GAHC010095072020

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

Case No. : WP(C) 2844/2020

1:M/S SC JOHNSON PRODUCTS PVT LTD
A LIMITED LIABILITY COMPANY WITHIN THE MEANING OF THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT 5TH FLOOR, PLOT NO-68, SECTOR 14, GURGAON, HARYANA-1220003

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
THROUGH THE FINANCE SECRETARY, MINISTRY OF FINANCE, HAVING HIS OFFICE AT NORTH BLOCK, NEW DELHI-1100001

2:THE COMMISIONER OF CENTRAL EXCISE AND SERVICE TAX
SETHI TRUST BUILDING
5TH FLOOR
GS ROAD
BHANGAGARH
GUWAHATI-781005

3:CUSTOMS
EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
(EASTERN ZONAL BENCH)
169
A.J.E. BOSE ROAD
BAMBOO VILLA
7TH FLOOR
KOLKATA-700014

4:THE MANAGER
CITIBANK
JEEVAN BHARTI BUILDING
4TH FLOOR
124

CONNAUGHT PLACE
NEW DELHI-110001

5:THE MANAGER
BANK OF MAHARASHTRA
DELHI ZONAL OFFICE
15 NBCC TOWER
3RD FLOOR
BHIKAJI CAMA PLACE
NEW DELHI-11006

Advocate for the Petitioner : MR. B SHARMA

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 23-07-2020

JUDGMENT & ORDER (ORAL)

Heard Mr. Laxmikumaran, learned senior counsel assisted by Mr. A. Bhattacharjee and Ms. S. Laxmikumaran, learned counsel for the petitioner and Mr. SC Keyal, learned ASGI for the respondent authorities.

2. Without going into the details of the facts warranting the institution of this writ petition, we just take note of that the petitioner is an industrial unit, which had set up its manufacturing unit in the North-eastern region on the basis of certain industrial policy by which 100% exemption was granted in respect of excise duty. In course of their manufacturing activity, a subsequent decision was taken by the authorities that the exemption of excise duty would be limited to 34%. Being aggrieved, a writ petition was instituted before this Court being WP(C) No.1707/2008. The said writ petition was allowed by the judgment dated 24.06.2009 of the learned Single Judge. On an appeal being carried to the Division Bench by the Revenue Department, the judgment of the learned Single Judge was upheld and the decision to limit the benefit of excise duty refund up to 34% stood interfered. On a further appeal being carried by the Revenue Department before the Supreme Court, the judgment dated 22.04.2020 was

passed in a series of appeals, which also included the appeal against the order of the Division Bench of this Court. The Supreme Court while interfering with the judgments of the High Courts in its judgment and order dated 22.04.2020 in SLP (C) No.028194-028201/2010 had provided as follows:-

> " ...... *However, it is further clarified that the pending refund applications shall be decided as per the subsequent notifications/industrial policies which were impugned before the respective High Courts and they shall be decided in accordance with the law and no merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand disposed of accordingly."*

3. It is the case of the petitioner that there was an application of the petitioner dated 27.05.2008 claiming that under the notification in force, the petitioner is entitled to an exemption/refund from excise duty up to 65% and thereafter several other applications were submitted to the department by the petitioner on the same claim but in respect of other assessment years. Mr. SC Keyal, learned ASGI submits that the application dated 27.05.2008 had already been considered by the department and rejected. Mr. Laxmikumaran, learned senior counsel for the petitioner on the other hand states that against such order of rejection, an appeal is pending before the appropriate appellate Tribunal. But it is also stated that the similar subsequent applications are still pending and no orders have been passed on the same.

4. This writ petition is instituted on the grievance that as per the further clarification of the Supreme Court in its judgment dated 22.04.2020, a consideration is required to be given to the said applications of the petitioner inasmuch as, it is a pending refund application, which the Supreme Court required that it be decided by the authorities as per the terms of the subsequent notification/industrial policies, which were assailed before the respective High Courts. A further apprehension has been raised by the petitioner that they had given a bank guarantee up to 100% of the excise duty and the respondent authorities may encash the bank guarantee without arriving at a decision on the said applications of the petitioner.

5. Mr. SC Keyal, learned ASGI fairly submits that the applications of the petitioner do require a consideration as clarified by the Supreme Court in its judgment dated 22.04.2020 and further that the respondent authorities at present do not have any intention to encash the bank guarantee without giving a due consideration to the said applications of the petitioner.

6. Considering the matter in its entirety, we require the respondents in the Excise Department to give a consideration to on the applications of the petitioner and pass reasoned orders on the same. The

requirement of passing the reasoned order be done within a period of three months from the date of receipt of a certified copy of this order. We further provide that till such consideration are made and the reasoned orders passed, the authorities in the Excise department shall not encash the bank guarantee given by the petitioner in respect of 100% of the excise duty paid by them. The writ petitioner to intimate the Department by email a list of all such applications that are required to be given a consideration as per this order. if the Department in response requires, a fresh copy of the applications be provided for doing the needful. If such list, or the copies of the applications, as the case may be, are not provided by the petitioner, the respondents would not be under any obligation to perform the requirement of this order.

The writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant