

GAHC010106622022



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

Case No. : WP(C)/3733/2022

M/S BORGOHAIN ENTERPRISES PRIVATE LIMITED
A PRIVATE LIMITED COMPANY, REGISTERED UNDER THE COMPANIES
ACT, 1956 HAVING ITS REGISTERED OFFICE AT NAMGHAR PATH,
OPPOSITE DISPUR TELEPHONE EXCHANGE, DISPUR, GUWAHATI-781006,
ASSAM AND IS REPRESENTED BY ONE OF ITS DIRECTORS, SHRI LUCKY
BORGOHAIN, AGED ABOUT 32 YEARS.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EXCISE DEPARTMENT, DISPUR, GUWAHATI-6,
ASSAM.

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6.

3:THE SUPERINTENDENT OF EXCISE
JORHAT
ASSAM

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 24-06-2024

- 1.** Heard Mr. N.K. Kalita, learned counsel for the petitioner and Mr. K.P. Pathak, learned Standing Counsel, Excise Department for all the respondents.
- 2.** By filing the petition under Article 226 of the Constitution of India, the petitioner is assailing *inter alia* a Demand Notice dated 09.05.2022 issued by the respondent No. 3, whereby the petitioner has been asked to deposit the establishment charge as per Demand Notice w.e.f. March, 2022 to April, 2022 within 31.05.2022.
- 3.** It is submitted at the Bar that the issue involved in this writ petition is covered by the decision of the coordinate Bench of this Court in the case of M/s Barak Warehouse Pvt. Ltd. and Another v. State of Assam in WP(C) 4575/2021.
- 4.** In view of the aforesaid endorsement made by the learned counsel for the parties, this Court deems appropriate, in the ends of justice for disposing of this writ petition in terms of the said order dated 09.05.2023 passed in WP(C) 4575 of 2021.
- 5.** Accordingly, the instant writ petition stands disposed off with the following observations and directions:-
 - (1) The petitioners herein are liable to pay the establishment charges in terms with Clause 9 of the order dated 29/8/2016 till payment of the ad-valorem excise duty as well as the VAT on the basis of the orders passed by the authorities in terms with Clause 3 of the office order dated 29/8/2016 are not paid or such amount so demanded are not set aside in accordance with law. The Respondent Excise Department is given the liberty to take such action as deemed fit for realising the establishment costs.

- (ii) The Respondent Authorities and more particularly the Commissioner of Excise is directed to take a definitive decision in respect to unfit/the dead stock lying in the warehouses of the petitioners within a period of 2 months from the date a certified copy of the instant judgment is served upon the Commissioner of Excise and the decision so taken be informed to the petitioners thereupon.
- (iii) The petitioners would be at liberty to place such materials before the Commissioner of Excise to show as regards the amounts the petitioners have paid as well as the observations and findings of the Sub Committees and if during such verification, it is found that the petitioners have already paid the amounts in terms with the demands so made under Clause 3 of the order dated 29/8/2016, then from such date the petitioners have already paid their dues, the petitioners would be not liable for the payment of the establishment charges.
- iv) On the facts of the case, this Court is not inclined to impose any costs.

The writ petition stands disposed of.

JUDGE

Comparing Assistant