification.

7. The Principal Commissioner, GST, Guwahati by order No. 08/SR/PR.COMMR./2021-2022 dated 30.08.2021 rejected the application for value addition/special rate filed by the petitioner as being barred by limitation. The respondent No. 4 held that if the assessee intended to avail special rate, the same had to be availed as per the terms of the Notification and the

application was required to be filed within the time specified in the said Notification. The present writ petition has been filed assailing the impugned order dated 30.08.2021 passed by the respondent No. 4 rejecting the special rate applications filed by the petitioner as being barred by limitation.

8. The learned counsel for the petitioner has submitted that in similar matters, the Co-ordinate benches have remanded the matter back to the respondent authorities to decide on the special rate application on merit. The learned counsel for the petitioner refers to order passed by the Co-ordinate Bench in W.P(C) No. 740/2022 (M/s North East Hi-Tech Vs. Union of India & Ors).

9. Upon hearing the learned counsels for the parties and upon perusal of the pleadings on record, it is seen that by order dated 13.05.2022 passed in W.P(C) No. 740/2022 (M/s North East Hi-Tech Vs. Union of India & Ors), a Co-ordinate Bench has dealt with the issue and the matter was disposed of directing the respondent No. 6, namely Principal Commissioner, GST, to decide the applications of the petitioner for special rate on its own merits. The Co-ordinate Bench arrived at its conclusion by placing on *Jyothy Labs Ltd. Vs. Union of India & Ors* reported in *(2021) SCC Online Gau 1602* and order dated 10.01.2022 passed by the Apex Court in Suo Motto Writ Petition No. 3/2020 extending the

limitation from 15.03.2020 till 28.02.2022. From the pleadings it is seen that the petitioner had filed its special rate application on 05.03.2021 which admittedly falls within the period of limitation extended by the Apex Court. This position of law is not disputed by the learned counsels at the bar. No appeal has been preferred against the orders dated 10.01.2022 and 13.05.2022 passed in Jyothy Labs Ltd (Supra) and M/s North East Hi-Tech (supra) respectively. Consequently, in the present writ petition also a similar question regarding the rejection of the special rate application on the ground of limitation has been raised. This Court is of view that the orders dated in 10.01.2022 and 13.05.2022 passed in Jyothy Labs Ltd (Supra) and M/s North East Hi-Tech (supra) respectively are applicable to the facts of the present proceedings as the present petitioner is also similarly situated. In that view of the matter, the impugned order dated 30.08.2021 passed by the respondent No. 4 rejecting the special rate application filed by the petitioner as being barred by limitation is interfered with and set aside. The matter is remanded back to the respondent No. 4 for deciding it afresh on merits.

10. Accordingly, this writ petition is disposed of directing the respondent No. 4, Principal Commissioner, GST, Guwahati to expeditiously consider afresh and dispose of special rate application which was filed by the petitioner. The petitioner should also be afforded an opportunity of hearing before any passing

any order on those applications. It is made clear that the authorities will decide the application on merit and pass appropriate orders and the same shall not be rejected on any technical ground such as limitation etc.

11. In terms of the above, the writ petition is disposed. No order as to cost.

JUDGE

Comparing Assistant