

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 119 of 2024 with
WP(C) No. 120 of 2024
WP(C) No. 121 of 2024
WP(C) No. 122 of 2024

Date of order: 03.06.2024

- 1) Meghalaya Cast and Alloys (P) Ltd.
- 2) Pawan Castings (Meghalaya) Pvt. Ltd.
- 3) M/s Nezone Pipes and Structures.
- 4) M/s Nezone Pipes and Structures.

....PETITIONERS

- Versus -

- 1) The State of Meghalaya
Represented by the Commissioner and Secretary to the
Government of Meghalaya, Directorate of Commerce and
Industries, 2nd Floor, Lower Lachumiere, Shillong,
Meghalaya 793001.
- 2) Under-Secretary to the Government of Meghalaya,
Commerce and Industries Department, Meghalaya Secretariat,
Additional Building, Shillong – 793001, Meghalaya
- 3) The Commissioner & Secretary to the Government of
Meghalaya, Commerce & Industries Department,
Meghalaya Secretariat, Additional Building, Room No.209,
Shillong – 793001, Meghalaya.
- 4) Director of Commerce and Industries,
Directorate of Commerce and Industries, State of Meghalaya,
Lower Nongrim Hills, Opposite Military Engineering Services,
Shillong – 793003, Meghalaya.
- 5) Additional Chief Secretary,
Incharge ERTS Department, Government of Meghalaya,
Main Secretariat Building, Shillong.

...RESPONDENTS

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioners : Dr. A. Saraf, Sr. Adv. with
Mr. S.J. Saikia, Adv.

For the Respondents : Mr. A. Kumar, AG with
Mr. E.R. Chyne, GA

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |
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J U D G M E N T : O R A L

(Made by Hon'ble, the Chief Justice)

These writ petitions have been filed with the following reliefs:

“In the premises aforesaid, it is most respectfully prayed that Your Lordships may graciously be pleased to admit this Petition, call for records of the case and issue a Rule calling upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or any other appropriate writ of like nature should not be issued directing the Respondent authorities to formulate necessary Scheme and/or issue necessary Notification to give effect to the promise made in the MIIPP, 2012 and MIIPS, 2016 with regard to grant of 99% remission of SGST paid after GST becoming applicable to industrial units undertaking substantial expansion by making a minimum of 25% on the original investment in Plant & Machinery/Equipments and as to why a writ in the nature of Mandamus and/or any other appropriate writ of like nature should not be issued directing the Respondent Authorities to grant refund of 99% SGST paid by the Petitioner company from 01.07.2017 to June, 2020 on the basis of the promises made in the MIIPP, 2012 and MIIPS, 2016 along with interest, and cause or causes that may be shown by the parties after perusal of the records of the case and after hearing the parties, make the Rule

absolute and/or pass such further order/orders as Your Lordships' may deem fit and proper”

2. Though various submissions have been granted, a reading of the prayer would make it very clear that a copy of the representation of the petitioners is pending as can be seen from a communication dated 13.07.2018 filed as Annexure-X. On the various factual and legal submissions have been made by the parties that the GST has come into force as early as 2003 and the same has been reflected in the judgment of the Supreme Court at paragraph 38 in ***Hero Motocorp Limited v. Union of India*** reported in (2023) 1 SCC 386, the fact that the GST Council is a constitutional body and any representation is made to the State Government needs to be addressed and a decision has to be taken in an expeditious manner. The Apex Court in a decision referred to (supra) has observed as follows:

“95. It is further to be noted that the GST Council is a constitutional body. In has a power to make recommendations on wide-ranging issues concerning GST, including grant of exemptions from the GST. It also has power to make recommendations with regard to special provisions governing North-Eastern and Himalayan States. Taking into consideration that the units like the appellants have been established in the Himalayan and North-Eastern States based on the said OM of 2003 and that lakhs of persons are employed in such industries, we are of the view that it will be appropriate that such States should also consider to correspondingly reimburse such units out of the share of revenue received by them through devolution from the Central Government. We further find that it will also be appropriate that the GST Council considers making appropriate recommendations to the States in that regard.

96. We, therefore, permit the appellants to make representations to the respective State Governments as well as to the GST Council. We also request the State Governments and the GST Council to consider such representations, if made, in accordance with what has been observed hereinabove in an expeditious manner.”

3. Without going into the merits of the matter, we permit the petitioners to make a further representation, if any and after hearing the petitioners in person, a decision shall be taken by the authorities within a period of eight weeks from the date of receipt of this order. We leave all the factual and legal submissions open to the petitioners to raise all the objections available to them within a period of four weeks from today and it is for the authorities to consider the same and take a decision as expeditiously as possible within a period of eight weeks from the date of receipt of such representation.

4. We make it very clear that we have not rendered any finding on the merits of the present writ petitions filed by the petitioners and all the issues are left open. We expect that the petitioners shall cooperate and appear before the authorities concerned. The parties shall appear to make their submissions and in case of non-appearance of the parties, the same can be recorded and a decision can be rendered on merits. We further make it very clear that if the parties fail to appear for personal hearing, they cannot later contend that an opportunity of being heard is not given. We also make it very clear that in case any adverse order is passed against the petitioners, it will be open for them to challenge the same in accordance with law.

5. In view of the above, these writ petitions stand disposed of.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
03.06.2024
"Sylvana PS"