GAHC010148142018

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

C. Ex. Appeal No. 81/2018

M/s New Tech Steel & Alloys Pvt. Ltd.
Khatkhati, Karbi Anglong, Assam, PIN-782480
represented by its Director, Sri Harsh Sharma,
S/o Sri Pawan Sharma,
Resident of 6th Floor, Ispat Complex, N.S. Road,
Fatasil, Guwahati, Assam, PIN-781009.

- Appellant

-Versus-

The Commissioner (Appeals), Customs, Central Excise & Service Tax, Customs House, Nilamoni Phukan Path, Christian Basti, Guwahati-781005.

- **Respondent**

For appellant(s)	:	Mr. K. N. Choudhury, Senior Advocate Assisted by Ms. N. Mahanta, Advocate.
For respondent(s)	:	Mr. S. C. Keyal, Senior Standing counsel, Central Board of Income Tax
Date of hearing	:	11.04.2023.
Date of judgment	:	11.05.2023.

– BEFORE –
HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE PARTHIVJYOTI SAIKIA

(Sandeep Mehta, CJ)

1. This appeal under Section 35G of the Central Excise Act, 1944, is directed against the judgment and order No.FO/75044/2018, dated 12.01.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT"), Kolkota, in Appeal No.E/75528/2015-SM, whereby the appeal preferred by the appellant herein against the order dated 29.12.2014, passed by the appellate authority, i.e., Commissioner (Appeals), Customs, Central Excise & Service Tax, Guwahati, in Appeal No.46/SH/CE(A)/GHY/2015 was dismissed. The appellant herein preferred the said appeal before the appellate authority to challenge the order of the jurisdictional adjudicating authority dated 08.08.2012, whereby the application dated 08.01.2012 filed by the appellant herein claiming refund of central excise duty paid for the period from July, 2010 to February, 2012 under the exemption notification dated 25.04.2007 was partly allowed and partly denied.

2. The short issue involved in this appeal is whether the excise duty refund claimed on behalf of the appellant under the exemption notification dated 25.04.2007 for the period from July, 2010 to February, 2012 was liable to be rejected on the ground of being time barred. The claim for refund was laid by the appellant herein on the basis of Paragraph 3(a) of the Notification No.20/2007-Central Excise, dated 25th April, 2007 issued by the Government of India, Ministry of Finance, exempting the goods specified in the First Schedule to the Central Excise Tariff Act, 1985, from the duty of excise leviable thereon under the said Act equivalent to the amount of duty paid by the manufacturer of exempted goods other than

the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004. Paragraph 3(a) of the Exemption Notification dated 25.04.2007 is extracted hereinbelow for the sake of ready reference:

> *"3. (a) The manufacturer shall submit a statement of the duty paid other than the amount of duty paid by utilization 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 7th 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;"*

3. The appellant herein, started manufacturing specified goods in the North Eastern area covered by the Exemption Notification dated 25.04.2007 and after acquiring the required eligibility certificate, submitted an application dated 08.01.2012 claiming refund of excise duty paid for the period from July, 2010 to February, 2012 in terms of the exemption notification which stipulated that manufacturing units located in the North Eastern region of India would be exempted from paying excise duty leviable on the specified goods 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.

4. The adjudicating/jurisdictional authority, i.e., Deputy Commissioner, Central Excise & Service Tax, Nagaon Division, vide order dated 08.08.2012 accepted the refund claim of the appellant only for the months of January and February, 2012 and rejected the claim for the prior period observing that the same was time barred by virtue of Clause 3(a) of the Notification dated 25.04.2007. The said order dated 08.08.2012 passed by the adjudicating authority was carried by the appellant in appeal to the Commissioner (Appeals), Customs, Central Excise & Service Tax, Guwahati. The appeal filed by the appellant herein was rejected by the appellate

authority vide order dated 29.12.2014. The Central Excise & Service Tax Appellate Tribunal (CESTAT) also rejected the appeal of the appellant vide order dated 12.01.2018, which is impugned in this C. Ex. Appeal.

