

GAHC010275452023



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

Case No. : WP(C)/7170/2023

DHARAMPAL SATYAPAL LTD.
SHED NO 6,7 AND 17 AT BAMUNIMAID INDUSTRIAL ESTATE, GUWAHATI,
ASSAM, A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT,1956 AND HAVING ITS REGISTERED OFFICE AT 98
OKHLA INDUSTRIAL ESTATE, PHASE-III, NEW DELHI-110020. AND IN THE
PRESENT PROCEEDING REP BY ONE OF ITS DIRECTORS MR. PROMOD
PADHY

VERSUS

UNION OF INDIA AND 3 ORS
REPRESENTED BY THE UNDER SECRETARY TO THE GOVERNMENT OF
INDIA, MINISTRY OF FINANCE DEPARTMENT OF REVENUE, NORTH
BLOCK, NEW DELHI,

2:THE CHIEF COMMISSIONER
CENTRAL EXCISE CUSTOMS AND SERVICE TAX SHILLONG ZONE NORTH
EASTERN REGION 3RD FLOOR CRESCENT BUILDING MG ROAD
SHILLONG 793001

3:COMMISSIONER AND SECRETARY
GOVT OF ASSAM DEPTT OF INDUSTRIES AND COMMERCE D BLOCK 2ND
FLOOR ASSAM SECRETARIAT GS ROAD GUWAHATI 781006 ASSAM

4:ASSISTANT COMMISSIONER
CGST GUWAHATI II DIVISION GST BHAWAN KEDAR ROAD FANCY
BAZAR GUWAHATI 78100

Advocate for the Petitioner : MR P K BORA

Advocate for the Respondent : SC, GST

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

15.12.2023

Heard Dr. A. Saraf, learned senior counsel assisted by Mr. N.N. Dutta, learned counsel for the petitioner; Mr. S.C. Keyal, learned Standing Counsel, CGST for the respondent nos. 1, 2 & 4; and Mr. A. Kalita, learned Standing Counsel, Industries & Commerce Department for the respondent no. 3.

2. In this writ petition, the petitioner has assailed a Final Order dated 31.08.2023 [Annexure-XXII] of the Investment Appraisal Committee [IAC]; and a Demand Notice dated 29.11.2023 [Annexure-XXIII] issued by the respondent no. 4 pursuant to the Final Order dated 31.08.2023 of the IAC. By the impugned Demand Notice dated 29.11.2023, the petitioner company had been called upon to pay/deposit a sum of Rs. 9,36,15,589/- along with applicable interest thereon purportedly under Section 11AA/11AB of the Central Excise Act, 1994 in term of a Notification no. 08/2004/CE dated 21.01.2004, as amended, immediately.

3. The petitioner has claimed that the petitioner company is eligible for the benefit under the Notification no. 08/2004/CE, as amended, that is, exemption from payment of duty for the said amounts also because investment for the said amount had already been made. It is projected that different amounts of investment the petitioner company had made to be eligible for the benefit of exemption from payment had been shown in the Table extracted in Paragraph 3.2 of the Final Order dated 31.08.2023 of the IAC. The said Table in Paragraph 3.2 is extracted below :-

Sl. no.	Description of Investment	Investment certified	not certified
1.	Plant & Machinery	Rs. 5,31,37,315	
2.	Civil Works	Rs. 1,26,79,995	
3.	Social work like conducting cine award, festivals, yoga & body building, Books Fair, etc and	Rs. 2,04,42,756	

	contribution to CM's Relief Fund, salary to school teachers, providing computers to Schools, etc.	
4.	Legal, administrative fee, TDS etc. for Infrastructure projects	Rs. 6,02,023
5.	Setting up of DS International School and Law College	Rs. 9,36,15,589
	Total	Rs. 18,04,77,678

But the IAC after considering the matter, has allowed the benefit of exemption from payment of duty in respect of first four heads. The IAC by its Final Order dated 31.08.2023 has declined to extend the benefit of exemption from payment of duty in respect of the investment made by the petitioner company, for setting up an International School and a Law College, which was for a sum of Rs. 9,36,15,589/-.

3.1. It is the contention of the petitioner company that in so far as the investment for setting up of the Law College is concerned, the petitioner company made the payment to a society named North East Legal Education Society, Guwahati when the said Society approached them for setting up the Law College and the fund is still available with the Society. As regards the establishment of the International School, it is the contention of the petitioner company that the project could not be implemented only because the State Government has not yet released the amount of their share in the project. The petitioner company has, in the meantime, invested their amount for the purpose of purchasing the land to establish the International School. The IAC in the Final Order has *inter alia* observed that the investment made for the purpose of the International School and the Law College projects do not merit acceptance.

3.2. Apart from the other grounds, the decision of the IAC has also been questioned on the ground that while in respect of the investment made in social work like conducting cine award, festivals, yoga & body building, Books Fair, etc. and contribution to CM's Relief Fund, salary to school teachers, providing computers to Schools, etc., the IAC has accepted the decision of the Commissioner of Central Excise in allowing withdrawal of the fund for investment for those activities. But, the IAC has taken a contrary stance in respect of the investment made by the petitioner company for setting up International School and Law College. There was also a decision of the Commissioner of Central Excise to allow withdrawal of fund for investing the same in

setting up International School and Law College. But the IAC while, on one hand, observing that the Commissioner of Central Excise has the authority to take its own decision on the implementation of the concerned investment but, at the same time, has expressed doubt on the decision about allowing withdrawal of fund for International School and Law College, only recording the reason that the Commissioner of Central Excise has to work within the condition of the Notification and does not have sweeping power to take independent decision. While expressing such view, the IAC has assigned no reason as to why the decision of the Commissioner of Central Excise is found to be beyond the conditions of the concerned Notification.

4. In the decision in *Dharampal Satyapal Ltd. and others vs. Union of India and others*, reported in 2010 [1] GLT 744, which is regarding the issues involving in the present *lis*, it has *inter alia* been observed that the IAC has no authority to issue the guidelines to the jurisdictional Commissioner as to what kind of projects the jurisdictional Commissioner shall consider fit to grant the permission for withdrawal and it is for the jurisdictional Commissioner to decide as to when he would permit withdrawal from the Escrow Account. It appears *prima facie* that the IAC while deciding on the matter of according approval or not according approval to the decision to extend the benefit of exemption from payment of duty as regards the investment made for setting up of International School and Law College appears to have not followed the proposition laid down earlier by this Court in *Dharampal Satyapal [supra]*, which decision stated to have been upheld by the Division Bench of this Court.

5. The matter would require further examination.

6. Issue notice, returnable in 4 [four] weeks.

7. As Mr. Kayal, learned Standing Counsel, CGST has appeared and accepted notices on behalf of the respondent nos. 1, 2 & 4 and Mr. Kalita, learned Standing Counsel, Industries & Commerce Department has appeared and accepted notices on behalf of the respondent no. 3, no formal notice need to be issued to the respondents. Mr. Dutta shall furnish requisite nos. of extra copies of the writ petition along with the annexures, each to Mr. Kayal and Mr. Kalita within 2 [two] working days from today.

8. Having regard to the projections made by the petitioner and the observations made in Dharampal Satyapal [supra], this Court is of the view that the petitioner has been able make out a *prima facie* case for interim relief. It is, therefore, observed that there shall not be any further steps from the respondent authorities in respect of the impugned Demand Notice dated 29.11.2023 which has been issued in consequence to the Final Order dated 03.08.2023, till the returnable date.

9. List the case after 4 [four] weeks.

10. The respondent shall file their respective counter affidavits on or before the returnable date.

JUDGE

Comparing Assistant