

GAHC010099262020



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

**Case No. : WP(C)/2918/2020**

M/S TOPCEM INDIA

A PARTNERSHIP FIRM REGD UNDER THE PROVISIONS OF THE INDIAN PARTNERSHIP ACT, 1932 AND HAVING ITS REGD OFFICE AND FACTORY AT VILL- GAURIPUR, P.O COLLEGE NAGAR, MOUZA- SILASUNDARI GHOPA, AMINGAON- 781031 IN THE DIST OF KAMRUP(R), GUWAHATI, ASSAM AND IN THE PRESENT PROCEEDINGS REP BY SRI ARUN KEJRIWAL, THE AUTHORISED SIGNATORY OF THE PETITIONER FIRM

VERSUS

UNION OF INDIA AND 3 ORS

REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF FINANCE,  
DEPTT OF REVENUE, NORTH BLOCK, NEW DELHI-

2:JOINT COMMISSIONER

GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

3:ASSTT COMMISSIONER

GUWAHATI-I DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

4:SUPERINTENDENT (TECHNICAL-I)

CGST AND CENTRAL EXCISE DIVISION-I  
GST BHAWAN, 2ND FLOOR, KEDAR ROAD  
MACHKHOWA, GUWAHATI- 78100

**Advocate for the Petitioner** : DR. A SARAF

**Advocate for the Respondent** : SC, GST

Linked Case : WP(C)/3155/2020

CEMENT INTERNATIONAL LTD.  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956 AND HAVING ITS MANUFACTURING UNIT AT DAVENDRANAGAR  
JHOOM BASTI  
P.O. BADARPURGHAT  
DIST. KARIMGANJ  
ASSAM AND REP. BY SRI MUKESH AGARWAL  
CHIEF EXECUTIVE OFFICER OF THE PETITIONER COMPANY.

VERSUS

UNION OF INDIA AND 2 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI.

2:PRINCIPAL COMMISSIONER  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001.  
3:ASSTT. COMMISSIONER

GST AND CENTRAL EXCISE DIVISION  
C. R. BUILDING  
CIRCUIT HOUSE ROAD  
SILCHAR-788001.

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Advocate for : DR. ASHOK SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.  
Linked Case : WP(C)/1780/2020

M/S. DIGBOI CARBON PVT. LTD.  
A COMPANY INCORPORATED UNDER THE COMPANIES ACT  
1956 AND HAVING ITS REGISTERED OFFICE AND FACTORY AT BORGURI  
INDUSTRIAL STATE  
BORGURI

TINSUKIA  
ASSAM  
PIN- 786126. REPRESENTED THROUGH ITS DIRECTOR SHRI SANJEEV  
KUMAR BARUA.

VERSUS

UNION OF INDIA AND 2 ORS.  
THROUGH THE COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX  
CENTRAL GST DIVISION  
DIBRUGARH.

2:THE COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX  
CENTRAL GST DIVISION  
DIBRUGARH.

3:THE ASSTT. COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX  
CENTRAL GST DIVISION  
TINSUKIA.

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Advocate for : MR. R K CHOUDHURY  
Advocate for : SC  
GST appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/1366/2020

PAN PARAG INDIA LTD.  
(FORMERLY KOTHARI PRODUCTS LIMITED)  
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGISTERED OFFICE AT PAN PARAG HOUSE  
24/19  
THE MALL  
KANPUR- 208001 HAVING ONE OF ITS UNIT AT A-1 TO A-4  
INDUSTRIAL ESTATE  
CHINNAMARA  
JORHAT- 785008.

VERSUS

UNION OF INDIA AND AND ANR.  
DULY REP. BY THE SECY. TO THE MINISTRY OF FINANCE  
DEPTT. OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI.

2:THE ASSTT. COMMISSIONER

CENTRAL GOODS AND SERVICE TAX DIVISION  
JORHAT  
STATION GODOWN ROAD  
JORHAT- 785001.  
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Advocate for : DR. ASHOK SARAF  
Advocate for : SC  
GST appearing for UNION OF INDIA AND AND ANR.

Linked Case : WP(C)/2920/2020

M/S JUMBO PACKAGING INDUSTRIES  
A PARTNERSHIP FIRM HAVING ITS PLACE OF BUSINESS AT UDALBAKRA  
LAL GANESH  
OPP KALI MANDIR  
GUWAHATI- 781034  
ASSAM AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS  
PARTNERS SRI DEEPAK KAYAL

VERSUS

UNION OF INDIA AND 3 ORS  
REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MIN OF FINANCE  
DEPTT OF REVENUE  
NORTH BLOCK  
NEW DELHI-

2:JOINT COMMISSIONER  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

3:ASSTT COMMISSIONER  
GUWAHATI-I DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

4:SUPERINTENDENT (TECHNICAL-I)  
CGST AND CENTRAL EXCISE DIVISION-I  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA

GUWAHATI- 781001

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Advocate for : DR. A SARAF

Advocate for : SC

GST appearing for UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/3763/2020

MODI MUNDIPHARMA BEAUTY PRODUCTS PVT. LTD.  
FORMERLY KNOWN AS KAMAKHYA COSMETICS AND  
PHARMACEUTICALS LTD. A COMPANY INCORPORATED UNDER THE  
PROVISIONS OF COMPANIES ACT

1956 AND HAVING TS CORPORATE OFFICE AT HOUSE NO. 17

RUKMINIGAON BELTOLA ROAD

RUKMINIGAON

GUWAHATI

ASSAM

781022 AND IN THE PRESENT PROCEEDINGS REP. BY SRI DEBEJIT DEBROY  
THE AUTHORIZED SIGNATORY OF THE PETITIONER COMPANY.

VERSUS

UNION OF INDIA AND 2 ORS.

REP. BY THE SECRETARY TO THE GOVT. OF INDIA

MINISTRY OF FINANCE DEPTT. OF REVENUE

NORTH BLOCK

NEW DELHI

2:JOINT COMMISSIONER

GST AND CENTRAL EXCISE COMMISSIONERATE GUWAHATI

GST BHAWAN

2ND FLOOR

KEDAR ROAD

MACHKHOWA

GUWAHATI-781001

3:ASSISTANT COMMISSIONER

GUWAHATI DIVISION II

GST BHAWAN

2ND FLOOR

KEDAR ROAD

MACHKHOWA

GUWAHATI-781001

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Advocate for : DR. A SARAF

Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/2929/2020

M/S KESHARI INDUSTRIES  
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE  
INDIAN PARTNERSHIP ACT  
1932 AND HAVING ITS OFFICE AND FACTORY AT ABHAYPUR  
SHILASUNDARI  
GAURIPUR  
GUWAHATI-31  
ASSAM REP. BY SRI PAWAN KUMAR SONI  
ONE OF THE PARTNERS OF THE PETITIONER FIRM

VERSUS

UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE NORTH BLOCK  
NEW DELHI

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

4:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
O/O ASSISTANT COMMISSIONER OF CENTRAL EXCISE  
GST  
BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

5:THE SUPERINTENDENT  
GST AND CENTRAL EXCISE  
TECH-I  
GUWAHATI-II  
GST BHAWAN KEDAR ROAD  
GUWAHATI-781001  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC

GST appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/2940/2020

M/S JOYSHREE POWEROL  
A PARTNERSHIP FIRM HAVING ITS PLACE OF BUSINESS AT SILA KATAMUR  
MOUZA- SINDURIGHOPA  
CHANGSARI  
KAMRUP  
ASSAM  
781001 AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS  
PARTNERS SRI MANOJ KAYAL

VERSUS

UNION OF INDIA AND 3 ORS  
REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MIN OF FINANCE  
DEPTT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:JOINT COMMISSIONER  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

3:ASSTT COMMISSIONER  
GUWAHATI-I DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

4:SUPERINTENDENT (TECHNICAL-I)  
CGST AND CENTRAL EXCISE DIVISION I  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

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Advocate for : DR. A SARAF

Advocate for : SC

GST appearing for UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/3113/2020

KAMLANG SAW AND VENEER MILLS PVT. LTD.  
A PRIVATE LTD. COMPANY HAVING THEIR REGISTERED OFFICE AT  
PALASHBARI  
MOUZA-CHAYANI  
KAMRUP-781128  
ASSAM  
REP. BY THEIR DULY AUTHORIZED DIRECTOR- SRI ABHISHEK KHETAN  
AGED ABOUT 38 YEARS  
S/O DEBI PRASAD KHETAN  
R/O SRCB ROAD  
FANCY BAZAR  
GUWAHATI-781001  
KAMRUP (M)  
ASSAM

VERSUS

UNION OF INDIA AND 3 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

4:THE ASSISTTANT COMMISSIONER GST AND CENTRAL EXCISE  
GUWAHATI-1 DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

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Advocate for : MR. D SARAF

Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 3 ORS.



Linked Case : WP(C)/3298/2020

BARAK VALLEY CEMENTS LTD  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956  
AND HAVING ITS MANUFACTURING UNIT AT DABENDRANAGAR  
JHOOM BASTI  
P.O. BADARPURGHAT  
DIST. KARIMGANJ  
ASSAM  
AND REP. BY SRI MUKESH AGARWAL  
CHIEF EXECUTIVE OFFICER OF PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 3 ORS  
REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MINISTRY OF FINANCE  
DEPTT. REVENUE  
NORTH BLOCK  
NEW DELHI

2:PRINCIPAL COMMISSIONER  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001  
3:JOINT COMMISSIONER  
GST AND CE COMMISSIONERATE  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001  
4:ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE DIVISION  
C.R. BUILDING  
CIRCUIT HOUSE ROAD  
SILCHAR-788001

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Advocate for : DR. A SARAF

Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/3386/2020

M/S. BULLAND CEMENT PVT. LTD.

A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES  
ACT

1956 AND HAVING ITS REGISTERED OFFICE AT AND FACTORY AT VILL.  
BAMUNGAON  
LANKA  
DIST. NAGAON  
ASSAM  
REP BY SRI AJIT KR. CHOUDHURY

VERSUS

THE UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

4:THE ASSISTANT COMMISSIONER  
CGST AND CENTRAL EXCISE  
O/O THE ASSISTANT COMMISSIONER OF GST AND CENTRAL EXCISE  
GUWAHATI  
GUWAHATI DIVISION-II  
GST BHAWAN  
KEDAR ROAD  
FANCY BAZAR  
GUWAHATI-781001  
ASSAM

5:THE SUPERINTENDENT OF CGST AND CENTRAL EXCISE  
GUWAHATI  
GUWAHATI DIVISION-II  
GST BHAWAN  
KEDAR ROAD  
FANCY BAZAR  
GUWAHATI-781001  
ASSAM

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Advocate for : MS. M L GOPE

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/3835/2020

M/S. SHANDAR PAINTS INDUSTRY (UNIT-II)  
A SOLE PROPRIETOR CONCERN HAVING THEIR PRINCIPAL PLACE OF  
BUSINESS AT SHED NO. 11 AND 12  
RANI INDUSTRIAL AREA  
RANI KAMRUP 781131  
REPRESENTED BY THEIR SOLE PROPRIETOR SRI UMASHANKAR  
BHAGAT AGED ABOUT 57  
S/O VASUDEV BHAGAT

VERSUS

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

2:THE SECRETARY TO THE GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDOY BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI 781001  
ASSAM

4:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
GUWAHATI I  
DIVISION GST BHAWAN 2ND FLOOR. KEDAR ROAD  
GUWAHATI 781001  
ASSAM

5:THE SUPERINTENDENT (TECHNICAL - I)  
O/O THE ASSISTANT COMMISSIONER

GST AND CENTRAL EXCISE  
GUWAHATI 1 DIVISION  
GST BHAWAN

KEDAR ROAD  
GUWAHATI 781001

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Advocate for : MR. D SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/2935/2020

OZONE PHARMACEUTICALS LTD.  
A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES  
ACT  
1956 READ WITH THE COMPANIES ACT  
2013 AND HAVING ITS OFFICE AND FACTORY AT EXPORT PROMOTION  
INDUSTRIAL PARK (EPIP)  
AMINGAON  
NORTH GUWAHATI CIRCLE  
DIST. KAMRUP  
ASSAM  
REP BY SRI DIPAK KUMAR SINGH

VERSUS

UNION OF INDIA AND 5 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN KEDAR ROAD  
GUWAHATI-781001  
ASSAM

4:THE JOINT COMMISSIONER  
GST AND CENTRAL EXCISE  
O/O GST AND CENTRAL EXCISE COMMISSIONERATE  
GUWAHATI  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA GUWAHATI-781001  
ASSAM

5:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
O/O THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE  
GUWAHATI DIV-I  
GST BHAWAN  
KEDAR ROAD

GUWAHATI-781001  
ASSAM  
6:THE SUPERINTENDENT  
GST AND CENTARL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
GST appearing for UNION OF INDIA AND 5 ORS.

Linked Case : WP(C)/3156/2020

M/S. K.D.CEMENTS  
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE  
PARTNERSHIP ACT  
1932 AND HAVING ITS CORPORATE OFFICE AT 2ND FLOOR  
SUBHAM VELOCITY WALFORD  
ABOVE PASSPORT SEVE KENDRA  
GS ROAD  
GUWAHATI 781005  
ASSAM AND FACTORY AT BHOMRAGURI  
SAMAGURI  
782140M NAGAON  
ASSAM AND HAVING IN THE PRESENT PROCEEDING REPRESENTED BY  
SRI ARUN KEJRIWAL  
THE AUTHORIZED SIGNATORY OF THE PETITIONER FIRM

VERSUS

UNION OF INDIA AND 2 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF REVENUE  
NORTH BLOCK NEW DELHI

2:PRINCIPAL COMMISSIONER  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI 781001  
3:ASSISTANT COMMISSIONER  
CGST GUWAHATI DIVISION-II. GST BHAWAN  
2ND FLOOR KEDAR ROAD  
MACHKHOWA GUWAHATI 781001  
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Advocate for : DR. A SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/3372/2020

CENT PLY  
(A DIVISION OF CENTURY PLYBOARDS (I) LTD.) A COMPANY  
INCORPORATED UNDER THE PROVISION OF THE COMPANIES ACT  
1956 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AT MIRZA  
PALASHBARI ROAD  
PALASHBARI  
KAMRUP  
ASSAM-781128  
AND IN THE PRESENT PROCEEDINGS REP. BY SRI NARENDRA PRATAP  
SINGH  
THE AUTHORIZED SIGNATORY OF THE PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 2 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:JOINT COMMISSIONER  
GST AND CENTRAL EXCISE COMMISSIONERATE  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

3:ASSISTANT COMMISSIONER  
GUWAHATI  
DIVISION -I  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

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Advocate for : DR. A SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/3464/2020

ASSAM ROOFING LTD.  
A COMPANY INCORPORATED UNDER THE PROVISION OF THE COMPANIES  
ACT  
1956 AND HAVING ITS REGISTERED OFFICE AND FACTORY SITUATED AT  
BONDA  
NARENGI  
ASSAM AND IN THE PRESENT PROCEEDING REPRESENTED BY SRI  
MISHRILAL RAJAK  
THE AUTHORIZED SIGNATORY OF THE PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 2 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:JOINT COMMISSIONER  
GST AND CENTRAL EXCISE  
COMMISSIONERATE  
GUWAHATI  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001.

3:ASSISTANT COMMISSIONER  
GUWAHATI II DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHTI-781001

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Advocate for : MR. P BARUAH  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/4824/2020

M/S BRAHMAPUTRA CARBON LTD  
A COMPANY INCORPORATED UNDER THE COMPANIES ACT  
1956 AND HAVING ITS REGISTERED OFFICE AND FACTORY AT  
INDUSTRIAL ESTATE  
NEW BONGAIGAON  
ASSAM 783380  
REPRESENTED BY ONE OF ITS DIRECTOR SHRI SANJIB KUMAR BARUAH

VERSUS

THE UNION OF INDIA AND 2 ORS  
THROUGH THE COMMISSIONER OF GST AND CENTRAL EXCISE GST  
BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI

2:THE COMMISSIONER OF GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI

3:THE JOINT COMMISSIONER OF GST AND CENTRAL EXCISE

GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI

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Advocate for : MS. M DEVI  
Advocate for : SC  
GST appearing for THE UNION OF INDIA AND 2 ORS

Linked Case : WP(C)/3762/2020

M/S PURBANCHAL CEMENT LTD.  
HAVING ITS PRINCIPAL PLACE OF BUSINESS AND ITS FACTORY SITUATED  
AT VILL.- SARUTARI  
MOUZA- SONAPUR  
P.O.- BYRNIHAT  
DIST.- KAMRUP (M)  
ASSAM- 782402  
REP. BY SRI SUNIL KUMAR AGARWAL  
ONE OF THE DIRECTORS OF THE PETITIONER COMPANY.

VERSUS

THE UNION OF INDIA AND 3 ORS.  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK



NEW DELHI.

2:THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI.

3:THE COMMISSIONER CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001  
ASSAM.

4:THE JOINT COMMISSIONER CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001  
ASSAM.

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Advocate for : MS. M L GOPE  
Advocate for : SC  
CENTRAL EXCISE appearing for THE UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/4053/2020

M/S. B.R.METTALICS  
A PARTNERSHIP FIRM HAVING ITS FACTORY AT INTERGRATED  
INDUSTRIAL DEVELOPMENT CENTRE  
VILLAGE BORSHIL  
PO MORANJANA RANGIA  
DIST KAMRUP R ASSAM AND IS REPRESENTED BY SRI BINOD KUMAR  
GOENKA  
ONE OF THE DULY AUTHORISED PARTNER OF THE PETITIONER  
PARTNERSHIP FIRM

VERSUS

UNION OF INDIA AND ANR.  
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE  
DEPARTMENT OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE ASSISTANT COMMISSIONER  
OFFICE OF THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
GUWAHATI I  
DIVISION

GST BHAWAN  
KEDAR ROAD  
GUWAHATI 781001

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Advocate for : MR G N SAHEWALLA  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR.

