

GAHC010118232021



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

**Case No. : WP(C)/4068/2021**

AMBE WIRE PRIVATE LIMITED  
A COMPANY INCORPORATED UNDER THE PROVISION OF COMPANIES  
ACT, 1956( READ WITH COMPANIES ACT,2013) 1956,(READ WITH AMBE  
COMPOUND, PACHARIA DOLAR PATHAR, NEAR CEPAT PWC, HAJO  
CHANGSARI, CHOWKIGATE ROAD, PUB BONGSAR, 781104,KAMRUP(R)  
ASSAM, REPRESENTED BY SRI SANJAY KUMAR TULSYAN ONE OF THE  
DIRECTORS OF THE COMPANY.

VERSUS

THE UNION OF INDIA 2 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA, MINISTRY  
OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI

2:THE COMMISSIONER GST  
(EARLIER CENTRAL EXCISE AND SERVICE TAX) GST BHAWAN  
KEDAR ROAD  
GUWAHATI 01  
ASSAM

3:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE

GUWAHATI I  
DIVISION  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI 78100

**Advocate for the Petitioner : DR. ASHOK SARAF**

**Advocate for the Respondent : SC, GST**

Linked Case : WP(C)/4025/2021

AMBE WIRE PRIVATE LTD.  
A COMPANY INCORPORATED UNDER THE PROVISION OF COMPANIES ACT  
1956 (READ WITH THE COMPANIES ACT  
2013) 1956  
(READ HAVING ITS AMBE COMPOUND  
PACHARIA DOLAR PATHAR  
NEAR CEPAT PWC  
HAJO CHANGSARI  
CHOWKIGATE ROAD  
PUB BONGSAR-781104  
KAMRUP (R)  
ASSAM  
REPRESENTED BY SRI SANJAY KUMAR TULSYAN ONE OF THE  
DIRECTORS OF THE COMPANY

VERSUS

THE UNION OF INDIA AND 3 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE COMMISSIONER GST (EARLIER CENTRAL EXCISE AND SERVICE  
TAX)  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-01  
ASSAM  
3:THE DEPUTY COMMISSIONER GST (EARLIER CENTRAL EXCISE AND  
SERVICE TAX)  
GST BHAWAN  
KEDAR GUWAHATI-01  
ASSAM  
4:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
GUWAHATI-I DIVISION  
GST BHAWAN  
KEDAR ROAD

GUWAHATI-781001

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Advocate for : DR. A SARAF

Advocate for : SC

GST appearing for THE UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/3965/2021

AMBE WIRE PRIVATE LIMITED

A COMPANY INCORPORATED UNDER THE PROVISION OF COMPANIES ACT  
1956 (READ WITH THE COMPANIES ACT

2013) 1956

(READ HAVING ITS AMBE COMPOUND

PACHARIA DOLAR PATHAR

NEAR CEPAT PWC

HAJO CHANGSARI

CHOWKIGATE ROAD

PUB-BONGSAR- 781104

KAMRUP

ASSAM

REP. BY SRI SANJAY KUMAR TULSYAN ONE OF THE DIRECTORS OF THE  
COMPANY.

VERSUS

THE UNION OF INDIA AND 2 ORS

REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

NORTH BLOCK

NEW DELHI.

2:THE COMMISSIONER GST

(EARLIER CENTRAL EXCISE AND SERVICE TAX)

GST BHAWAN

KEDAR ROAD

GUWAHATI-01

ASSAM

3:THE ASSISTANT COMMISSIONER

GST AND CENTRAL EXCISE

GUWAHATI-I DIVISION

GST BHAWAN

KEDAR ROAD

GUWAHATI- 781001.

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Advocate for : DR. A SARAF

Advocate for : SC  
GST appearing for THE UNION OF INDIA AND 2 ORS

**BEFORE**  
**HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Advocates for the petitioner : Dr. A. Saraf, Sr. Adv.,  
Mr. P. Baruah, Adv.  
Mr. Z. Islam, Adv.  
Mr. P. Das, Adv.  
Mr. S. P. Sharma, Adv.  
Mr. N. Dutta, Adv.  
Mr. S. Saikia, Adv.

Advocates for the respondents : Mr. S.C. Keyal, SC, GST.

Dates of Hearing : 01.03.2024 & 12.03.2024

Date of Judgment : 24.05.2024

**JUDGMENT & ORDER (CAV)**

Heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. P. Baruah, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel for the GST.

**2.** The petitioner in the Writ Petition No. being W.P (C) No. 4068/2021, has challenged the order dated 22.09.2017 passed by the Assistant Commissioner of

GST & CX Division-I (Annexure - VII) levying interest and penalty on the late payment of duty, which was exempted in view of the Notification No. 20/2007-CE dated 25.04.2007 (Annexure II), and the order dated 29.09.2020 passed by the Assistant Commissioner of GST & Central Excise rejecting the representation dated 12.09.2017 submitted by the Petitioner and upholding the levy of interest and penalty on the delay in payment of duty.

**3.** In the Writ Petition No. being W.P (C) No. 3965/2021, the petitioner has challenged the order dated 21.09.2017 passed by the Assistant Commissioner of GST & CX, Division-I (Annexure-VII) levying interest and penalty on the late payment of duty, which was exempted in view of the Notification No. 20/2007-CE dated 25.04.2007 (Annexure-II), and the order dated 29.09.2020 passed by the Assistant Commissioner of GST & Central Excise rejecting the representation dated 12.09.2017 submitted by the Petitioner and upholding the levy of interest and penalty on the delay in payment of duty.

