IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14917 of 2013
TO
SPECIAL CIVIL APPLICATION NO. 14921 of 2013

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH Sd/-
and
HONOURABLE MS JUSTICE SONIA GOKANI Sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2.	To be referred to the Reporter or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the judgment ?	No
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5.	Whether it is to be circulated to the civil judge ?	No

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E I DUPONT INDIA PRIVATE LIMITED & 1....Petitioner(s)
Versus
UNION OF INDIA & 3....Respondent(s)

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Appearance:
MR SN SOPARKAR, SR. ADVOCATE with MR SP MAJMUDAR, ADVOCATE for the Petitioners
MR RJ OZA, SR. STANDING COUNSEL for the Respondent(s) No. 3 - 4

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 25/10/2013

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] RULE. Shri R.J. Oza, learned Senior Standing Counsel waives service of notice of Rule on behalf of respondent Nos.3 and 4 in all the

petitions. In the facts and circumstances of the case and with the consent of learned counsels appearing on behalf of the respective parties, present petitions are taken up for final hearing today.

[1.1] As common question of law and facts arise in this group of petitions, they are disposed of by this common judgment and order.

[2.0] Facts leading to the present special civil applications in nut-shell are as under:

[2.1] That the petitioner herein – M/s. EI Dupont India Pvt. Ltd. (hereinafter referred to as "claimant") holding central excise registration, re-submitted the refund claims in respect of CENVAT credit on inputs used in the manufacture of their product which were cleared under Rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as "the Rules"). That the adjudicating authority was of the opinion that since the claimant has not physically exported the goods but merely supplied the goods to 100% EOU, the provision of Rule 5 of the Rules are not applicable and therefore, there are not entitled for refund of CENVAT credit under Rule 5 and therefore, the claims were liable to be rejected under Rule 5 of the Rules. The adjudicating authority served a show-cause notice upon the claimant and the claimant was directed to show cause why the refund claim should not be rejected under the Rules.

[2.2] That the claimant challenged the said show cause notices before this Court by way of Special Civil Application No.10220/2013 and other allied petitions and this Court disposed of the said special civil applications vide order dated 03.07.2013 directing the claimants to file reply to the show cause notices and the adjudicating authority was directed to dispose of the case as per the law on the point, at the earliest but not later than three months from the date of the submission of the

reply to the notices.

[2.3] That the claimant heavily relied upon the decision of this Court in the case of **Commissioner of Central Excise and Customs vs. NBM Industries** reported in **2013(29) STR (208) Gujarat**, by which it has been held by this Court that on inputs used in manufacturing of goods cleared by DTA units to 100% EOU refund of CENVAT credit is available and it could not be denied on the ground that it was the case of deemed export and refund would be granted only in case of physical export. Despite the above binding direct decision of this Court, the respondent No.4 – Assistant Commissioner, Central Excise and Customs Division, Vapi by impugned orders has rejected the refund claims of the claimant on the ground *inter alia* that the decision of this Court in NBM Industries (Supra) is in the case of another assessee and not in the case of claimant and each one must fight its own battle and must succeed or fail in such proceedings and also on the ground that the decision of the Madras High Court in the case reported in 2007(211) ELT 23 (Madras) is against the assessee.

[2.4] Being aggrieved and dissatisfied with the impugned orders passed by the respondent No.4 herein – Assistant Commissioner, Central Excise and Customs Division, the claimant has preferred the present special civil applications under Article 226 of the Constitution of India.

[3.0] Shri S.N. Soparkar, learned counsel has appeared on behalf of the petitioner and Shri R.J. Oza, learned Senior Standing Counsel has appeared on behalf of the respondents more particularly the adjudicating authority.