Linked Case : WP(C)/4194/2020

KAMAKHYA PLASTICS PVT. LTD.  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956 AND HAVING ITS FACTORY SITUATED AT BONDA  
NARENGI  
GHY AND REP. BY MR. M.L.RAJAK  
THE AUTHORISED SIGNATORY OF THE PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 2 ORS.  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:PRINCIPAL COMMISSIONER  
GST AND CENTRAL EXCISE COMMISSIONERATE  
GHY

GST BHAWAN  
5TH FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

3:ASSTT. COMMISSIONER  
GHY

DIVISION-II  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

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Advocate for : DR. A SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/3610/2020

ASSAM CARBON PRODUCTS LTD.  
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGD. OFFICE AT NARENGI CHANDRAPUR ROAD  
BIKRUCHI  
NARENGI  
GHY-26  
ASSAM  
REP. BY  
SRI KAILASH CHAND JOSHI  
ADVISOR-FINANCE AND ACCOUNTS OF THE COMPANY

VERSUS

UNION OF INDIA AND ANR.  
DULY REP. BY THE SECY. TO THE MINISTRY OF FINANCE  
DEPTT. OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE ASSTT. COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX  
GHY DIVISION-II  
GST BHAWAN  
KEDAR ROAD  
FANCY BAZAR  
GHY-01

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Advocate for : MR G N SAHEWALLA  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR.

Linked Case : WP(C)/3176/2020

M/S AHINSHA CHEMICALS LTD. (INSTANT TEA DIVISION)  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956  
READ WITH THE COMPANIES ACT  
2013 HAVING ITS REGISTERED OFFICE AT N.T. ROAD  
MILANPUR  
DIST. NALBARI  
ASSAM  
-781335  
REP. BY SRI PAWAN KUMAR JAIN

THE AUTHORISED REPRESENTATIVE OF THE PETITIONER COMPANY

VERSUS

THE UNION OF INDIA AND 4 ORS  
REP BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK NEW DELHI.

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYUG BHAWAN  
NEW DELHI

3:THE COMMISSIONER CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDER ROAD  
GUWAHATI-781001  
ASSAM

4:THE ASSISTANT COMMISSIONER  
CGST AND CENTRAL EXCISE  
O/O THE ASSISTANT COMMISSIONER OF GST AND CENTRAL EXCISE  
GUWAHATI-I DIVISION  
GST BHAWAN  
KEDER ROAD  
GUWAHATI-781001  
ASSAM

5:THE SUPERINTENDENT (TECHNICAL-I)  
CGST AND CENTRAL EXCISE DIVISION-I  
GST BHAWAN  
KEDER ROAD  
GUWAHATI-781001  
ASSAM

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Advocate for : MS. M L GOPE

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/4493/2020

ASSAM CARBON PRODUCTS LIMITED  
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGISTERED OFFICE AT NARENGI CHANDRAPUR ROAD  
BIKRUCHI  
NARENGI  
GUWAHATI 781026  
ASSAM  
REPRESENTED BY SRI KAILASH CHAND JOSHI

ADVISOR FINANCE AND ACCOUNTS OF THE COMPANY

VERSUS

UNION OF INDIA AND ANR  
DULY REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE  
DEPARTMENT OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE ASSISTANT COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX  
GUWAHATI DIVISION II. GST BHAWAN  
KEDAR ROAD  
FANCY BAZAR  
GUWAHATI 781001

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Advocate for : MR G N SAHEWALLA  
Advocate for : SC  
GST appearing for UNION OF INDIA AND ANR

Linked Case : WP(C)/2951/2020

M/S. BARAK ISPAT PVT. LTD.  
A PVT LIMITED COMPANY REGD UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956  
READ WITH THE COMPANIES ACT  
2013 AND HAVING ITS OFFICE AT MOHANPUR ROAD  
SRIKONA  
SILCHAR 26 AND FACTORY AT DAG NO. 187 AND 188 OF 2ND R S PATTA NO.  
15 AND 161  
MOUZA- SRIKONA  
DIST- CACHAR  
ASSAM

VERSUS

UNION OF INDIA AND 4 ORS  
REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MIN OF FINANCE  
DEPTT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY

TO THE GOVT OF INDIA  
MIN OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER  
GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001

ASSAM  
4:THE ASSTT COMMISSIONER  
GST AND CENTRAL EXCISE  
OFFICE OF THE ASSTT COMMISSIONER OF CENTRAL EXCISE  
CIRCUIT HOUSE  
SILCHAR  
ASSAM

5:THE SUPERINTENDENT  
GST AND CENTRAL EXCISE  
CIRCUIT HOUSE  
SILCHAR  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/3596/2020

M/S. INDIA CARBON LTD.  
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGD. OFFICE AT NOONMATI  
GHY  
REP. BY SRI SHYAMAL KUMAR BHATTACHARJYA  
GENERAL MANAGER (ADMINISTRATION AND COMMERCIAL) OF THE  
COMPANY

VERSUS

UNION OF INDIA AND ANR.  
DULY REP. BY THE SECY. TO THE MINISTRY OF FINANCE  
DEPTT. OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE JOINT COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX  
GHY DIVISION-II  
GST BHAWAN

KEDAR ROAD  
FANCY BAZAR  
GHY-01  
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Advocate for : MR G N SAHEWALLA  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR.

Linked Case : WP(C)/3177/2020

M/S JSVM PLYWOOD INDUSTRIES LTD. (FORMERLY KNOWN AS M/S  
ARUNACHAL SAW AND VENEER MILLS PVT. LTD  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956 READ WITH THE COMPANIES ACT  
2013  
HAVING ITS REGISTERED OFFICE AT 17TH MILE STILWELL ROAD  
P.O. JAIRAMPUR  
DIST. CHANGLANG  
ARUNACHAL PRADESH-792121  
REP. BY SRI RAJ KUMAR BAJAJ

VERSUS

THE UNION OF INDIA AND 4 ORS  
REP BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK NEW DELHI.

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYUG BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GOVT. OF ARUNACHAL PRADESH  
KAR BHAWAN ITANAGAR-791113  
ARUNACHAL PRADESH

4:THE DEPUTY COMMISSIONER  
GST AND CENTRAL EXCISE  
GOVT. OF ARUNACHAL PRADESH  
KAR BHAWAN ITANAGAR-791113  
ARUNACHAL PRADESH

5:THE ASSISTANT COMMISSIONER  
CGST AND CENTRAL EXCISE  
O/O ASSISTANT COMMISSIONER OF CENTRAL GST AND CENTRAL EXCISE  
ITANAGAR DIVISION

SECTOR-A  
NAHARLAGUN-791110  
ARUNACHAL PRADESH

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Advocate for : MS. M L GOPE  
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/4947/2020

GREENPLY INDUSTRIES LTD.  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956 AND HAVING ITS REGISTERED OFFICE AT MAKUM ROAD  
TINSUKIA  
ASSAM AND ITS MANUFACTURING UNIT AT LAPA LAMPONG  
TIZIT  
MON  
NAGALAND- 798602 AND HAVING ONE OF ITS OFFICE AT MAKUM ROAD  
TINSUKIA  
ASSAM.

VERSUS

UNION OF INDIA AND 3 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI.

2:THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI.

3:THE COMMISSIONER CENTRAL GST AND CENTRAL EXCISE

DIMAPUR  
NAGALAND.  
4:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE

OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE  
DIMAPUR  
NAGALAND.

5:THE COMMISSIONER CENTRAL GST AND CENTRAL EXCISE



GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001  
ASSAM.

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Advocate for : MS. M L GOPE  
Advocate for : MR. S C KEYAL appearing for UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/3166/2020

M/S GATTANI POLYMERS  
A PARTNERSHIP FIRM HAVING ITS REGD. OFFICE AT G.B. GATTANI  
INDUSTRIAL COMPLEX  
MARIANI ROAD  
CINNAMARA  
JORHAT  
ASSAM AND REP. BY SRI SARANGAPANI BORDOLOI  
THE AUTHORIZED SIGNATORY OF THE PETITIONER FIRM

VERSUS

UNION OF INDIA AND 4 ORS  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI  
3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GHY-01  
ASSAM  
4:THE ASSTT. COMMISSIONER  
GST AND CENTRAL EXCISE  
OFFICE OF THE ASSTT. COMMISSIONER OF CENTRAL EXCISE  
JORHAT DIVISION  
STATION ROAD  
JORHAT- 785001  
ASSAM  
5:THE SUPERINTENDENT

GST AND CENTRAL EXCISE  
CGST  
JORHAT DIVISION  
STATION ROAD  
JORHAT- 785001  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
CENTRAL EXCISE appearing for UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/4721/2020

M/S NEW AGE PETCOKE PVT. LTD.  
A COMPANY INCORPORATED UNDER THE COMPANIES ACT  
1956 AND HAVING ITS REGISTERED OFFICE AND INDUSTRIAL UNIT AT  
PALASHBARI PO KAJALGAON  
CHIRANG  
BTAD  
ASSAM REPRESENTED BY ONE OF ITS AUTHORISED REPRESENTATIVE  
SHRI BIPUL KUMAR DUTTA  
S/O LATE DHARANI DHAR DUTTA  
RESIDENT OF BHETAPARA CHARIALI  
PS HATIGAON  
GUWAHATI 781038

VERSUS

UNION OF INDIA AND ANR.  
DULY REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE  
DEPARTMENT OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE ASSISTANT COMMISSIONER  
ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
BONGAIGAON DIVISION  
GST BHAWAN  
KEATING ROAD  
DHUBRI  
ASSAM 783301

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Advocate for : MR G N SAHEWALLA  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR.

Linked Case : WP(C)/4035/2020

NORTH EAST ROOFING (P) LTD.  
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE  
COMPANIES ACT  
1956 AND HAVING ITS REGISTERED OFFICE AND FACTORY SITUATED AT  
BONDA  
NARENGI  
GUWAHATI-781026  
ASSAM AND IN THE PRESENT PROCEEDING REPRESENTED BY SRI  
MISHRILAL RAJAK  
THE AUTHORIZED SIGNATORY OF THE PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 2 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:PRINCIPAL COMMISSIONER  
GST AND CENTRAL EXCISE COMMISSIONERATE  
GUWAHATI  
GST BHAWAN  
5TH FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

3:ASSISTANT COMMISSIONER  
GUWAHATI  
DIVISION-II  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001

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Advocate for : DR. A SARAF  
Advocate for : MR. S C KEYAL (SC  
GST AND ASSTT.S.G.I.) appearing for UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/4031/2020

M/S K.D. COKES  
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE  
PARTNERSHIP ACT  
1932 AND HAVING ITS OFFICE AT VILL AMERIGOG  
11TH MILE  
JORABAT GS ROAD  
DIST KAMRUP ASSAM  
AND IN THE PRESENT PROCEEDING REPRESENTED BY ITS SAURABH  
AGARWALA  
THE AUTHORISED SIGNATORY OF THE PETITITON FIRM

VERSUS

THE UNION OF INDIA AND 2 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:PRINCIPAL COMMISSIONER  
GST AND CENTRAL EXCISE COMMISSIONERATE GUWAHATI  
GST BHAWAN  
5TH FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI 781001

3:ASSISTANT COMMISSIONER  
GUWAHATI DIVISION II GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA GUWAHATI 781001

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Advocate for : DR. A SARAF

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 2 ORS

Linked Case : WP(C)/4046/2020

PDP STEELS LTD  
A COMPANY INCORPORATED UNDER THE PROVISION OF THE COMPANIES  
ACT  
1956 AND HAVING ITS REGD. OFFICE AND FACTORY SITUATED AT BONDA  
NARENGI  
GHY-26  
ASSAM

AND IN THE PRESENT PROCEEDING REP. BY SRI MISHRILAL RAJAK  
THE AUTHORIZED SIGNATORY OF THE PETITIONER COMPANY

VERSUS

UNION OF INDIA AND 2 ORS  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:PRINCIPAL COMMISSIONER  
GST AND CENTRAL EXCISE COMMISSIONERATE  
GHY  
GST BHAWAN  
5TH FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

3:ASSTT. COMMISSIONER  
GHY  
DIVISION-II  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

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Advocate for : DR. A SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS

Linked Case : WP(C)/3087/2020

UPPER ASSAM PETROCOKE PRIVATE LIMITED  
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT  
1956 HAVING ITS REGD OFFICE AT NO. 2  
MAKUM PATHER  
P.O- MARGHERITA  
DIST- TINSUKIA  
ASSAM  
PIN- 786181 REP. BY SRI ARUP KUMAR MAITY  
ONE OF THE DIRECTORS OF THE COMPANY

VERSUS

UNION OF INDIA AND ANR  
DULY REP. BY THE SECRETARY TO THE MIN OF FINANCE  
DEPTT OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE ASSISTANT COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX DIVISION  
TINSUKIA  
DURGABARI ROAD  
TINSUKIA- 786123

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Advocate for : MR G N SAHEWALLA  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR

Linked Case : WP(C)/3810/2020

M/S. K.D.IRON AND STEEL CO.  
A PARTNERSHIP FIRM HAVING ITS FACTORY AT INTEGRATED INDUSTRIAL  
DEVELOPMENT CENTRE  
VILLAGE BORSHIL  
PO MORANJANA  
RANGIA  
KARMUP R ASSAM 781354 AND REPRESENTED BY SRI BINOD KUMAR  
GOENKA  
ONE OF THE DULY AUTHORISED PARTNER OF PETITION PARTNERSHIP  
FIRM

VERSUS

UNION OF INDIA AND ANR.  
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF FINANCE  
DEPARTMENT OF BANKING AND REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE ASSISTANT COMMISSIONER  
OFFICE OF THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE GUWAHATI I  
DIVISION  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI 781001

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Advocate for : MR G N SAHEWALLA  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND ANR.

Linked Case : WP(C)/3049/2020

M/S BARAK ALLOY  
A PARTNERSHIP FIRM REGD UNDER THE PROVISIONS OF THE INDIAN  
PARTNERSHIP ACT  
1932 AND HAVING ITS OFFICE AT MOHANPUR ROAD  
SRIKONA  
SILCHAR- 26  
ASSAM AND FACTORY AT MOUZA SRIKONA  
PART II  
PARGANA RAJNAGAR  
DIST- CACHAR  
ASSAM

VERSUS

UNION OF INDIA AND 4 ORS  
REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MIN OF FINANCE  
DEPTT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY TO THE GOVT OF INDIA  
MIN OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER  
GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001  
ASSAM

4:THE ASSTT COMMISSIONER  
GST AND CENTRAL EXCISE  
OFFICE OF THE ASSTT COMMISSIONER OF CENTRAL EXCISE  
CIRCUIT HOUSE ROAD  
SILCHAR  
ASSAM

5:THE SUPERINTENDENT  
GST AND CENTRAL EXCISE

C R BUILDING  
CIRCUIT HOUSE ROAD  
SILCHAR- 788001  
ASSAM  
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Advocate for : MS. M L GOPE  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/5800/2020

M/S PRAG ELECTRICALS PVT LTD  
HAVING ITS REGISTERED OFFICE AT INDUSTRIAL ESTATE  
BAMUNIMAIDAM  
GUWAHATI  
ASSAM REPRESENTED BY ITS MANAGING DIRECTOR

VERSUS

THE UNION OF INDIA AND 3 ORS.  
REPRESENTED BY THE GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
DELHI

2:COMMISSIONER  
CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

3:JOINT COMMISSIONER  
CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

4:ASSISTANT COMMISSIONER  
CGST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM  
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Advocate for : MR. B CHAKRABORTY  
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 3 ORS.



Linked Case : WP(C)/2916/2020

M/S JUMBO ROOFING AND TILES  
A PARTNERSHIP FIRM HAVING ITS PLACE OF BUSINESS AT SILA  
HALUGURI CHOWK  
CHANGSARI  
KAMRUP(R)  
ASSAM- 781001 AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS  
PARTNERS DEEPAK KAYAL

VERSUS

UNION OF INDIA AND 3 ORS  
REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MIN OF FINANCE  
DEPTT OF REVENUE  
NORTH BLOCK  
NEW DELHI-

2:JOINT COMMISSIONER  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

3:ASSTT COMMISSIONER  
GUWAHATI-I DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

4:SUPERINTENDENT (TECHNICAL-I)  
CGST AND CENTRAL EXCISE DIVISION-I  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI- 781001

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Advocate for : DR. A SARAF

Advocate for : SC

GST appearing for UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/2899/2020

M/S GUWAHATI CARBON LIMITED  
A COMPANY INCORPORATED UNDER THE COMPANIES ACT  
1956 AND HAVING ITS REGISTERED OFFICE AND FACTORY AT NH-37  
PUB-BORAGAON  
GORCHUK  
KAMRUP(M)  
GUWAHATI-781035  
ASSAM  
REPRESENTED BY ITS DIRECTOR SHRI SANJIB KUMAR BARUAH

VERSUS

THE UNION OF INDIA AND 2 ORS.  
THROUGH THE COMMISSIONER OF GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI

2:THE COMMISSIONER OF GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI

3:THE JOINT COMMISSIONER OF GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI

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Advocate for : MS. M DEVI  
Advocate for : SC  
GST appearing for THE UNION OF INDIA AND 2 ORS.

Linked Case : WP(C)/3237/2020

M/S. PCL CEMENT AND PIPE INDUSTRIES  
A PARTNERSHIP FIRM REGD. UNDER THE PROVISIONS OF INDIAN  
PARTNERSHIP ACT  
1932 HAVING ITS PLACE OF BUSINESS AT BORERA GAON  
NA ALI  
TITABAR  
DIST. JORHAT  
ASSAM-785630 AND IN THE PRESENT PROCEEDINGS REP. BY ONE OF ITS

PARTNERS  
SRI DILIP KUMAR GATTANI.

VERSUS

UNION OF INDIA AND 3 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI.

2:PRINCIPAL COMMISSIONER

GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GUWAHATI-781001.

3:ASSTT. COMMISSIONER  
CGST  
DIVISION JORHAT  
STATION GODOWN ROAD  
JORHAT-785001  
ASSAM.

4:JOINT COMMISSIONER  
CGST AND CEX  
DIBRUGARH COMMISSIONERATE  
MILAN NAGAR (F) LANE  
P.O. CR BUILDING  
DIBRUGARH-786003.

