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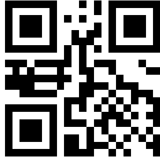

THE GAUHATI HIGH COURT

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

Case No. : WP(C)/740/2022

M/S NORTH EAST HI-TECH
A PARTNERSHIP FIRM FORMED UNDER THE PROVISIONS OF THE PARTNERSHIP ACT, 1932, HAVING ITS PRINCIPAL PLACE OF BUSINESS AT UDYOG NAGAR, PORBOTIA, MAKUM ROAD, TINSUKIS, PIN-786125, ASSAM, REP. BY ITS PARTNER SRI SAJJAN KUMAR GOEL, S/O. DEVI DAYAL GOEL, R/O. TINSUKIA, ASSAM.

VERSUS

THE UNION OF INDIA AND 2 ORS.
THROUGH THE FINANCE SECRETARY, MINISTRY OF FINANCE TO THE GOVT. OF INDIA, NORTH BLOCK, PARLIAMENT HOUSE, NEW DELHI-110001.

2:PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE

DIBRUGARH
C.R. BUILDING
LANE-F
DIBRUGARH
PIN-786003
ASSAM.

3:DEPUTY COMMISSIONER

CGST DIVISION TINSUKIA
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
TINSUKIA
DURGABARI ROAD
TINSUKIA
PIN-786123

Advocate for the Petitioner : MR. D SAHU

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

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER(CAV)

Date : 13-05-2022

Heard Mr. D.Sahu, the learned counsel for the Petitioner, Mr. Girin Pegu, the learned counsel appearing on behalf of the Respondent No. 1 and Mr. S.C. Keyal, the learned Standing Counsel for the GST Department.

2. The present writ petition under 226 of the Constitution has been filed challenging the Order No.02/SR/(09-10/10-11/11-12/12-13/13-14/14-15/15-16/16-17/17-18/18-19/PR.COMMR.2021-22 dated 5/8/2021 and for a direction to the Respondent Nos. 2 and 3 to expedite the proceedings relating to special rate fixation and not to initiate any recovery proceedings till the special rate asserted by the Respondent No. 2.

3. The case of the petitioner in brief is that the Petitioner firm is an industrial unit carrying on manufacturing of M.S. Ingot falling under CETSH-72 of the Central Excise Tariff Act, 1985. The Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion vide the Office Memorandum dated 1/4/2007 announced the North East Industrial and Investment Promotion Policy

(NEIIPP), 2007. In terms with the said industrial policy of the year 2007, various exemptions were assured to all new units as well as existing units which go in for substantial expansion, unless otherwise specified and which commence commercial production within the 10 years period from the date of the notification of the industrial policy, i.e. NEIIPP, 2007 for a period of 10 years from the date of commercial production. The location of the new as well as the existing industrial units carrying out a substantial expansion had to be in the North Eastern Region. The said industrial policy also stipulated that incentives on substantial expansion will be given to units effecting "an increase by not less than 25% in the value of the fixed capital investment in the plant and machinery for the purpose of expansion of the capacity/modernization and diversification" as against an increase of 33½ % which was prescribed in the earlier North East Industrial Policy, 1997. As regards excise duty exemption, it was stipulated that 100% excise duty exemption will be continued, on finished products manufactured in the North Eastern Region, as was available under the North East Industrial Policy,1997. However, in the cases where the CENVAT paid on the raw materials and intermediate products going into the production of finished products(other than the products which are otherwise exempt or subject to nil rate of duty) is higher than the excise duties payable on the finished products, ways and means to refund such overflow of CENVAT credit will be separately notified by the Ministry of Finance. In terms with the said industrial policy of 2017, the Central Excise Exemption which was granted under the North East Industrial Policy,1997 vide the

Notification Nos. 32/1999-CE and 33/1999-CE, both dated 8/7/1999 as amended from time to time were continued and a Notification No. 20/2007-CE dated 25/4/2007 was issued. The Petitioner which as already stated hereinabove, was in the business of manufacturing M.S. Ingot expanded its production capacity to avail the benefits under the Industrial Policy of 2007 and the incentives and exemptions granted therein. The Petitioner was allotted the Central Excise Registration No.AAEFN5081AXM001 and commenced its commercial production after its expansion w.e.f. 12/11/2013. It is the further case of the Petitioner in the writ petition that as the Petitioner's industrial unit being an eligible unit, the Petitioner continued to avail exemption.

4. At this stage, it may be relevant to mention that the Government of India, Ministry of Finance in exercise of the powers conferred under Sub-Section (1) of Section 5A of the Central Excise Act. 1944 issued the Notification No. 20/2007-CE, dated 25.4.2007, whereby exempted the Goods specified in the First Schedule to the Central Excise Tariff Act, 1985 other than those goods mentioned in Annexure to the said Notification. The terns for availing the said exemption was clearly spelt out. Subsequently thereto vide a Notification bearing No. 20/2008-CE dated 27/3/2008, the Notification No. 20/2007-CE dated 25/4/2007 was amended whereby the value addition undertaken in manufacture of the goods under Area based Exemption Notification was introduced. In terms with Para 2A of the Notification No.20/2008-CE dated 27/03/2008, the Assessee availing the benefit under the said Notification was entitled for refund of the Central Excise Duty paid on the value addition undertaken in

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the manufacture of goods which shall be equivalent to the amount calculated as percentage of the duty payable on the said excisable goods of the description specified in column (3) of the Table annexed to the said Notification. Taking into account that the goods manufactured by the Petitioners fall within Chapter 72 of the Central Excise Tariff Act, 1985, the Petitioner exemption was limited to 39%. Another Notification being Notification No. 38/2008-CE dated 10/6/2008 was also issued whereby the Notification No.20/2007-CE dated 25/4/2007 was further amended by substituting sub-para (1) of Paragraph 3 with the following :-

> "*(1) Notwithstanding anything contained in paragraph 2A, the manufacturer shall have the option not to avail the rates specified in the said Table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, if the manufacturer finds that the actual value addition in the production or manufacture of the said goods is at least 115 per cent of the rate specified in the said Table and for the said purpose, the manufacturer may make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, not later than the 30th day of September in a financial year for determination of such special rate, stating all relevant facts including the proportion in which the material or components are used in the production or manufacture of goods: Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days:*
>
> *Provided further that the manufacturer supports his claim for a special rate with a certificate from his statutory Auditor containing a calculation of value addition in the case of goods for which a claim is made, based on the audited balance sheet of the unit for the preceding financial year:*
>
> *Provided also that a manufacturer that commences commercial production on or after the 1st day of April, 2008 may file an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may*

be, for the fixation of a special rate not later than the 30th day of September of the financial year subsequent to the year in which it commences production."