[3.1] Shri Soparkar, learned counsel appearing on behalf of the petitioner has vehemently submitted that the respondent No.4

adjudicating authority has materially erred in rejecting the refund claims of the petitioner. It is submitted that the respondent No.4 has materially erred in not following the binding decision of this Court in the case of NBM Industries (Supra). It is submitted that the decision of this Court in the case of NBM Industries (Supra) which holds the field is binding upon the respondent No.4. It is submitted that the said binding decision of the jurisdiction of the High Court is binding upon the respondent No.4. It is submitted that merely because the decision in the case of NBM Industries, though directly on the point, is in the case of another assessee, is no ground by the respondent No.4 adjudicating authority not to follow the same.

[3.2] It is further submitted that the respondent No.4 adjudicating authority has materially erred in not relying upon the decision of this Court in the case of NBM Industries (Supra) and in observing that as the decision in the case of NBM Industries (Supra) is in case of another assessee, it cannot be accepted as a rule. It is further submitted by Shri Soparkar, learned counsel appearing on behalf of the petitioner – claimant that the respondent No.4 adjudicating authority has erred in holding that as the decision in the case of NBM Industries (Supra) is in the case of another assessee and not in the case of the claimant, the same cannot be relied upon by the claimant.

[3.3] It is further submitted by Shri Soparkar, learned counsel appearing on behalf of the petitioner that the adjudicating authority has misinterpreted and/or misapplied the decision of the Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd. vs. Union of India** reported in 1997/89//ELT.247/SC and observed that as held by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. (Supra), the assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund order in

favour of just because in another assessee's case similar point is decided in favour of the manufacturer/assessee. It is submitted that as such no such law has been laid down by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. (Supra).

[3.4] It is further submitted by Shri Soparkar, learned counsel appearing on behalf of the petitioner that as such by not following the binding decision of this Court, the respondent No.4 is liable for action under the provisions of the Contempt of Courts Act. In support of his above submissions, Shri Soparkar, learned counsel appearing on behalf of the petitioner has heavily relied upon the decision of the Division Bench of this Court in the case of **(The) State of Gujarat vs. The Secretary, Labour, Social Welfare & Tribal Development Dept., Sachivalaya, Gandhinagar and Anr.** reported in **1982 GLH 55** as well as the decision of the Bombay High Court in the case of **Legrand (India) Pvt. Ltd. vs. Union of India** reported in **2007(216) ELT 678 (Bom.)**

[3.5] Shri Soparkar, learned counsel appearing on behalf of the petitioner – claimant has also heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Union of India vs. Kamlakshi Finance Corporation Ltd.** reported in **1991(55) ELT 433 (SC)** as well as the recent decision of this Court in the case of **Claris Lifesciences Ltd. (100% EOU) & Anr. vs. Union of India & Anr.** rendered in Special Civil Application No.3022 of 2013.

[3.6] It is submitted by Shri Soparkar, learned counsel appearing on behalf of the claimant that in the case of Legrand (India) Pvt. Ltd. (Supra), the Hon'ble Supreme Court has held that it is immaterial that in a previous litigation a particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities/Tribunals in the State.

It is further submitted that it is also further observed by the Hon'ble Supreme Court in the said decision that if inspite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in S.2(b) of the Contempt of Courts Act, 1971.

[3.7] Shri Soparkar, learned counsel appearing on behalf of the petitioner has submitted that the impugned orders passed by the respondent No.4 – adjudicating authority is required to be considered from another angle also. It is submitted that if the observations made by the adjudicating authority made in the impugned order that an assessee cannot claim refund of any duty on the basis of a favorable appellate judgment in case of any assessee, and that the assessee must succeed or fail in his own proceedings and that the decision in case of another assessee cannot be accepted as a ruling [binding ruling], in that case it will lead to multiplicity of proceedings and unnecessary expenditure and burden upon other assessees as well as the revenue.

Making above submissions, it is requested to allow the present special civil applications with exemplary cost.

