Serial No. 1
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.264/2021

Date of Order: 28.04.2022

Shree Shakambari Ferro Alloys Pvt. Ltd.	Vs.	Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. D. Sahu, Adv with
Ms. M. Gogoi, Adv

For the Respondents : Dr. N. Mozika, ASG with
Ms. S. Rumthao, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The present petition falls within a narrow compass. Notwithstanding the several grounds urged on behalf of the respondent Goods and Services Tax Authorities, the real answer to the issue raised depends on the interpretation of a previous order of this Court of February 26, 2021 between the same parties.

2. Prior to the issuance of notification No.30/2008-C.E. of June 10, 2008, manufacturers of goods and service providers in the North-East were governed by notification No.20/2007-C.E. In effect, the previous

notification exempted the Central excise component for the manufacturers of goods and service providers in the North-East region. This total exemption regime was altered by the notification of June 10, 2008 that, in effect, exempted the value added component and not the entirety of the Central excise component.

3. The relevant notification described the goods in one of the columns and provided a flat rate of deemed value addition in respect of such goods. However, the relevant notification also permitted a manufacturer to not avail of the rate specified in the table set out in the notification and to apply to the jurisdictional Commissioner for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under the notification, if the manufacturer found that the actual value addition in the production or manufacture of the said goods was at least 115 per cent of the rate specified in the table. For such purpose, the notification stipulated that the manufacturer had to make an application in writing to the jurisdictional Commissioner not later than September, 30 of the financial year for determination of such special rate, stating all the relevant facts including the proportion in which the material or components were used in the production or manufacture of the relevant goods. A proviso to the relevant paragraph in the notification permitted the jurisdictional Commissioner to extend the time for making the application by a period of 30 days.

4. The notification of June 10, 2008 was challenged in various High Courts and, by an order dated November 20, 2014, the High Court of Gauhati set aside the same. The relevant order of November 20, 2014 was carried by way of a petition for special leave to appeal to the Supreme Court. On December 7, 2015, on an interim application in SLP (C) No.11878/2015, the Supreme Court stayed the operation of the impugned judgment and made some order pertaining to the refund to be made by the Department to the petitioner before the Supreme Court. What is of relevance in the order is that the operation of the judgment of the High Court of Gauhati of November 20, 2014 invalidating the notification of June 10, 2008 was stayed.

5. The respondents contend that as a consequence of such stay granted by the Supreme Court, the legal effect was that the relevant notification revived. The respondents maintain that as a result of such order of the Supreme Court, the application for special rate of value addition had to be made in terms of the notification; and, upon the extended time as per the notification of June 10, 2008 elapsing, a request for a special rate of value addition for any particular product could no longer be made or entertained.

6. In the light of a subsequent event and an order inter partes that binds the respondents herein, it is not necessary to go into the effect of the order of the Supreme Court passed on December 7, 2015 as contended by

the Department. However, it may only be recorded that when an order is stayed by a superior forum, the legal effect is that the relevant order impugned before the superior forum remains in suspended animation. A mere stay of an order does not imply that the order impugned is obliterated. It is only upon the order impugned being set aside would that order be obliterated and it will be deemed as if the order had never been passed. Further, certain practical difficulties arise in such a scenario. If a particular notification provides for certain steps to be taken within a specified time and such notification is assailed and the same is stayed or set aside, persons entitled to make the application may not have had the opportunity to apply thereunder before the notification may have been stayed or set aside. If, after a lapse of a long period of time, the final order invalidating the notification is passed and such order is stayed by a superior forum, some provision has to be made for applicants entitled to apply under the notification but who had missed the bus because of the pending proceedings, to avail of the opportunity. Be that as it may.

7. The order of the High Court of Gauhati of November 20, 2014 invalidating the notification of June 10, 2008 was set aside by the Supreme Court by an order dated April 22, 2020.

8. Subsequent to such order of the Supreme Court, the writ petitioner herein instituted WP (C) No. 32 of 2021 in this Court which was

disposed of on the basis of the submission made on behalf of the respondents herein as will be evident from the relevant order:

> "Dr. N. Mozika, learned ASG for the respondents at the outset having taken instruction from his client makes a statement that within 3 (three) months from today respondents No.2 & 3 shall settle the account of the petitioner with regard to special rate of value addition admissible to the petitioner and that money will be adjusted towards the demand notice issued to the petitioner which is impugned in the present petition. Statement accepted.
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> In the light of the statement, Mr. D. Sahu, learned senior counsel for the petitioner fairly concedes that petitioner's grievance stands redressed.
>
> Petition accordingly disposed of with direction to the respondents that till the decision by the respondents regarding special rate of value addition due to the petitioner is calculated and adjusted, no coercive action shall be taken against the petitioner."

9. The present petition has been instituted since the respondents herein have not settled the accounts of the petitioning assessee in terms of the submission recorded in the order dated February 26, 2021 and in the light of the respondents now seeking to assert that the petitioning assessee applied for determination of the special rate of the value addition at a time long after the period therefor under the notification of June 10, 2008. Indeed, an additional affidavit has been filed on behalf of the respondent authorities focusing on the order of February 26, 2021 and trying to wriggle out of the respondents' obligation in terms thereof.

10. In view of the submission of the Department as recorded in the order dated February 26, 2021 which has attained finality and which has

not sought to be assailed by the Department, the issue as to whether the application was made by the petitioning assessee for determination of a special rate of value addition within the permissible time or not cannot be reopened. Implicit in the submission of the Department as recorded in the order of February 26, 2021 is the acceptance that the matter would be considered on merits. If the Department wanted to assert that the belated application of the petitioning assessee could not be entertained in terms of the relevant notification, the issue would have called for an answer in course of the proceedings. It was open to the Department to canvass such ground. However, upon the Department not raising such objection and making a submission that implied and was reasonably understood to imply that the matter would be considered on merits, the petitioner herein was induced by the submission to accept the same in the hope that the determination as sought would be conducted in accordance with law. The Department is now estopped from urging the objection of limitation and the respondents are bound by the submission attributed to them in the order of February 26, 2021 to consider the application for determination of the special rate of value addition in accordance with law, irrespective of when the application therefor may have been made by the petitioning assessee.

11. At this stage, it is pointed out on behalf of the petitioner that by a communication in writing dated June 1, 2021, the Commissioner of Goods and Services Tax, Shillong had indicated at paragraph 3 of the

relevant document that the rate of value addition in respect of the goods manufactured by the petitioning assessee was determinable at the rate of 81.9 per cent. Full particulars of the determination were indicated.

12. Accordingly, WP(C) No. 264 of 2021 is disposed of by affording the respondents a period of four weeks from date to affirm or alter the determination indicated in the letter of June 1, 2021 in accordance with law so that appropriate steps consequent thereupon can be taken by the parties thereafter.

13. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
28.04.2022
"Lam DR-PS"