**4.** In the Writ Petition No. being W.P (C) No. 4025/2021, the petitioner has challenged the Order dated 17.03.2017(Annexure- VII) passed by the Deputy Commissioner, Central Excise and Service Tax Division-I, levying interest and penalty on the late payment of duty, which was exempted in view of the Notification No. 20/2007-CE dated 25.04.2007 (Annexure-II), and the Order dated 29.09.2020 passed by the Assistant Commissioner of GST & Central Excise rejecting the representation dated 12.09.2017 submitted by the petitioner and upholding the levy of interest and penalty on the delay in payment of duty.

**5.** Pertinent that the issue involved being identical in the three writ petitions, the said writ petitions are being taken up for hearing together and are being

disposed of by this common Judgment and Order.

**6.** In W.P (C) No.3965/2021, for the month of March-2016, the interest and penalty is amounting to Rs. 3,52,266/-.

**7.** In W.P (C) No. 4025/2021, for the month of November-2014, January-2015, February-2015 and March-2015, the interest and penalty is amounting to Rs. 6,75,593/-.

**8.** In W.P (C) No. 4068/2021, for the month of April-2016, May- 16, June-2016 and July-2016, the interest and penalty is amounting to Rs. 3,71,282/-.

**9.** The Government of India on 01.04.2007 announced a new Policy namely the North-East Industrial and Investment Promotion Policy (NEIIPP), 2007. Vide the said Policy, the Government of India had approved a package of fiscal concessions and other concession for the North Eastern Region. In the said Policy i.e. NEIIPP of 2007, in the issue of Excise duty exemption under clause (v), it was clearly noted that "*hundred percent excise duty exemption will be continued, on finished products made in the North Eastern Region, as was available in North East Industrial Policy, 1997*".

**10.** To give effect to the Industrial Policy Resolution, 2007, a Notification was issued in exercise of power under Section 5A of the Central Excise Act, 1944 being Notification No. 20/2007 dated 25.04.2007 exempting the goods specified in the first schedule of the Central Excise Tariff Act, 1985 from so much of the duty of excise leviable thereon under the said Act as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004. As per the said notification No. 20/2007 dated 25/4/2007, the

exemption contained in the said Notification was to apply to a new Industrial Unit which commenced commercial production on or after 1<sup>st</sup> day of April, 2007 but not later than 31<sup>st</sup> day of March, 2017 or Industrial units existing before the 1<sup>st</sup> day of April, 2007 but which had undertaken substantial expansion by way of increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purposes of expansion of capacity/ modernization and diversification and have commenced commercial production from such expanded capacity on or after the 1st day of April, 2007 but not later than 31st day of March, 2017.

**11.** The aforesaid Notification No. 20/2007 dated 25.04.2007 was subsequently modified by Notification No. 20/2008-CE dated 27.03.2008 and Notification No. 38/2008-CE dated 10.06.2008, whereby it was provided that the excise duty exemption shall be available on the value addition and part only. The aforesaid Notifications were upheld by the Apex Court.

**12.** The petitioners relying on the promises and assurances made in the Industrial Policy, 2007 and the Notifications issued in pursuance thereto, set up its manufacturing unit at Ambe Compound, Pacharia Dolar Pathar, near CEPAT PWC, Hajo Changsari Chowkigate Road, Pub- Bongsar, Kamrup (R) -781104, Assam, for manufacture of excisable goods, viz. wire of iron or non-alloy steel falling under chapter sub-heading No.721710202171010 and wire nails falling under chapter sub-heading No.73170013 of the Central Excise Tariff Act, 1985 from the said manufacturing unit. The petitioner Company fulfilled the conditions contained in the Notification No.20/2007 dated 25/4/2007 and was found eligible for the benefit of exemption by way of refund of Excise duty through account PLA for the products allowed to be manufactured and cleared

from the said unit for a period not exceeding 10 years from the date of commencement of commercial production.

**13.** The Assistant Commissioner of Central Excise vide order dated 21.09.2017 in respect of Writ Petition bearing W.P(C)No. 3965/2021, levied interest and penalty amounting to Rs.3,52,266/- for the month of March, 2016 for the delay in payment of the duty. The petitioner submitted representation against the levy of interest and penalty vide representation dated 12.09.2017 (Annexure-IX), but the Assistant Commissioner of Central Excise vide order dated 09.09.2020 (Annexure XII, Page - 96, Page - 106) rejected the contentions of the petitioner and upheld the levy of interest and penalty by holding as under: -

*"In Para- 7 of the representation the petitioner has stated that the refund sanctioning authority has committed an illegality by levying interest and penalty on late payment of duty as no loss has been caused to the government exchequer due to late payment of duty, as the same is fully refundable to the petitioner. This submission of the petitioner is again creation of his own mind, as nowhere in notification no. 20/2007-CE dated 25.04.2007 is stated that if the amount of duty paid through cash*

*is fully refundable, the assessee has the option not to pay the duty but can take self credit of the unpaid duty. Further the attention of the petitioner is redrawn to the provisions of Rule 8(3) and 8(3A) of the Central Excise Rules, 2002 which provides that interest and penalty is payable on late payment of duty. Therefore, in view of the above provisions of law, the submission of the petitioner does not merit consideration."*

**14.** Similarly, the Assistant Commissioner of Central Excise vide order dated 17.03.2017 in respect of Writ Petition bearing W.P (C) No. 4025/2021 levied interest and penalty amounting to Rs. 6,75,593/- for the months of November-2014, January-2015, February-2015 and March-2015 for the delay in payment of the duty, and the Assistant Commissioner of Central Excise vide order dated 22.09.2017 in respect of Writ Petition bearing W.P (C) No. 4068/2021 levied



interest and penalty amounting to Rs.3,78,148/- for the months of April-2016, May-2016, June- 2016 and July-2016 for the delay in payment of the duty.

