

# THE HIGH COURT OF MEGHALAYA

## WP(C)NO. 39 OF 2015

M/s Purbanchal Alloys Limited,  
EPIP, Rajabagan, Ri-Bhoi District  
Meghalaya – 793101  
Present address :  
(House No 13, Kundil Path,  
Rukmininagar,  
Guwahati – 781006)

.....Petitioner

- Versus -

The Commissioner of Central Excise  
Morellow Compund, M.G. Road,  
Shillong – 793101 and two Others.

.....Respondents

**BEFORE**

**HON'BLE MR JUSTICE UMA NATH SINGH, CHIEF JUSTICE  
HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**Advocate for Petitioner : Mr N Das Gupta, Adv.**

**Advocate for Respondents Mr R Deb Nath, CGC.**

**Date of hearing : 26.05.2015**

**Date of Judgment : 26.05.2015**

### *JUDGMENT AND ORDER (ORAL)*

(UN Singh, CJ)

We have heard learned counsel for parties and perused the pleadings of the writ petition.

2. The petitioner has filed this writ petition under Article 226 of the Constitution of India to seek an appropriate writ, order and direction after setting aside Order No. 33/SR/2014-15 dated 24.12.2014 passed by respondent No.1 (Commissioner of Central Excise, Shillong), which was communicated vide C. No. IV-10/02/TECH/SH/2011/22047-50 dated 31.12.2014, and to direct respondent No. 1, the Commissioner of Central Excise, Shillong to decide petitioner's claim afresh for fixation of Special

Rate which should represent the actual value addition of its product Ferro Silicon for the financial year 2011-12 in terms of Para 2.1 of the Notification No. 17/2008- Central Excise dated 27.03.2008, as amended by the Notification No. 31/2008-Central Excise dated 10.06.2008. It is the case of the petitioner that the claim for fixation of Special Rate in respect of its product, namely, Ferro Silicon for the year 2011-12 representing the actual value addition was submitted to respondent No.1 way back on 29.09.2011 and 01.11.2011 in terms of the aforesaid notifications. But that claim was kept pending for more than 3 years on the pretext of verification of petitioner's private records. As such, the petitioner was deprived of bonafide claim of refund of excise duty representing the actual value addition. As per Para 2.1(2) of the notification No. 17/2008 CE dated 27.3.2008 (as amended vide Notification No. 31/2008 CE dated 10.06.2008) laid down the procedure for determination of the actual value addition by Commissioner of Central Excise, Shillong, within a stipulated period of three months from the date of receipt of the application. In the instant case, the Original Application was filed on 29.09.2011. The Balance Sheets and other related certificates were submitted on 01.11.2011. The said documents were admittedly received in the office of respondent No. 1 on 14.11.2011. Therefore, as per aforesaid provisions of law, respondent No. 1 was under obligation to decide the claim on or before 14.02.2012.

**3.** Learned counsel for petitioner, submits that under 1996 Notification (No. 32/99-C.E) dated 08.07.1999, the petitioner company was entitled to get 100% exemption from payment of excise duty on finished goods. Whereas, under notification No. 31/2008-Central Excise dated 10.06.2008, it was reduced and limited to 39%. It is also the submission of learned counsel, that since raw materials required for manufacturing the articles by the petitioner company were derived from natural sources, there was no question of payment of excise duty at the time of purchase of raw materials. Therefore, there was no credit available on that count. It is also the submission of learned counsel, that when the goods after production were to be moved as finished goods, the petitioner company had paid 100% excise duty. However, as per the notification of 2008, only a claim of 39% exemption was maintainable. Thus, when the company made an application with certificate of statutory auditor in favour of its claim for higher exemption to the Commissioner of Customs and Central Excise, the application did not find favour. The application of the petitioner company did not evoke a favourable response particularly for

the reason that along with the certificate, and balance sheet of statutory auditor, the supporting documents said to be private records in legal parlance were not submitted.

4. Learned counsel for the petitioner, further states that the company has been submitting all the documents regarding transaction periodically to the local Excise Officer and therefore, the Commissioner was required to take decision on that basis, instead of demanding fresh documents. Learned counsel for the petitioner, also referred to para 9 of the petition to argue that the company has already supplied essential documents required for verification of the certificate and balance sheet by the Customs and Central Excise authority. The said para states as under:

***“That there is no provision of law which requires that the petitioner should produce their private records in addition to the statutory documents specified in the notifications. It is also mandatory the petitioner should maintain private records of production, raw materials and sale etc. Moreover, statutory records name RG-1 showing daily production and clearance, opening and closing stock of the final product, RG-23 Registers and input/raw material registers reflecting purchase and consumption of inputs/raw materials/ packaging materials etc for production, Central Excise Invoices sale and removal of the excisable commodity were always made available to the Department by the petitioner on a monthly basis mandatorily. Sale value, value of raw materials consumed, opening and closing stock were already available with the Respondent Authorities as mentioned above.”***

Learned counsel for the respondent on the other hand, referred to para 12 of the affidavit-in-opposition on behalf of respondents No. 1, 2 & 3. The said paragraph is also reproduced as:

***“12. That as regard statement made in paragraph 9 it is stated that as per Chapter – 6 of CBEC’s Central Excise Manual, it is clearly stated that ‘.....while framing the Central Excise Rule 2002 (hereinafter referred to as the said Rules), CENVAT Credit Rules, 2004 and other Rules issued under Central Excise Act, 1944, the Government has continued with the policy of relying on the private records of the assessee’.***