[4.0] Shri R.J. Oza, learned Senior Standing Counsel appearing on behalf of the respondents more particularly the adjudicating authority – respondent No.4. As such he is not in a position to defend the impugned orders passed by the respondent No.4 – adjudicating authority on merits. He is also not in a position to point out that decision of this Court in the case of NBM Industries (Supra) is not applicable to the facts of the present case. However, has raised only one objection that the petitioners have alternative remedy available to prefer appeal against the impugned order passed by the respondent No.4 – adjudicating authority

rejecting the refund claim of the petitioner.

[4.1] He has also stated at the bar under the instructions from the Commissioner concerned of Central Excise as well as the respondent No.4. - adjudicating authority that as such there was no any other intention of the respondent No.4 – adjudicating authority in not following the decision of this Court in the case of NBM Industries (Supra). It is submitted that as there was a decision of the Madras High Court in the case of BAPL Industries Ltd. vs. Union of India, which is in favour of the revenue, the respondent No.4 has thought it fit to rely upon the said decision to protect the interest of the revenue. It is submitted that otherwise there was no other intention on the part of the respondent No.4 in not following the decision of this Court in the case of NBM Industries (Supra).

[4.2] Shri Oza, learned Senior Standing Counsel appearing on behalf of the respondent No.4 has as such tendered unconditional apology and has requested not to take any further action against the respondent No.4 by further submitting that the adjudicating authority, who passed the impugned orders, has recently joined the department in the year 2011 and she has acted bonafidely to protect the interest of the revenue.

[5.0] Heard the learned counsel appearing on behalf of the respective parties at length and perused the impugned orders passed by the respondent No.4 – adjudicating authority rejecting the refund claims of the claimant.

At the outset it is required to noted that as such there is a direct binding decision of this Court in the case of NBM Industries (Supra) which is in favour of the assessee holding that on inputs used in manufacture of goods cleared by TDA units to 100% EOU refund of CENVAT credit would be available to the assessee and it would not be

denied on the ground that it was the case of deemed export and refund could be granted only in case of physical export. It is also required to be noted that in the said decision the revenue pressed into service the decision of the Madras High Court in the case of BAPL Industries Ltd. (Supra) [which has been relied upon by the adjudicating authority in the present case] and the Division Bench after considering the said decision held as stated hereinabove. Despite the decision of this Court in the case of NBM Industries (Supra) was pressed into service by the claimant and was pointed out to the adjudicating authority, which is a binding decision upon adjudicating authority, the adjudicating authority has not followed the said decision solely on the ground that the said decision is not in the case of assessee but is in the case of another assessee and the adjudicating authority has further observed that as held by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. (Supra), it is not open to any person to make a refund claim on the basis of the decision of a court or a tribunal rendered in the case of another person and each one must fight its own battle and must succeed or fail in such proceedings and consequently by impugned orders the adjudicating authority has rejected the refund claims of the claimant. While passing the impugned orders, in para 22, the adjudicating authority has observed as under:

> *"22. I also find that the claimant vide their defence reply has put forth the argument that they are eligible for refund of credit under Rule 5 of Cenvat Credit Rules 2004 and relied upon the Gujrat High Court's decision in case of NBM Industries and they produced the copy of said case law. In this regard I find that in the case of Mafatlal Ind. Ltd. vs. UOI – 1997/89//ELT.247/SC, the Supreme Court has ruled that it is not open to any person to make a refund claim on the basis of a decision of a Court or a Tribunal rendered in the case of another person. Each one must fight his own battle and must succeed or fail in such proceedings. Further the Apex court held that 'An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee.' It clearly means that "an assessee cannot*

> *claim refund of any duty on the basis of a favourable appellate judgement in case of an another assessee." In the present case, the claimant has relied upon the case law of an another assessee i.e. M/s. NBM Industries which cannot be accepted as a Ruling as per the above direction of H'ble Supreme Court in case of M/s Mafatlal Industries."*

