

GAHC010289432023



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

**Case No. : WP(C)/7473/2023**

M.S. DUROPLY INDUSTRIES LIMITED (FORMERLY KNOWN AS M/S SARADA PLYWOOD INDUSTRIES LTD.)  
A PUBLIC LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956, HAVING ITS PLACE OF BUSINESS AT P.O.- JEYPORE, DIBRUGARH, ASSAM- 786614 AND OFFICE LOCATED AT P.O. AND P.S. GARCHUK, OPP PUB BARAGAON LP SCHOOL, GARCHUK PAMOHI ROAD, GARCHUK, GUWAHATI, KAMRUP METROPOLITAN, ASSAM, 781035 AND IN THE PRESENT PROCEEDINGS REPRESENTED BY SHRI PRAKASH KUMAR AGARWAL, THE AUTHORISED REPRESENTATIVE OF THE PETITIONER COMPANY.

VERSUS

THE UNION OF INDIA AND 4 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,  
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK,  
NEW DELHI-110001.

2:THE JOINT COMMISSIONER  
APPEALS  
CGST  
CENTRAL EXCISE AND CUSTOMS  
GUWAHATI.  
3RD FLOOR  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI -781001.

3:THE ASSTSTANT COMMISSIONER  
CENTRAL GOODS AND SERVICES TAX  
DIBRUGARH DIVISION

DIBRUGARH. C.R. BUILDING  
DIBRUGARH  
ASSAM- 786003

4:THE SUPERINTENDENT  
CGST AND CX  
DIBRUGARH DIVISION  
DIBRUGARH. C.R. BUILDING  
DIBRUGARH  
ASSAM 786003.

5:THE COMMISSIONER  
CGST AND CX  
DIBRUGARH DIVISION  
DIBRUGARH. C.R. BUILDING  
DIBRUGARH  
ASSAM 786003

For the Petitioner(s) : Mr. A. Kanodia, Advocate

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

**BEFORE**  
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 28.01.2025**

Heard Mr. A. Kanodia, the learned counsel appearing on behalf of the petitioner as well as also heard Mr. S.C. Keyal, the learned Standing Counsel appearing on behalf of the CGST.

2. The petitioner herein has assailed the order dated 31.03.2022 passed by the learned Joint Commissioner (Appeals), CGST & CX, Guwahati i.e. the respondent No. 2 as well as the Order-in-Original dated 02.06.2020 passed by to respondent No. 3 and has also assailed the communication dated 06.09.2023.

3. This Court vide an order dated 21.12.2023 issued notice and further stayed the interest and the penalty so imposed subject to deposit of the principal amount to the tune of Rs.33,69,271/-. It is an admitted position that the petitioner thereupon deposited the principal amount of Rs.33,69,271/-. In other words, the principal amounts had been duly paid. During the pendency of the instant writ petition, a statutory development took place whereby Section 128A was inserted to the CGST Act, 2017 whereby if the tax amount is paid in full pertaining to the period from 01.07.2017 to 31.03.2020, no interest under Section 50 and penalty under the said Act shall be payable and all proceedings in respect to the said notice or order or statement as the case may be shall be deemed to be concluded subject to the conditions as may be prescribed. It is under such circumstances, this Court passed an order on 17.12.2024. The relevant portion of the said order being paragraph Nos. 5 and 6 are reproduced herein under:

*“5. The insertion of Section 128A and the fact that the Petitioner has already deposited the entire tax amount, a question therefore arises in view of the admitted position that the Petitioner is otherwise is entitled to the said amount Rs.33,69,271/- which the Respondents in their communication dated 09.01.2018 have admitted that the Petitioner is entitled for refund under Section 11B of the Central Excise Act, 1944. In that view of the matter, this Court enquired with the learned Standing counsel for the Respondents as to whether applying the principle of revenue neutrality whether the amount paid by the Petitioner i.e. Rs.33,69,271/- by using the credit in his PLA account could be adjusted towards the returns filed on 31.10.2017 under the CGST Act, 2017 and the amount so deposited pursuant to the orders passed by this Court be refunded.*

6. *The above query is made taking into consideration that if this Court grants liberty to the Petitioner to file application for refund of the amount under Section 11B of the Central Excise Act, 1944, the Authorities may have to incur payment of interest. On the other hand, as by virtue of Section 128A of the CGST Act, 2017, the amount of tax had already been deposited, the payment of interest and penalty would be waived."*

4. Subsequent thereto, an affidavit has been filed by the Assistant Commissioner, CGST, Dibrugarh Commissionerate on 27.01.2025. Paragraph Nos. 2 and 3 of the said affidavit being relevant are reproduced herein under:

*"2. That by order dated 17.12.2024 passed in the instant case, this Hon'ble Court in para 6 of the aforesaid order made a query that if this Court grants liberty to the petitioner to file application for refund of the amount under Section 11B of the Central Excise Act, 1944, the authority may have to incur payment of interest. On the other hand, as by virtue of Section 128A of the CGST Act, 2017, the amount of tax had already been deposited, the interest and penalty would be waived.*

*3. That the department taken into consideration aforesaid query of the Hon'ble Court and are not adverse in adjusting the amount paid by the petitioner to the tune of Rs. 33,69,271/- by using the credit in the PLA account towards the returns filed on 31.10.2017 under the CGST Act, 2017 and the amount so deposited in pursuance to the orders passed by this Hon'ble Court to be refunded."*

5. From a perusal of the above quoted paragraphs, it appears that the Department have duly taken into consideration the queries so raised by this Court in its order dated 17.12.2024 and, more particularly, at paragraph Nos. 5 and 6 which have been already quoted herein above. It

has been further mentioned in the said affidavit that the Respondent Department would be adjusting the amount paid by the petitioner to the tune of Rs.33,69,271/- by using the credit in the PLA account towards the returns filed on 31.10.2017 under the CGST Act, 2017. It is further mentioned that the amounts so deposited by the petitioner in pursuance to the order dated 21.12.2023 would be refunded to the petitioner.

6. Taking into account the said stand, Mr. A. Kanodia, the learned counsel appearing on behalf of the petitioner submitted that the issues raised in the instant petition have been duly addressed and as such, the petitioner would be filing appropriate application before the concerned Respondent Authorities for refund of the said amount.

7. Taking into account the above, the instant writ petition therefore stands closed, thereby granting liberty to the petitioner to file application for refund of the amount of Rs.33,69,271/- which was deposited by the petitioner in pursuance to the order passed by this Court on 21.12.2023 and upon such application being filed, the respondents shall refund the said amount within 4(four) weeks from the date of such application.

8. It is further observed that with the instant order the writ petition stands disposed of and the petitioner herein would be entitled to claim the benefits under Section 128A of the CGST Act, 2017.

**JUDGE**

**Comparing Assistant**