**15.** Dr. A. Saraf, learned Senior Counsel submits that the petitioner is entitled to exemption by virtue of Notification No. 20/2007 read with Notification 20/2008 and as such, the question of payment of any such duty and consequently the levy of interest for the purported delay in payment of duty does not arise and thereby the Assistant Commissioner committed a manifest error in law while imposing such interest and penalty vide order dated 17.03.2021 while sanctioning such refund and subsequently by order dated 29.09.2020.

**16.** He further submits that the respondents failed to appreciate that the exemption by way of refund of duty paid is also an exemption from payment of duty. Since in the present case, Notification Nos. 20/2007 and 20/2008 provided for that refund of duty paid after verification of the same by excise authority, the same will not make the duty leviable or payable under the Act so as to attract levy of interest and penalty for delay in making payment of the same.

**17.** Mr. S.C. Keyal, learned Standing Counsel for the respondents on the other hand submits that the refund claim of the Central Excise Duty paid in cash for the months of March, 2016 as filed by the petitioner in terms of the refund provisions contained in Notification No. 20/2007-CE dated 25.04.2007, as amended, was duly processed and an amount of Rs. 12,94,386/- was sanctioned as refund vide Refund Order No. R-417/ACG/2017-18 dated 21.09.2017. However, due to late payment of duty in refund order for the months for which refund was sanctioned, interest and penalty amounting to Rs.

3,52,226/- was appropriated and recovered from the sanctioned amount. Further, as the petitioner had failed to pay the CENVAT on respect of the goods cleared during the months of August 2016 to December 2016, collectively amounting to Rs. 52,02,600/-, as per the petitioner's declaration in the statutory returns, within the due date, the refund sanctioning authority had appropriated the balance sanctioned amount of Rs. 9,42,120/- i.e. [Rs.12,94,386/- (-) Rs. 3,52,266/-] towards recovery of the unpaid duty.

**18.** He further submits that in case of the petitioner, liability to pay interest and penalty was on account of delayed payment of Central Excise duty as envisaged in Rule 8(3) and Rule 8(3A) of the Central Excise Rules, 2002.

**19.** He further submits that under the provisions of Notification No. 20/2007-CE dated 25.04.2007, as amended, it is amply clear that the benefit of the exemption under the said notification is available to an eligible industrial unit only when the unit makes payment of duty and furnish statements of duty payment including duty paid by utilization of CENVAT Credit to the concerned Central Excise Authority who after proper verification makes refund of the duty payable on value addition, the maximum of which could be the amount of duty paid in cash. He further submits that payment of duty is the foundation of refund as made available by Notification No. 20/2007-CE dated 25.04.2007.

**20.** In support of the aforesaid submission, he relied upon the following judgments:-

***1. Amalgamated Plantations (P) Ltd. Vs Union of India, 2013 (2) GLR 732 2012 0 Supreme (Gau) 1243 at paragraph 24, 25, 26, 27, 28, 29, 30, 31.***

**2. Union of India Vs Amalgamated Plantations (P) Ltd., 2016 5 GLR 403** at paragraph 16 and 17.

**3. Union of India VS V. V. F Limited, 2020 20 SCC 57 or 2020 0 Supreme (SC) 319.**

**21.** I have heard the submissions made at the bar and I have perused the materials available on record.

**22.** The Notification No. 20/2007-CE dated 25.04.2007 and subsequent notifications amending the said notification were issued in exercise of powers under Section 5A of the Central Excise Act, 1944. Section 5A of the Central Excise Act is reproduced herein below:

*"5A. Power to grant exemption from duty of excise.—*

*(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:*

*Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured-*

*(i) in a 1 [free trade zone 2 [\*\*\*]] and brought to any other place in India; or*

*(ii) (ii) by a hundred per cent export-oriented undertaking and 3 [brought to any other place in India].*

**23.** The relevant provisions of the Notification No.20/2007-CE dated 25.04.2007, as amended is extracted hereinbelow as follows-

*“Para 1 of Notification No. 20/2007-CE dated 25.04.2007, as amended, has exempted the good specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than those mentioned in the Annexure to the said Notification and cleared from a unit located in the States of Assam or Tripura or Meghalaya or*

*Manipur or Nagaland or Arunachal Pradesh or Sikkim, as the case may be; from so much of duty of Excise leviable thereon under the said Act as is equivalent to the duty payable on value addition undertaken in the manufacture of the said goods by the said unit.*

*Para 2A Proviso - Provided that where the duty payable on value addition exceeds the duty paid by the manufacturer on the said goods, other than the amount paid by the utilization of CENVAT credit (i.e. in cash) during the month, the duty payable on value addition, shall be deemed to be equal to the duty so paid other than by CENVAT credit (i.e. in cash).*