***Private records:***

***2.1 The main features of the acceptance of private records are as below:***

***(i) The fact that the rules do not prescribe ‘statutory records’ shall not be construed that no records***

**has to be maintained. Every assessee shall maintain private records.**

- (ii) The rules which requires certain records to be maintained, are self contained and they specify the minimum information that an assessee MUST enter in his record;**
- (iii) Every assessee shall on demand make available to the Range officer duly empowered by the Government of India/Commissioner of Central Excise**
  - (a) the records maintained or prepared by him in terms of sub-rule (2) of rule 22 of the said Rules;**
  - (b) the cost audit reports, if any, under section 233B of the Companies Act, 1956 (1 of 1956); and**
  - (c) the Income-tax audit report, if any, under section 44B of Income-tax, 1961 (43 of 1961), (d) for the scrutiny of the officer or audit party, as the case may be.**

**The information available in the audited Balance Sheet submitted by the applicant is insufficient as most of the information available in the audited Balance Sheet is consolidated and as such detailed cross checking could not be made for fixation of special rate which is a mandatory requirement. Hence, details breakup like Raw materials/Packing materials Ledgers/invoices/register, Freight Ledger, Sale Invoices, Transit Insurance etc. which is available with the petitioner only is mandatory for taking into consideration for fixation of special rate. As stated by the petitioner that statutory records namely RG-1 showing daily production and clearance, opening and closing of the final product, RG-23 registers and input/raw materials registers reflecting purchase and consumption of inputs/raw materials/packaging materials etc. for production, central excise invoices sale and removal of the excisable commodity were always made available to the department by the petitioner on a monthly basis mandatorily and already available with the respondent authorities is baseless/not acceptable. In RG-1 only Quantity of production and quantity of opening & closing stock is reflected there, but no entry of value which is necessary for fixation of special rate. In RG-23 only Cenvatable raw materials is available, in fixation of special rate both Cenvatable and non-cenvatable raw materials is necessary. The petitioner is trying to mislead this Hon'ble Court on furnishing wrong information and it is stated that Central Excise invoices reflecting sale and removal of the excisable commodity are not satisfying the requirement of fixation of special rates for which the petition of the petitioner deserves to be dismissed."**

In the rejoinder affidavit filed on 22.05.2015, the petitioner, vide para 10 has given the reply as under:

***“10. With regard to the paragraphs 12, 13 & 14 of the Affidavit in opposition of the Respondents.***

***i) The argument that verification could not be made by the Central Excise Range Officer due to non-availability of the private documents is frivolous and weak due to the fact that all required information such as sale value, value of raw materials, opening and closing stock etc were all along available with the Range Office as the same were mandatorily submitted by the petitioner to the Central Excise Range Office on a monthly basis without fail. Neither there is any statutory provision nor are there any departmental instructions in force for maintenance and/or production of private records to the Central Excise Authority. This is an glaring example of failure on the part of the respondent Authorities to carry out statutory exercise of fixation of Special Rate as per the Notification No. 17/2008-Central Excise dated 27.03.2008, as amended, and shifting the burden unlawfully to make the petitioner responsible for such failure. As such, the respondent authority's findings that verification could not be done due to non-availability of documents do not sustain.***

***(ii) That this is an absurd situation where it is baselessly alleged that the verification could not be caused by the Department whereas para 4 of the impugned Order dated 24.12.2014 clearly mentions that the verification was done by the Shillong Central Excise Division and also submitted report to the competent authority.***

***(iii) That it is transpired from para 6 of the impugned order of the Respondent No. 1 dated 24.12.2014, that the respondent Authority have started making correspondence in the matter after more than 3 years when the petitioner's factory, being not finally viable, was already closed.***

***(iv) It is alleged that petitioner was trying to avoid the responsibility of payment of Central Excise duty of Rs. 25,47,622/- and that amount is payable till date, otherwise, the Special rate of duty could have been decided in due time. The humble petitioner denies and disputes the allegation and states that it was open to the Central Excise department to initiate proceedings for recovery of arrears. But this had nothing to do with the fixation of Special rate. Department is at liberty to adjust from the payment arising out of fixation of Special Rate, if there is any confirmed demand, pending against the petitioner. This was not done, made it amply clear that respondent No. 1 was not honest and sincere while performing the statutory duties regarding fixation of Special Rate of the humble petitioner.”***

5. Learned counsel for the respondents, Union of India, could not point out anything further except what is provided in the affidavit-in-opposition whereas the petitioner company has asserted that it had supplied all documents, even though they were not required under the rules, which are also admitted by the respondents in the affidavit. We thus think it appropriate to dispose of the writ petition with a direction to the respondents to consider the applications of the petitioner afresh on merit which were disposed of vide the order dated 24.12.2014 only for non-supply of certain documents. A detailed reason would thus be required to be given by the quasi judicial authority within a period of 4 (four) weeks from the date of receipt of a copy of this order.

6. We thus, set aside the impugned order dated 24.12.2014 so as to enable the authority to have a fresh look for taking a fresh decision in the matter. This writ petition stands disposed of.

**JUDGE**

**CHIEF JUSTICE**

*Sylvana*