5. Mr. K.N. Choudhury, learned senior counsel representing the appellant urged that the claim for refund filed by the appellant was unjustly curtailed by the adjudicating authority to a period of two months only, i.e. January, 2012 and February, 2012. The adjudicating authority wrongly held that the refund of duty paid for the previous period, i.e. from July, 2010 to December, 2011, could not be accepted as the same was time barred. Mr. Choudhury submitted that the adjudicating authority as well as the appellate authorities committed error apparent in law in rejecting the claim of duty refund accruing to the appellant under Notification dated 25.04.2007 from the date it started paying excise duty on the specified goods manufactured in the exempted region. He submitted that the only condition required to be fulfilled under the notification for claiming exemption was that the manufacturer should submit the statement of duty paid to the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid other than the amount of duty paid by utilisation of CENVAT credit under the CENVAT Credit Rules, 2004. He urged that no sooner the manufacturer submitted the statement of duty paid by the 7th of the next month as a consequence, by virtue of Clause 3(a) of the Notification, the onus of refunding the duty paid shifted on the jurisdictional authority of the Central Excise Department. He pointed out that the appellant commenced the manufacturing process in the Northeast region (exempted under the 2007 notification) in the month of July, 2010. The excise duty was regularly paid for each month and the statement of duty paid was submitted to the appropriate officer by the 7th

day of each following month, which fact has been verified by the jurisdictional authority as reflected from the order dated 08.08.2012. He referred to the pertinent observations made in this regard in the order dated 08.08.2012 which are reproduced below for the sake of ready reference:

> ***"7. I have caused verification of the records such as statement of duty paid, PLA, GAR-7 Challan, ER-1 for the relevant period and the verification report of the jurisdictional Superintendent of the assessee relating to their claim of refund, production and clearance of the goods and payment of duty through Account Current as well as the CENVAT Credit Account."***

Mr. Choudhury urged that a bare perusal of these findings based on verification of records would establish that the statement of duty paid by the assessee for the corresponding months after the production of specified goods was commenced was duly verified. Thus, rejection of the appellant's refund claim on the ground that the claim application was filed belatedly was absolutely unjustified. He submitted that filing of a formal application for claiming refund of duty paid is not contemplated under the Exemption Notification or the rules. As a matter of fact, as the authorities failed to refund the excise duty paid by the appellant as per the requirements of the Notification dated 25.04.2007, the appellant herein was compelled to submit a formal written request for refunding the excise duty paid from July, 2010 to February, 2012 with the eligibility certificate. Mr. Choudhury placed reliance on the judgment rendered by Division Bench of this Court in the case of ***Vernerpur Tea Estate Owned by the Cachar Native Joint Stock Co. Ltd. Vs. Commissioner of Central Excise, Shillong***, reported in ***(2018) SCC Online Gau 48*** and urged that the ratio of the said judgment covers the issues raised in this appeal on all fours and hence the appellant is entitled to the refund of excise duty paid during the relevant months with interest.

6. Per contra, Mr. S.C. Keyal, learned counsel representing the respondent department vehemently and fervently urged that the application filed by the appellant seeking refund of excise duty was time barred. The refund was required to be claimed by filing an application before the 7th day of each following month after production was commenced and duty was paid, whereas, admittedly, the claim application of the appellant was a consolidated one for the period from July, 2010 to February, 2012. Thus, as per Mr. S.C. Keyal, the adjudicating authority was absolutely justified in approving the claim applications for the months of January and February, 2012 only and rejecting it for the earlier months as the same was time barred. He submitted that Clause 3 of the Notification dated 25.04.2007 makes it clear that application for refund would not be entertained unless filed by the 7th day of the following month, on which the duty was paid.