*Provisions of Para 2C of the Notification are:*

*"The exemption contained in this notification shall be given effect to in the following manner, namely:-*

*(a) The manufacturer shall submit a statement of the total duty paid (emphasis given) and that paid by utilization of CENVAT credit, on each category of goods specified in the said Table cleared under this Notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid;*

*(b) The Assistant Commissioner of Central Excise or the Deputy Commissioner of the Central Excise, as the case may be, after such verification as may be deemed necessary, shall refund the duty payable on value addition, computed in the manner as specified in paragraph 2A above to the manufacturer by the 15th of the month following the one in which the statement as at clause (a) above has been submitted.*

*Para 2D(a) provides that "manufacturer at his own option, may take credit of the amount calculated in the manner specified in paragraph 2A in his account current, maintained in terms of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by the manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2004, in subsequent months, and such payment shall be deemed to be payment in cash;"*

*Para 2D(c) reads as "a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before affecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year,"*

**24.** In the present case, the petitioner filed a refund claim of the central excise duty paid for the goods which has been exempted under the aforesaid notification dated 25.04.2007 for the subject month. The said refund claim was sanctioned. However due to late payment of duty in respect of the months for which refund was sanctioned, interest and penalty was appropriated and recovered from the sanctioned amount.

**25.** The issue which falls for determination is whether interest and penalty can be levied for late payment of duty on goods which is exempted for payment of duty.

**26.** Reading of the subject Notification dated 25.04.2007, as amended manifest that it only provides for the manner of claiming the exemption. The said notification provides that the manufacturer shall submit statement of duty paid other than the amount of duty paid by utilisation of CENVAT credit under the CENVAT Credit Rules, 2004, to the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, by the 7<sup>th</sup> of the next month in which the duty has been paid other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004 and on furnishing of such statement of duty paid, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall refund the amount of duty paid other than the amount of duty paid by utilisation of CENVAT credit under

the CENVAT Credit Rules, 2004 during the month under consideration to the manufacturer by the 15<sup>th</sup> of the next month.

**27.** Apparent, that the said notification does not mandate that duty for a particular month has to be paid by a particular date perhaps because of the fact that the said duty on goods manufactured by an eligible industrial unit was exempted. The payment of duty by such an eligible industrial unit, as per the notification was only for the purpose of verification and the said amount of duty after verification has to be refunded to the eligible industrial unit. The said Notification only provides that the statement of duty paid has to be submitted within seven (7) days of the next month in which duty has been paid. No obligation has been put on the eligible industrial unit, entitled to exemption as per Notification no. 20/2007 read with Notification No. 20/2008, to make payment of exempted duty within a particular date. Since no liability of payment of duty within a particular time has been fastened on an industrial unit entitled to exemption as per Notification No. 20/2007 read with Notification No. 20/2008 issued in exercise of powers under Section 5A of the Central Excise Act, 1944, no interest or penalty can be imposed for any purported delay in making payment of such duty.

**28.** Apparent, that once the goods cleared by an eligible industrial unit have been exempted from payment of duty subject to the limitation specified in the Notification, the question of payment of any duty by an eligible industrial unit does not arise and consequently, no interest and/or penalty can be charged for non-payment of such duty within time. The provisions for payment of duty and the time prescribed for such payment of duty in the Central Excise Act, 1944 are applicable in respect of goods which are excisable to Central Excise duty and the

manufacturer is liable to pay such duty. The said provision cannot be made applicable in respect of duty which is exempted by issuance of Notifications under Section 5A of the Central Excise Act, 1944.

**29.** Pertinent, that in a taxing statute, there has to be first a charge and then levy and thereafter, the question of payment of any duty arises. Where, in respect of any goods, there is charge, levy and the liability of payment of said duty, then subsequently, the question of assessment and recovery of said demand arises. Interest and penalty are also measures for recovery of the demand payable under the Act. If there is no liability of payment of any duty under the Act, the question of levy of interest and penalty for non-payment of the demand within the prescribed time does not arise.

**30.** Section 11AA of the Central Excise Act, 1944 provides for interest on delayed payment of duty. The said Section 11 AA is reproduced below for the sake of convenience:

***"Section 11AA. Interest on delayed payment of duty.-***

*(1) Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily or after determination of the amount of duty under section 11A.*

*(2) Interest, at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid in terms of section 11A after the due date by the person liable to pay duty and such interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.*

*(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-*

*(a) the duty becomes payable consequent to the issue of an order, instruction or*

*direction by the Board under section 37B; and*

*(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment."*

**31.** Reading of Section 11 AA of the Central Excise Act, 1944, manifest that any person who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily or after determination of the amount of duty under Section 11A. Sub-section (2) of Section 11 AA provides that interest at the rate not below ten percent and not exceeding thirty-six percent per annum, as the Central Government may, by notification in the Official Gazette fix, shall be paid in terms of Section 11A after the due date by the person liable to pay duty and such interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due. Thus, it is clear that interest can be levied when a person is liable to pay duty within a specific period. When an assessee is not liable to pay duty because he is exempted by way of issuance of notification under Section 5A of the said Act, the provision of levy of interest cannot be made applicable to him. Since in the present case, the petitioner was entitled to exemption by virtue of Notification No. 20/2007 read with Notification 20/2008, the question of payment of any such duty and consequently, the levy of interest for the purported delay in payment of duty does not arise.

