

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/700/2025

GAURAV ENTERPRISES
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE OM NARAYAN RAI
Date: 1st December, 2025.

Appearance:

Mr. Amit Agarwal, Adv.
Mr. Bhaskar Sengupta, Adv.
Mr. Aasish Choudhury, Adv.
Ms. Rwtika Dhandhanian, Adv.
Mr. Tabbish Wasi, Adv.
...for Petitioner.

Mr. Aryak Dutt, Adv.
Mr. Amit Sharma, Adv.
Mr. Abhishek Kr. Agrahari, Adv.
Ms. Riya Kundu, Adv.
...for Respondents.

1. This writ petition takes exception to the action of the respondent Income Tax authorities in recovering/adjusting amounts in excess of 20% of the disputed demand from the amounts refundable to the petitioner in respect of several other assessment years pertaining to the assessment year 2018 -19.
2. The facts leading to the institution of this writ petition may briefly be noted. A notice of demand dated April 17, 2021 under Section 156 of

the Income Tax Act, 1961 was issued to the petitioner, pursuant to an assessment order dated April 17, 2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the assessment year 2018-19, thereby calling upon the petitioner to pay a sum of Rs.9,19,33,664/-.

3. The said assessment order dated April 17, 2021 was carried in appeal by the petitioner on August 3, 2021 before the Commissioner (Appeals) (hereafter "CIT (Appeals)") under Section 246A of the Income Tax Act, 1961.
4. During pendency of the appeal, the petitioner made an application before the Income Tax Officer (i.e. the concerned assessing officer) on September 29, 2021 requesting for stay of the demand.
5. While the said application remained pending, the Income Tax authorities proceeded to recover the outstanding demand from the amounts refundable to the petitioner for assessment years 2020-21 to 2023-24 and, in fact, recovered a sum of Rs.5,01,16,180/-.
6. Being aggrieved by such recovery/adjustment, the petitioner has approached this Court by way of the instant writ petition.
7. Mr. Agarwal, learned Advocate appearing for the petitioner submits that in view of the law laid down by this Court in the case of *Danieli India Limited Vs. Assistant Commissioner of Income Tax, Central Circle 2(2), Kolkata* (WPO 2294 of 2022 decided on September 1, 2023), while relying on an earlier judgment of this Court in the case of *M/s. Graphite India Limited Vs. Deputy Commissioner of Income Tax, Circle*

11(1) Kolkata and Ors. (WPO 113 of 2018 decided on February 15, 2022), the respondent Revenue authorities could not have recovered any sum in excess of 20% of the disputed demand raised pursuant to the assessment order dated April 17, 2021 in respect of assessment year 2018-19.

8. Mr. Sharma, learned Standing Counsel appearing for the Revenue authorities submits that the recovery which has been impugned in the present writ petition, has been done in accordance with law. It is submitted that unless the petitioner puts in a sum equivalent to 20% of the disputed demand, recovery of the entire outstanding demand is permissible.
9. It is further submitted that there is no prohibition in law to recover the entire demand if stay of demand is not granted and that stay of demand can be granted only upon deposit of 20% of the demand. In support of his submission he relies on the judgment of the Hon'ble High Court at Delhi in the case of *Chemester Food Industry (P.) Ltd. vs. Central Processing Centre* reported in [2025] 174 taxmann.com 791 (Delhi).
10. Heard the learned Advocates appearing for the respective parties and considered the materials on record.
11. A Co-ordinate Bench of this Court has in the aforesaid judgment of *Danieli India Limited* (supra), which has been passed by relying on *M/s. Graphite India Limited* (supra), held that the action of the assessing officer in recovering any amount in excess of 20% of the

disputed demand pertaining to a given assessment year by way of adjustment from the admitted refunds relating to other assessment years, while an appeal before the CIT (Appeals) assailing the assessment order in respect of the said relevant assessment year is pending, cannot be sustained in law. This Court finds no good reason to take a divergent view.

12. Mr. Sharma is indeed right in submitting, that there is no express prohibition in law for the Income Tax Authorities to recover a sum in excess of 20% of the disputed demand. Section 220(6) of the Income Tax Act, 1961 vests discretion with the assessing officer not to treat the assessee in default in respect of the disputed tax demand (commonly called “stay of demand”) while an appeal is pending before the CIT (Appeals) but such discretion is guided by the instructions issued by the Central Board of Direct Taxes (CBDT). To wit, the Office Memorandum dated February 29, 2016 issued by the CBDT, (which was later partially modified by the subsequent Office Memorandum dated July 31, 2017), instructs that in a case where the outstanding demand is disputed before the CIT (Appeals), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed demand, excepting situations mentioned in paragraph 4B of the said Office Memorandum February 29, 2016.
13. If in terms of the said office memorandum, the assessing officer is obliged to stay the demand upon payment of 20% of the disputed demand by the assessee (except in the situations mentioned in

paragraph 4B thereof), it would be unfair on the part of the income tax authorities to recover any sum in excess of 20% of the disputed demand during pendency of the appeal in the absence of any of the situations mentioned in paragraph 4B of the Office Memorandum.

14. As regards the judgment in the case of *Chemester Food Industry (P.) Ltd.* (supra), it is noticed that the same was rendered in the peculiar facts of the case where a notice under section 245 of the Income Tax Act, 1961 had been issued by the Income Tax Department and where the assessing officer had found that grant of stay was not permissible. In fact the Hon'ble Delhi High Court also proceeded to hold against the assessee in the said case of *Chemester Food Industry (P.) Ltd.* (supra) on being satisfied that adjustment of the amount was not contrary to the Office Memorandum dated 31.07.2017 as claimed by the assessee. The case at hand is evidently not so.
15. As recorded hereinabove, the assertion of the revenue authorities is that unless the petitioner puts in a sum equivalent to 20% of the disputed demand, recovery of the entire outstanding demand is permissible. It has not been demonstrated before this Court to any degree of satisfaction that any such situation as mentioned in paragraph 4B of the Office Memorandum dated February 29, 2016 as amended by the office memorandum dated July 31, 2017 exists in the case at hand. In such view of the matter, this Court is inclined to pass the same order as passed by the Co-ordinate Bench of this

Court in the case of *Danieli India Limited* (supra) while relying on *M/s. Graphite India Limited* (supra).

16. Accordingly, the respondent Income Tax authorities are directed to refund to the petitioner the amount recovered by them, in excess of 20% of the disputed demand (on the strength of the notice of demand dated April 17, 2021 issued pursuant to the assessment order dated April 17, 2021 against which an appeal is pending), from the amounts refundable to the petitioner in respect of assessment years 2020-21 to 2023-24 within a period of eight weeks from the date of communication of this order upon due verification of the actual amount recovered thus far. The respondent Income Tax authorities shall be free to afford an opportunity of hearing to the petitioner for the purpose of any clarification in respect of the petitioner's claim as regards the amount recovered.
17. It is submitted that the appeal that has been preferred before the CIT (Appeals) under Section 246A of the Income Tax Act, 1961 has been pending since 2021. In such view of the matter, the appellate authority being the respondent no. 6 herein is requested to expedite the hearing of the appeal and dispose of the same as early as possible.
18. WPO/700/2025 stands disposed of. No costs.

(OM NARAYAN RAI, J.)