5. Even prior to the petitioner going for commercial production after expansion, some of the industrial units preferred writ petitions challenging the Notification Nos.20/2008-CE and 38/2008-CE dated 27/3/2008 and 10/6/2008 respectively whereby the refund entitlement as stated herein above was reduced. Vide a common judgment and order dated 26/4/2009, this Court set aside and quashed the said Notification Nos. 20/2008-CE and 38/2008-CE dated 27/3/2008 and 10/6/2008 respectively on the ground that it was hit by the principles of promissory estoppel. Further to that, this Court also declared that the Petitioners who had filed the writ petition were entitled to receive 100% exemption from payment of excise duty as were available to them in terms with the relevant Notification Nos. 32/1999-CE and 33/1999-CE dated 8/7/1999 and Notification Nos.20/2007-CE dated 25/4/2007 as the case may be.

6. Being aggrieved by the judgment and order passed by this Court dated 24/6/2009, the Union of India filed Writ Appeal No 243/2009 alongwith other writ appeals. The Division Bench of this Court initially passed an order on 11/8/2009 whereby the refund in terms with the verdict in the writ petition was directed to be limited, to the amount offered by the Excise Authorities or in other words the judgment of this Court dated 24/6/2009 was rendered inoperative. While the said writ appeal continued to be pending before the Division Bench of this Court, similar litigations emanating from the Gujarat High Court were taken up by the Supreme

Court on 13/1/2012 in SLP(C) Nos.28194-28201/2010 wherein the Supreme Court vide an order dated 13/1/2012 stayed the judgment passed by the Gujarat High Court till further orders subject to the Petitioner therein (The Excise Authorities) releasing to the Respondents (the writ petitioners therein) 50% of the amount due to them in terms with the judgment assailed before the Supreme Court and subject to furnishing solvent surety to the satisfaction of the jurisdictional Commissioner within four weeks of their furnishing the said security.

7. Taking a cue from the interim order passed by the Supreme Court in the Gujarat cases, an interlocutory application being registered and numbered as Misc. Case No. 1999/2012 was filed in the pending Writ Appeal No.243/2009 and the Division Bench of this Court after referring to the order of the Supreme Court dated 13/1/2012 (in the Gujarat cases) modified the earlier order dated 11/8/2009 in terms with the order of the Supreme Court dated 13/1/2012 by an order dated 14/8/2012.

8. The record further reveals that the Division Bench of this Court vide a judgment and order dated 20/11/2014 dismissed the Writ Appeal No. 243/2009 and allowed the various writ petitions filed challenging the Notifications Nos. 20/2008-CE and 38/2008-CE dated 27/3/2008 and 10/6/2008 respectively. A perusal of the writ petition before this Court does not however reflect as to whether the Petitioners herein had filed any writ Petition challenging the said Notifications. The Union of India thereupon preferred a Special Leave Petition before the Supreme Court which was registered and numbered as SPL(C)No. 11878/2015. At this stage, it may be also be relevant to

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mention herein that the benefits of the judgment and order dated 20/11/2014 passed by the Division Bench of this Court were not allowed by the Central Excise Department for which various contempt proceedings were initiated before this Court. The Supreme Court vide order dated 7/12/2015 stayed the operation of the judgment and order dated 20/11/2014 passed in Writ Appeal No. 243/2009 subject to the Union of India releasing 50% of the amount due to the Respondents therein in terms with judgment and order dated 20/11/2014 upon the Respondents therein furnishing solvent security to the satisfaction of the jurisdictional Commissioner. It was also mentioned that upon releasing of the said 50% of the amount, the contempt proceedings initiated shall also remain stayed. The said order of the Supreme Court dated 7/12/2015 is quoted herein below :-

> "*Heard*
>
> *Pending further orders, we direct that subject to the petitioners releasing 50% of the amount due to the respondent in terms of the impugned judgment on the respondents' furnishing solvent surety to the satisfaction of the jurisdictional commissioner, the operation of the impugned judgment shall remain stayed.*
>
> *We further direct that contempt proceedings initiated against the petitioners shall remain subject to their releasing 50% of the amount as stated above remain stayed.*
>
> *The needful shall be done within four weeks from today.*
>
> *I.A. No. 3 of 2015 is accordingly allowed and disposed of."*

9. The Petitioner herein in terms with the above quoted interim order passed by the Supreme Court, continued to get refund upon furnishing the security bonds executed by the partners of the Petitioner. The Supreme Court thereafter vide a common judgment and order dated 22/4/2020 held that the respective High Courts

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including this Court had committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they were hit by the doctrine of promissory estoppel and that they are retrospective and not retroactive. The said judgment is Union of India Vs. V.V. F. Limited reported in (2020) 20 SCC 57 The relevant directions of the Supreme Court at paragraph 26 & 26.1 of the said judgment being pertinent for the purpose of the instant dispute is quoted herein below : -

> "*26. Under the circumstances, the respective High Courts have committed a grave error in quashing and setting aside the subsequent notifications/industrial policies impugned before the respective High Courts on the ground that they are hit by the doctrine of promissory estoppel and that they are retrospective and not retroactive. Consequently, all these appeals are* ***ALLOWED.*** *The impugned Judgments and Orders passed by the respective High Courts, which are impugned in the present appeals, quashing and setting aside the subsequent notifications/industrial policies impugned in the respective writ petitions before the respective High Courts, are hereby quashed and set aside. Consequently, the original writ petitions filed by the respective original writ petitioners before the respective High Courts challenging the respective subsequent notifications/industrial policies stand dismissed and for the reasons stated hereinabove, the challenge to the respective hereinbove, the challenge to the respective subsequent notifications/industrial policies impugned before the respective High Courts* ***FAIL.*** *However, it is* ***CLARIFIED*** *that the present judgment shall not affect the amount of excise duty already refunded, meaning thereby, the cases in which the excise duty is already refunded prior to the subsequent notifications/industrial policies impugned before the respective High Court, they are not to be reopened. 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 Court and they shall be decided in accordance with the law and on merits and as per the subsequent notifications/industrial policies impugned before the respective High Courts. All these appeals stand disposed of accordingly. NO COSTS.*
>
> *26.1. Now, so far as the Civil Appeals @ SLP (C) No. 14751/2013,14752/2013 and 14753/2013 are concerned, the challenge to notifications Nos. 16/2008-CE and 33/2008-CE* ***FAIL*** *and the Excise authorities have in fact allowed the refund of excise in line with the subsequent notification Nos.16/2008-CE and 33/2008-CE which are now upheld by this Court, the present appeals deserve to be dismissed and are accordingly dismissed. NO COSTS."*