**32.** Section 11 AC of the Act provides for short levy or non-levy of duty in certain cases. Sub-section (1)(a) of Section 11 AC provides that where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the



provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of Section 11A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or Rupees five thousand, whichever is higher.

**33.** Section 11AC of the Central Excise Act, 1944, which is relevant in the present context is reproduced herein below for the sake of convenience of this Hon'ble Court:

**"11AC. Penalty for short-levy or non-levy of duty in certain cases.** - (1) *the amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows-*

*(a) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any willful mis-statement or suppression of facts or contravention or any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of Section 11A shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher:*

*Provided that where such duty and interest payable under section 11A is paid either before the issue or show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;*

*(b) where an duty as determined under sub- section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.*

*(c) where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this act or of the rules made thereunder with intent to evade payment of duty, the person who*

*is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined:*

*Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with 8th April 2011 up to date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined.*

*(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;*

*(e) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11A in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.*

*(2) Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub- section (10) of Section 11A, then, the amount of penalty payable under clause (c) of sub-section (1) and the interest payable under section 11AA shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay such amount of penalty and interest so modified.*

*(3) Where the amount of duty or penalty is increased by the appellate authority or tribunal or court over the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest and the reduced penalty is payable under clause (b) or clause € of sub-section (1) in relation to such interest amount of duty shall be counted from the date of the order of the appellate authority or tribunal or court."*

**34.** Apparent, that under said Section 11 AC, penalty can be imposed on the manufacturer, only if, firstly, one is liable to pay duty as determined under sub-

section (10) of section 11A, and secondly, where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded. Thus both the aforesaid two conditions has to conjointly exist. Where the duty is exempted because of notification issued by an appropriate authority under Section 5A of the Act, the question of levy or payment of duty does not arise and thereby, the question of payment of any penalty for non-payment of said duty also cannot arise.

**35.** In the present case, the petitioner has no liability of payment of any duty because of Notification No. 20/2007 read with Notification No. 20/2008. Therefore, the petitioner cannot be saddled with the liability of payment of interest and penalty for delayed payment of duty which was exempted.

**36.** The Assistant Commissioner of Central Excise while upholding the levy of interest and penalty referred to Rules 8(3) and 8(3A) of the Central Excise Rules, 2002. Relevant provisions of Rule 8 are reproduced herein below for the sake of convenience-

*"(1) The duty on the goods removed from the factory or the warehouse during a month shall be paid by [the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case] :*

***Provided** that in case of goods removed during the month of March, the duty shall be paid by the 31st day of*

*March :*

***[Provided** further that where an assessee is eligible to avail of the exemption under a notification based on*

*the value of clearances in a financial year, the duty on goods cleared during a quarter of the financial year shall be paid by the 6th day of the month following that quarter, if the duty is paid electronically through internet banking and in any other case, by the 5th day of the month following that quarter, except in case of goods removed during the last quarter, starting from the 1st day of January and ending on the 31st day of March, for which the duty shall be paid by the 31st day of March.*

**[Explanation-1.** - For the removal of doubts, it is hereby clarified that, -

[(a) ] \* \* \*

(b) an assessee, \*] shall be eligible, if his aggregate value of clearances of all \* [\* excisable goods

for home consumption in the preceding financial year, computed in the manner specified in the said

notification, did not exceed rupees four hundred lakhs.]

**Explanation-2.** - The manner of payment as specified in this proviso shall be available to the assessee for the

whole of the financial year.]

] \* \* \* [

**Explanation.** - For the purposes of this rule,-

(a) the duty liability shall be deemed to have been discharged only if the amount payable is credited to the

account of the Central Government by the specified date;

(b) if the assessee deposits the duty by cheque, the date of presentation of the cheque in the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which the duty has been paid subject to realization of that cheque.]

Notwithstanding anything contained in sub-rule (1), the [(1A) duty on the clearances in the month of November, 2015, by an assessee in the [State of Tamil Nadu and the Union Territory of Puducherry (except Yanam and Mahe)], payable by the 5th or the 6th of the December, 2015, as the case may be, shall be paid by the 20th December, 2015] :

**Provided** that where an assessee in the State of Gujarat is availing of the exemption under a notification

based on the value of clearances in a financial year, the duty on goods cleared during the month of February, 2002

shall be paid by the 31st March, 2002.

**Explanation.** - For removal of doubts, it is hereby clarified that the duty liability shall be deemed to have been

discharged only if the amount payable is credited to the account of the Central

*Government by the specified date:]*

*Every [(1B) assessee shall electronically pay duty through internet banking :*

***Provided*** *that the Assistant Commissioner or the Deputy Commissioner of Central Excise, for reasons to be*

*recorded in writing, allow an assessee payment of duty by any mode other than internet banking.]*

**(3)** *If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AB of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.*

**(3A)** *If the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub-rule (1), then notwithstanding anything contained in said sub-rule (1) and sub-rule (4) of rule 3 of CENVAT Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon; and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow."*

**37.** Reading of the aforesaid rules indicates that if a manufacturer fails to pay an amount of duty by due date, he shall be liable to pay the outstanding amount along with interest in terms of Section 11AB of the Act. However, there is no provision in the Act for levy of interest in respect of goods which is exempted from payment of duty. Further, Rules 8(3) and 8(3)(c) are procedural and therefore the assessing authorities cannot levy interest or penalty for delayed payment of duty on exempted goods under the said Rules until and unless the Act provides.