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Advocate for : DR. ASHOK SARAF  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/2872/2020

M/S OZONE AYURVEDICS  
UNIT-II  
A FIRM HAVING ITS OFFICE AND FACTORY AT EPIP  
AMINGAON  
GUWAHATI  
DIST. KAMRUP  
ASSAM  
PIN-781031  
REP. BY SRI DIPAK KUMAR SINGH

VERSUS

UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF COMMERCE AND INDUSTRY UDGOY BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

4:THE ASSISTANT COMMISSIONER  
GST AND CENTRAL EXCISE  
O/O ASSISTANT COMMISSIONER OF CENTRAL EXCISE  
GUWAHATI  
DIV-I  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI-781001  
ASSAM

5:THE SUPERINTENDENT  
GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : SC  
GST appearing for UNION OF INDIA AND 4 ORS.

Linked Case : WP(C)/2926/2020

M/S RIVER VALLEY CEMENT CORPORATION  
A PARTNERSHIP FIRM HAVING ITS PLACE OF BUSINESS AT LAXMI NAGAR  
CHANGSARI  
KAMRUP (R)  
ASSAM AND REP. BY ONE OF ITS PARTNERS SRI DEEPAK KAYAL

VERSUS

UNION OF INDIA AND 3 ORS  
REP. BY THE SECY. TO THE GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPTT. OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:JOINT COMMISSIONER  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

3:ASSTT. COMMISSIONER  
GHY-I DIVISION  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

4:SUPERINTENDENT (TECHNICAL-I)  
CGST AND CENTRAL EXCISE DIVISION-I  
GST BHAWAN  
2ND FLOOR  
KEDAR ROAD  
MACHKHOWA  
GHY-01

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Advocate for : DR. A SARAF  
Advocate for : SC  
GST appearing for UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/2947/2020

M/S. OZONE AYURVEDICS  
A FIRM HAVING ITS OFFICE AND FACTORY AT EPIP  
AMINGAON  
GUWAHATI  
DIST- KAMRUP  
ASSAM  
PIN- 781031 REP. BY SRI DIPAK KUMAR SINGH

VERSUS

UNION OF INDIA AND 4 ORS

REP. BY THE SECRETARY TO THE GOVT OF INDIA  
MIN OF FINANCE  
DEPTT OF REVENUE  
NORTH BLOCK  
NEW DELHI

2:THE SECRETARY TO THE GOVT OF INDIA  
MIN OF COMMERCE AND INDUSTRY  
UDYOG BHAWAN  
NEW DELHI

3:THE COMMISSIONER GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001  
ASSAM

4:THE ASSTT COMMISSIONER GST AND CENTRAL EXCISE  
OFFICE OF THE ASSTT COMMISSIONER OF CENTRAL EXCISE  
GUWAHATI  
DIV-I  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI- 781001  
ASSAM

5:THE SUPERINTENDENT  
GST AND CENTRAL EXCISE  
GST BHAWAN  
KEDAR ROAD  
GUWAHATI  
ASSAM

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Advocate for : MS. M L GOPE  
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 4 ORS

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**Date : 12-03-2021**

For the Petitioners	: Dr. A. Saraf, Sr. Adv.
	: Mr. P. Das
	: Mr. R. K. Choudhury, Adv.
	: Mr. A. Das, Adv.
	: Mr. G. Sahewalla, Sr. Adv.
	: Mr. M. Sahewalla, Adv.

: Mr. D. Saraf, Adv.  
: Ms. N. Hawelia, Adv.  
: Ms. N. Gogoi, Adv.  
: Mr. B. Chakraborty, Adv.

For the Respondent(s) : Mr. S. C. Keyal, SC Central Excise & GST  
: Ms. P. Das, Adv.  
: Ms. G. Hazarika, Adv.  
: Mr. P. Parasar, CGC  
: Mr. C. Sarma Baruah CGC

Date of Hearing : 05.02.2021

&

Date of Judgment : 12.03.2021

### **JUDGMENT & ORDER (CAV)**

Heard Dr. A. Saraf, learned senior counsel assisted by Mr. P. Das, learned counsel for the petitioner in WP(C) No. 2918/2020, WP(C) No. 1366/2020, WP(C) No. 2916/2020, WP(C) No. 2920/2020, WP(C) No. 2926/2020, WP(C) No. 2940/2020, WP(C) No. 3155/2020, WP(C) No. 3156/2020, WP(C) No. 3237/2020, WP(C) No. 3298/2020, WP(C) No. 3372/2020, WP(C) No. 3464/2020, WP(C) No. 3763/2020, WP(C) No. 4031/2020, WP(C) No. 4035/2020, WP(C) No. 4046/2020 and WP(C) No. 4194/2020.

**2.** Mr. R. K. Choudhury, learned counsel assisted by Mr. A. Das, learned counsel appears for the petitioners in WP(C) No. 1780/2020, WP(C) No. 2899/2020 & WP(C) No. 4824/2020.

**3.** Mr. G. Sahewalla, learned senior counsel assisted by Mr. M. Sahewalla, learned counsel appears for the petitioners in WP(C) No. 3087/2020, WP(C) No. 3596/2020 WP(C) No. 3610/2020, WP(C) No. 3810/2020, WP(C) No. 4053/2020, WP(C) No. 4493/2020 and WP(C) No. 4721/2020.

**4.** Mr. D. Saraf, learned counsel appears for petitioners in WP(C) No. 3113/2020 and WP(C) No. 3835/2020.

**5.** Ms. N. Hawelia and Ms. N. Gogoi, learned counsels appears for the petitioners in

WP(C) No. 2872/2020, WP(C) No. 2929/2020, WP(C) No. 2935/2020, WP(C) No. 2947/2020, WP(C) No. 2951/2020, WP(C) No. 3049/2020, WP(C) No. 3166/2020, WP(C) No. 3176/2020, WP(C) No. 3177/2020, WP(C) No. 3386/2020, WP(C) No. 3762/2020 and WP(C) No. 4947/2020.

**6.** Mr. B. Chakraborty, learned counsel appears for the petitioners in WP(C) No. 5800/2020.

**7.** Also heard Mr. S. C. Keyal, learned standing counsel assisted by Ms. P. Das, and Ms. G. Hazarika, learned counsels for the respondent, Central Excise and GST Department and Mr. P. Parasar and Mr. C. Sarma Baruah, learned CGC appearing for the Union of India.

**8.** All these writ petitions raise common questions of law and, therefore, the same are taken together for hearing and disposal. The matters were heard on several dates and pursuant thereto the same are taken up for disposal by this common Judgment and Order. Dr. A. Saraf, learned senior counsel has lead the arguments for the petitioners. All other learned counsels for the petitioners have adopted the arguments of Dr. Saraf. The brief facts necessary for adjudicating the issues raised in the present proceedings are narrated as under:-

**9.** In all these writ petitions, the petitioners have challenged the Demand-cum-show cause notices issued by the Central Excise Authority directing the petitioner to show cause as to why the amount of *Education Cess and Secondary and Higher Education Cess*, which were refunded to the petitioners should not be recovered under the Provisions of Section 11A(i) of the Central Excise Act, 1944, (hereinafter known as the "Act") and further as to why interest should not be charged and realized in terms of Section 11AA of the Act. The show cause notices were issued in view of the Judgment and Order of the Apex Court in *M/S Unicorn Industries –Vs- Union of India* reported in (2020) 3 SCC 492 whereby an earlier Judgment of the Apex Court, namely, *SRD Nutrients Pvt. Ltd. –Vs- Commissioner of Central Excise, Guwahati* reported in (2018) 1 SCC 105 have been declared to be per incuriam. According to the Department, the refunds sanctioned to the petitioners earlier were made pursuant to the Judgment of the Apex Court in *SRD Nutrients Pvt. Ltd.* (supra) and the said



Judgment having been held to be "per incuriam" by the Apex Court in the recent Judgment of *M/S Unicorn Industries –Vs- Union of India*; the refunds earlier granted to the petitioners on the strength of the Judgment in *M/S SRD Nutrients (supra)* have become "erroneous refunds" and, therefore, the same are sought to be recovered from the petitioners by way of impugned show cause notice.

**10.** For enhancing the industrial progress in the North-East Region and for attracting the investees with a view to foster industrial growth and industrial activities in the North-East region, the Govt. of India announced an Industrial Policy Resolution vide Notification dated 24.12.1997. The Industrial Policy Resolution (hereinafter referred to as "IPR") contained a package of incentives and concessions for the industries established in the entire North-East Region.

**11.** The said IPR amongst others declared all industrial activities in growth centers; integrated infrastructural development centers, export promotion and industrial parks, export processing zone, industrial estates and industrial areas as completely tax free zones for a period of 10 (ten) years. It was announced and promised by the Government of India that all industrial activities for such areas would be free from, inter alia, income tax, central excise for a period of 10(ten) years from the date of commencement of production and also that the State Government would be moved for exemptions of sales tax, municipal tax and other such local taxes on industrial activity in the said areas. It was further stated in the aforesaid office memorandum of 24.12.1997, that Ministry of Finance of Government of India would be moved to amend the existing rules/notifications for giving effect to the decisions embodied in the Industrial Policy Resolution. Apart from exemption from, inter alia, income tax and Central excise duty, the IPR, envisages other different incentives and concessions like Capital Investment Subsidy assistance in obtaining Term Loan and Working Capital and Interest Subsidy.

**12.** In terms of the promises made by the Government of India in the North-East Industrial Policy Resolution contained in the office Memorandum dated 24.12.1997, various Notifications conferring benefits in terms with the promise as visualized in the Industrial Policy Resolution were issued by various authorities of the Central Government. Insofar as the

exemption of Central Excise was concerned, the respondents issued notifications No. 32/99-CE and 33/99-CE both dated 08.07.1999 respectively granting exemption in respect of all excisable goods cleared from a unit located in the Growth or Integrated Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estates or Industrial area or Commercial Estate, as the case may be, specified in the Annexure appended to the said notifications from such of the excise or additional duty of excise leviable thereon as is equivalent to the amount of the duty paid by the manufacturer of goods from the account current maintained under Rule 9 read with Rule 173 G of the Rules. The exemption contained in the said notification was made applicable to only new Industrial Units which commenced their commercial production on or after the 24<sup>th</sup> Day of December, 1997 and to the Industrial Units existing before the 24<sup>th</sup> day of December but which undertook substantial expansion by way of increase in the installed capacity by not less than 25% on or after the 24<sup>th</sup> day of December, 1997. The exemption contained in the said notifications in terms of para 4 of the Notification was made applicable to any of the above stated Industrial units for a period not exceeding 10 years from the date of publication of the Notification in the official Gazette or from the date commencement of commercial production, whichever was later.

**13.** The Government of India on 01.04.2007 announced a new Policy, namely, the North-East Industrial and Investment Promotion Policy (NEIIPP), 2007. Vide the said Policy, the Government of India vide the NEIIPP, 2007 has also approved a package of fiscal concessions and other concession for the North-East Region. In the said new Policy NEIIPP of 2007, on the issue of the excise duty exemption under clause (v) it was clearly noted that "hundred per cent excise duty exemption will be continued, on finished products made in the North-Eastern Region, as was available NEIP, 1997".

**14.** In terms of the promise made by the Government of India in the North-East Industrial and Investment Promotion Policy (NEIIPP), 2007 dated 01.04.2007, Notification No.20/2007 was issued conferring benefits in terms with the promises as visualized in the NEIIPP, 2007, insofar as the exemption of Central Excise was concerned, granting exemption in respect of all excisable goods cleared from a unit located in the states of Assam or Tripura or Meghalaya or Mizoram or Manipur of Nagaland or Arunachal Pradesh or Sikkim, from such

of the excise or additional duty of excise leviable thereon as is equivalent to the amount of the duty paid by the manufacturer of goods other than the amount of Duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004. The exemption contained in the said notification was made applicable to only new Industrial Units which commenced their commercial production on or after the 1<sup>st</sup> of April, 2007 but not later than 31<sup>st</sup> day of March, 2017 and to the Industrial Units existing before the 1<sup>st</sup> day of April, 2007 which undertook substantial expansion by way of increase in the installed capacity by not less than 25% on or after the 1<sup>st</sup> day of April, 2007. The exemptions contained in the said notifications in terms of para 4 of the Notification are made applicable to any of the Industrial Units for a period not exceeding 10 years from the date of publication of the Notification in the official Gazette or from the date of commencement of commercial production, whichever ever was later.

**15.** Bolstered by the promises and incentives offered by the Govt. of India under the North-East Industrial Policy Resolution by Office Memorandum dated 24.12.1997 and the subsequent Notification granting Central Excise Exemption, the petitioners set up their respective units for manufacturing of the respective excisable goods falling under various Central Excise Tariff Heads and Sub-heads. The particulars regarding the industrial units set up by the petitioners are described in details later in this Judgment,.

**16.** All the petitioners are stated to be duly registered with the Central Excise Authority in accordance with the provisions of Central Excise Act, 1944. The goods manufactured at the petitioners' Plants/factories are cleared upon payment of Central Excise duties leviable thereon after due compliance of all required procedural formalities under cover of appropriate Central excise invoices. The petitioners had been claiming exemptions under Notification No. 20/2007-CE dated 25.04.2007, as amended, by way of refund excise duty through Account Current in respect of the above mentioned final products w.e.f. 25.11.2011.

**17.** By Finance Act, 2004, the Parliament levied Education Cess by way of the Finance Act, 2004. Education Cess was levied on goods specified in the First Schedule of the Central Excise Tariff Act, 1985, being goods manufactured or produced on which there shall be a duty of excise i.e. Education Cess, @ 2% calculated on aggregate of all duties of excise (including special duty of excise or any other duty of excise but excluding Education Cess on

excisable goods) which are levied and collected by the Central Govt. in the Ministry of Finance (Department of Revenue) under the provision of Central Excise Act, 1944 or any other law for the time being in force. It was also provided that Education Cess on excisable goods shall be in addition to any other duties of excise chargeable on such goods under Central Excise Act, 1944 or any other law for the time being in force. The provisions of Central Excise Act, and the Rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalties shall as far as may be apply in relation to the levy and collection of Education Cess on excisable goods as far as they apply in relation to the levy and collection of duties of excise on such goods under Central Excise Act, 1944 or the Rules.

**17.1.** Subsequently, by Finance Act, 2004, Higher Education Cess was also levied as a duty under the Central Excise Act. In terms of the provisions of the Finance Act, 2004, the petitioners were paying the Education Cess and the Higher Education Cess however, as per the Notification No. 20/07 CE dated 25.04.2007, although the basic duty was refunded to the petitioners, but the Education Cess and the Higher Education Cess paid by the petitioners were not refunded to the petitioners. Several representations were made to the Department for refund of the Education Cess and the Higher Education Cess not being acceded to. The issue travelled to the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), as well as to the various High Courts of the country including this Court in respect of entitlement of the petitioners towards refund of Education Cess and Higher Education Cess when the basic Excise duty exempted and refunded. Various departmental circulars like Circular dated 10.08.2004 and Circular dated 08.04.2011 were also issued whereby the view of the Government was that when the whole of excise duty or service tax was exempted then education Cess as well as Secondary and Higher Education Cess would not be payable. However, in spite of the circular being issued, the petitioners continued to pay Education Cess and Higher Education Cess on the basic Central Excise Duty and which were not refunded to the petitioners in terms of the Notification No. 20/07 CE dated 25.04.2007. Ultimately, the question pertaining to entitlement of industrial units like the petitioners towards refund of Education Cess and Secondary and Higher Education Cess paid by the petitioners when the basic excise duty was exempted from the levy, was finally decided by the Apex Court in *M/S SRD Nutrients Pvt. Ltd. Vs. Commissioner of Central Excise, Guwahati* reported in (2018) 1

SCC 105.

**18.** The Apex Court by the Judgment and Order dated 10.11.2017 in "*M/S SRD Nutrients (supra)*" decided the issue by holding that the appellants were entitled to refund of Education Cess and Secondary and Higher Education Cess which were paid along with excise duty as the excise duty itself was exempted from levy. In the said Judgment, the Apex Court held that Education Cess is payable on excise duty and those assesseees who are required to pay excise duty have to shell out Education Cess as well. It was further held that Education Cess was introduced by Sections 91 to 93 of the Finance (No. 2) Act, 2004 and as per Section 91 thereof, Education Cess is the surcharge which the assessee is required to pay. The Apex Court held that Section 93 of the Act of 2004 made it clear that Education Cess is payable on the 'excisable goods' i.e. in respect of goods specified in the First Schedule to the Central Tariff Act, 1985 and the same was to be levied @ 2% and calculated on the aggregate of all duties of excise which were levied and collected by the Central Government under the provisions of the Central Excise Act, 1944 or under any other law for time being in force. Sub-section (3) of Section 93 provided that the provisions of the Central Excise Act, 1944 and the rules made thereunder, including those related to refunds and duties etc. shall as far as may be applied in relation to levy and collection of Education Cess on excisable goods. In view of the aforesaid, the Apex Court held that when there is no excise duty payable, as it is exempted, there would not be any Education Cess as well, inasmuch as Education Cess @ 2% is to be calculated on the aggregate of duties of excise and that there cannot be any surcharge when basic duty itself is Nil.

**19.** A review petition by the Department was filed before the Apex Court bearing number Review Petition (C) D. No. 6714 of 2018 in Civil Appeal Nos. 2781-2790 of 2010 against the aforesaid judgment dated 10.11.2017 passed by the Supreme Court. The Apex Court vide its order dated 10.07.2018 dismissed the review application.

**20.** In view of the aforesaid judgment of the Apex Court, the petitioners filed their claim petitions for refund of Education Cess and Higher Education Cess for the respective relevant periods before the concerned Department Authorities of Central Excise vide their representations giving reference to the judgment of the Apex Court in, *M/S SRD Nutrients*

(*supra*).

**21.** Since in-spite of the claims filed by the petitioner, no refund on account of Education and Secondary & Higher Education Cess was granted to the petitioners, some of the petitioners filed writ applications before this Hon'ble Court challenging the inaction of the respondent authorities in not granting refunds of Education and Secondary & Higher Education Cess claimed in spite of the law laid down by the Apex Court in *SRD Nutrients (supra)*. This Hon'ble Court following the decision of the Apex Court in *SRD Nutrients (supra)* disposed of the writ petitions by directing the respondent authorities to refund the Education Cess as well as Secondary & Higher Education Cess which was collected from the petitioners along with excise duty.