In support of his contentions, Mr. Keyal placed reliance on the Division Bench judgment of this Court in the case of ***Lukwah Tea Estate Vs. Commissioner of CGST and Central Excise,*** reported in ***(2022) 0 Supreme (Gau) 665***. He urged that in this case, the delayed application claiming refund filed by the assessee was rejected and the Division Bench affirmed the decision of the department, hence the appeal of the appellant is required to be dealt with in the same manner.

7. We have considered the submissions advanced by the learned counsel for the parties and have also given thoughtful consideration to the impugned orders and the material available on record.

8. The question of law requiring adjudication in this appeal is whether the appellant, who is unquestionably entitled for excise duty exemption under the Notification dated 25.04.2007 was required to file any

formal application for claiming such refund? Clause 3 of the said notification reads as below:

> *"3. 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 duty paid other than the amount of duty paid by utilization 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 7th 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;*
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> *(b) 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 utilization of CENVAT credit under the CENVAT Credit Rules, 2004, during the month under consideration to the manufacturer by the 15th of the next month;*
>
> *Provided that in cases, where the exemption contained in this Notification is not applicable to some of the goods produced by a manufacturer, such refund shall not exceed the amount of duty paid on the inputs used in or in relation to the manufacture of good cleared under this notification;*
>
> *(c) if there is likely to be any delay in the verification, Assistant Commissioner of Central Excise or the Deputy Commissioner of Central excise, as the case may be, shall refund the amount on provisional basis by the 15th of the next month to the month under consideration and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds admissible to the manufacturer."*

Bare perusal of the language of the above clause makes it clear that all that is required from a manufacturer eligible for exemption under the Notification to get duty refund is that the statement of duty paid for each month, other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004 should be submitted to the

Assistant Commissioner of Central Excise or the Deputy Commissioner of Central excise, as the case may be, by the 7th of the next month for which the duty has been paid. As per Clause 3(b), once the duty paid statement is received, the burden then shifts to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central excise, as the case may be, to make the required verification and refund the amount of duty paid, by 15th of the next month. The Notification dated 25.04.2007 does not stipulate that the manufacturer entitled to exemption would be required to file a formal application for refund. Upon a pertinent query being put, Mr. Keyal was not in a position to point out any such procedure/prescribed format for duty refund in the exemption notification of the Central Excise Act and the Rules.

9. Identical controversy arose in the case of ***Vernerpur Tea Estate*** (supra), wherein challenge given to rejection of claim for duty refund under an analogous Notification dated 08.07.1999 was examined by the Division Bench of this Court. The relevant paragraphs from the judgment rendered by the Division Bench in ***Vernerpur Tea Estate*** (supra) are extracted below for the sake of ready reference:

> *"7. It is argued on behalf of the appellant that statement of duty paid submitted in the RT-12 returns by the 7th of the next month in which the duty was paid from the account current was substantial compliance and therefore the Assistant Commissioner ought to have refunded the amount of duty paid by the 15th of the next month or if there was any doubt, he should have refunded the amount on provisional basis. It has also been argued that in any case, the refund of duty paid cannot be denied to the appellant on the ground of delay as no limitation is prescribed in the Notification. On the other hand, the learned counsel for the Revenue has defended the order passed by the Tribunal.*
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> *8. The relevant Clauses 2 and 3 of the Notification are re-produced below for ready reference:-*

'2. 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 duty paid from the said account current to the Assistant Commissioner or the Deputy Commissioner, as the case may be, by the 7th of the next month in which the duty has been paid from the account current.

(b) 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 from the account current during the month under consideration to the manufacturer by the 15th of the next month.

(c) If there is likely to be any delay in the verification, Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall refund the amount on provisional basis by the 15th of the next month to the month under consideration and thereafter may adjust the amount of refund by such amount as may be necessary in the subsequent refunds admissible to the manufacturer.

3. The exemption contained in this Notification shall apply only to the following kind of units, namely:-

(a) New industrial units which have commenced their commercial production on or after the 24th day of December, 1997;

(b) Industrial units existing before the 24th day of December, 1997 but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty five per cent on or after the 24th day of December, 1997.'