**38.** It is well settled that interest cannot be levied without there being a substantive provision for levy of interest in the Act. The Apex Court in the case

of **India Carbon Ltd. &Ors. Vs. State of Assam** reported in **(1997) 6 SCC 479** at paragraph 12 while examining the provisions of Central Sales Tax Act, 1956 held as under:

*"12. There is no substantive provision in the Central Act requiring the payment of interest on Central sales tax. There is, therefore, no substantive provision in the Central Act which obliges the assessee to pay interest on delayed payments of Central sales tax."*

**39.** Thus, the Assistant Commissioner failed to consider that Rules are framed to carry out the purposes of an Act. Interest is a substantive provision of the taxing statute and unless there is any provision in the Act for levy and charge of interest, no interest can be charged on the basis of any Rules framed under the Act. Since no interest is payable in respect of duty which is exempted under the Act, the liability of interest and penalty cannot be fastened on an eligible unit which is exempted from payment of duty by virtue of Notification No. 20/2007 read with Notification No. 20/2008.

**40.** As per Section 11AA of the Central Excise Act, 1944, interest can be levied only if a person who is liable to pay the duty, pays the same after the due date of the payment of the same. In the present case, the petitioner was not liable to pay his duty inasmuch as the same was exempted by virtue of the Notification No. 20/2008-CE dated 27.03.2008 read with Notification No. 38/2008-CE dated 10.06.2008 issued under Section 5A of the Central Excise Act, 1944 and thereby, no interest could be levied by the Respondent Authorities in the present case.

**41.** For imposition of penalty, a substantive provision in the Act is necessary. Penalty cannot be imposed without their being a substantive provision for the imposition of penalty. The Apex Court in the case of **Khemka & Co.**

**(Agencies) Pvt. Ltd. Vs. State of Maharashtra**, reported in **(1975) 2 SCC 22** held that a rebate can be included in the procedural part but a penalty being an imposition like imposition of tax cannot be included within the procedural part. The Apex Court further held that penalty is not merely a sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. A penalty is a statutory liability.

**42.** As per Section 11AC of the Central Excise Act, 1944, penalty can be imposed only on a person who is liable to pay duty. Section 11AC of the Act clearly provides that where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of Section 11A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or rupees five thousand, whichever is higher.

**43.** Though the procedure for granting the exemption as prescribed in Notification No. 20/2007 CE dated 25.04.2007 is that the eligible industries has to first pay the duty after utilization of the CENVAT Rules, 2004 and after verification of the same, the same is refunded back to the eligible unit, the aforesaid procedure is only for the purpose of verification of the exemption claimed by the eligible industrial unit and even though the same is being granted by way of refund, the same will still be an exemption.

**44.** Reference is made to the decision of the Apex Court in **Assistant**

**Commissioner of Commercial Taxes (Asst.) Dharwar & Ors. Vs. Dharmendra Trading Company & Ors**, reported in **(1988) 3 SCC 570**, wherein the Apex Court rejected the contention of the State that since the benefit was called a refund it cannot be said to be an exemption. Paragraph 6 of the aforesaid judgment is reproduced herein below:

*"6. .... The only submission made on behalf of the appellants is that since the benefit given is called a refund, it cannot be said to be an exemption or reduction as permitted by Section 8A. In our view, there is no substance in this submission at all. In order to test the validity of the order dated 30th June, 1969, one has to see the substance of the concession granted under the order and not merely certain words used out of context. Although the benefit regarding sales tax granted to the new industries is by way of refunds of sales tax paid to the extent provided in the Order, it is clear that, in effect, the benefit granted is in the nature of an exemption from the payment of the sales tax or reduction in the sales tax liability to the extent stated in the order....."*

**45.** Apparent that the Assistant Commissioner failed to appreciate that the refund of duty paid is also an exemption from payment of duty. Since in the present case, Notification Nos. 20/2007 read with 38/2008 provided for refund of duty paid after verification of the same by excise authority, the same will not make the duty leviable or payable under the Act so as to attract levy of interest and penalty for delay in making payment of the same. Further, the notification have not prescribed for any date for making payment of such duty and only provides that the manufacturer shall submit statement of duty paid by the 7<sup>th</sup> of the next month in which the duty has been paid other than the amount of duty paid. Under such circumstances, it cannot be said that since the Notifications provide for refund of duty on furnishing the statement of duty paid, the same will imply that there was liability of payment of duty and thereby, if any such duty has not been paid within the time prescribed under the Acts which is applicable only in respect of duty leviable and chargeable and which is liable to



be paid by an assessee, interest and penalty can be imposed on an industrial unit which is exempted from payment of duty.