**22.** In pursuance to the Judgment of the Apex Court passed in *SRD Nutrients (Supra)* as well as the directions of this Court, the Assistant Commissioner, the respondent No. 3 herein, passed respective Refund Orders on various dates sanctioning the refunds claimed by the petitioners as Education Cess and Secondary and Higher Education Cess for the relevant periods. The said amounts sanctioned were subsequently refunded to the petitioner.

**23.** Pursuant to the refund orders sanctioned by the Department, the Apex Court while dealing with similar issues, in a recent judgment rendered in the case of *Unicorn Industries -Vs- Union of India*, held that in the absence of notifications containing an exemption to additional duties in the nature of Education Cess and Secondary & Higher Education Cess, it cannot be said that same are exempted. The Apex Court held that in *Union Of India & Ors -Vs- M/S Modi Rubber Limited* reported in (1986) 4 SCC 66, and in *Rita Textiles Pvt. Ltd. and Ors. -Vs- Union of India* reported in (1986) Supp SCC 557 had already laid down the law and the subsequent judgment rendered by the Apex Court in the case of *SRD Nutrients(supra)* being contrary to the view taken earlier, was held to be *per incuriam*. The Apex Court in *Unicorn Industries(supra)* held that earlier binding judgments of the Apex Court in *M/S Modi Rubber Limited* and *Rita Textiles Pvt. Ltd.* were not placed for consideration and, therefore, decision of the Apex Court rendered in *SRD Nutrients* and *Bajaj Auto Limited* were clearly *per incuriam*.

**24.** After the decision of the Apex Court in *Unicorn Industries*, the Department issued impugned Demand-cum-show cause notices to the petitioners on various dates, seeking recovery of the refund of Education Cess, Secondary & Higher Education Cess earlier sanctioned/granted to the petitioners were treated to have been erroneously made. The Department by the impugned show case notices held that the amounts so refunded are liable to be recovered from the petitioners in terms of provisions of Section 11A(i) of the Central Excise Act, 1944 and further held the petitioners to be liable to pay interest on the amount so recovered in terms of Section 11AA of the Act. The petitioners were directed to show cause as to why the amount erroneously refunded to the petitioners should not be demanded and recovered back from the petitioners in terms of Section 11A(i) of the Central Excise Act, 1944. The details of various demand-cum-show cause notices seeking recovery of Education Cess and Secondary and Higher Education Cess earlier sanctioned by the Department in respect of the each of the petitioners, the showing the amounts sought to be recovered, the authority issuing the show cause notices along with items manufactured by each of the petitioners is extracted from the pleadings in a tabular form for convenience:-

Sl. No.	WP(C)	Parties Name	Company Address	Intems/ Manufactures	Demand of Refund by the Department	Show cause notice details	Issuing Authority
1	WP(C)/2918/2020	M/S TOPCEM INDIA Vs. UNION of INDIA & 3 ORS	Office and factory at Village- Gauripur, P.O. College Nagar, Mouza- Silasundari Ghopa, Amingaon- 781031 in the District of Kamrup(R), Guwahati.	Excisable goods viz. OP & PP Cement.	Rs.1,05,28,680/-	C.No.V(15)06/A DJ/CGST-HQRS/GHY/CE/2020/19506-07  Dated 17.06.2020	Joint Commissioner, GST & Central Excise Commissionerate, Guwahati.
2	WP(C)/1366/2020	PAN PARAG INDIA LTD. Vs. UNION OF INDIA & ANR	Office at Pan Parag House, 24/19, The Mall, Kanpur- 208001 having one of its unit at A-1 to A-4, Industrial Estate, Cinnamara, Jorhat- 785008.	manufacture and sale of Pan Masala and Pan Masala containing tobacco	Rs.1,93,05,728/-	F.No.V(18)01/A CJ/REF/2018-19/327  Dated 10.02.2020	Assistant Commissioner, CGST, Division Jorhat.
3	WP(C)/1780/2020	M/S. DIGBOI CARBON PVT. LTD. Vs. UNION OF	Office and factory at Borguri Industrial State, Borguri, Tinsukia, Assam,	excisable goods viz. Calcined Petroleum	E.Cess + S&HE Cess= Dt.15.11.18	06.02.2020 No. F.No.V(15)06/S CN/DCPL/ACT/2019-20	Assistant Commissioner, Central Goods & Service Tax,

		INDIA & 2 ORS.	Pin- 786126	Coke	Rs.34,41,786/- Dt. 05.12.18 Rs.3,37,922/- Dt. 13.09.19 Rs.10,63,719/-		Tinsukia.
4	WP(C)/2872 /2020	M/S OZONE AYURVEDICS, UNIT-II Vs. UNION OF INDIA & 4 ORS	Office and factory at EPIP, Amingaon, Guwahati, Dist-Kamrup, Assam- 781031	Ayurvedic Extracts, Cosmetics or Toilet Preparation and Medicaments of Ayurvedic	Rs.20,10,048/-	C.No. V (18)10/SCN-CESS/OZONE AYURVEDICS-II/ACG-I/2020 dated 02.06.2020	Assistant Commissioner Guwahati, Assam.
5	WP(C)/2899 /2020	M/S GUWAHATI CARBON LIMITED Versus THE UNION OF INDIA AND 2 ORS.	Office and factory at NH- 37, Pub-Boragaon, Gorchuk, Kamrup(M), Guwahati- 781035, Assam.	Calcined Petroleum Coke (CPC)	Dt.13.03.2019 E.Cess + S&HE Cess= Rs.1,27,57,035/-	17.06.2020 C.No.V(15)03/A DJ/CGST-HQRS/GHY/CE/ 2020	Issued by Joint Commissioner.
6	WP(C)/2916 /2020	M/S JUMBO ROOFING AND TILES Vs. UNION OF INDIA & 3 ORS	Place of business at Sila, Haluguri Chowk, Changsari, Kamrup(R), Assam- 781001	excisable goods viz. Asbestos Cement Corrugated Sheet and Asbestos Cement Plain Sheet	Rs.8,07,137/-	C.No.V(18)04/S CN-CESS/JUMBOR OOFING/ACG-I/2020/2275 Dated 27.05.2020	Superintendent (Tech-I), CGST & Central Excise, Division-I.
7	WP(C)/2920 /2020	M/S JUMBO PACKAGING INDUSTRIES Vs. UNION OF INDIA & 3 ORS	Place of business at Udalbakra, Lal Ganesh, Opposite Kali Mandir, Guwahati- 781034, Assam.	excisable goods viz. Corrugated cartons/ Paper scrap	Rs.3,91,118/-	C.NO.V(18)25/S CN-CESS/Jumbo Packaging/ACG-I/2020/2324 Dated 02.06.2020	Superintendent (Tech-I), CGST & Central Excise, Division-I.
8	WP(C)/2926 /2020	M/S RIVER VALLEY CEMENT CORPORATION Vs UNION OF INDIA & 3 ORS	Place of business at Laxmi Nagar, Changsari, Kamrup(R), Assam	excisable goods viz. Ordinary Portland Cement (OPC) and Portland Pozzolana Cement	Rs.23,60,321/-	C.NO.V(18)01/S CN-CESS/River Valley/ACG-I/2020/2333 dated 02.06.2020	Assistant Commissioner GST & CE, Guwahati Division-I.



				(PPC)			
9	WP(C)/2929/2020	M/S KESHARI INDUSTRIES Vs UNION OF INDIA & 4 ORS	Office and factory at Abhaypur, Shilasundari, Gauripur, Guwahati-31, Assam	Plastic Moulded Furniture	Rs.5,96,470/-	C.No.V(18)08/S CN-CESS/Keshari Industries/ACG-I/2020 dated 27.05.2020	Superintendent (Technical-I), Guwahati, Assam.
10	WP(C)/2935/2020	OZONE PHARMACEUTICALS LTD. Vs. UNION OF INDIA & 5 ORS.	Office and factory at Export Promotion Industrial Park (EPIP), Amingaon, North Guwahati Circle, Dist-Kamrup, Assam.	pharmaceutical products	Rs.93,38,718/-	C.No.V(15)04/A DJ/CGST-HQRS/GHY/CE/2020 dated 18.06.2020	Joint Commissioner, Guwahati, Assam.
11	WP(C)/2940/2020	M/S JOYSHREE POWEROL Vs. UNION of INDIA & 3 ORS	Place of Business at Sila Katamur, Mouza- Sindurighopa, Changsari, Kamrup(Rural), Assam- 781001	excisable goods viz. Diesel Generator Set and Acoustic Enclosure & Electrical Panel	Rs.2,94,502/-	C.NO.V(18)24/S CN-CESS/Powerol/ACG-I/2020/2318  Dated 02.06.2020	Superintendent (Tech-I), CGST & Central Excise Guwahati Division-I.
12	WP(C)/2947/2020	M/S. OZONE AYURVEDICS Vs. UNION OF INDIA AND 4 ORS	Office and Factory at EPIP, Amingaon, Guwahati, Dist-Kamrup, Assam- 781031	Ayurvedic Medicaments	Rs.49,23,097/-	C.No.V(18)18/S CN-CESS/Ozone Ayurvedics/ACG-I/2020 dated 02.06.2020	Assistant Commissioner , Guwahati, Assam.
13	WP(C)/2951/2020	M/S. BARAK ISPAT PVT. LTD. Vs. UNION OF INDIA AND 4 ORS	Office at Mohanpur Road, Srikona, Silchar- 26 and Factory at Dag No. 187 & 188 of 2 <sup>nd</sup> R S Patta No. 15 & 161, Mouza Srikona, Dist- Cachar, Assam.	M. S and H.S.D. Rod	Rs.3,59,344/-	C.No.IV(10)20/E.CESS/Refund/ACS/2019/707 dated 09.06.2020	Assistant Commissioner, Silchar, Assam.
14	WP(C)/3049/2020	M/S BARAK ALLOY Vs UNION OF INDIA AND 4 ORS	Office at Mohanpur Road, Srikona, Silchar- 26, Assam and Factory at Mouza Srikona, Part- II, Pargana Rajnagar, Dist-Cachar, Assam.	M. S. Ingot	Rs.22,49,076/-	C.No.IV(10)11/E.CESS/Refund/ACS/2019/691 dated 09.06.2020	Assistant Commissioner, Silchar, Assam.
15	WP(C)/3087/2020	UPPER ASSAM PETROCOKE	Office at No. 2, Makum Pather, P.O. Margherita, Dist:	Manufacture and sale of Calcined	E.Cess + SHE Cess= Rs.13,63,561/-	F.No.V(15)07/S CN/UAPC/ACT/	Assistant Commissioner, Central Goods

		PRIVATE LIMITED Vs UNION OF INDIA AND ANR	Tinsukia- 786181, Assam	Petroleum Coke (CPC)		2019-20/215 Dated 06.02.2020	and Service Tax Division, Tinsukia
16	WP(C)/3113/2020	KAMLANG SAW AND VENEER MILLS PVT. LTD. Vs UNION OF INDIA AND 3 ORS.	Office at Palasbari, Mouza- Chayani, Kamrup- 781128, Assam.	Plywood, Block Board & Flush Door	Rs.15,52,417/-	V(18)14/SCN/-CESS/KAMLANG/ACG-I/2020/2342  Dated- 02.06.2020	Assistant Commissioner
17	WP(C)/3155/2020	CEMENT INTERNATIONAL LTD. Vs UNION OF INDIA AND 2 ORS.	Manufacturing unit at Davendranagar, Jhoom Basti, P.O. Badarpurghat, Dist- Karimganj, Assam.	excisable goods viz. cement (OPC and PPC)	Rs.30,80,122/-	C.NO.IV(10)17/E.CESS/CIL/Refund/ACS 2019/693  Dated 09.06.2020	Assistant Commissioner.
18	WP(C)/3156/2020	M/S. K.D.CEMENT S Vs UNION OF INDIA AND 2 ORS.	Factory at Bhomraguri, Samaguri, P.O.- 782140, Dist- Nagaon, Assam	product OPC, PPC & PS Cement & Clinker	Rs.19,46,217/-	C.NO.V(18)327/Refund/KDC/ACG-II/2018/697  Dated 28.07.2020	Assistant Commissioner, CGST, Guwahati Division-II
19	WP(C)/3166/2020	M/S GATTANI POLYMERS Vs UNION OF INDIA AND 4 ORS	Office at G.B. Gattani Industrial Complex, Mariani Road, Cinnamara, Jorhat, Assam.	excisable commodities, viz. HDPE & PP Circular woven Fabrics and Industrial Bags	Rs.2,51,967/-	C.No.V(18)13/A CJ/REF/2019-19/213 dated 23.01.2020 (read with Corrigendum No. C.No.V(18)13/A CJ/REF/2018-19/349-50 dated 13.02.2020)	Assistant Commissioner, Jorhat, Assam.
20	WP(C)/3176/2020	M/S AHINSHA CHEMICALS LTD. (INSTANT TEA DIVISION) Vs THE UNION	Office at N.T. Road, Milanpur, Dist- Nalbari, Assam- 781335	excisable commodities viz Instant Tea & Instant Tea Premixes	Rs.2,05,140/-	C.No.V(18)13/S CN-CESS/AHINSHA / ACG-I/2020 dated 20.05.2020	Superintendent (Technical-I), Guwahati, Assam.

		OF INDIA AND 4 ORS					
21	WP(C)/3177/2020	M/S JSVM PLYWOOD INDUSTRIES LTD. (FORMERLY KNOWN AS M/S ARUNACHAL SAW AND VENEER MILLS PVT. LTD Vs THE UNION OF INDIA AND 4 ORS	Office at 17 <sup>th</sup> Mile, Stilwell Road, P.O. Jairampur, Dist- Changlang, Arunachal Pradesh.	articles of wood	Rs.14,09,689/-	C.No. V (18)07/Refund/JSVM/ACI/2018/149 dated 06.03.2020	Deputy Commissioner Itanagar Division, Arunachal Pradesh.
22	WP(C)/3237/2020	M/S. PCL CEMENT AND PIPE INDUSTRIES Vs UNION OF INDIA AND 3 ORS.	Place of business at Borera Gaon, Na Ali, Titabar, Dist- Jorhat, Assam- 785630	Excisable goods viz. Cement.	Rs.1,29,710/-	C.NO. V(18)02/ACJ/REF/PCL/2019-20/216  dated 06.03.2020	Assistant Commissioner, CGST, Division Jorhat.
23	WP(C)/3298/2020	BARAK VALLEY CEMENTS LTD Vs UNION OF INDIA AND 3 ORS	Manufacturing unit at Dabendranagar, Jhoom Basti, P.O. Badarpurghat, Dist- Karimganj, Assam.	excisable goods viz. Clinker and OPC/ PPC/ PSC Cement	Rs.1,66,22,535/-	C.No.V(15)09/A DJ/CGST-HQRS/GHY/CE/2020 dated 27.07.2020	Joint Commissioner, GST & Central Excise Commissionera te, Guwahati.
24	WP(C)/3372/2020	CENT PLY Vs UNION OF INDIA AND 2 ORS.	Principal place of business at Mirza-Palashbari Road, Palashbari, Kamrup, Assam- 781128	plywood, block board, flush door and resin	Rs.85,24,563/-	C.No.V(15)05/A DJ/CGST-HQRS/GHY/CE/2020/19510-11  dated 17.06.2020	Joint Commissioner, GST & Central Excise Commissionera te, Guwahati.
25	WP(C)/3386/2020	M/S. BULLAND CEMENT PVT. LTD. Vs THE UNION OF INDIA AND 4 ORS.	Office and factory at Village Bamungaon, Lanka, Dist- Nagaon, Assam.	excisable commodities viz Cement (OPC & PPC) and Clinker	Rs.16,25,503/-	C.No.V(18)247/Refund/BCPL/A CG-II/2018 dated 28.07.2020	Assistant Commissioner, Guwahati, Assam.
26	WP(C)/3464	ASSAM	Office and Factory	“excisable	Rs.90,70,956/-	C.No.V(15)15/A	Joint

	/2020	ROOFING LTD. Vs UNION OF INDIA AND 2 ORS.	situated at Bonda, Narengi, Assam.	commodities viz. Galvanized Plain Sheets, Galvanized Corrugated Sheets and Asbestos products		DJ/CGST-HQRS/GHY/CE/2020/750-51  dated 06.08.2020	Commissioner, GST & Central Excise Commissionerate, Guwahati.
27	WP(C)/3596/2020	M/S. INDIA CARBON LTD. Vs UNION OF INDIA AND ANR.	Office at Noonmati, Guwahati	Calcined Petroleum Coke and Electrode Carbon Paste	E.Cess + SHE Cess= Rs.63,42,164/-	C.No.V(15)12/A DJ/CGST-HQRS/GHY/CE/2020 dated 06.08.2020	Joint Commissioner, GST & Central Excise Commissionerate, Guwahati.
28	WP(C)/3610/2020	ASSAM CARBON PRODUCTS LTD. Vs UNION OF INDIA AND ANR	Office at Narengi Chandrapur Road, Bikruchi, Narengi, Guwahati- 781026, Assam.	manufacture and sale of electrical grade carbon blocks, mechanical grade carbon blocks, Metal Graphite and Silver Graphite Grade Blocks, NH Coke, electrical carbon brushes, Tamping Powder, Tamping Paste etc	E.Cess + SHE Cess= Rs.19,93,410/-	C.No.V(18)246/Refund/ACPL/A CG-II/2018 dated 28.07.2020	Assistant Commissioner, GST & Central Excise, Guwahati-II Division, Guwahati.
29	WP(C)/3762/2020	M/S PURBANCHAL CEMENT LTD. Vs THE UNION OF INDIA AND 3 ORS.	Factory situated at Village- Sarutari Mouza- Sonapur, P.O.- Byrnihat, Dist-Kamrup(M), Assam-782402	excisable commodities viz Cement	Rs.97,99,652/-	C.No.V(15)11/A DJ/CGST-HQRS/GHY/CE/2020 dated 06.08.2020	Joint Commissioner, Guwahati, Assam.
30	WP(C)/3763/2020	MODI MUNDIPHARMA BEAUTY PRODUCTS PVT. LTD. Vs UNION OF INDIA AND 2 ORS.	Office at House No. 17, Rukminigaon, Guwahati, Assam-781022	manufacture of Cosmetics	Rs.1,09,35,787/-	C.NO.V(15)14/ADJ/CGST-HQRS/GHY/CE/2020/752-53  dated 27.07.2020	Joint Commissioner, GST & Central Excise Commissionerate, Guwahati