9. A bare reading of the above quoted clauses of the Notification makes it clear that the appellant was first required to prove its eligibility for notified exemptions by establishing that the three industrial units had undertaken substantial expansion of not less than 25% on or before 24th day of December, 1997 and then file

every month's statement of duty paid from the account current to the Assistant Commissioner. And, if these two conditions were fulfilled, the appellant was entitled to refund of the amount of duty paid. It is not in dispute that the Industrial Unit has undertaken increase by more than 25%. Clause 2(a) of the Notification only says that the manufacturer shall submit a statement of the duty paid by 7th of next month in which the duty has been paid from the account current. ***The Notification nowhere mandates the manufacturer to submit a separate claim for refund of duty paid. The appellant has admittedly been submitting statements of the duty paid from account current in RT-12 returns within time with all details before the Assistant Commissioner. The appellant having been once found to be eligible for exemptions and refund of duty paid, denial of benefit of exemptions and refund on the ground of delay, in our considered opinion, will cause grave injustice which cannot be permitted. Even otherwise, it is well settled law that non-following of procedural requirement cannot deny the substantive benefit, otherwise available to the assessee. Also exemptions made with a beneficent object like growth of industry in a region have to be liberally construed and a narrow construction of the Notification which defeats the object cannot be accepted. For these reasons, we conclude that the impugned order of the Tribunal is not based on correct appreciation of the provisions of Notification and denial of refund (of duty paid) to the appellant on the ground of delay is wholly unjustified. We also hold that statements of duty paid submitted in RT-12 returns by the appellant was substantial compliance of Clause 2(a) of the Notification and there was no need for it to submit a separate statement of the duty paid and claim refund. The Tribunal itself earlier in number of cases viz. Commissioner of Central Excise v. Vinay Cement Ltd., 2002 (147) E.L.T 74; Commissioner of Central Excise v. Papuk Tea Estate, 2007 (219) E.L.T 178 and Dhunseri Tea Estate v. Commissioner of Central Excise, 2011 (274) E.L.T 590 has held that statements of duty paid submitted in RT-12 returns amounts to full compliance of Clause 2(a) of the Notification and refund of duty paid cannot be denied for want of separate statement of such duty paid. A long standing decision adopting a particular construction which may have been acted upon by persons in the general conduct of affairs may not be departed from on the doctrine of stare decisis.***

(Emphasis supplied)

10. With these findings, we answer all the substantial questions of law in favour of the appellant. We accordingly set aside the orders

dated 08.11.2006, 09.10.2007 and 29.02.2016 passed by the Deputy Commissioner, Commissioner (Appeals) and the Tribunal, respectively and allow the appeal with cost of Rs. 1,000/-."

10. The language of the notification dated 08.07.1999 under consideration in the said case is *pari materia* to the notification dated 25.04.2007. The Division Bench of this Court held in unequivocal terms that the only requirement for a manufacturer to claim benefit of exemption of excise duty under the notification was to prove its eligibility for such claim and to submit statement of duty paid, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central excise, as the case may be, by the 7th of the next month for which the duty had been paid. The Division Bench held that once the appellant was found to be eligible for exemptions and refund of duty paid, denial of benefit of exemptions and refund on the ground of delay cannot be permitted.

11. Thus, the controversy at hand is clearly covered by the ratio of the judgment of the Division Bench in the case of ***Vernerpur Tea Estate*** (supra). The judgment in the case of ***Lukwah Tea Estate*** (supra) relied upon by Mr. Keyal is clearly distinguishable because in that case the issue regarding claim for exemption of duty laid by the assessee had already been decided against the assessee by the High Court and the subsequent claim was found to be barred by the principle of *res judicata.* It was further held that the absence of limitation prescribed under the notification would not make the assessee eligible for the exemption/refund claimed unless they satisfy the procedure prescribed under the notification. We may observe that the said judgment, on the face of it is distinguishable because the issue of *res judicata* is not prevailing in the present case and, moreover, the appellant in the said case had failed to furnish adequate evidence in support of the refund claims, i.e. compliance with the

prescriptions under the notification, which is not the position in the present case. It may be mentioned here that the Division Bench judgment in the case of ***Vernerpur Tea Estate*** (supra) was rendered at an earlier point of time and the same was not considered by the subsequent Division Bench in the case of ***Lukwah Tea Estate*** (supra). Thus, to the extent of inconsistency in ratio, the judgment in the case of ***Lukwah Tea Estate*** has to be held as *per incuriam*.

