

GAHC010009402021



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

Case No. : WP(C)/343/2021

M/S AHINSHA CHEMICALS LTD.
(INSTANT TEA DIVISION) A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956 READ WITH THE COMPANIES
ACT, 2013 HAVING ITS REGISTERED OFFICE AT NT ROAD, MILANPUR,
DIST NALBARI, ASSAM, 781335, REPRESENTD BY SRI PAWAN KUMAR
JAIN, THE AUTHORISED REPRESENTATIVE OF THE PETITIONER
COMPANY

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT.OF INDIA, MINISTRY
OF FINANCE DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI

2:THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF COMMERCE AND INDUSTRY
UDHYOG BHAWA
NEW DELHI

3:THE COMMISSIONER
CGST AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI 781001 ASSAM

4:THE ASSISTANT COMMISSIONER
CGST AND CENTRAL EXCISES
OFFICE OF THE ASSTT COMMISSIONER OF GST AND CENTRAL EXCISE
GUWAHATI-I
DIVISION
GST BHAWAN

KEDAR ROAD
GUWAHATI 781001 ASSAM

5:THE SUPERINTENDENT (TECHNICAL - I)
CGST AND CENTRAL EXCISE DIVISION I
GST BHAWAN
KEDAR ROAD
GUWAHATI 781001 ASSA

Advocate for the Petitioner : DR B P TODI

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 03-03-2021

Heard Dr. BP Todi, learned senior counsel for the petitioner. Also heard Mr. S.C. Keyal, learned counsel for the respondent GST department.

2. The petitioner company is engaged in a business manufacture of instant tea. In course of the manufacturing business, the petitioner company is subjected to the provisions of the Central Excise Act, 1944 bearing Registration Number AACCA6496MXM004. The petitioner company also claimed some benefits under the Northeast Industrial Policy for which, certain exemptions are made in respect of excise duties that are payable under the said Act.

3. The procedure adopted for grant of exemption is that the assesee first pays the excise duty and thereafter for the purpose of exemption the duty paid stands refunded. Initially the refund was made to the extent of 100% of the payment of the excise duty. The respondents had issued the Notification No.20/2008-Central Excise dated 27.03.2008 by which it was provided that instead of 100% refund of the excise duty paid, the refund would be subjected to the rates provided in the said notification in respect of the different categories of goods as are provided therein.

4. Clause 3(1) of the Notification No.20/2008-Central Excise dated 27.03.2008 provides 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 and 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 the notification, if the manufacturer finds that fourth-fifths 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.

5. We take note of that at this stage by invoking the provisions of Clause 3(1) of the Notification No.20/2008-Central Excise dated 27.03.2008 the petitioner company had made an application claiming that they had made certain add-ons to the goods manufactured by them and therefore claim for a special rate as provided in the said provision. In the meantime, the Notification No.20/2008-Central Excise dated 27.03.2008 was assailed in a series of writ petitions before this Court as well as in the other High Courts also. This Court by its judgment in the relevant writ petition had set aside the Notification No.20/2008-Central Excise dated 27.03.2008 which led to the situation that the refund of 100% of the excise duties to be paid stood restored.

6. On an appeal being carried before the Supreme Court by the Department against such judgment of the High Courts, the judgment in the *Union of India and Others., -vs- V.V.P. Limited & Others* was passed which is reported in *2020 SCC Online SC 378*. By the said judgment of the Supreme Court, the judgments of the High Courts interfering with the Notification No.20/2008-Central Excise dated 27.03.2008 was interfered meaning thereby that the Notification No.20/2008-Central Excise dated 27.03.2008 stood restored.

7. This petition is instituted on the grievance that the Notification dated 27.03.2008 having been restored as per the judgment of the Supreme Court, two application dated 28.09.2020 under Clause 3(1) of the Notification No.20/2008-Central Excise dated 27.03.2008 was submitted by the petitioner claiming for a special rate, but the same has not been given its consideration and without giving a due consideration to the claim for special rate made by the petitioners, the respondents now intend to

attach the bank accounts of the petitioner on the premises that the refund of excise duty would be as per the rates provided in the Notification dated 27.03.2008. As the Notification dated 27.03.2008 provides for a legal right to the assessee to claim for a special rate to be fixed in the event of there being any add-ons to the goods manufactured, we are of the view that without an appropriate decision being taken on such claim for special rate, it would be inappropriate for the department to proceed against the petitioners as per the rates provided in the Notification dated 27.03.2008.

8. In view of the above, as agreed by the learned counsel for the parties, this petition stands disposed of by directing the Principal Commissioner of GST Guwahati to consider the aforesaid application of the petitioner dated 28.09.2020 claiming for a special rate to be fixed on the basis of the add-ons made to the goods manufactured. After arriving at the special rate, if any as per the order to be passed by the Principal Commissioner, GST further process against the petitioner as per law may be initiated. Till such decision is taken, no coercive measure be taken against the petitioner pursuant to the communication impugned dated 01.01.2021 as well as not to pursue with the communication dated 22.01.2001 made from the Office of the Assistant Commissioner of GST Guwahati to the AGM/Branch Manager, State Bank of India.

9. The Principal Commissioner of GST shall do the needful as indicated above within a period of 6 (six) weeks from the date of receipt of the certified copy of the order.

10. It is made clear that if any coercive measures had already been taken, the same be restored to its original position. As we have already provided that no coercive measures be taken, we further provide that in respect of the Account No.30582674712 of the petitioner in the State Bank of India (SBI) Nalbari Bazar Branch, the same be allowed to be operated by the petitioner till such decision is taken on the application of the petitioner claiming for special rate.

11. Further, in this writ petition, the petitioner has also assailed the imposition of interest for the amount that the petitioners are required to pay to the respondent GST department for the amount that they are to return. As we have not decided the said issue, liberty is granted to the petitioner to approach this Court again on the question of imposition of interest, if so advised.

12. Writ petition stands allowed to the extent indicated above.

JUDGE

Comparing Assistant