10. A perusal of the above quoted portion of the judgment of the Supreme Court V.V. F. Ltd (supra) would show that the judgments and orders passed by the respective High Courts including this Court dated 20/11/2014 in Writ Appeal No. 243/2009 were set aside and quashed. The writ petitions filed by the various petitioners in the respective High Courts challenging the respective subsequent notifications/industrial policies including the various writ petitions filed before this Court were dismissed and the challenge to the respective subsequent notifications/industrial policies impugned before the respective High Courts including this Court was declared to have failed. It was, however, clarified that the judgment and order dated 22/4/2020 shall not affect the amount of excise duty already refunded prior to the subsequent notifications/industrial policies impugned before the respective High Courts and they are not to be reopened, meaning thereby that those refunds so made prior to the Notification No. 20/2008-CE dated 27/3/2008 and Notification No. 38/2008-CE dated 10/6/2008 were not to be reopened. It was also clarified that 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 law and on merits as per the subsequent notifications/industrial policies impugned before the respective High Courts. In order words, for the North Eastern Region, the pending refund applications were to be processed in terms with Notification No. 20/2008-CE dated 27/3/2008 and Notification No. 38/2008-CE dated 10/6/2008 respectively.

11. In the backdrop of the above, it is relevant to take note of that vide a Communication dated 28/5/2000 the Assistant Commissioner, Central GST Division, Tinsukia informed the Petitioner that in view of the judgment of the Supreme Court dated 22/4/2020, the Petitioner was requested to reverse the amount taken as refund/self credit in excess of the Petitioner's entitlement as per the table annexed to Paragraph 2 (A) of the Notification No. 20/2007-CE dated 27/3/2008 along with applicable interest within 15 days of the receipt of the said letter else it was intimated that action may be initiated against the Petitioner as per the provisions of Central Excise Act, 1944 and the Rules framed therein under. Pursuant thereto reminders were issued to the Petitioner on 22/6/2020, 16/7/2020 and 18/09/2020 but the Petitioner did not reverse the amount taken as refund, for which a show cause notice dated 20/11/2020 was issued whereby the Petitioner was asked to show cause within 30 days from the date of receipt of the said show cause notice as to why the refund of Rs.99,82,752/-, which was sanctioned earlier in accordance with the interim judgment of the Apex Court dated 7/12/2015 for the period from January, 2010 to June 2017 should not be recovered from the Petitioner ; interest at the appropriate rate should not be recovered from the Petitioner under Section 11A A of the Central Excise Act, 1944 and penalty should not be imposed upon the Petitioner under Section 11 A C of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. The Petitioner instead of submitting the show cause notice filed a writ petition before this Court which was registered and numbered as W.P.(C) No. 822/2021. The said writ

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petition was disposed off vide an order dated 15/3/2021 passed in W.P.(C) No.822/2021. The said order is quoted herein below :-

> "*Mr. D.Sahu, the learned counsel for the petitioner gives an undertaking that the application for fixing a special rate including the ad-on would be filed within a period of new week from today. In the event, such application is filed before the Assistant Commissioner, GST, Dibrugarh, the authorities including the Principal Commissioner of GST may pass any order as may be advisable under the law. In the event, the application is not filed, no further requirement of the authorities.*
>
> *By requiring the petitioner to make a representation and the respondents to pass a reasoned order thereon, we clarify that we are not making any observation on the merit of the claim of the petitioner, nor on the maintainability of the representation and it would be up to the Principal Commissioner, GST or any authority of the Department, who may take up the representation to pass any reasoned order as may be advisable under the law.*
>
> *Based upon such statement from the learned counsel for the petitioner, the writ petition stands closed.*"

12. A perusal of the said order would show that the counsel appearing for the Petitioner gave un undertaking that the application for fixing a special rate including the ad-on would be filed within a period of 1 week from 15/3/2021 and this Court on the basis of the said undertaking observed that, if such an application is filed before the Assistant Commissioner, GST Department, Dibrugarh, the authorities including the Principal Commissioner of GST may pass any order as may be advisable under the law. It was also clarified that by requiring the Petitioner to make a representation and the Respondent to pass a reasoned order thereon this Court was neither making any observation on the merit of the claim of the Petitioner nor on the maintainability of the representation and it would be up to the Principal Commissioner, GST or any other authority of the Department who may take up the representation to pass any reasoned order as may be advisable under law.

13. Now the question arises as to what application did the counsel for the petitioner undertake to file within a period of one week and as to whether the same was permissible. For that purpose, it would be relevant to take note of the Notification No.38/2008-CE dated 10/6/2008. The relevant portion of the said notification which relates to fixation of a special rate has already been quoted herein. A perusal of the same stipulates that notwithstanding anything contained in paragraph 2A of the Notification No. 20/2007-CE dated 25/4/2007 as was amended by the Notification No. 20/2008-CE dated 27/3/2008, the manufacturer shall have the option not to avail the rates specified in the table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect to any goods, manufactured and cleared under the said Notification, if the manufacturer finds that the actual value addition in the production or manufacture of the goods is at least 115% of the rates specified in the said table and for the said purpose, the manufacturer may make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, not later than 30th day of September in a financial year for determination of such special rate, stating all relevant facts including the proportion in which the material or components are used in the production or manufacture of goods. The first proviso stipulates that the Commissioner of the Central Excise or the Commissioner of Customs and Central

Excise, as the case may be, may if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of 30 days. Therefore, it would be seen that if the manufacturer wants fixation of a special rate by not availing the option as available in the rates specified in the table, the manufacturer has to file an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be not later than 30th day of September in a financial year for determination of such special rate. The Commissioner of Central Excise or the Commissioner of Customs and Central Excise has been empowered to condone the delay upon sufficient cause being shown, which prevented the manufacturer from filing the application within the aforesaid time by a further period of 30 days. This Court at the cost of prolixity reiterates the said Sub-Paragraph (1) of Paragraph No. 3 of the Notification No. 20/2007-CE dated 25/4/2007 after amendment by the Notification Nos. 20/2008-CE and 38/2008-CE stipulates that for each financial year the manufacturer has to file an application before the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, not later than 30th day of September of the financial year for determination of such special rate and this period as per the first proviso, the Commissioner of Central Excise or the Commissioner of Customs and Central Excise could be extended by a further period of 30 days upon being satisfied that the manufacturer was prevented by sufficient cause from making the application, within

the aforesaid time allows such manufacturer to make the application within a further period of 30days.