[5.1] The aforesaid observations of the adjudicating authority and the consequent impugned orders passed by the adjudicating authority – respondent No.4 cannot be sustained for a moment. It is required to be noted that the decision of Division Bench of this Court in the case of NBM Industries (Supra) is binding upon the respondent No.4. Merely because the said decision is in the case of another assessee, the respondent No.4 could not have ignored the same and/or not followed the same by holding that it is not binding ruling as the same is in case of another assessee. It appears that the respondent No.4 has not properly understood the decision of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. (Supra). In the case of Mafatlal Industries Ltd. (Supra), the Hon'ble Supreme Court has never held that a decision of the higher appellate authorities/courts which may be in the case of another assessee are not binding to the lower authorities, on the ground that the same is in the case of another assessee. It is also not held by the Hon'ble Supreme Court that it is not open for a person to make refund claim on the basis of a decision of a court or tribunal rendered in the case of another person. On the contrary, there are direct decisions of the Hon'ble Supreme Court as well as various High Courts.

[5.2] In the case of Kamlakshi Finance Corporation Ltd. (Supra), in paras 7 to 10, the Hon'ble Supreme Court has held and observed as under:

> *"7. Having heard learned Counsel for the parties, we are of the opinion that the approach adopted by the Adjudicating Authority was wholly impermissible in law. At the outset, we may record that we are conscious that such order is appealable in terms of statutory appeals provided under Central Excise Act,1944. However, we find that the*

Adjudicating Authority committed serious error in disregarding binding precedent and that there are absolutely no disputed facts. We would, therefore, not insist that the petitioners once again follow the same gamut of taking the appeal route. To revert back to the issue at hand, we may recall that the question of computation of education cess and secondary and higher education cess was decided finally by the Tribunal in favour of the petitioners. As of now, such decision of the Tribunal holds the field. Such decision of the Tribunal would be binding on the Adjudicating Authority. Even if the Department is of the opinion that the issue is not free from doubt, it is not open for the Adjudicating Authority to ignore the binding precedent. We may notice that under the Central Excise Act, 1944 and the Customs Act, the Department has the right to appeal even against the order in original passed by the Adjudicating Authority. This is in contrast to the provisions contained in the Income Tax Act, 1961 where against an order passed by the Assessing Officer, the Department has no right to appeal. Only remedy available to the Revenue is by way of a revision against the order of the Assessing Officer that too only if it is found that such order is erroneous and prejudicial to the interest of the Revenue. Such rigors, however, are not applicable in so far as the Department's right to appeal against the order of the Adjudicating Authority is concerned under the Central Excise Act, 1944.

8. The Adjudicating Officer acts as a quasijudicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944.

9. Counsel for the petitioners brought to our notice the decision of the Apex Court in the case of Union of India vs. Kamlakshi Finance Corporation Ltd. reported in 1991 (55) E.L.T. 433 (S.C.) in which while approving the criticism of the High Court of the Revenue Authorities not following the binding precedent, the Apex Court observed that:

> *"6... It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasijudicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that*

the order of the appellate authority is not "acceptable" to the department in itself an objectionable phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35D confers adequate powers on the department in this regard. Under subsection(1), where the Central Board of Excise and Customs[Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under subsection(2) the Collector of Central Excise,when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue,the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S.35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

10. Under the circumstances, we have no hesitation in striking down the impugned order dated 13.7.2012. We clarify that this should not

be seen as any indication of our view of upholding the view of the Tribunal contained in its decision dated 21.6.2010. It would be open for the Department to call in question such a view in appropriate proceedings as in the manner permissible to the Department. Petition is disposed of accordingly."

[5.3] In the case of Legrand (India) Pvt. Ltd. (Supra), the Bombay High Court has held as under:

(a) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State ;

(b) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(c) If inspite of the earlier expositiion of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in S. 2 (b) of the Contempt of Courts Act, 1971.