We are of the firm view that the judgment in the case of ***Vernerpur Tea Estate*** (supra) has a direct bearing on the controversy in the present case.

On a plain reading of Clause 3(b) of the exemption notification reproduced hereinbefore, it becomes clear that the same does not contemplate filing of any formal refund application. Grant of refund is automatic upon the assessee whose eligibility to claim refund is not disputed, forwarding the statement of duty paid to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central excise, as the case may be, by the 7th of the next month for which the duty has been paid. No sooner this requirement is fulfilled, the onus shifts on to the jurisdictional authority to verify the statement of duty paid and refund the excise duty to the assessee/manufacturer by 15th of each month in terms of the said notification. Regarding the aspect that the statement of duty paid was forwarded by the assessee within the stipulated time, we may refer to the relevant observations made in the order dated 08.08.2012/19.08.2012, passed by the assessing authority reproduced (supra). It is clearly observed in the order that the authority had caused verification of the records, ***such as statement of duty paid***, PLA, GAR-7 Challan etc. for the relevant period and the verification report of the jurisdictional Superintendent of the assessee relating to their claim of

refund, production ***and clearance of the goods and payment of duty through Account Current*** as well as the CENVAT Credit Account.

The eligibility of the appellant to get refund under the exemption notification is not disputed by the respondents because the refund was sanctioned to the appellant by the jurisdictional authority for the months of January and February, 2012 by the impugned order dated 08.02.2012. It may be true that as the appellant having started the manufacturing process in July, 2010 by setting up a new unit, may have been delayed in acquiring the requisite eligibility certificate but no sooner the eligibility criteria for duty refund was satisfied, the appellant became entitled to claim duty refund because, undisputedly, the statement of duty paid by the appellant for the month of July, 2010 to December, 2011 was duly verified as is reflected from the above-quoted observations made by the jurisdictional authority at Paragraph 7 of its order dated 08.08.2012 (supra). Merely because the assessee submitted the application for eligibility on 08.01.2012, the claim for duty refund could not be defeated as being time barred. At best, the assessee could be denied the interest, if any accrued on the excise duty paid for the period from July, 2010 to December, 2011. As observed by Hon'ble Division Bench in the case of ***Vernerpur Tea Estate*** (supra), non-following of procedural requirement cannot deny the substantive benefit otherwise available to the assessee. Exemptions made with a beneficient object like growth of industry in an otherwise difficult region have to be liberally construed and a narrow construction of the notification which defeats the object thereof cannot be accepted.

12. In view of the above discussion, we are of the firm opinion that the substantial questions of law framed by this Court, while admitting the appeal, deserve to be decided in favour of the assessee/appellant. As a

consequence, the impugned judgment and order dated 12.01.2018, passed by the CESTAT, Kolkota, is hereby quashed and set aside. The orders of the appellate authority as well as the jurisdictional adjudicating authority deserve to be, and are hereby reversed to the extent the refund claim was denied to the appellant for the months of July, 2010 to December, 2011 while holding that the assessee/appellant is entitled to refund of the excise duty paid by it by virtue of Clauses 3(a) and 3(b) of the Notification dated 25.04.2007. The duty paid by the appellant for this period commencing from July 2010 to December 2011, shall be refunded to the appellant with interest if applicable as per law within next 60 (sixty) days.

13. The appeal stands disposed of in terms of the above observations and directions.

No order as to costs.

JUDGE **CHIEF JUSTICE**

Comparing Assistant