14. It is this application which the learned counsel for the Petitioner had given an undertaking before this Court that the petitioner would file for fixation of the special rate within a period of one week and this Court clarified that the observations so made directing the Respondent Authorities to pass any order as may be advisable under law on such application, was without making any observation on merit of the claim of the Petitioner nor on the maintainability of the representation and it would be upto the Principal Commissioner, GST or any other authority of the department who may take up the representation to pass any reasoned order as may be advisable under law. In terms with the averments so made in the writ petition, the Petitioner filed the application for fixation of the special rate and the Principal Commissioner and the Respondent No. 2 fixed the matter for hearing of the special rate application.

15. At this stage, it is relevant to take note of, that from a perusal of the impugned order dated 5/8/2021, it reveals that on 18/3/2021, the Petitioner filed 10 applications seeking fixation of the special rate representing the actual value addition in terms with Para 3(1) of the Notification No. 20/2007-CE dated 25/4/2007 after amendment. Vide the impugned order dated 5/8/2021, all the 10 applications filed by the Petitioner for fixation of special rate representing the actual value addition for the financial year 2009-10 to 2018-19 were rejected as being barred by limitation. It is against the said order that the Petitioner has filed the instant writ petition on 2/2/2022. At this stage, it

may also be relevant herein to mention that pursuant to the passing of the impugned order on 5/8/2021, the Petitioner submitted its reply to the show cause notice dated 28th of November, 2020.

16. This Court vide an order dated 9/2/2022 issued notice returnable by six weeks. Subsequent thereto, on 16/2/2022, the Assistant Commissioner , Central GST Division, Tinsukia had passed the Order in Original No. 11/ Asst.COM/ADJ/CE/ACT/2021-22 whereby the demand of Rs. 99,82,752/- was confirmed along with applicable interest at the appropriate rate in terms with Section 11 A A of the Central Excise Act, 1944 was confirmed. However, the said authority did not impose any penalty upon the Petitioner. On the passing of the said order, the Petitioner filed an Interlocutory Application on 10/03/2022 which was registered and numbered as IA (C) No.940/2022, whereby the Petitioner sought for stay of the said Order in Original No. 11/Asst.COM/ADJ/CE/ACT/2021-22 dated 16/2/2022 on the ground that the order dated 5/8/2021 whereby the Petitioner's application for fixation of the special rate was rejected was pending adjudication before this Court in the instant writ petition.

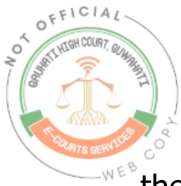
17. I have heard Mr. D. Sahu, the learned counsel for the Petitioner as well as Mr. S. C. Keyal, the learned counsel appearing on behalf of the GST Department.

18. Mr. Sahu submits that the order impugned in the instant proceedings i.e. the order dated 5/8/2021 has been passed without proper application of mind and without taking into consideration that during the period when the Petitioner ought to have

filed the application i.e. by 30th day of September of each financial year, the Notification No. 20/2008-CE and Notification No. 38/2008-CE dated 20/7/2008 and 10/6/2008 respectively were pending adjudication before various Courts and no occasion arose for filing the said application as the said notifications were initially set aside and quashed by this Court vide judgment and order dated 24/6/2009 and thereafter by the Division Bench of this Court vide judgment and order dated 20/11/2014 and the said matter was pending adjudication before the Apex court and by virtue of interim orders the Petitioner was getting 50% of the benefits subject to furnishing of solvent security. The need arose for filing the application only after the judgment of the Supreme Court dated 22/4/2020. At that relevant point of time, the entire country was under lockdown on account of the COVID pandemic. He further submitted that though notices were issued by the Assistant Commissioner, Central GST Division, Tinsukia on 28/5/2020, 22/6/2020, 16/7/2020 and 18/7/2020 but on account of the various restrictions the Petitioners could not take appropriate legal advice as regards the effect of the judgment and order dated 24/2/2020 whereby the Notifications dated 27/3/2008 and 10/6/2008 were upheld. He further submitted that after the petitioner received the show cause notice dated 20/11/2020, the Petitioner took legal advice and thereafter filed the writ petition before this Court which was registered and numbered as W.P.(C) No. 822/2021. The learned counsel further submitted that this Court after taking into consideration the case of the Petitioner permitted the petitioner to file the application for fixing a special rate including the ad-

on within a period of one week and directed the concerned Respondent Authorities to pass reasoned order. On the basis of the said order dated 15/3/2021 passed by this Court, the Petitioner immediately on 18/3/2021 filed the said application. The learned counsel for the Petitioner referring to the judgment of this Court rendered in the case of **Jyothy Labs Ltd.** Vs. **Union of India and 2 Ors**. reported in **(2021) SCC Online Gau 1602** submits that the Petitioner herein is similarly situated and as such similar directions as was passed in the said judgment dated 12/8/2021 in **Jyothy Labs Ltd.** (supra) needs to be passed in the instant case. He further submitted that in terms with the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (in short, "the Act of 2020") there were certain relaxations being granted in respect to completion of any proceedings or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action by whatever name called by any authority, Commission or Tribunal by whatever name called under the provision of the specified Act or filing of an appeal, reply or application or furnishing of any report, document returned or statement or such other record by whatever name may be called under the provisions of the specified Act and as such the Petitioners should be granted the benefit under the said Act of 2020.

19. Mr. D. Sahu, the learned counsel for the petitioner further referring to the order passed by the Supreme Court in the Suo Motto Writ Petition No. 3/2020, whereby the Supreme Court had directed extension of the period of limitation in all proceedings before the Courts, Tribunals and the freezing of the limitation period vide



the order dated 10/1/2022 was continued beyond 28/2/2022 for a period of 90 days from 15/3/2020. He therefore submits that taking into consideration that the petitioner had filed the application on 18/3/2021 the order dated 5/8/2021 ought to be interfered with thereby directing the Respondent No. 2 to decide the applications for fixing special rate on merits.

20. Mr. S.C. Keyal, the learned Standing Counsel for the GST Department submits that the judgment of the Supreme Court was passed on 22/4/2020 and the Petitioner had only filed the application on 18/3/2021. Referring to the judgment in the case of Jyoti Labs(supra), the learned Standing Counsel submits that the perusal of the facts would show that immediately after the passing of the order dated 22/4/2020, the Petitioner therein had filed the application on 18/5/2020 and as such, the facts in the case of Jyoti Labs(supra) being clearly distinct and different, the proposition of law stated therein cannot be applied to the facts of the instant case. He further submits that had the petitioner filed his application before 30th of September even in the year 2020, the Petitioner's application could have been taken into consideration. He further submits that the Act of 2020 is not applicable to the present case in as much as the relaxation granted therein were in respect to the specified Act as defined under Section 2(1) (b) of the Act of 2020 and the Central Excise Act, 1944 is not a specified Act within the meaning of Section 2 (1) (b) of the Act of 2020.