31	WP(C)/3810/2020	M/S. K.D.IRON AND STEEL CO. Vs UNION OF INDIA AND ANR	Factory at Integrated Industrial Development Centre, Village-Borshil, P.O. Moranjana, Rangia, in the district of Kamrup(R)	M.S. Rod, M.S. Pipe, M.S. Wire Rod and M.S. Billet	E.Cess + SHE Cess= Rs.25,70,952/-	C.No.V(18)21/S CN-CESS/K.D.IRON /ACG-I/2020/2351  Dated 02.06.2020	Assistant Commissioner, GST & Central Excise, Guwahati-I Division, Guwahati
32	WP(C)/3835/2020	M/S. SHANDAR PAINTS INDUSTRY (UNITII) Vs UNION OF INDIA AND 4 ORS	A sole proprietorship concern having their principal place of business at Shed No.11 & 12, Rani Industrial Area, Rani, Kamrup-781131.	Special Oxide Pigment, Damp Roof Powderfalling	Rs.2,14,199/-	V(18)23/SCN-CESS/Shandar-II/ACG-I/2020/2269  Dated 27.05.2020 alleged Rs.2,14,199/- erroneous refund.	Superintendent Technical-I
33	WP(C)/4031/2020	M/S K.D. COKES Vs THE UNION OF INDIA AND 2 ORS	Office at Village-Amerigog, 11 <sup>th</sup> Mile, Jorabat, G.S. Road, District- Kamrup, Assam	Excisable Goods i.e Coke	Rs.5,91,532/-	C.No.V(18)167/Refund/K.D.CO KES/ACG-II/2018  dated 17.09.2020	Assistant Commissioner, CGST, Guwahati Division- II.
34	WP(C)/4035/2020	NORTH EAST ROOFING (P) LTD. Vs UNION OF INDIA AND 2 ORS.	Registered office at Bonda, Narengi, Guwahati- 781026, Assam	excisable commodities under broad description of Articles of Asbestos Cement of Cellulose Fibre Cement Corrugated Sheets, AC Plain Sheet and Accessories	Rs.29,35,614/-	C.NO.V(18)242/REFUND/NERPL /ACG-II/2018/1035  dated 22.09.2020	Assistant Commissioner, CGST, Guwahati Division- II.
35	WP(C)/4046/2020	PDP STEELS LTD Versus UNION OF INDIA AND 2 ORS	Registered office at Bonda, Narengi, Guwahati- 781026, Assam	excisable commodities viz. CR Coils, End Cut and Scrap, HR Slit Coil/ Scrap and	Rs.32,73,850/-	C.NO.V(18)244/REFUND/PDPST EELS/ACG-II/2018/1018	Assistant Commissioner, CGST, Guwahati Division- II.

				MS Wire		dated 21.09.2020	
36	WP(C)/4053 /2020	M/S. B.R.METTALI CS Vs UNION OF INDIA AND ANR	Factory at Integrated Industrial Development Centre, Village- Borshil, P.S. Moranjana, Rangia, in the district of Kamrup(R), Assam- 781354	M.S. Billet and M.S. Ingots	E.Cess + SHE Cess= Rs.17,27,580/-	c.No.V(18)03/S CN-CESS/B.R. METTALLICS/A CG- I/2020/2345  dated 02.06.2020	Assistant Commissioner, GST & Central Excise Guwahati-I Division, Guwahati.
37	WP(C)/4194 /2020	KAMAKHYA PLASTICS PVT. LTD. Vs UNION OF INDIA AND 2 ORS.	Factory situated at Bonda, Narengi, Guwahati	excisable goods i.e UPVC Pipes and Fittings and plastic water storage tank	Rs.7,92,439/-	C.NO.V(18)249/ REFUND/KPPL/ ACG- II/2018/1032  dated 22.09.2020	Assistant Commissioner, CGST, Guwahati Division- II.
38	WP(C)/4493 /2020	ASSAM CARBON PRODUCTS LIMITED Vs UNION OF INDIA AND ANR	Registered office at Narengi Chandrapur Road, Bikruchi, Narengi, Guwahati- 781026, Assam.	manufacture and sale of electrical grade carbon blocks, mechanical grade carbon blocks, Metal Graphite and Silver Graphite Grade Blocks, NH Coke, electrical carbon brushes, Tamping Powder, etc	E.Cess + SHE Cess= Rs.1,10,823/-	C.No.V(18)245/ Refund/ACOL/A CG- II/2018/1015  dated 21.09.2020	Assistant Commissioner, Central Goods and Service Tax, Guwahati- II Division, Guwahati.
39	WP(C)/4721 /2020	M/S NEW AGE PETCOKE PVT. LTD. Vs UNION OF INDIA AND ANR.	Office and Industrial Unit at Palashbari, P.O. Kajalgaon, in the District of Chirang (BTAD), Assam.	Calcined Petroleum Coke	E.Cess + SHE Cess= 4,50,915/-	Bearing No. GEXCOM/SCN/ CE/29/2020- TECH-CGST- DIV-BONG- COMMRT- GUWAHATI- I/19126/2020/7 14	Assistant Commissioner, GST & Central Excise, Bongaigaon Division

						Dated 07.10.2020	
40	WP(C)/4824 /2020	M/S BRAHMAPUT RA CARBON LTD Vs THE UNION OF INDIA AND 2 ORS	Industrial Estate, New Bongaigaon, Assam-783380	Calcined Petroleum Coke (CPC).	E.Cess + S&HE Cess= Dt. 14.02.2019 Rs.4,84,461/- Dt. 20.06.2019 Rs.47,80,113/-	Dated 07.10.2020	Assistant Commissioner.
41	WP(C)/4947 /2020	GREENPLY INDUSTRIES LTD. Vs UNION OF INDIA AND 3 ORS	Makum Road, Tinsukia, Assam and its manufacturing unit at Lapa Lampong, Tizit, Mon, Nagaland- 798602 and having one of its office at Makum Road, Tinsukia, Assam	Plywood, Block Board, Flush Door etc.	Rs.1,31,28,902/-	C.No.IV(9)02/D MR/GST/COMM R/ADJ/GREENP LY/2020-21  dated 04.06.2020	Commissioner, CGST, Dimapur, Nagaland.

**25.** Being aggrieved by the impugned Demand-cum-show cause notices issued, the present writ petitions have been filed assailing the said demand-cum-show cause notices and praying for appropriate orders seeking interference by this Court.

**26.** The common grounds urged by the writ petitioners assailing the impugned demand-cum-show cause notices are as under:-

- (i) That the refund of Education Cess and Secondary and Higher Education Cess which was granted to the petitioners was on the basis of law laid down by the Apex Court in the case of *SRD Nutrients(supra)* which was prevailing at that point in time, and therefore, it cannot be said to be erroneous refund simply on the ground that the Apex Court in the subsequent decision rendered in *M/S Unicorn Industries(supra)* held that judgment passed by the Apex Court earlier in *SRD Nutrients Pvt. Ltd. (supra)* to be *per incuriam*.

(ii) As the refunds granted to the petitioners was in terms of the law laid down by the Apex Court in the case of *SRD Nutrients(supra)* prevailing at the relevant point in time, cannot be held to be erroneous and, therefore, the impugned demand-cum-show cause notices issued by the Department under Section 11A of the Central Excise Act is without jurisdiction.

(iii) That the binding effect of any judgment rendered will not be reversed or effected even if the said judgment is overruled and/or held to be *per incuriam* by a subsequent judgment as the refund granted to the petitioners were made by the Central Excise Department in terms of the judgment rendered by the Apex Court in *SRD Nutrients* which was the law prevailing at the relevant point in time. The said judgment being held to be *per incuriam* by later judgment will not alter the binding effect of *SRD Nutrients* under which the refunds were already granted to the petitioners. Accordingly the refunds granted cannot be said to be erroneous as have been sought to be projected by the Department by issuing the impugned Demand-cum-show cause notices.

**27.** The learned Senior counsel appearing for the petitioners submits that under Section 11A of the Central Excise Act, 1944, the power for recovery of duties not levied or not paid or short levied or short paid or erroneously refunded, can only be invoked by the Department upon fulfillment of the circumstances provided under Sub-section 4 of Section 11 A of the Central Excise Act, 1944.

**27.1.** The learned senior counsel submits that in the fact of the present proceedings, the impugned show cause notices have been issued by the Department invoking Section 11A by holding that the refunds granted to the petitioners towards Education Cess and Secondary and Higher Education Cess. As the case may be, on the ground that the same were refunded erroneously. The learned Senior counsel submits that the basis for arriving at a conclusion by the department that the refunds were granted erroneously is solely on the ground that judgment of the Apex Court rendered in *SRD Nutrients (supra)* has been held to a judgment rendered "*per incuriam*" by the apex Court in the recent judgment of *M/S Unicorn Industries*



(Supra).

**27.2.** The learned senior counsel submits that the condition precedent for exercise of power under Section 11A(1) of the Act are wholly missing in the present case inasmuch as refund of Education Cess and Secondary and Higher Education Cess was neither on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of the Act or the rules made there under nor by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of the Act or the rules made there under with intent to evade payment of duty. The only ground for issuance of the impugned show cause notices by the Department that the refunds were made erroneously is the finding of the Apex Court arrived at in the latter Judgment (M/S Unicorn Industries Ltd.) that the earlier Judgment i.e. M/S SRD Nutrients (Supra) has been rendered "per incuriam" as the said judgment did not take into consideration the earlier two Judgments of the Apex Court rendered in *Modi Rubber(supra)* and *Rita Textile Pvt Ltd (supra)*.

**27.3.** The learned senior counsel submits that the Judgment held to have been rendered "per incuriam" by the Apex Court will not have any effect on the actions initiated under such judgment namely, grant of refunds. It cannot be treated to have been made erroneously. Therefore, the impugned demand notices are contrary to the provisions of Section 11A of the Central Excise Act, 1944 as the impugned recovery of refunds granted earlier sought to be made cannot be treated to be erroneous.

**28.** The learned senior counsel further submits that when a judgment is declared to be "per incuriam", by a latter Bench or a larger Bench, then the Judgment declared "per incuriam" loses its precedential value. However, the binding effect of the judgments between the parties to the said judgment remains conclusive and cannot be altered except otherwise by way of an appeal or review by any of the parties to the Judgment. It is submitted that pursuant to the judgment of the *SRD Nutrients(supra)*, the departments granted the refunds claimed by the petitioners. The review petition filed before the Apex Court by the Department at the relevant point of time was also dismissed. Accordingly, the refunds having been granted under orders of the Apex Court, in view of *M/S SRD Nutrients (supra)*, had attained finality. Merely because *M/S SRD Nutrients (Supra)* has subsequently been declared to be

“per incuriam” by the Apex Court in *M/S Unicorn Industries (Supra)*, the refunds granted cannot be said to be erroneous and thereby the Department cannot seek to invoke the provisions of Section 11A of the Central Excise Act, 1944 and demand recovery of the refunds granted.

**29.** The learned Senior counsel submits that the term “*erroneous*” has been defined by the Black’s Law Dictionary as “involving error; deviating from the law”. The learned counsel referred to the Judgment of the Apex Court in *Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, Kerala State*, (2) 2 SCC 718 held that incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous.

**30.** The learned Sr. counsel submits that this Court in *Rajendra Singh Vs. Superintendent of Taxes* reported in 1990 Vol. 1 GLR 449, held that “*erroneous*” means involving error; deviating from law. The Division Bench of this Court in the said judgment held that “Erroneous assessment” refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the assessing officer in fixing the amount of valuation of the property. Similarly ‘erroneous judgment’ means: ‘One rendered according to course and practice of Court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles’.

**31.** The learned senior counsel submits that the said judgments of this Court rendered in *Rajendra Singh(supra)* came to be considered by a larger Bench as in a latter judgment, also rendered by Division Bench of this High Court, the view of the Division Bench of this Court in *Daga Entrade Pvt. Ltd*, reported in 2010 327 ITR 467 was perceived to be in conflict with the judgment rendered in *Rajendra Singh(supra)*. The larger Bench in the case of *Commissioner of Income Tax Vs. Jawahar Bhattacharjee*, reported in 2012 (2) GLR 495, held that there was no conflict between the two judgments. It was held therein that incorrect assumption of facts or incorrect application of law as also non-application of mind and condition to follow natural justice will satisfy the requirement of the order being “erroneous”. The learned sr. counsel, therefore, submits that since the refunds made earlier by the Department in terms of the judgment of the Apex Court rendered in *SRD Nutrients(supra)* and were not on incorrect assumption of facts or incorrect application of law or non-application of mind, the same cannot be treated to be “erroneous” in order to bring it within

the ambit of Section 11A of the Central Excise Act 1944. The learned senior counsel submits that the refunds orders passed by the Department in respect of refunds of Education Cess and Secondary and Higher Education Cess cannot be said to be erroneous, inasmuch as, the same were refunded by the Department on the basis of the law existing at the relevant pointing time as was laid down by the Apex Court in *SRD Nutrients(supra)*.

**32.** The learned senior counsel submits that the subsequent contrary view taken by the Apex Court in a later judgment i.e. *M/S Unicorn Industries Ltd(supra)* will not render any proceedings concluded to be illegal and thereby making the refunds already granted "erroneous". It is submitted that there is no provision under the Central Excise Act, 1944, which permits the concerned Officer under the Department to revisit orders finally made by him/her or his or her predecessor in office by resorting to provisions of Section 11A. The learned Sr. counsel submits that section 35 of the Central Excise Act, 1944 there is a provision for appeal against any order or decision passed under the Central Excise Act, 1944 by the Central Excise Officer lower rank then a Principle Commissioner of Central Excise or Commissioner of Central Excise. It is submitted that no appeal has been filed by the Department against the order of the concerned departmental officer sanctioning the refunds of Education Cess and Secondary and Higher Education Cess to the petitioners. It is submitted that if the department was aggrieved they could have preferred an appeal as provided under Section 35 of the Central Excise Act. However, no such appeal has ever been preferred by the Departmental authorities, the refunds granted has long attained finality.

**33.** It is further submitted that in respect of WP(C) 2918/2020, W.P(C) No. 3156/2020, W.P.(C) No. 3237/2020, W.P(C) 3464/2020, W.P(C) No. 4035/2020, W.P(C) No 4046/2020, W.P.(C) No. 4194/2020 and W.P.(C) No. 1366/2020, the refunds were granted on the basis of directions issued by this Hon'ble Court in writ applications filed by the petitioners. No appeals against such orders were filed by the Department and therefore, the orders passed by this Court in the writ petitions have attained finality. The refunds granted to those petitioners on the basis of such orders being passed by this Court have been so done because the Department has accepted the direction of this Hon'ble court passed in the said writ petitions. Accordingly, they are estopped and barred from reopening the issues by way of the impugned show cause notices on the ground of change of law as declared by the Apex Court.

**34.** The further submissions of the learned senior counsel is that the impugned show cause notices have been issued in total contravention to the department circulars issued. The learned Sr. counsel submits that vide instructions, dated 09.01.2020, issued to all Principle Chief Commissioners/ Chief Commissions of Customs and GST, all Principle Directors General/Director Generals of Customs and GST, clear instructions were issued by the Department that any interim or final order decided against the review may be contested by final statutory appeal, writ appeal or review petition as the case may be and if the same is not possible, a self-contained SLP proposal may be forwarded to the Board on the aforesaid instructions. The learned Sr. counsel submits that a bare perusal of the instructions clearly reveal the Department has accepted that the refunds granted earlier and that they have attained finality. Therefore, Field Officers/ departmental officers have been instructed to contest by filing statutory appeals/ writ appeals or review petitions or forward a proposal for filing SLP to the Board. Accordingly, it is submitted that the Departmental Officers on whom departmental instructions/circulars are binding, cannot act in contrary to such instructions issued and continue to pursue the impugned demand notices issued. It is submitted that in view of the instructions dated 09.01.2020, the impugned show cause notices are required to be dropped by the Department and not be pursued with.

**35.** The Department contested that case by filing their affidavit. Mr. S. C. Keyal, learned standing counsel submits that since common questions of law are involved in the present proceedings, the affidavits filed in W.P.(C) No. 2918/2020, W.P.(C) No. 1366/2020 and W.P.(C) No. 1780/2020 will reflect, the stand of the department in respect of all the other petitioners also. Mr. Keyal, learned Standing counsel, Central Excise Department, submits that there is no infirmity in the show cause notices issued as the same were issued pursuant to judgment of the Apex Court rendered in *M/S Unicorn Industries (Supra)*. It is the submission of Mr. Keyal that in view of the judgments of *M/S Unicorn Industries (supra)* holding the earlier judgment *SRD Nutrients (supra)* to be "per incuriam", the Department is duty bound in law to treat the refunds granted earlier to have been wrongly or erroneously granted. The learned Standing counsel submits that in view of the judgment of *M/S Unicorn (supra)* that the earlier judgments rendered in *M/S SRD Nutrients(supra)* was rendered "per incuriam" has occasioned the necessity of the issuance of the show cause notices by the Department for

recovery of the refunds granted earlier in terms of the judgments of *SRD Nutrients(supra)*. The learned Standing counsel submits that the Apex Court in *M/S Unicorn Industries(supra)* has held *M/S SRD Nutrients (supra)* to have been rendered in "per incuriam" in view that earlier judgments rendered by the Apex Court in *Modi Rubber(supra)* and *Rita Textile Pvt. Ltd (supra)* were not considered by the Apex Court while rendering *M/S SRD Nutrients(supra)*. The learned Standing counsel submits that as the refunds made earlier were contrary to the law laid down in *Modi Rubber(supra)* and *Rita Textile*, therefore, the refunds will have to be considered to have been made erroneously. Under such circumstances the department has correctly sought the recovery of the refunds already granted by issuance of the show cause notices as has been done and which are impugned in the present proceedings. The learned Standing counsel submits that in that view of the matter, the refunds granted earlier being erroneous will have to be recovered under the provisions of Section 11A of the Central Excise Act, 1944. The learned Standing counsel submits that the show cause notices served upon the petitioners were also within the period stipulated under the statute.