**46.** Reference is made to the case of **Commercial Taxes Officer, Special Circle, Jodhpur Vs. Gadia Textiles and Anr.**, wherein the Rajasthan High Court held as under:

*“.....the Board ignored the distinction and difference between the two expressions "liable to pay tax" and "tax shall be payable", for, a manufacturer may be liable for payment of tax but on account of exemption, tax is not payable by him. We have already given reasons that "liable to pay tax" does not mean that tax is payable by the dealer/manufacturer under the Act. From a manufacturer tax may not be payable because of exemption under the Act.....”*

**47.** Reference is also made to the case of **Commercial Taxes Officer, Special Circle, Jodhpur (Supra)**, wherein the Rajasthan High Court further held as under:

*"On a careful perusal of the various provisions of the Act and the Rules referred to hereinabove the two expressions "liable to pay tax under the Act" and "tax shall be payable" deserve our pointed attention. In Rule 42 the words used in both the Sub-rules (1) and (2) are "liable to pay tax under the Act". We shall first examine the connotation of the word "liable". The word "liable" is generally/normally interpreted to mean, "exposed to a certain contingency or casualty, i.e., it means a future possibility, probability, happening which may or may not actually occur". The word "liable" ordinarily denotes (1) "legally subject or amenable to", (2) "exposed or subject to or likely to suffer from (something prejudicial)", (3) "subject to the possibility of (doing or undergoing something undesirable)". According to Webster's New World Dictionary also the word "liable" denotes "something external which may befall us". It is not in dispute that the cloth that was manufactured by the manufacturer during the periods under consideration was exempt from payment of tax either under Section 4(1) or Section 4(2) of the Act and since the cloth which is a cotton fabric which the manufacturer was dealing was exempt from payment of tax, he was not required to pay any tax on it or in other words the tax was not payable by him....."*

**48.** The Rajasthan High Court further in **Commercial Taxes Officer, Special Circle, Jodhpur (Supra)**, held as under:

*"In the latter case, the sales or purchases are exempted from taxation altogether. The legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."*

**49.** Reference is made to the case of ***Associated Cement Companies Ltd. Vs. State of Bihar***, reported in **(2004) 7 SCC 642**, wherein the Apex Court in paragraph 17 held as under:

*"17. Crucial question, therefore, is whether the appellant ...had any "liability" under the Act. The question of exemption arises only when there is a liability. Eligibility to tax is not the same as liability to pay tax. The former depends on charge created by the Statute and latter on computation in accordance with the provisions of the Statute and rules framed thereunder if any. It is to be noted that liability to pay tax chargeable under Section 3 of the Act is different from quantification of tax payable on assessment. Liability to pay tax and actual payment of tax are conceptually different. But for the exemption the dealer would be required to pay tax in terms of Section 3. In other words, exemption presupposes a liability. Unless there is liability question of exemption does not arise. Liability arises in term of Section 3 and tax become payable at the rate as provided in Section 12. Section 11 deals with the point of levy and rate and concessional rate."*

**50.** Reference is also made to the case of ***CCE Vs. National Tobacco Co. of India Ltd.*** reported in **(1972)2 SCC 560** wherein the Apex Court in paragraph 19 held as under:

*"19. The term 'levy' appears to us to be wider in its import than the term 'assessment. It may include both 'imposition' of a tax as well as 'assessment. The term 'imposition' is gene rally used for the, levy of a tax or duty by legislative provision indicating the subject matter of the tax and the rates at which it has to be taxed. The term 'assessment, on the other hand, is generally used in this country for the actual procedure adopted in fixing the liability to pay a tax on account of particular goods or property or*

*whatever may be the object of the tax in a particular case and determining its amount.*

*The Division Bench appeared to equate levy' with an 'assessment' as well as with the collection of a tax when it. held that 'when the payment of tax is enforced, there is a levy'. We think that, although the connotation of the term 'levy' seems wider than that of 'assessment, which it includes, yet, it does not seem to us to extend to 'collection'. Article 265 of the Constitution makes a distinction between "levy" and "collection".*

**51.** Reference is also made to the case of ***Somaiya Organics (India) Ltd. Vs. State of U.P.,*** reported in ***(2001)5 SCC 519,*** wherein the Apex Court in paragraph 29 held as under:

*".....The words used in Article 265 are 'levy' and 'collect'. In taxing statute the words 'levy' and 'collect' are not synonymous terms while 'levy' would mean the assessment or charging or imposing tax, 'collect' in Article 265 would mean the physical realization of the tax which is levied or imposed. Collection of tax is normally a stage subsequent to the levy of the same....."*

**52.** Reference is also made to the case of ***Peekay Re-Rolling Mills (P) Ltd. Vs. Asstt. Commissioner &Anr,*** reported in ***(2007) 4 SCC 30,*** wherein the Apex Court in paragraph 45 held as follows:

*"45. In the light of the above two cases, it is evident that collection and levy are distinct and that collection is not an essential facet of levy. It is true that collect of a tax may sometimes be indicative of a lawful levy of tax, but in our opinion it does not logically follow that absence of collection means an absence of liability. We are also of the opinion that the reliance on Town Municipal Committee by the Division Bench which involved an interpretation of "continued to be levied" and "to be applied to the same purposes" in Article 277 of the Constitution was misplaced. While that case did hold that in the circumstances before them "levy" was intended to include "collection", in our opinion the logic or ratio of that case cannot be extended so far as to say that every "levy" must include collection and without such collection no levy can be said to have been made."*

**53.** It is a well settled law that taxing statutes are to be interpreted strictly and while interpreting the taxing statute, one must have argued to the strict letter of law and not merely to the spirit of law and one cannot be taxed by inference or by analogy.