21. I have heard the learned counsels for the parties and given my anxious consideration to the matter. The gamut of the dispute revolves around the

understanding of the Notification No.38/2008-CE dated 10/6/2008 whereby the Notification No. 20/2007-CE dated 25/4/2007 was amended. Another aspect which needs to be taken into consideration is the judgment of the Supreme Court in the case of V.V. F. Ltd.(supra) and its effect of the said judgment on the amendment made by the Notification No. 38/2008-CE dated 10/6/2008. In the forgoing paragraphs of the instant judgment, this Court had explained the scope and ambit of Paragraph 3(1) as was inserted by the Notification No. 38/2008-CE. In terms with the said provision, the manufacturer shall have the option not to avail the rates specified in the table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect to any goods, manufactured and cleared under the said Notification, if the manufacturer finds that the actual value addition in the production or manufacture of the goods is at least 115% of the rates specified in the table and for that purpose, the manufacturer may make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, not later than 30th day of September in a given financial year for determination of such special rate, stating all relevant facts including the proportion in which the material or components are used in the production or manufacture of goods. To understand the reason behind the said amendment, whereby the option was granted to the manufacturer, it would be relevant to take note of the judgment of the Supreme Court

in V.V.F. Ltd(supra). In Paragraph No. 24, the Supreme Court held that the impugned Notifications therein including the Notification No. 20/2008-CE and 38/2008-CE were clarificatory in nature and it can be defined as an Act to remove doubts. It is in that perspective, the Supreme Court observed that the subsequent Notification/industrial policies cannot be said to have taken away the benefits which were accrued/granted under the earlier Notifications. In Paragraph 24 . 1 to 24.1.4 the Supreme Court on the basis of the materials on record had observed the misuse of the earllier Notifications granting exemption. The Supreme Court in Paragraph Nos. 24.2, 24.3, 24.4 and 25 observed as to why the doctrine of promissory estoppel was not applicable in the case of the manufacturing assesses and came to a finding that as the impugned subsequent Notifications/industrial policies were clarificatory in nature and were issued in public interest and in the interest of the revenue and they sought to achieve the original object and purpose of giving incentives/exemption while inviting the person to make investments on establishing the new undertaking and they did not take away any vested right conferred under the earlier Notifications/industrial policies and therefore cannot be said to be hit by the doctrine of promissory estoppel and the same is to be applied retrospectively and same cannot be said to be irrational or arbitrary. For the purpose of the instant dispute, it would be relevant to quote herein below the said Paragraph Nos. 24.2, 24.3, 24.4 and 25 of the judgment of the Supreme Court in V.V. F. Ltd(supra) :-

> "*24.2. Therefore, the Government came out with the impugned notifications/industrial policies that the refund of excise duty shall be provided*

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on actual and calculated on the basis of actual value addition. On a fair reading of the earlier notifications/industrial policies, it is clear that the object of granting the refund was to refund the excise duty paid on genuine manufacturing activities. The intention would not have been that irrespective of actual manufacturing activities. The intention would not have been that irrespective of actual manufactured, but are manufactured on paper, there shall be refund of excise duty which are manufactured on paper. Therefore, it can be said that the object of the subsequent notifications/industrial policies was the prevention policies, the only rationalize the quantum of exemption and proposing rate of refund on the total duty payable on the genuine manufactured goods. At the time when the earlier notifications were issued, the Government did not visualize that such a modus operandi would be followed by the unscrupulous manufacturers who indulge in different types of tax evasion tactics. It is only by experience and on analysis of cases detected by excise department that the Government came to know about such tax evasion tactics being followed by the unscrupulous manufacturers which prompted the Government to come out with the subsequent notifications which, as observed herein above, was to clarify the refund mechanism so as to provide that excise duty refund would be allowed only to the extent of duty payable on actual value addition made by the manufacturer undertaking manufacturing activities in the areas concerned. The entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption/refund of excise duty paid was to provide such exemption only to actual value addition made in the respective areas. As it was found that there was misuse of excise duty exemption it was considered expedient in the public interest and with a laudable object of having genuine industrialization in backward areas or the areas concerned, the subsequent notifications/industrial policies have been issued by the Government. Therefore, the subsequent notifications/industrial polices impugned before the respective High Courts were in the public interest and even issued after thorough analysis of tax evasion and even after receipt of the reports. The earlier notifications were issued under Section 5-A of the Central Excise Act and even the subsequent notifications which were issued in public interest and in the interest of revenue were also issued under Section 5-A of the Central Excise Act, which cannot be said to be bad in law, arbitrary and/or hit by the doctrine of promissory estoppels.

24.3. The purpose of the original scheme was not to give benefit of refund of the excise duty paid on the goods manufactured only on paper or in fact not manufactured at all. As the purpose of the original notifications/incentive schemes was being frustrated by such unscrupulous manufacturers who had indulged in different types of tax evasion tactics, the subsequent notifications/industrial policies have been issued allowing refund of excise duty only to the extent of duty payable on the actual value addition made by the

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manufacturers under taking manufacturing activities in these areas which is absolutely in consonance with the incentive scheme and the intention of the Government to provide the excise duty exemption only in respect of genuine manufacturing activities carried out in these areas.

24.4 As observed herein above the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who establish the new undertakings shall continue to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities. Therefore, it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppels. The respective High Courts have committed grave error in holding that the subsequent notifications/industrial polices impugned before the respective High Courts were hit by the doctrine of promissory estoppels. As observed and held herein above, the subsequent notifications/industrial policies which were impugned before the respective High Courts can be said to be clarificatory in nature and the same have been issued in larger public interest and in the interest of the Revenue, the same can be made applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in aspect of genuine manufacturing activities carried out in the areas concerned shall be frustrated. As the subsequent notifications/industrial policies are "to explain" the earlier notifications/industrial polices, it would be without object unless construed retrospectively. The subsequent notifications impugned before the respective High Courts as such provide the manner and method of calculating the amount of refund of excise duty paid on actual manufacturing of goods. The notification impugned before the respective High Courts can be said to be providing mode on determination of the refund of excise duty to achieve the object and purpose providing incentive/exemption. As observed herein above, they do not take away any vested right under the earlier notifications. The subsequent notifications therefore, are clarifactory in nature since it declares the refund of excise duty paid genuinely and paid on actual manufacturing of goods and not on the duty paid on the goods manufactured only on paper and without undertaking any manufacturing activities of such goods.