**36.** In the affidavits filed, the Department denied the contentions of the petitioners that the recovery of refunds sought to be made is barred by limitation under the provisions of Section 11A of the Central Excise Act or that the impugned show cause notices issued by the Department for the recovery of the refunds of Education Cess and Secondary and Higher Education Cess are void and without jurisdiction. The Department contended that the questions which arise for consideration before this Court are as under:-

- (i)** *Whether the law laid down in the judgment dated 06.12.2019 in Unicorn Industries shall have retrospective effect as the earlier judgment dated 10.11.2017 in SRD Nutrients Pvt. Ltd. held to be per incuriam.*
- (ii)** *Whether refund of Education Cess and Secondary and Higher Education Cess have become erroneous refund in view of declaration of judgment dated 10.11.2017 (SRD Nutrients Pvt. Ltd.) as per incuriam and as such recovery of Education Cess and Secondary and Higher Education Cess sought through impugned Demand notice is legal and valid.*

**37.** The learned standing counsel contended that the law declared by the Hon'ble Apex Court in the context of the present proceedings, will have to be taken to be effective retrospectively since the Apex Court in Unicorn Industries Limited (*supra*) had already declared that the *SRD Nutrients Pvt. Ltd. (supra)* to be per incuriam in view of *Modi Rubber(supra)*, and *M/S Rita Textiles (supra)*. As such, the refunds of Education Cess and Secondary and Higher Education Cess made to the petitioners in terms of *SRD Nutrients Pvt. Ltd. (supra)* were contrary to law itself as it stood then as laid down in *Modi Rubber(supra)* and *M/S Rita Textiles (supra)*, and thereby making it erroneous. The learned standing counsel contended that when a Judgment has been held to be "per incuriam" it amounts to overruling the Judgment and, therefore, it is deemed to be applicable from a retrospective period except otherwise when indicated in the Judgment itself. The refunds allowed to the petitioners earlier are now required to be recovered as they have become refunds erroneously made in view of the Judgment of the Apex Court in *M/S Unicorn Industries (supra)*. The petitioners are under clear obligation to pay back the amounts which were received by them in terms of the Judgment of M/S SRD Nutrients (*supra*) which have been overruled presently. As the refunds granted earlier to the petitioners have become erroneous in view of the judgment of the Apex Court in M/S Unicorn Industries(*supra*), the demand-cum-show cause notices were rightly issued by the Department under Section 11A.

**38.** The learned standing counsel further contended that in terms of Notification No. 32/99 and 33/99 both dated 08.07.1999 and Notification No. 20/2007 dated 25.04.2007, there was no provision for exemption of the Education Cess and Secondary and Higher Education Cess provided for. The refunds of the Education Cess and Secondary and Higher Education Cess were granted by the Department only in terms of the judgment of the Apex Court in SRD Nutrients (*supra*) which have now become erroneous in view of the later judgment of the Apex Court in M/S Unicorn Industries Limited (*supra*) whereby the earlier SRD Nutrients (*supra*) has been held to be per incuriam. The learned standing counsel for the respondents relied on the judgments of the Apex Court in the case of *Assistant Commissioner, Income Tax, Rajkot –Vs- Saurashtra Kutch Stock Exchange Limited* reported in (2008) 14 SCC 171 to support his contention that the judicial decision acts retrospectively. Where an earlier decision of the Court operated for quite some time, the decision later would

have retrospective effect to clarify the legal position which was earlier not correctly understood. He submits that in view of the judgment of the Apex Court in M/S Unicorn Industries holding the earlier Judgment of the Apex Court in SRD Nutrients (supra) to be per incuriam, the legal position will have to be given retrospective effect. Therefore, as the refunds granted by the Department earlier were granted erroneously and contrary to the law laid down in *Modi Rubber(supra)*. Consequently the demand-cum-show cause notices for recovery of the education Cess and Secondary and Higher Education Cess refunded has been rightly issued and, therefore, the same ought to be interfered with. In support of his contentions that decisions rendered in ignorance of law cannot bind subsequent benches as held by the Apex Court. The learned standing counsel referred to *Jagannath Temple Managing Committee –Vs- Siddha Math* reported in (2015) 16 SCC 542. The learned standing counsel also relied upon the Judgment of Apex Court in *P.V. George and Ors, -Vs- State of Kerala* reported in (2007) 3 SCC 557 and *M.A. Murthy –Vs- State of Karnataka and Ors.*, reported in (2003) 7 SCC 17 to submit that any decision of the Apex Court unless indicated therein to be operative prospectively will have to operate retrospectively. Where the law was ambiguous, the correct position of law will have to be operative retrospectively unless otherwise indicated in the judgment itself. The learned standing counsel also referred to Judgment of the Rajasthan High Court in WP(C) No. 880/2018. The learned counsel strongly disputed the contentions of the petitioners that the Judgment of the Apex Court in M/S Unicorn Industries (supra) is prospective only and that it shall not affect the earlier settled cases. He submits that even though a case may not have been expressly over-ruled but once it has been held that it has been rendered “per incuriam”, it cannot be said that it lays down good law as held by the Apex Court in *Mukesh K. Tripathi –Vs- L.I.C. (2004) 8 SCC 387*. He further refers to *Sanchalakshri –Vs- Vijyakumar Raghuvirprasad Mehta* reported in (1998) 8 SCC 245 to submit that the Judgment of the Apex Court in “M/S Unicorn Industries”(supra) had not laid down any new law but has only interpreted the existing law and therefore, the Judgment will have to relate back to the date when the law came into force. The learned standing counsel submits that in *Sanchalakshri (supra)*. The Apex Court held that the High Courts/Tribunal did not possess the same power as the Apex Court possess under Article 142 of the Constitution of India for doing complete justice, even in the absence of such a provision. Therefore, he submits that unless indicated in the Judgment itself, it will have

retrospective effect. The learned standing counsel also referred to *H.P. Nurpur (P) Bus Operators' Union* reported in (1999) 9 SCC 559 to submit that once a Court came to the conclusion that the provisions are declared invalid, then the collections made thereunder also consequently stood invalid. He, therefore, submits that the law under which the refunds were made having been declared to be "per incuriam", the refunds granted thereunder would automatically become erroneous and therefore, the Department is duty bound to issue notifications for recovery under Section 11A as has been done in the present case.

**39.** The learned standing counsel for the respondents further submits that the decision of *SRD Nutrients* (supra) was on a pure and abstract question of law and, therefore, the principle of *res judicata* cannot be applied. For this purpose, he also relied on *Union of India –Vs- Indian Railway SAS Staff Association* reported in (1995) Supp. (3) SCC 600. It is the contention of the learned standing counsel that the principle of *res judicata* and settled assessment will apply only to the company *M/S. SRD Nutrients Pvt. Ltd.* and other companies who were party before the Hon'ble Apex Court in the case of *SRD Nutrients vs. Union of India*. The said company *M/S. SRD Nutrients Pvt. Ltd.* which was one of the industrial units in Assam was eligible to Excise Duty exemption under the aforesaid notification and who was denied refund of Education Cess and Secondary and Higher Education Cess by the Assessing Officer, challenged the order of the Assessing Officer by filing an appeal before the Commissioner of Central Excise and Customs (Appeals), Guwahati. However, these appeals were dismissed by the Commissioner (Appeals) and the order of the Commissioner (Appeals) was thereafter also upheld by the Customs Excise & Service Tax Appellate Tribunal (CESTAT), East Regional Bench, Kolkata by the impugned judgment. Against the said order passed by the learned CESTAT, an SLP was preferred before the Hon'ble Apex Court which was decided by the Hon'ble Apex Court vide judgment dated 10.11.2017 passed in *SRD Nutrients Pvt. Ltd vs. Commissioner of Central Excise, Guwahati* reported in (2018) 1 SCC 105. As such, the said company being a party in the said case, *res judicata* will apply to the said company. As far as the other petitioners are concerned, principle of *res judicata* will have no application.

**40.** The learned standing counsel further submits that a decision on an abstract question of law unrelated to facts which give rise to a right, cannot operate as *res judicata*. Nor also can a decision on the question of jurisdiction be *res judicata* in a subsequent suit or



proceeding. He referred to the Judgment of Supreme Court Employees' Association –Vs- Union of India reported in (1989) 4 SCC 187 in support of his contention. The relevant paragraph of the judgment is extracted as under:-

*“24. Thus, a decision on an abstract question of law unrelated to facts which give rise to a right, cannot operate as res judicata. Nor also can a decision on the question of jurisdiction be res judicata in a subsequent suit or proceeding. But, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may operate as res judicata between the parties in a subsequent suit or proceeding, if the cause of action is the same. The Delhi High Court judgments do not decide any abstract question of law and there is also no question of jurisdiction involved. Assuming that the judgments of the Delhi High Court are erroneous, such judgments being on questions of fact would still operate as res judicata between the same parties in a subsequent suit or proceeding over the same cause of action.”*

**41.** The further contention of the learned standing counsel is that grant of refund to the petitioners will result in “unjust enrichment”. He has referred to the Judgments of Apex Court in *Mafatlal Industries vs. Union of India* reported in (1997) 5 SCC 536; *U.P. State Electricity Board v. City Board, Mussoorie* reported in (1985) 2 SCC 16; *I.T.C. Ltd. Vs. State of Karnataka* reported in (1985) Supp SCC 476; *Indian Oil Corpn. Vs. Municipal Corpn, Jullundhar* reported in (1993) 1 SCC 333; *Entry Tax Officer Vs. Chandanmal Champalal & Co.* reported in (1994) 4 SCC 463 and *Jindal Stainless Ltd. Vs. State of Haryana* reported in (2017) 12 SCC 1 to support his contentions that refund can only be allowed when the claimant establishes that the tax burden has not been passed on to the end consumers. No refund can be granted to cause a windfall gain to any person when he has not suffered to burden of tax. As the petitioners have not disclosed that they have not passed on the tax burden to the end users/consumers, refund of Education Cess and Secondary and Higher Education Cess will amount to against enrichment and therefore, the refunds submitted be allowed.

**42.** The learned counsel submits that the Writ jurisdiction under Article 226 of the Constitution has wide amplitude. These writs are therefore, referred as prerogative writs and

even now retain its discretionary character. The Court will not always issue a writ simply because it is lawful to do so. Therefore, even if a petitioner establishes infringement of some legal right, the Court may still refuse to issue a writ. When therefore a petitioner invokes writ jurisdiction and urges the High Court to issue an appropriate writ, his legal rights and infringement thereof are not the only considerations before the Court.

**43.** Finally, the learned counsel further submits that the law prevailing in Assam and Meghalaya till the decision of the Apex Court in *M/S SRD Nutrients (Supra)* is that Education Cess and Secondary and Higher Education Cess were not exempted. However, pursuant to the judgment of *M/S SRD Nutrients (Supra)* the refunds were granted. However, in so far as the state of Sikkim is concerned, the Education Cess and Secondary and Higher Education Cess is not exempted and the industries in the state of Sikkim have paid the Education Cess and Secondary and Higher Education Cess to the Government. If this is permitted to continue it will leave to a anomalous situation resulting in territorial discrimination and which will be against the letter and spirit of Article 141 of the Constitution of India which provides that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

**44.** The learned counsel for the parties have been heard. The pleadings on record have also been perused. There is no dispute with regard to the facts that the petitioners before this Court have all set up their industries or under took substantial expansions of the industries and are manufacturing excisable items. The excise duty on the products manufactured by the petitioners are exempted under the Industrial Policy of 1997 and 2007. The petitioners claimed refund of the Education Cess and Secondary and Higher Education Cess paid as it was their contention, that since the excise duty on the products manufactured were itself exempted under the Industrial Policy notification issued by the Central Government in furtherance of the Industrial Policy. The claims of refund of Education Cess and Secondary and Higher Education Cess were rejected by the Department and against which appeals were filed before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT). The CESTAT also rejected the claims for refund of Education Cess and Secondary and Higher Education Cess. Ultimately, the issue relating to entitlement of refund of Education Cess and Secondary and Higher Education Cess paid, reached the Apex Court by way of several appeals. The Apex Court upon due examination of the entire matter by its

Judgment dated 10<sup>th</sup> November, 2017 in "*M/S SRD Nutrients Private Limited*" (*supra*) held that the industrial units like the petitioners are entitled to refund of Education Cess and Secondary and Higher Education Cess when the basic duty of excise was exempted from levy. Pursuant to the said judgment of the Apex Court, the refunds claimed by the petitioners were granted by the department. Some of the petitioners were required to prefer writ petitions before this Court seeking such refunds in terms of the Apex Court judgment in *SRD Nutrients (Supra)*. Pursuant to orders passed by this Court refunds were granted by the department following the Judgment of "*M/S SRD Nutrients Private Limited*" (*supra*). Much later, after the refunds were granted by the Department, the Apex Court while considering the same issue arising in a matter where the parties are similarly situated held in "*M/S Unicorn Industries Private Limited*" (*supra*), that the earlier Judgment of the Apex Court in "*M/S SRD Nutrients Private Limited*" (*supra*) to be "per incuriam" as the said Judgment was rendered without taking into consideration, the still earlier Judgments of the Apex Court in "*M/S Modi Rubber*"(*supra*) and "*M/S Rita Textile*"(*supra*) which had already taken a contrary view. In view of the judgment of the Apex court in "*M/S Unicorn Industries*" (*supra*) holding the Judgment of the Apex Court in "*M/S SRD Nutrients*" (*supra*) to be "per incuriam", the department considered the refunds granted earlier to have been "Erroneously" granted and consequently the impugned Demand-cum-show cause notices were issued to the petitioners seeking recovery of the refunds of the Education Cess and Secondary and Higher Education Cess which were granted earlier to the petitioners.

**45.** The question which falls for consideration in the present proceeding is whether refunds granted earlier pursuant to the Judgment of the Apex Court in "*M/S SRD Nutrients Private Limited*" (*supra*) can be considered to be refunds erroneously granted in view of the subsequent Judgment of the Apex Court in "*M/S Unicorn Industries*" (*supra*) wherein the earlier Judgment of "*M/S SRD Nutrients Private Limited*" (*supra*) was held to be "per incuriam" and whether the same can be recovered under the provisions of Section 11A of the Central Excise Act as sought to be done by the Department. The further question that has arisen for consideration in the present proceedings is whether an order passed by the Quasi Judicial Authority under the Central Excise Department granting refunds earlier can be revisited by another co-lateral authority of the same Department in exercise of their powers

under the Central Excise Act. To deal with the question presented, it is necessary to first refer to statutory provisions, under which the show cause notices were issued by the department under Section 11A and 11AA of the Central Excise Act, 1944 which reads as under:-

**“[11-A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—** (1) *Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,—*

*(a) the Central Excise Officer shall, within <sup>88</sup>[two years] from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*

*(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,—*

*(i) his own ascertainment of such duty; or*

*(ii) duty ascertained by the Central Excise Officer,*

*the amount of duty along with interest payable thereon under Section 11-AA.*

*(2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.*

*(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of <sup>89</sup>[two years] shall be computed from the date of receipt of information under sub-section (2).*

*(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—*

*(a) fraud; or*

*(b) collusion; or*

*(c) any wilful misstatement; or*

*(d) suppression of facts; or*

*(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,*

*by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 11-AA and a penalty equivalent to the duty specified in the notice.*

<sup>1</sup>[\* \* \*]

<sup>2</sup>[(7-A) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4) <sup>3</sup>[\* \* \*], the Central Excise Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or

*erroneously refunded for the subsequent period, on the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1) or sub-section (3) or sub-section (4) <sup>3</sup>[\* \* \*], subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice or notices.]*

*<sup>4</sup>[(8) Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of <sup>5</sup>[two years] referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) <sup>1</sup>[\* \* \*], as the case may be.]*

*(9) Where any appellate authority or tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of <sup>99</sup>[two years], deeming as if the notice were issued under clause (a) of sub-section (1).*

*(10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.*

*(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)—*

*(a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);*

(b) within <sup>2</sup>[two years] from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4) <sup>1</sup>[\* \* \*].

(12) Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.

(13) Where the amount as modified by the appellate authority or tribunal or court is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority or tribunal or court in respect of such increased amount.

(14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

(15) The provisions of sub-sections (1) to (14) shall apply, mutatis mutandis, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

[(16) The provisions of this section shall not apply to a case where the liability of duty not paid or short-paid is self-assessed and declared as duty payable by the assessee in the periodic returns filed by him, and in such case, recovery of non-payment or short-payment of duty shall be made in such manner as may be prescribed.]”

**[11-AA. Interest on delayed payment of duty.]—** (1) Notwithstanding

anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily or after determination of the amount of duty under Section 11-A.