**54.** Reference is made to the case of ***M/s. Polestar Electronic (Pvt) Ltd. Vs. Additional Commissioner, Sales Tax &Anr.,*** reported in ***(1978) 1 SCC 363***, wherein the Apex Court in paragraph 12 held as under:

*"12. ....it is well-settled rule of interpretation that in constructing a taxing statute one must have regard to the strict letter of the law and not merely to spirit of the statute or the substance of the law....."*

**55.** The aforesaid law was reiterated in the case of ***H.H. Lakshmi Bai &Anr. Vs. Commissioner of Wealth Tax & Ors,*** reported in ***(1994) 2 SCC 534***. The Apex Court at paragraph 10 of the said judgement held that taxation statute in particular has to be strictly construed and that there is no equity in a taxing provision. In Federation of ***A.P. Chambers of Commerce & Industry and Ors. Vs. State of A.P. and Ors,*** reported in ***(2000) 6 SCC 550*** at paragraph 7 the Apex Court held that it is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In ***Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax,*** reported in ***(2010) 8 SCC 739*** at paragraph 36 it was held as under:

*"36. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment..... "*

**56.** From the aforesaid decisions of the Apex Court, it is clear that the taxing provisions are to be interpreted strictly and on a strict interpretation of Section 11AA and Section 11AC of the Central Excise Act, 1944, it is clear that interest and penalty can only be imposed if the duty is payable. When the legislature in clear words in Section 11AA and 11AC of the Central Excise Act, 1944 has stated that interest and penalty can only be levied when the duty is payable,

interest and penalty cannot be levied when the said duty is not payable, the same being exempted by issuance of notification under Section 5A of the Central Excise Act, 1944.

**57.** It is a settled law that in case of an ambiguity in the taxing provision, the benefit of the same should go to the tax payer. The Apex Court in **M/s MurarilalMahabir Prasad &Ors. (supra)** in paragraph 28 held as under:

*"28. ....If the statute contains a lacuna or a loophole, it is not the function of the court to plug it by a strained construction in reference to the supposed intention of the Legislature. Legislature must then step in to resolve the ambiguity and so long as it does not do so, the tax payer will get the benefit of that ambiguity. But equally, courts ought not to be astute to hunt out ambiguities by an unnatural construction of a taxing section....."*

**58.** Reference is also made to the case of **M/s. Polestar Electronic (Pvt) Ltd. (supra)**, the Apex Court held at paragraph 12 that the words of a taxing statute must never be stretched against a tax-payer and if the legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the tax-payer. The Apex Court held that even if there is any doubt as to interpretation, it must be resolved in favour of the subject.

**59.** In the present case, the provision of Sections 11AA and 11AC of the Central Excise Act, 1944 are very clear and there is no ambiguity in the provisions of the Act. However, even for the sake of argument, if there is an ambiguity, the benefit of the same must be extended to the tax payer.

**60.** Rule 8(3) and 8(3A) of the Central Excise Rules, 2002 cannot be made applicable in support of the levy of the interest and penalty, for delayed payment of duty which is exempted in terms of notification issued under Section 5A of the Act. As discussed above, Rules are framed to carry out the purposes

of the Act. If there is no substantive provision in the Act for levy of interest and penalty, the interest and penalty cannot be levied on the basis of any provisions of Rules. The submissions of Mr. S.C. Keyal, learned Standing Counsel GST, is to the contrary and as such, is of no substance and hence rejected. The three authorities as referred earlier, relied by the respondent are in different context and therefore does not fit in the context of the present case and hence not relevant.

**61.** In view of the aforesaid, the Respondent Authorities committed a manifest error in law in levying penalty and interest relying on the provisions of Rules 8(3) and 8(3A) of the Central Excise Rules, 2002 in the absence of a substantive provisions of the Act.

**62.** Accordingly, this Court is of the opinion that interest and penalty cannot be levied for late payment of duty on goods which is exempted from payment of duty.

**63.** As such, the impugned orders passed by the Assistant Commissioner of GST & CX levying interest and penalty on the late payment of duty, which was exempted in view of the Notification No. 20/2007-CE dated 25.04.2007 is totally arbitrary, palpably erroneous, illegal and without jurisdiction and hence, the same is unsustainable.

**64.** In view of the above, in **1) WP(C) No. 4068 of 2021**, the impugned Order dated 22.09.2017 passed by the Assistant Commissioner of GST & Central Excise, Division I, Guwahati (respondent No. 3) and impugned Order dated 29.09.2020 passed by the respondent No. 3 rejecting the representation dated 12.09.2017; in **2) W.P(C) No. 3965/2021**, the impugned order dated

21.09.2017 passed by the Assistant Commissioner of GST & CX, Division-I, Guwahati and Order dated 29.09.2020 passed by the Assistant Commissioner of GST & Central Excise, Guwahati-I Division rejecting the representation dated 12.09.2017; and in **3) W.P (C) No. 4025/2021**, the impugned order dated 17.03.2017 passed by the Deputy Commissioner, Central Excise & Service Tax Division-I, Guwahati and the impugned Order dated 29.09.2020 passed by the Assistant Commissioner of GST & Central Excise, Guwahati-I Division rejecting the representation dated 12.09.2017 are hereby set aside and quashed.

**65.** Resultantly, the three writ petitions stands allowed.

The writ petitions are accordingly disposed of.

**JUDGE**

**Comparing Assistant**