25. In view of the above and for the reasons stated above and once it is held that the subsequent notifications/industrial polices which were impugned before the respective High Courts are clarificatory in nature and are issued in public interest and in the interest of the Revenue and they seek to achieve the original object and purpose of giving incentive/exemption while inviting the persons to

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make investment on establishing the new undertakings and they do not take away any vested rights conferred under the earlier notification/industrial policies and therefore cannot be said to be hit by the doctrine of promissory estoppel, the same is to be applied retrospectively and they cannot be said to be irrational and/or arbitrary."

22. From a conjoint reading of the above quoted Paragraphs, it was observed that the Government came out with the impugned Notifications/industrial policies to grant refund of excise duty on actual and calculated on the basis of actual value addition. It was categorically observed that the object of the subsequent notifications/industrial policies was the prevention of tax evasion and by issuance of the subsequent notifications/industrial policies the Government only rationalized the quantum of exemption and proposing rate of refund on the total duty payable on the genuine manufactured goods. It was observed that the entire genesis of the policy manifesting the intention of the Government to grant excise duty exemption/refund of the excise duty paid was to provide such extension only to actual value additions made in the respective areas. A reading of Paragraph 24.3 also makes it clear that the purpose of the original scheme was not to give benefit of refund of the excise duty paid on the goods manufactured only on paper or in fact not manufactured at all. The Supreme Court had further observed that the purpose of the original notifications/incentives schemes were being frustrated by such unscrupulous manufacturer who had indulged in different types of tax evasion tactics. The subsequent notifications/industrial policies had been issued allowing refund of excise duty only to the extent of duty payable on actual value additions made by the manufacturers undertaking manufacturing activities in those areas which is absolutely in consonance with the incentives scheme

and the intention of the Government to provide the excise duty exemption only in respect to genuine manufacturing activities carried out in those areas. The said observations made by the Supreme Court in the above quoted Paragraphs throws further light into the option so given vide Sub-Paragraph (1) of Paragarph 3 of the Notification No.38/2008-CE whereby the Notification No.20/2007-CE was amended in as much as the manufacturing assessee has been granted an option either to get refund in terms with the table specified in Clause 2A or opt for the special rate representing the actual value addition. Paragraph Nos. 24 and 25 stipulates that the notifications impugned which were the Notification Nos. 20/2008-CE and 38/2008-CE were clarificatory in nature and the same is to be applied retrospectively. In the backdrop of the same, it would be relevant to understand the directions of the Supreme Court in Paragraph 26 of the judgment in V.V.P. Ltd(supra) wherein specifically the Supreme Court dealt with the question as to how the refund were to be dealt with.

23. Paragraph 26 has already been quoted herein above. A reading of the said Paragraph No. 26 for the purpose of refund applications shows that the Supreme Court had clarified that the judgment shall not affect the amount of excise duty already refunded, meaning thereby that the cases in which excise duty is already refunded prior to the notifications/industrial policies impugned before the respective High Court, they are not to be reopened. In the opinion of this Court, the reason why the Supreme Court had made that clarification was on account of the observations

made by the Supreme Court in Paragraph Nos. 24 and 25 of the said judgment observing inter alia that the impugned notification/industrial policies were clarificatory in nature and the same can be applied retrospectively. It is because of the said clarification being given by the Supreme Court that the refunds are to be worked out on the basis of the impugned notifications from the dates the said notifications were issued and not from the date on which the original notifications were issued which were held to be clarified by the impugned notifications. It is for that reason the Supreme had categorically mentioned in Paragraph No. 26 that the refunds so granted for the period from the date of the original notification till the date of the subsequent notifications clarifying the original notification should not be reopened. However, in respect to pending refund applications, the Supreme Court categorically clarified that the said 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 law and on merits. The said clarification in the opinion of this Court not only clarifies that all pending applications subsequent to the issuance of the impugned notifications/industrial policies would be dealt with on the basis of the subsequent notification/industrial policies and it was also clarified that the authorities shall decide on the basis of the subsequent notification/industrial policies in accordance with law and on merits.

24. The above observations so made by this Court is based upon a literal reading of Paragraph 26 of the judgment of the Supreme Court in V.V.F.Ltd.(supra) and also on

the basis till 22/4/2020 the judgment and order dated 20/11/2014 passed in Writ Appeal No. 243/2009 whereby the Notifications Nos. 20/2008-CE and 38/2008-CE were quashed but not wiped out from existence till the date of the said judgment passed by the Supreme Court and as such with effect from 22/4/2020 the necessity arose for compliance with the requirements of the impugned notifications No. 20/2008-CE and 38/2008-CE. The Supreme Court had only stayed the judgment passed by the Division Bench of this Court on 7/12/2015. The effect of a stay of a judgment is well settled by a judgment of the Supreme Court in the case of **Sri Chamundi Mopeds Ltd Vs. Church of South India Trust Association, CSI Cinod Secretariat Madras** reported in (**1992**) **3 SCC 1** wherein the Supreme Court observed at Paragraph 10 the difference between a stay of an order and quashing of an order. The relevant portion of the Paragraph 10 is quoted herein below:-

> *10. "While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending."*

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25. As in the instant case, it was only on 22/4/2020 the judgment and order passed by the Division Bench of this Court on 20/11/2014 in Writ Appeal No. 243/2009 was set aside and quashed, the requirement arose to the Petitioner along with all other manufacturing assessees to either opt for the specified rate in the table as stipulated in Paragraph 2A or for fixation of a special rate representing the actual value addition. It is also relevant herein to note that till the judgment of the Supreme Court in V.V. F. Ltd.(supra), the Petitioner alongwith similar manufacturing assessees were availing benefit by virtue of the interim order on 50% of their entitlement on the basis of the original notifications.