(2) Interest, at such rate not below ten per cent, and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid in terms of Section 11-A after the due date by the person liable to pay duty and such interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 37-B; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

#### **46.                   “ERRONEOUS REFUND”**

The provisions of section 11A in the context of the present proceedings have been invoked by the Department by treating the refunds granted earlier to the petitioners to have been granted “erroneously”. A perusal of the provisions of Central Excise Act and the Rules framed thereunder reveals that the term erroneous has not been defined anywhere. In this context, it is relevant to refer to the Judgment of this Court rendered in *Rajendra Singh(supra)* wherein by referring to the Black’s Law Dictionary, it was held that “erroneous”



means involving error; deviating from law. In the said judgment, it is held that an order cannot be term as erroneous unless it is not in accordance with law. It is held that if an officer acting in accordance with law makes certain assessment and determines the turnover of dealer, the same cannot be branded as erroneous. In another matter, the Division Bench of this Court in *Victor Cane Industries vs. Commissioner of Taxes and ors*, reported in 2001 SCC Online Gau 216 : (2002) 2 GLR 69, held that simply because the law has changed or earlier law laid down has been reversed, it would not entitle the revisional authority to reopen the earlier assessments. The relevant paragraphs of the judgment are extracted below:

*“10. It will be seen that this Court had taken the view after relying on earlier judgments of different High Courts as also observations of Supreme Court in India Aluminium Cable Ltd. case. No doubt the view of the Apex Court expressed in Pine Chemicals case, (1992) 2 SCC 683 was reversed by the Apex Court itself in (1995) 1 SCC 58, but according to us that should not make any difference on the assessments already completed. On similar matter a Division Bench of Punjab & Haryana High Court in 107 STC 332 observed as under:*

*“4. From the perusal of Section 40 as reproduced above, it would be apparent that the Commissioner can call for the record of any case pending before or disposed of by any Assessing Authority or appellate authority to satisfy himself as to the legality or propriety of any proceedings or any order and pass such order in relation thereto as he may think fit. The Scope of revisional powers is, thus, only to examine legality or propriety of any proceedings or any order. That being the scope of the revision, the only question that, thus, needs determination is as to whether the appellate authority while accepting the appeals preferred by M/s. Free Wheels (India) Limited as on the day when the appeals were decided had committed any illegality or the orders suffered from any impropriety. All that is stated on behalf of the counsel representing the State of Haryana is that the appellate authority had based its decision on the decision of the Tribunal in M/s. Liberty Footwear Co., Karnal, which decision could not be held to be laying*

*down the correct law in view of the later decision rendered by the Tribunal in M/s. Steel Kraft, Panipat. We do not find any merit in the contention of the learned counsel as on the day when the appellate authority decided the appeals preferred by Free Wheels (India) Ltd., the decision rendered by the Tribunal in M/s. Liberty Footwear Co., had the field. If on a subsequent decision the Tribunal has taken a contrary view it would not make the proceedings that have been finalised far earlier and are based upon an earlier decision of the Tribunal either illegal or improper. If the contention of the learned state counsel is upheld. It would result into endless litigation as all matter finalised earlier on the basis of law then in existence and holding the field would need reconsideration if law changes in succeeding years. All matters that have been finalised shall be then reported thus, unsettling the settled matters, in any case, as mentioned above, the order passed by the appellate authority which was based upon the law then holding the field could not possibly be styled as illegal or improper. That apart, the Commissioner by powers vested in him by virtue of section 40 on his own motion can call for the record of any case pending or disposed of by any Assessing Authority or appellate authority other than the Tribunal. The decision of the appellate authority that was set aside by the revisional authority as mentioned above was based upon the decision of the Tribunal, even though, therefore, the revisional authority was not reopening. The case decided by the Tribunal, it virtually amounts to upsetting an order that is based upon the decision of the Tribunal."*

**11.** *The matter can be looked from another angle also. This Court in Mahavir Coke Industries v. Income Tax Commissioner; Assam, (1995) 97 STC 186 (Division Bench which judgment was pronounced on October 5, 1993 relying on earlier judgment of this Court (1992 (1) GLR 46) as well as Pine Chemical Limited Case, (1992) 2 SCC 683 (supra) took the view that industries like the*

*appellant were exempt from the payment of Central Sales Tax U/S. 8(2A) of the Central Sales Tax Act. Against the aforesaid judgment the S.L.P. filed by the revenue was dismissed on 3.3.1997 (S.L.P. No. C 5644 of 1997). Thereafter the revenue filed a review petition No. 1370/97 before the Apex Court on the ground that the judgment reported in (1992) 2 SCC 683 (supra) already stood reviewed and reversed in the case reported in (1995) 1 SCC 58 and therefore the order passed in the S.L.P. dated 3.3.1997 may be reviewed.*

**12.** .....

**13.** *From the above, it can reasonably said that despite the fact that it was brought to the notice of the Apex Court that the earlier view expressed in (1992) 2 SCC 683 stood reversed in (1995) 1 SCC 58; yet the Apex Court did not review the order passed in the SLP inasmuch as the Division Bench judgment of this High Court in Mahavir Coke Industries case was on the basis of the then existing law i.e., (1992) 2 SCC 683 and could not be said to be wrong just because lateron that view was upset in (1995) 1 SCC 58. We agree with the learned counsel that law laid down in Tax matters should normally be applied prospectively. No tax was collected by the appellant from the purchasers as per the law then existing. On the basis of what has been observed above, we are of the view that on the day the assessment order was passed and even on the day when the Assistant Commissioner of Taxes passed the order on 31.7.1992 the law then existing was as per (1992) 2 SCC 683 as also the earlier law of this Court and the various other High Courts. The orders of assessment could not be said to be erroneous and prejudicial to the interest of the revenue. We are in respectful agreement with the view expressed by the Punjab & Haryana High Court (supra) that simply because the law has been changed or earlier law laid down has been reversed, that would entitled the revisional authority to reopen the earlier assessments. The learned Single Judge has not gone into this aspect of the matter.”*

**47.** Another Division Bench Judgment of this Court rendered similar findings in the

case of *Mahabir Coke Industries, reported in (2007) 4 GLR 515*. It was held that even if subsequently the law is changed or reversed, the assessments already completed cannot be allowed to be opened as the law covering the field relating to exemption of tax to a new Industry at the time of passing of the order of assessment to be considered.

**48.** State of Harayana –Vs- Free Wheels (India) Limited reported in 1997 SCC Online P&H 1849 : (1997) 107 STC 332, the Hon'ble Punjab and Haryana High Court while dealing with the similar issue relate that a contrary view taken by the Tribunal in respect of proceedings finalized earlier which were based upon earlier decision of the Tribunal then, the said proceedings cannot be illegal or improper. In this Context, the relevant paragraph is extracted as under:-

*“5. From the perusal of section 40 as reproduced above, it would be apparent that the Commissioner can call for the record of any case pending before or disposed of by any Assessing Authority or appellate authority to satisfy himself as to the legality or propriety of any proceedings or any order and pass such order in relation thereto as he may think fit. The scope of revisional powers is, thus, only to examine legality or propriety of any proceedings or any order. That being the scope of the revision, the only question that, thus, needs determination is as to whether the appellate authority while accepting the appeals preferred by M/s. Free Wheels (India) Limited as on the day when the appeals were decided had committed any illegality or the orders suffered from any impropriety. All that is stated on behalf of the counsel representing the State of Haryana is that the appellate authority had based its decision on the decision of the Tribunal in Liberty Footwear Co., Kamal, which decision could not be held to be laying down the correct law in view of the later decision rendered by the Tribunal in Steel Kraft, Panipat. We do not find any merit in the contention of the learned counsel as on the day when the appellate authority decided the appeals preferred by Free Wheels (India) Ltd., the decision rendered by the Tribunal in Liberty Footwear Co., held the field. **If on a subsequent decision the Tribunal has taken a contrary view it would***

***not make the proceedings that have been finalised far earlier and are based upon an earlier decision of the Tribunal either illegal or improper. If the contention of the learned State counsel is upheld, it would result into endless litigation as all matters finalised earlier on the basis of law then in existence and holding the field would need reconsideration if law changes in succeeding years. All matters that have been finalised shall be then reopened, thus, unsettling the settled matters, in any case, as mentioned above, the order passed by the appellate authority which was based upon the law then holding the field could not possibly be styled as illegal or improper. That apart, the Commissioner by powers vested in him by virtue of section 40 on his own motion can call for the record of any case pending or disposed of by any Assessing Authority or appellate authority other than the Tribunal. The decision of the appellate authority that was set aside by the revisional authority as mentioned above was based upon the decision of the Tribunal, even though, therefore, the revisional authority was not reopening the case decided by the Tribunal, it virtually amounts to upsetting an order that is based upon the decision of the Tribunal.***

**49.** The Bombay High Court while dealing with the similar issues upheld that the views of the Tribunal that the revisional jurisdiction by the Higher departmental Officers cannot be exercised in respect of orders passed by the Assessing Officer which are based on binding decision of the High Court. In this Context the relevant paragraphs of Commissioner of Income Tax –Vs- Paul Brothers 1992 SCC Online Bom 650 : (1995) 216 ITR 548 are extracted as under:-

***5.*** That in view of the merger of the Income-tax Officer's order for the assessment year 1981–82 in appeal, revisional jurisdiction could not be exercised is a settled position having been concluded against the Revenue by several decisions of this court including *CIT v. P. Muncherji and Co.*, [1987] 167 ITR 671.

**6.** *The Calcutta High Court in the case of Russell Properties Pvt. Ltd. v. A. Chowdhury, Addl. CIT, [1977] 109 ITR 229 and the Allahabad High Court in K.N. Agrawal v. CIT, [1991] 189 ITR 769 have held that where the Income-tax Officer's order is passed on the basis of a binding decision, revisional power under section 263 cannot be exercised to undo the said order. The Income-tax Officer is a quasi-judicial authority and the principle laid down is sound. We endorse the same.*

**7.** *Either in section 80HH or in section 80J, there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions. Hence unless the relief granted for the assessment year 1980–81 was withdrawn, the Income-tax Officer could not have with-held the relief for the subsequent years. [See Gujarat High Court decision in the case of Saurashtra Cement and Chemical Industries Ltd. v. CIT, [1980] 123 ITR 669].*

**50.** In *G.M. Mittal Stainless Steel Pvt. Ltd.* report in (2003) 11 SCC 441, the Apex Court while dealing with the matter under Section 263 of the income tax act, 1961 held that the power of the commissioner under Section 263 must be exercised on the basis of the materials that was available to him when he exercised the power. The Apex Court held that the satisfaction of the Commissioner was not based on materials either legally or factually which would have given the jurisdiction to take action under section 263. It was held:-

*“6. In this particular case, the Commissioner has not recorded any reason whatsoever for coming to the conclusion that the assessing officer was erroneous in deciding that the power subsidy was capital receipt. Given the fact that the decision of the jurisdictional High Court was operative at the material time, the assessing officer could not be said to have erred in law. The fact that this Court had subsequently reversed the decision of the High Court would not justify the Commissioner in treating the assessing officer's decision as erroneous. The power of the Commissioner under Section 263 of the Income Tax Act must be exercised on the basis of the material that was available to him when he exercised the power. At that time, there was no dispute that the issue whether the power*

*subsidy should be treated as capital receipt had been concluded against the Revenue. The satisfaction of the Commissioner, therefore, was based on no material, either legal or factual which would have given him the jurisdiction to take action under Section 263 of the Income Tax Act '.*

**51.** In the case of ***Malabar Industrial Co Ltd vs Commissioner of Income Tax, Kerala State***, reported in (2000) 243 ITR 83, wherein it was held that every loss of revenue cannot be treated to be erroneous for the purposes of invoking revisional powers under Section 263 of the Income Tax Act. The Apex Court while dealing with the correctness of revisional powers invoked by the Commissioner of Income Tax held that scope of 263 covers loss of tax due to erroneous order, but does not cover loss of tax resulting from a valid order.

**52.** From the Judgments discussed above, it is seen that the term "erroneous" any error deviating from law. A change of law subsequently would not make an action taken earlier by Quasi Judicial Authority in terms of law as it stood then, to be held to be erroneous so as to enable the Departmental Officer to invoke powers under Section 11A of the Central Excise Act. On perusal of Section 11A reveals that the power under Section 11A for recovery of duties not levied or not paid or short levied or short paid or erroneously refunded will be available to the departmental Officer only on the decisions mentioned in Sub-section (4) unless the concerned departmental Officer is satisfied that the refund granted earlier was because of any or all of the conditions mentioned under sub-Section (4), the refunds cannot be treated to be erroneous. The mandate of section requires the departmental Officer to apply its mind and only upon satisfaction of the conditions mentioned under sub-Section (4) of Section 11A can any refund granted earlier be treated to have been erroneously.

**53.** The Department proceeded to issue, the impugned demand-cum-show cause notices on the premise that once the judgment on the basis of which the refunds were granted have been held to be per incuriam, the refunds sanctioned/granted earlier will become unavailable to the petitioners because of the change in law and, therefore, the same will be an erroneous refund enabling the Department to invoke its statutory powers under Section 11A read with Section 11AA of the Central Excise Act, 1944. What cannot be lost sight of is that the Department sanctioned the refunds demanded/claimed by the petitioners

on the basis of the Judgment in SRD Nutrients without any demur. The contention of the departmental counsel that the refunds sanctioned become erroneous by virtue of the Apex Court holding the judgment of SRD Nutrients to be rendered per incuriam as the still earlier Judgments of the Apex Court rendered in *Modi Rubber(supra)* and *Rita Textile(supra)* were not considered, cannot be accepted. It is not disputed that pursuant to the judgment of the SRD Nutrients, a review application was filed by the Department and which was dismissed on 10.07.2018.

**54.** As such a perusal of the law discussed above, it can be held that the concerned departmental Officer exercising power under Section 11A of the Central Excise Act must arrive at finding that the earlier order/refunds as have been granted in the present proceedings, were contrary to the law and therefore, erroneous and that the same are required to be reopened or recovered by invoking the powers under Section 11A. The refunds were granted by the Department in terms of the Judgment in "*M/S SRD Nutrients Private Limited*" (*supra*). As discussed above, the Department accepted the Judgment of the Apex Court in "*M/S SRD Nutrients Private Limited (supra)*" and sanctioned the refunds. As such, the contention of the Department that the refunds granted earlier were erroneous and could be recovered under Section 11A cannot be accepted. The grounds urged by the Department supporting impugned show cause notices do not satisfy the requirements of Section 11A(4). The Division Bench of this Court in *Shri Rajendra Singh (supra)* and *Victor Cane Industries (supra)* are binding precedents and I respectfully concur with the same. Therefore, the refunds granted earlier cannot be considered "erroneous" to invoke the powers under Section 11A of the Central Excise Act, 1944 only on the premise that the Judgment of the Apex Court in "*M/S SRD Nutrients Private Limited*" (*supra*) held to be "per incuriam" by the Apex Court subsequently in "*M/S Unicorn Industries Private Limited*".

**55. Binding effect of a Judgment and Principle of Res Judicata**

It is also not disputed that in respect of the some of the petitioners since the refunds were not granted, writ petitions were filed before this Court and this Court by orders on different dates held that the petitioners were entitled to refunds claimed in terms of the judgment of the Apex Court in "*M/S SRD Nutrients Private Limited*" (*supra*). There is no appeal or review filed in respect of these orders also which have been since attained finality.



Accordingly, the refunds which were granted by the Department were pursuant to judicial proceedings before the Apex Court and/or the Gauhati High Court, the refunds sanctioned/released were on the basis of orders passed by the Apex Court and/or the Gauhati High Court. Consequently, once a judgment or judicial order is passed by a Court of law against the Department, the remedy available to the Department is by way of an appeal to a higher Court or review. Since, the review filed before the Supreme Court were dismissed and since no further appeal and/or review was passed against the different orders passed by the Gauhati High Court , the lis between the parties, namely, the petitioners and the Department of Central Excise has attained finality in respect of the issues which are now sought to be re-opened by way of the demand-cum-show cause notice impugned in the present proceedings. Such a procedure sought to be invoked by the Department is completely alien in law as established by the constitution as well as the law laid down by the Apex Court in a catena of judgments.

**56.** In this context, it will be relevant to refer to meaning ascribed to a "judgment" by the Apex Court :-

*2. Generally speaking, a judgment adjudicates on the rights of the parties as they existed before the suit in which it was obtained. A judgment is an affirmation of a relation between a particular predicate and a particular subject. So, in law, it is the affirmation by the law of the legal consequences attending a proved or admitted state of facts. Its declaratory, determinative and adjudicatory function is its distinctive characteristics. Its recording gives an official certification to a pre-existing relation or establishes a new one on pre-existing grounds. It is always a declaration that a liability, recognized as within the jural sphere, does or does not exist.*

**57.** From the judgment of the Apex Court discussed above, it is evident that a "Judgment" decides the rights between the parties to a lis. Once a Court renders a judgment on the issues viz-a-viz the rights of the parties, such a judgment can only be re-visited by the established judicial norms, namely, a review or an appeal or revision in some cases. Unless, the findings of a Court arrived at by way of legal proceeding is sought to be reopened in the manner discussed above, the operative portions in the judgment viz-a-viz parties will attain

finality. A subsequent change in law arrived at by a Court by way of the separate judicial proceeding, wherein the earlier law laid down has been held to be not a good law or that the earlier law will cease to have precedential value, will not ipso facto reverse the position of the party viz-a-viz their rights which were declared and concluded by way of an earlier judicial proceedings.

**58.** The question of the effect of actions taken under the judgment subsequently declared to be “per incuriam” came up for consideration before the apex court in the case of *A.R. Antulay vs. R.S. Nayak & Anr*, reported in (1988) 2 SCC 602, the apex court while dealing with the issue held as under:

*“183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word ‘decision’ means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the Five-Judge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the Five-Judge Bench gave its reason. The reason, in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point: (para 105)*

*“Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting*

*the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench."*

**59.** This judgment of the Apex Court came up to be considered again in the Apex Court of *Madras Telephone SC & ST Welfare Association*, reported in (2006) 8 SCC 662. In the said judgment the Apex Court held that since the rights of applicants were determined in duly constituted proceedings which determination as attained finality, a subsequent judgment of the Court or a tribunal taking a contrary view will not adversely affect the applicant in whose cases the orders have attained finality. The said judgment is extracted below:

*"21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case [Parmanand Lal and Brij Mohan v. Union of India, WPs Nos. 2739 and 2652 of 1991 decided on 20-2-1985] have been upheld or recognised by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment in Madras Telephones [(1997) 10 SCC 226 : 1997 SCC (L&S) 1279] . Since the rights of such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a court or tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly.*

**60.** The Apex Court in *Bharat Sanchar Nigam Limited and Anr., -Vs- Union of India and Ors.*, reported in (2006) 3 SCC 1 held as under:-

*"22. A decision can be set aside in the same lis on a prayer for review or an application for recall or under Article 32 in the peculiar circumstances mentioned in Hurra v. Hurra [(2002) 4 SCC 388] . As we have said, overruling of a decision takes place in a subsequent lis where the precedential value of the decision is*

called in question. No one can dispute that in our judicial system it is open to a court of superior jurisdiction or strength before which a decision of a Bench of lower strength is cited as an authority, to overrule it. **This overruling would not operate to upset the binding nature of the decision on the parties to an earlier lis in that lis, for whom the principle of res judicata would continue to operate.** But in tax cases relating to a subsequent year involving the same issue as an earlier year, the court can differ from the view expressed if the case is distinguishable or per incuriam. The decision in *State of U.P. v. Union of India* [(2003) 3 SCC 239] related to the year 1988. Admittedly, the present dispute relates to a subsequent period. Here a coordinate Bench has referred the matter to a larger Bench. This Bench being of superior strength, we can, if we so find, declare that the earlier decision does not represent the law. None of the decisions cited by the State of U.P. are authorities for the proposition that we cannot, in the circumstances of this case, do so. This preliminary objection of the State of U.P. is therefore rejected”.

