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

Case No. : WA/325/2024

1: NUMALIGARH REFINERY LTD. AND 2 ORS. A PUBLIC SECTOR UNDERTAKING, REGISTERED UNDER SEC. 617 OF THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE 122A, G.S. ROAD, CHRISTIAN BASTI, GUWAHATI- 781005, REPRESENTED BY ITS MANAGING DIRECTOR.

2: THE SR. MANAGER MATERIALS COMMERCIAL DEPARTMENT NUMALIGARH REFINERY LIMITED P.O. NUMALIGARH DIST. GOLAGHAT (ASSAM).

3: THE MANAGER MATERIALS COMMERCIAL DEPARTMENT NUMALIGARH REFINERY LIMITED P.O.- NUMALIGARH DIST. GOLAGHAT (ASSAM)

VERSUS

1: IQUBAL SINGH AND ANR.
SON OF LATE I. SINGH R/O JPR ROAD,
(NEAR RICE MILL), JORHAT, ASSAM.

2:THE PR. COMMISSIONER OF CGST AND CENTRAL EXCISE GUWAHATI GST BHAWAN (5TH FLOOR) KEDAR ROAD MACHKHOWA GUWAHATI PIN-781001 (ASSAM)

For the Appellant(s) : Mr. R.S. Mishra, Advocate.

For the Respondent(s) : Mr. S.C. Keyal, Standing Counsel, GST.

– **B E F O R E** –
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

17.03.2026
(Ashutosh Kumar, CJ)

This appeal has been preferred by Numaligarh Refinery Limited (a Public Sector Undertaking) and its two Officers, against the judgment & order dated 12.05.2015 passed by a learned Single Judge of this Court in WP(C) No.3165/2010 as also against the order dated 20.06.2023 passed in Review Petition No.78/2016.

The appellants had conducted an e-auction sale of scrap materials (Tor Steel Scrap) through MSTC. The respondent No.1 participated in the auction, was adjudged the highest bidder for 500 Metric Ton of scraps and also deposited the security amount.

A sale order was issued on 12.05.2010 confirming the acceptance of the bid. However, it was noticed that in the sale order, Central Excise Duty of 10% on scrap value was also included.

This was challenged by the respondent No.1 arguing that there was no manufacturing activity involved in the disposal of scraps and, therefore, the excise duty could not be imposed.

The contention was sought to be negated by the appellants with the submission that Rule 3(5A) of the Cenvat Credit Rules, 2004 *(hereinafter to be referred as the "Rules of 2004")* made excise duty payable when scrap arose from capital goods on which cenvat credit has been availed. Since the scrap was generated from capital goods used in petroleum refining, excise duty was mandatorily leviable and since this was an indirect tax, the incidence of the duty was to be borne by the buyer.

The Central Excise Department is represented by Mr. S.C. Keyal, who supports the levy of duty under Rule 3(5A) of the Rules of 2004 but submits that the duty is payable either from the supplier or the buyer. There is a further contention on behalf of the appellants that when the writ petition was finally disposed of on 12.05.2015, they were not heard and, therefore, the order was passed that no excise duty was payable on such scrap transactions and directed the appellants to refund the duty already collected within 1(one) month.

The respondent No.1 claimed refund.

Almost simultaneously, a review petition was filed by the appellants but the same was dismissed.

It further appears from the records that against the respondent No.1, there is only deemed service of notice.

Let fresh notice be issued to the respondent No.1, on steps being taken by the appellants within a period of 2(two) weeks by both modes, i.e. by Speed Post well as by usual process, returnable on ***05.06.2026***.

Let *dasti* notice also be served upon the respondent No1, subject to the appellants filing requisites in the Registry, whereupon they shall be given the format of notice to be served upon the respondent No.1.

Interim order, in the meanwhile, if any, shall continue.

JUDGE **CHIEF JUSTICE**

Comparing Assistant