26. In the backdrop of the above, let this Court first take into consideration the impugned order dated 5/8/2021. Vide the impugned order the Principal Commissioner held that in view of the stay granted by the Supreme Court, the manufacturing assessee/the Central Excise assessee who intended to avail the special rate ought to file its application within the specific time frame and as such, the Petitioner was not entitled to do so now. It was also observed that the Act of 2020 or the Supreme Court's order in respect to the Suo Moto Writ Petition No. 3/2020 cannot be applied to the facts of the instant case. A perusal of the impugned order shows that on the ground of the stay of the judgment and order dated 20/11/2014 and taking into account that the stay of the order dated 20/11/2014 had wiped out the judgment and order dated 20/11/2014, the Respondent Authority had come to a finding that the application so filed by the Petitioner was barred by limitation. The said

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Respondent/Adjudicating Authority did not go into the question as regards the impact of the Act of 2020 as well as the orders passed by the Supreme Court in the Suo Moto Writ Petition No. 3/2020 on the ground that the time limit for filing the application for fixation of special rate did not fall during the period as mentioned in the order dated 23/3/2020 or the period mentioned in the Ordinance No. 2/2020 which subsequently became the Act of 2020. This approach of the Respondent/Adjudicating Authority in rejecting the application for special rate on the ground of being barred by limitation, in the opinion of this Court, is not in consonance to the observations of the Supreme Court in Paragraph No. 26 of the judgment in the case of V.V.F. Ltd.(supra) wherein the Supreme Court had clarified that all 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 law and on merits as per the subsequent notifications/industrial policies. This Court further observes that the impugned order dated 5/8/2021 is also passed contrary to the principles of an effect of a stay to a judgment and order by the superior Court as laid down by the Supreme Court in the case of Chamundi Mopeds(supra). Consequently, the said impugned order dated 5/8/2021 is set aside and quashed.

27. In view of the submissions being made as regards the applicability of the judgment of this Court dated 12/8/2021 in Jyothy Labs (supra) the orders passed by the Supreme Court in Suo Moto Writ Petition No. 3/2020 and observations made in the impugned order dated 5/8/2021 that filing of the application within 30th September of

the financial year was compulsory, this Court would like to take up for adjudication of the said issues for consideration. A perusal of the judgment rendered by a Coordinate Bench of this Court in Jyothy Labs Ltd. (supra) had observed in Paragraph Nos. 16 and 17 that the applications are required to be made not later than 30th day of September of a given financial year is a provision for streamlining the provision for making such application and to avoid the situation where the process of making such application would be a never ending matter. The Coordinate Bench of this Court further observed that as long as there was the judgment of the Division Bench of this Court in Writ Appeal No.243/2009 in favour of the Petitioner interfering with the modification for exemption of excise duty and the matter thereafter was pending before the Supreme Court on an appeal with an interim order dated 7/12/2015 requiring a refund of 50% of the amount of the excise duty, the occasion has not arisen for the assessee to go further and seek for a fixation of special rate in respect to a value addition to the manufactured goods and even if there would have been a determination of such rate, the same would have remained ineffective and unimplemented till the Supreme Court had finally decided the issue which was done as per the judgment dated 20.4.2020 in V.V. F. Ltd.(supra) and further the relevance of such determination would again depend on the outcome of an appeal that was pending before the Supreme Court. It was also observed that the Petitioner therein would not be prevented from claiming their legal right for fixation of a special rate to value addition to the manufactured goods merely because such applications was not made within 30th day

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of September of that given financial year to which the claim for fixation of the said rate pertains to. Paragraph 16,17 and 18 of the said judgment is quoted herein below :-

> “*16. In the instant case, it is the case of the petitioner that the requirement of requesting for fixation of a special rate in respect of the value addition to the manufactured goods had arisen only after the final judgment of the Supreme Court on 20.04.2020, inasmuch, as long as the matter was pending before the Supreme Court and the interim order dated 07.12.2015 was in operation requiring a refund of 50% of the amount involved, no occasion had arisen for the assessee to claim for the fixation of a special rate in respect of the value addition to the manufactured goods. The dominant purpose of the two notifications i.e. amended notification No.32/99-CE dated 18.07.1999 and the notification No. 31/2008-CE dated 10.06.2008, is the bestowing of a legal right to the assessee to opt for the fixation of a special rate in respect of the value addition to a manufactured goods. The requirement that such applications are to be made not later than 30th day of September of the given financial year is a provision for streamlining the procedure for making such application and to avoid the situation where the process of making such applications would be a never ending matter.*
>
> *17. Without going into the aspect whether the requirement to submit such application within 30th September of the given financial year is a mandatory requirement or a directory requirement, what we take note of is that such a provision has been incorporated to streamline the process for submission of the application seeking for the fixation of a special rate to the value addition to manufactured goods.*

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18. *We have to take note of that as long as there was a judgment of the Division Bench in WA No.243/2009 in favour of the petitioner interfering with the modification for exemption of excise duty and the matter thereafter was pending before the Supreme Court on an appeal with an interim order dated 07.12.2015 requiring a refund of the 50% of the amount of excise duty, the occasion had not arisen for the assessee to go further and seek for a fixation of a special rate in respect of the value addition to the manufactured goods and even if there would have been a determination of such special rate, the same would have remained ineffective and un-implementable till the Supreme Court had finally decided the issue which was done as per the judgment dated 20.04.2020 in Civil Appeal No.2256-2263 of 2020, and further the relevance of such determination would again depend on the outcome of the appeal that was pending before the Supreme Court. We have taken note of that immediately after the judgment dated 20.04.2020 in Civil Appeal No.2256-2263 of 2020, when the occasion had again arisen for the petitioner assessee to seek for fixation of a special rate in respect of the value addition to the manufactured goods for the purpose of payment of the excise duty, the application for such request was made within a period of one month, which is on 18.05.2020. From such point of view, it cannot be wholly said that the petitioner would now be prevented from claiming their legal right for fixation of a special rate to the value addition to the manufactured goods merely because such application was not made within 30th September of that given financial year to which the claim for fixation of the said rate pertains to.*"

28. On a specific query being made to the counsel for the GST Department as to whether any challenge has been made to the judgment rendered by the Coordinate Bench in Jothy Labs Ltd.(Supra), the learned counsel for the GST Department submits that to his knowledge no such challenge has been made to the said judgment. Consequently the observations made to the effect that the requirement that such

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applications are to be made not later than 30th day of September of the given financial year is a provision for streamlining the procedure for making such application and to avoid a situation where process of making such application would be a never ending effect is binding upon this Court.