In the said decision, the Bombay High Court has relied upon the decision of the Hon'ble Supreme Court in the case of **East India Commercial Co. Ltd v Collector of Customs, Calcutta** reported in **AIR 1962 SC 1893 (Para 29)** as well as in the case of **Makhan Lal vs State of Jammu and Kashmir** reported in **AIR 1971 SC 2206;** in the case of **Baradakanta Mishra vs Bhimsen Dixit** reported in **AIR 1972 2466 (paras 15 and 16)** as well as the decision of this Court in the case of **Hasmukhlal C.Shah vs State of Gujarat**, reported in **(1978) 19 GLR 378.**

[5.4] In the recent decision in the case of Claris Life Sciences Ltd. (Supra), when despite the binding decision of the Tribunal, the adjudicating authority issued the show-cause notice, relying upon the

decision of the Hon'ble Supreme Court in the case of Kamlakshi Finance Corporation Ltd. (Supra), we have observed in para 26 as under:

> *"26. Despite such clear and specific directions and authoritative pronouncements, act of issuance of show cause notice by the Deputy Commissioner is wholly impermissible and unpalatable and deserves to be quashed and struck down with a specific note of strong disapproval. The respondents simply could not have exercised the powers contained under the statute in such arbitrary exercise and in complete disregard to the pronouncement of this Court particularly reminding the Revenue authorities of the binding effect of decision of Tribunal on the identical question of law. This not only led to multiplicity of proceedings but also speaks of disregard to the direction of this Court rendered in the earlier petition of this very petitioner. Resultantly, petition stands allowed. Both the show cause notices dated 21.8.2012 and 22.1.2013 are quashed and struck down."*

Considering the aforesaid law laid down by the Hon'ble Supreme Court, it was not open for the adjudicating authority – respondent No.4 herein not to follow the binding decision of this Court in the case of NBM Industries (Supra), solely on the ground that the said decision is in the case of another assessee and the claimant cannot rely upon the said decision. It is also required to be noted that despite the binding decision of the jurisdictional court in the case of NBM Industries (Supra), adjudicating authority has relied upon the decision of the Madras High Court in the case of BAPL Industries Ltd. (Supra), which was as such considered by this Court while passing the order in the case of NBM Industries (Supra). We strongly disapprove the observation made by the adjudicating authority that the decision of this Court in the case of NBM Industries (Supra) is not a ruling as it is in the case of another assessee. The decision of this court in the case of NBM Industries (Supra) though may be in the case of another assessee is binding to respondent No.4. Under the circumstances, despite the alternative remedy available to the petitioner, we have to interfere with the impugned orders in exercise of powers under Article 226 of the Constitution of India.

[5.5] As such by not following the binding decision of this Court in the case of NBM Industries (Supra), the respondent No.4 – adjudicating authority has rendered herself liable for the prosecution/proceedings under the Contempt of Courts Act. Identical question came to be considered by the Division Bench of this Court in the case of the Secretary, Labour, Social Welfare & Tribal Development Dept., Sachivalaya, Gandhinagar and Anr. (Supra) and considering the observations made by the Hon'ble Supreme Court in the case of East India Commercial Co. Ltd. (paras 9 and 10) (Supra); in the case of Makhan Lal (para 9) (Supra); in the case of Baradakanta Mishra (Supra), it is held that inspite of the earlier exposition of law by the Hon'ble High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, the proceedings are initiated, it must be held to be a wilful disregard of law laid down by the High Court and would amount to civil contempt as defined in section 2(2b) of the Contempt of Courts Act, 1971. Similar view has been expressed by the Bombay High Court in the case of Legrand (India) Pvt. Ltd. (Supra). Considering the aforesaid decisions of the Hon'ble Supreme Court as well as this Court, it can be *prima facie* said that not following the decision of this Court in the case of NBM Industries (Supra) by the respondent No.4 herein would amount to civil contempt. The submission of Shri R.J. Oza, learned Senior Standing Counsel appearing on behalf of the respondent No.4 that there was no other intention on the part of respondent No.4 in not following the decision of this Court in the case of NBM Industries (Supra) except to protect the interest of revenue is concerned, as such under the guise of protecting the interest of revenue, the lower authority cannot be permitted to ignore the binding decision of the higher appellate authorities/courts. Everybody is bound by law. To maintain the rule of law and judicial discipline, the lower authority is bound by the decision of the higher appellate authorities/courts. However, considering the fact

that there is no other malafide alleged and that the respondent No.4 is reported to be recently joined the department in the year 2011 and the unconditional apology tendered, we close the proceedings so far as the proceedings under the Contempt of Courts Act are concerned.