29. The learned counsel for the GST Department upon being asked by this Court as to whether the directions given in Jothy Labs Ltd.(supra) can be applied to the case of the Petitioner, he specifically submitted that had the Petitioner submitted his application prior to September, 2020 his application could have been considered for special rate as has been done in the case of Jyothy Labs (supra) as they filed their application prior to September,2020. This Court finds it difficult to appreciate the said stand of the GST Department in as much as the learned counsel for the GST Department failed to place on record any material as to on what basis the Respondent can limit the period to 30th of September of the year 2020 for the financial year during which period the High Court or the Supreme Court was in session of the legality or validity of the said notification. At this stage, it may be relevant to mention that there is no quarrel with the fact the Petitioner is entitled to the exemption under the Industrial Policy of 2007 as well as the various notifications issued including the Notification No. 20/2007-CE as amended by the Notification No. 20/2008-CE and Notification No. 38/2008-CE. So the Petitioner's eligibility being not in question, the question which arises is as to whether the Petitioner was entitled to exercise his option for fixation of a special rate in lieu of the prescribed rate in the facts of the case. The

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Coordinate Bench of this Court had categorically held that the fixation of the time period of not later than 30th day of September of a given financial year is a provision for streamlining the procedure for making such application and to avoid a situation where the process of making such application would not be a never ending matter or in other words, it was a procedural formality to opt within a particular period of time. In this regard, this Court finds it relevant to refer to the Constitution Bench judgment rendered in the case of **Commissioner of Central Excise, New Delhi Vs. Hari Chand Sri Gopal and Ors**. reported in (**2011**) **1 SCC 236** wherein the doctrine of substantial compliance and intended use was succinctly capsulated. Paragraph No. 32 to 34 of the said judgment being relevant is quoted herein below :-

> "***32.*** *The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.*
>
> ***33.*** *A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and directory*

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requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. *The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential."*

30. The above quoted paragraph would show that the doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirement. In Paragraph 34 of the Constitution Bench of the Supreme Court observed that if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In the instant case, the Petitioner pursuant to the judgment of the Supreme Court in V.V.S. Ltd.(supra) had filed its application for special rate. Filing of the application was the substance/essence in terms with the exemption notification but the filing within the period from 30th day

of September of a financial year which obviously elapsed during the pendency of the proceedings before the Supreme Court within which period the Petitioner could not have been reasonably be expected to file the said application cannot be described as the essence or the substance of the requirement.

31. It is also relevant to take note of another aspect of the matter. The judgment and order passed in V.V. F. Ltd.(supra) was delivered on 22/4/2020 when the entire country was under a national lockdown. On 23/3/2020, the Supreme Court in Suo Moto W.P.(C) No. 3/2020 directed extension of the period of limitation in all proceedings before the Court and Tribunals w.e.f. 15/3/2020 until further orders. Subsequent thereto vide an order dated 8/3/2021, the period from 15/3/2021 till 14/3/2021 as regards computation of limitation in any suit, application or proceedings was directed to stand excluded and an additional limitation of 90 days or such longer period from 15/3/2021 to all persons. Thereafter vide another order dated 27/4/2021, the Supreme Court restored the order dated 23/3/2020 and in continuation of the order dated 8/3/2021 directed the period of limitation as prescribed in general or special laws in respect to all judicial or quasi judicial proceedings whether condonable or not shall extended till further orders. It was also clarified that from the period from 14th March,2021 till further orders shall also stand excluded in computing the period prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Codes Act, 2015 and provisos B and C of Section138 of the Negotiable Instrument Act, 1881 and any other laws, which prescribes period

of limitation for instituting proceedings, outer limits (within which the Court or Tribunal) can condone the delay, and termination of proceedings. It was also clarified in the said order that it would be a binding order within the meaning of Article 141 on all Courts, Tribunals and authorities. It would also be relevant to take note of that the Central Government initially promulgated the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 granting relaxation and amendment of provisions of certain acts and for matters connected therewith. The said Ordinance was later on enacted and became the Act of 2020. The GST counsel in its 43rd meeting held on 20th of May, 2021 also discussed for granting benefits as regards Covid related relief measures for tax payers as well as for Covid-19 related relaxation. It was mentioned that wherever the time lines for extension was extended by the Supreme Court the same would apply. Subsequent thereto on 20th of July, 2021, the Principal Commissioner GST of the Central Board of Indirect Tax and Customs, GST Policy Wing had issued Circular 157/13/2021/GST dated 20/7/2021 whereby clarifications were issued regarding extension of limitation under the GST law in terms with the Supreme Court's order dated 27/4/2021. In the said Circular reference was also made to the 43rd meeting of the GST Council wherein recommendations were made that whenever timeline extension has been extended by the Supreme Court, the same would apply. It also needs to be taken note of that the High Court of the Judicature at Madras in **M/S GNC Infra LLP Vs. Assistant Commissioner (Circle) in W.P.(C) Nos. 18165 and 18168/2021** by a judgment

and order dated 28/9/2021 as well as the High Court of the Judicature at Bombay in **Writ Petition (L) No. 1275/2011** in the case of **Saiher of Supply Chain Consulting Ltd. Vs. Union of India and Ors.** by judgment and order dated 10/1/2022 on the basis of the order passed by the Supreme Court in Suo Moto Writ Petition No. 3/2020 set aside and quashed the orders of the rejection of the applications for refund on the ground of limitation by the authority under the GST.

32. At this stage, it would be further relevant to mention that vide an order dated 10th of January, 2022, the Supreme Court had again restored the order dated 23/3/2020 and in continuation of the subsequent orders dated 8/3/2021, 27/4/2021 and 23/9/2021, it was directed that the period from 15/3/2020 till 28/2/2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect to judicial or quasi judicial proceedings. It was further observed that where the limitation would have expired during the period between 15/3/2020 till 28/2/2022, notwithstanding the actual balance period of limitation remaining all persons shall have the limitation period of 90 days from 1/3/2022.

33. In view of the above, taking into consideration the judgment of the Supreme Court in the case of V.V. F. Ltd. (supra), the judgment of this Court in Joythy Labs Ltd. (supra), the various orders passed by the Supreme Court in Suo Moto Writ Petition No. 3/2020 and the benefits thereof being given to the tax payers by the GST council, the Circular so issued from time to time and also the judgment of the Bombay High Court and the Madras High Court and taking into consideration that the Petitioner's

applications were filed on 18/3/2021 for fixation of the special rate for value addition, this Court deems it appropriate and accordingly directs the Principal Commissioner of Central Goods and Service Tax, Dibrugarh, the Respondent No. 2 herein to decide the applications of the Petitioner dated 18/3/2021 on its own merit as regards the claim for fixation of the special rate to actual value addition to the manufactured goods of the given financial years. Further taking into consideration that the order in Original No.11/Asstt.COM/ADJ/CE/ACT/2021-22 dated 16/2/2022 has a direct co-relation with the question of fixation of the special rate and its fall out, this court deems it appropriate and accordingly directs the concerned Respondent Authority not to give effect to the said order dated 16/2/2022 till such decision of the Respondent No. 2 to the applications for fixation special rate dated 18/3/2021 filed by the Petitioner.

34. With the above observations and directions, the instant writ petition stands allowed.

JUDGE

Comparing Assistant

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