[6.0] In view of the above and for the reasons stated above and the decision of this Court in the case of NBM Industries (Supra), the impugned orders passed by the respondent No.4 rejecting the refund claims of the petitioner cannot be sustained and they deserve to be quashed and set aside and are accordingly quashed and set aside and the respondents – adjudicating authorities are hereby directed to sanction the respective refund claims of the claimant after following the law laid down by this Court in the case of NBM Industries (Supra) and pass fresh orders within a period of two months from the date of the receipt of the present order and to make the actual payment within a period of four weeks thereafter and also grant consequential reliefs which may be available to the petitioners under the relevant provision of the rules more particularly Rule 5 of the Rules.

[6.1] Before parting with the present order, we are constrained to strongly disapprove such arbitrary act on the part of the lower adjudicating authority and/or lower authorities in ignoring the binding decisions/orders passed by the higher appellate authorities/courts. Time and again the Hon'ble Supreme Court as well as various High Courts and this Court have disapproved such conduct/act on the part of the lower authorities in ignoring the binding decisions/orders passed by the higher appellate authorities/courts. Still it appears that message has not reached the concerned authorities. In the recent decision in the case of Claris Lifesciences Ltd. (Supra) in para 26 this Court has observed as under:

"26. Despite such clear and specific directions and authoritative

pronouncements, act of issuance of show cause notice by the Deputy Commissioner is wholly impermissible and unpalatable and deserves to be quashed and struck down with a specific note of strong disapproval. The respondents simply could not have exercised the powers contained under the statute in such arbitrary exercise and in complete disregard to the pronouncement of this Court particularly reminding the Revenue authorities of the binding effect of decision of Tribunal on the identical question of law. This not only led to multiplicity of proceedings but also speaks of disregard to the direction of this Court rendered in the earlier petition of this very petitioner. Resultantly, petition stands allowed. Both the show cause notices dated 21.8.2012 and 22.1.2013 are quashed and struck down."

It appears that still the message has not reached the concerned authorities in following the binding decisions of the higher appellate authorities and/or courts solely on the ground that the same is in the case of another assessee. Such a conduct is also required to be viewed from another angle. This would not only amount to disregarding the direction of the court rendered in earlier petitions but would also lead to multiplicity of proceedings. When the courts are overburdened and are accused of arrears, it is the duty of the concerned authorities to avoid multiplicity of proceedings and lessen the burden of the courts. Being a part of the justice delivery system. All efforts should be made by the authorities/quasi judicial authorities and judicial authorities to see that there is no multiplicity of proceedings and to pass the orders considering the binding decisions. It would also avoid unnecessary harassment to the parties as well as the unnecessary expenditure.

[6.2] As observed hereinabove despite clear and unequivocal message by the pronouncement of the decisions by the Hon'ble Supreme Court as well as this Court, the message has not reached to the concerned authorities, we direct respondent No.2 – Central Board Excise and Customs, New Delhi to issue a detailed circular to all the adjudicating authorities considering the observations made by this Court in the present judgment and order as well as the law laid down by the Hon'ble

Supreme Court in various decisions referred to in the present judgment and order, within a period of 30 days from the date of receipt of the present order so that such eventuality may not happen again and again.

[7.0] Rule is made absolute to the aforesaid extent in each of the petitions with exemplary cost which is quantified at Rs.5000/- per petition (token cost) to be paid to the petitioner alongwith its refund claims.

Sd/-
(M.R. SHAH, J.)

Sd/-
(MS SONIA GOKANI, J.)

Ajay