**61.** Again in the Special Reference No. 1 of 2012- *Natural Resources Allocation* reported in (2012) 10 SCC 1 held as under:-

“**48.1.** The first limitation is that a decision of this Court can be reviewed only under Article 137 or a curative petition and in no other way. It was in this context that in para 85 of *Cauvery (2)* [1993 Supp (1) SCC 96 (2)] , this Court had stated that the President can refer a question of law when this Court has not decided it. Mr. Harish Salve, learned Senior Counsel, is right when he argues that **once a lis between parties is decided, the operative decree can only be opened in review. Overruling the judgment—as a precedent—does not reopen the decree.**

**48.2.** The second limitation, a self-imposed rule of judicial discipline, was that overruling the opinion of the Court on a legal issue does not constitute sitting in appeal, but is done only in exceptional circumstances, such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and capable of causing public mischief. For this

*proposition, the Court relied upon the judgment in Bengal Immunity case [AIR 1955 SC 661 : (1955) 2 SCR 603] wherein it was held that when Article 141 lays down that the law declared by this Court shall be binding on all courts within the territory of India, it quite obviously refers to courts other than this Court; and that the Court would normally follow past precedents save and except where it was necessary to reconsider the correctness of law laid down in that judgment. In fact, the overruling of a principle of law is not an outcome of appellate jurisdiction but a consequence of its inherent power. This inherent power can be exercised as long as a previous decree vis-à-vis a lis inter partes is not affected. It is the attempt to overturn the decision of a previous case that is problematic, which is why the Court observed that: [Cauvery (2) case [1993 Supp (1) SCC 96 (2)] , SCC p. 145, para 85]*

*“85. ... Under the Constitution such appellate jurisdiction does not vest in this Court, nor can it be vested in it by the President under Article 143.”*

**62.** In yet another recent judgment, the Apex Court in *Dr. Shah Faisal and others – Vs- Union of India and Anr.*, reported in (2020) 4 SCC 1, the issue of precedential value of a judgment came up for consideration while hearing an application wherein contesting parties were seeking a reference to be made to a larger Bench in view of the contention urged that the earlier judgment was rendered “per incuriam”. The View of the apex court rendered in *A.R Antulay(supra)* has again been reiterated in this Judgment.

**63.** The Department contends that the law declared by the Apex Court will not have prospective overruling unless it is so indicated in the particular decision. As the Apex Court in the decision of *M/S Unicorn Industries(supra)* did not provide that the law declared by *M/S Unicorn Industries (Supra)* will be applied prospectively, it must be accepted that it will have retrospective effect. If that interpretation is accepted then the law which was declared by the Apex Court earlier by the judgments of *Modi Rubber(supra)* and *Rita Textile(supra)* will continue to be applicable even at a time when the refunds were made by the Department following the judgment of the Apex Court in *SRD Nutrients(supra)*. The contention of the respondents that in view of such position, there is no infirmity in treating the refunds already

granted to have been erroneously granted and, therefore, the show cause notices issued by the Department under Section 11A of the Central Excise Act are inconsonance with law and should, therefore, not be interfered with as prayed for. The contentions urged by the Department, if accepted, will be self-defeating inasmuch as the refunds were granted earlier in terms of the Apex Court in "M/S SRD Nutrients Private Limited" (*supra*). From the pleadings, it is evident that even in the writ petitions filed before this Court, the Department accepted that the Apex Court in "M/S SRD Nutrients Private Limited" (*supra*) held that the Education Cess and Secondary and Higher Education Cess paid along with the excise duty were required to be refunded. The Department accepted the Judgment in "M/S SRD Nutrients Private Limited" (*supra*) and refunded the Education Cess and Secondary and Higher Education Cess notwithstanding the contrary view of the Apex Court in "M/S Modi Rubber Limited" and "Rita Textiles Pvt. Ltd".

**64.** The Judgment referred to by the Department in M.A. Murthy (*supra*) to support the above contention does not come to the aid of the respondents. In this judgment, the Apex Court held that the law declared by the Supreme Court under Article 141 has to be assumed to be the law from inception. Prospective overruling is only an exception to the normal rule. The decision of the Apex Court unless indicated therein to be operative on the prospectively cannot to be treated to be so, more so when it was a review judgment overruling the earlier judgment. There is no dispute with this proposition. However, in the context of the present proceedings, this judgment will not come to the aid of the respondents as the judgment rendered by the Apex Court in SRD Nutrients was not reviewed by the Apex Court in *M/S Unicorn Industries Limited* although by the subsequent judgment, the earlier judgment was held to have been rendered "per incuriam".

**65.** In the Judgment of *Assistant Commissioner, Income Tax, Rajkot -Vs- Saurashtra Kutch Stock Exchange Limited* reported in (2008) 14 SCC 171 referred to by the respondents, relates to the power of rectification available to statutory authority under the Income Tax Act, 1961. The issue which arose before the Apex Court was whether non-consideration of a decision of the jurisdictional High Court or of the Supreme Court can be said to be a mistake apparent from the record. In this case, the Tribunal passed an order without taking into consideration of judgment passed by the jurisdictional High Court. Subsequently, an

application for rectification was filed, by which the Tribunal rectified its earlier order. The Apex Court held that on the facts of that case that such course was available to the Tribunal under the provisions of the Income Tax Act as non-consideration of a decision of jurisdictional High Court was a mistake apparent from record and, therefore, can be rectified. Similarly the judgments of the Rajasthan High Court and Madhya Pradesh High Court pressed into service by the Department are also not applicable in the context of the present proceedings. Further in the context of the present proceedings, the Department did file a review petition in the case of Bajaj Auto Limited (supra) being Review Petition No. \_\_\_ of 2020 (Diary No. 13857/2020) which was preferred by the Department seeking review of the judgment rendered by the Apex Court in the case of *Bajaj Auto Limited –Vs- Union of India* reported in *2019 SCC Online SC 421* in which matter similar orders were passed by the Apex Court as in the case of "*M/S SRD Nutrients Limited (supra)*". It is submitted at the Bar that by order dated 01.09.2020 the Apex Court dismissed the application misc. application seeking condonation of delay of 148 days that had occurred in filing the said review petition. It is also submitted that a similar review petition in respect of "*M/S SRD Nutrients (supra)*" has also been filed and the same is pending before the Apex Court. No order passed by the Apex Court allowing or rejecting the said review petition has been brought before this Court till the date of hearing of these matters. In any view of the matter such orders that may be passed by the Apex Court in the review application will be binding on all including this Court.

**66.** The contra submissions of the respondents, however, do not deal with the proposition of law as laid down by the Apex Court in the case of *A.R. Antulay(Supra) and Madras Telephone SC & ST Welfare Association (supra)*. There is no quarrel with the submissions of the respondent that the earlier judgment under which the refunds were granted, namely, "*M/S SRD Nutrients (supra)*" has been declared in "per incuriam" by subsequent a judgment of the Apex Court rendered in *M/S Unicorn industries (Supra)*. However, it is equally not disputed by the respondents that the refunds sought for were granted following the judgment of the Apex Court rendered in "*M/S SRD Nutrients (supra)*" and/or judgment of this Court directing the respondents to comply with the law declared by the Apex court in "*M/S SRD Nutrients(supra)*". The respondents have not disputed the position that the refunds claimed by the petitioners have since been granted and presently

there is no refund application pending with the Department insofar as the present petitioners are concerned. Under the circumstances, the directions of the Apex Court as well as the Gauhati High Court having been complied with, a finality of the issue inter-party has been arrived at. No appeal or review by the Department has been filed in respect of the refunds granted earlier. It is also evident from a perusal of the impugned show cause notices that there is no other ground on which the refunds have been treated to be erroneous except that the law under which the refunds were granted earlier has been held to be "per incuriam" by a later Judgment of the Apex Court rendered in "*M/S Unicorn Industries*" (*supra*).

**67.** The Officers of the Central Excise Department exercise Quasi judicial functions. The orders passed by the Department Officers being in exercise of Quasi Judicial powers cannot be co-laterally revoked/reviewed except when permitted under the Statute. It is seen that against sanction orders passed the concerned officers, the statute does not provide for any review of such order passed. However, under Section 35, there is a provision for appeal, which however has not been resorted to by the Department seeking revocation/recall of orders already passed sanctioning the refund in terms of "*M/S SRD Nutrients (supra)*". The refund orders passed cannot be unilaterally revoked by application of Section 11A unless the requirements of sub-Section (4) of Section 11A are satisfied. This will amount to impeaching collaterally a finding rendered by a quasi judicial authority. The Apex Court in "*Abdul Kuddus*" reported in (2019) 6 SCC 604 has very succinctly laid down the law regarding impermissibility of collateral impeachment of orders passed by Quasi Judicial bodies. The relevant paragraphs of the Judgment is extracted as under:-

*"23. The procedure prescribed by the post 2012 amendment under the 1964 Order mandates compliance with the principles of natural justice. All the allegations and grounds are required to be served by the Tribunal in the form of a show-cause notice to the person who is alleged to be a foreigner [see para 60 in Sarbananda Sonowal (2) [Sarbananda Sonowal (2) v. Union of India, (2007) 1 SCC 174] ]. Thereupon, the person has to be given a reasonable opportunity to file representation and also produce evidence. The Tribunal has been authorised to consider and allow prayer for production and examination of the witnesses which can be refused if found to be vexatious, or*



*made with the intent to cause delay, etc. The evidence produced by the Superintendent of Police can also be recorded. The person concerned has to be heard before the Tribunal gives its opinion. The person concerned may appear in person or can be represented by a legal practitioner or an authorised representative. Opinion is to be given within a period of sixty days after the reference from the competent authority. No doubt, the Rules do not prescribe and require an opinion of the Tribunal to be a detailed judgment, nevertheless, it is obvious that the opinion rendered must state the facts and reasons for drawing the conclusions. It is a decision and an order. Fixing time-limits and recording of an order rather than detailed judgment is to ensure that these cases are disposed of expeditiously and in a time-bound manner. The opinion by the Foreigners Tribunal is a quasi-judicial order and not an administrative order. The expression "quasi-judicial order" means a verdict in writing which determines and decides contesting issues and question by a forum other than a court. The determination has civil consequences. Explaining the meaning of quasi-judicial body in Indian National Congress (I) v. Institute of Social Welfare [Indian National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685] , it was held that when any body of persons has a legal authority to determine questions affecting the rights of subjects and a duty to act judicially, such body of persons constitute a quasi-judicial body and decision given by them is a quasi-judicial decision. It would also be a quasi-judicial order if the statute empowers an authority to decide the lis not between the two contesting parties but also when the decision prejudicially affects the subject as against the authority, provided that the authority is required by the statute to act judicially. Further, what differentiates an administrative act from the quasi-judicial act is that a quasi-judicial body is required to make an enquiry before arriving at a conclusion. In addition, an administrative authority is the one which is dictated by policy and expediency whereas a quasi-judicial authority is required to act according to the rules.*

**24.** *The opinion/order of the Tribunal, or the order passed by the Registering*

*Authority based upon the opinion of the Foreigners Tribunal, as the case may be, can be challenged by way of writ proceedings. Thus, it would be incorrect to hold that the opinion of the Foreigners Tribunal and/or the consequential order passed by the Registering Authority would not operate as res judicata. Both the opinion of the Tribunal and the order of the Registering Authority result in determination of rights/status under the statute and by an authority after a contest on the merits which would necessarily operate as a bar to subsequent proceedings before the same authority for redetermination of the same issue/question. This Court in Ujjam Bai v. State of U.P. [Ujjam Bai v. State of U.P., AIR 1962 SC 1621] has held that the principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or a writ unless the erroneous determination relates to the jurisdictional matter of that body.*

**25.** *In J.J. Merchant v. Shrinath Chaturvedi [J.J. Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635], when the learned counsel had pleaded that the National Consumer Disputes Redressal Commission cannot examine complicated questions of facts which require examination and cross-examination of experts including doctors and that the procedure followed for determination of consumer disputes being summary in nature is not suitable for determination of complicated questions, this Court rejected these contentions and held that under the Consumer Protection Act, 1986, for a summary trial, an exhaustive procedure conforming to the principles of natural justice is provided. Merely because the trial is summary in nature cannot be a ground to reject it as unjust or unfair. Further, it was held in Rajesh Kumar v. CIT [Rajesh Kumar v. CIT, (2007) 2 SCC 181] that when civil or evil*

*consequences ensue by reason of an act done by the statutory authority, principles of natural justice must be followed. The Act and power of judicial review vested with the constitutional courts provide sufficient safeguards, in the present context.*

**26.** *When we apply general principles of res judicata, the contention of the appellants that the person concerned should be permitted to double-dip and be entitled to a second round of litigation before the Foreigners Tribunal notwithstanding the earlier opinion expressed by the Foreigners Tribunal is far-fetched, and completely unacceptable. The plea is fallacious and has no merit. This contention therefore must be rejected and fails.*

**27.** *As stated above, a person aggrieved by the opinion/order of the Tribunal can challenge the findings/opinion expressed by way of a writ petition wherein the High Court would be entitled to examine the issue with reference to the evidence and material in the exercise of its power of judicial review premised on the principle of "error in the decision-making process", etc. This serves as a necessary check to correct and rectify an "error" in the orders passed by the Tribunal."*

**68.** In view of the above discussions, this Court holds that the refund granted/sanctioned earlier in terms of the Judgment of the Apex Court rendered in "*M/S SRD Nutrients Private Limited*" (*supra*) as well as in terms of orders passed by this Court directing such refunds of Education Cess and Secondary and Higher Education Cess in terms of "*M/S SRD Nutrients Private Limited*" (*supra*), cannot be revoked co-laterally by a Quasi Judicial Authority of the Department without taking recourse to the statutory and/or judicial remedies available to the Department. In view of dismissal of the earlier review petition filed by the Department against the Judgment of the Apex Court in "*M/S SRD Nutrients Private Limited*" (*supra*) and also in view that no appeal or review having been preferred against orders of this Court directing entitlement of refund of Education Cess and Secondary and Higher Education Cess to the petitioners, the issue between the parties to the lis having attained finality, the later Judgment of the Apex Court in "*M/S Unicorn Industries*" (*supra*) holding "*M/S SRD*

*Nutrients Private Limited*" (*supra*) to be per incuriam, will not permit the Department to unilaterally revoke or re-open the issue without taking recourse to the remedies available to them before a judicial forum. Such actions initiated by issuance of the impugned show cause notices, if permitted, will amount to revoking the earlier orders passed by the departmental officers exercising Quasi Judicial powers unilaterally and which action cannot be permitted in view of the law laid down by the Apex Court in "*Abdul Kuddus*" (*supra*).

**69. Department Circulars – Binding on Department Officers.**

It is contended by the petitioners that the actions of the department impugned in the present proceeding are contrary to departmental circulars/instructions issued by the department on 09.01.2020 whereby the field officers and department officers have been instructed to contest by filing Statutory Appeals/ Writ Appeals or Review Petitions or forward proposals for filing SLP to the Board in view of the judgment of the Apex Court of *M/S Unicorn Industries (Supra)*, it is seen that the circular vide Circular No. F. No. 276/187/2018-CX.8A part, has been issued by the legal cell of the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India and the same is disputed by the departmental counsel. In view of the said circular, the department has been directed, inter alia, to initiate recovery of duties, including NCCD, in cases where the assessee were not paying the same on the strength of the previous Judgment, specifically the Judgment in the case of *Bajaj Auto Limited (supra)*. The circular further instructed that the subject Judgment may be brought to the notice of the Hon'ble Courts, wherein the similar issues are pending. Any interim or final order decided against the revenue may be contested by filing statutory appeal, writ appeal or review petition, as the case may be, in consultation with the Standing Counsel. If the same is not possible, a self-contained SLP proposal may be forwarded to the Board, as per extant instructions. In view of the circular, it is evident that the Board has instructed the officers to contest matters pending before the Hon'ble Courts by filing statutory appeal, writ appeal or review petition as the case as may be or in the alternative submit a proposal for filing SLP before the Apex Court. There is also no pleading/submission on behalf of the department as to the effect of the instructions issued on the departmental officers nor has any official communication been submitted before this

Court to show that the circular has not been properly issued or that the same has been modified/withdrawn.

**70.** Insofar as the Departmental circulars being binding on the Officers of the department, instructions/circulars issued under Section 37B of the Central Excise Act, 1944 are binding as the Department Officers. Under Section 37 B, it is provided that the Central Board of Excise and Customs (CBEC) constituted under the Central Boards of Revenue Act may, if it considers it necessary or expedient so to do for the purpose of uniformity with respect to levy of duties of excise, issue such order, instructions and directions to the Central Excise Officers as it may deem fit and such Officers employed in the execution of this Act shall observe and follow such orders and directions issued by the Board. The Apex Court in *Commissioner of Customs (Calcutta) & Ors Vs. Indian Oil Corporation and Ors.* reported in (2004) 3 SCC 488 laid down that such circulars issued under Section 37B are not binding on the assessee. However, it will not be open to the Revenue to raise a contention contrary to the circular issued by CBEC. When the circular remains in operation, the Revenue is bound by it and it cannot be allowed to take the plea that it is not valid or that it is contrary to the terms of the statute. The relevant paragraph of the judgment is extracted below:-

**12.** *The principles laid down by all these decisions are:*

*(1) Although a circular is not binding on a court or an assessee, it is not open to the Revenue to raise a contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.*

*(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.*

*(3) A show-cause notice and demand contrary to the existing circulars of the Board are ab initio bad.*

*(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars.*

## **71. Judicial Review in Show Cause Notice**

There is another aspect that needs to be dealt with in the present proceedings. The petitioners before this Court in the present proceedings are questioning the show cause notices issued by the department. Although, the High Court in exercise of judicial review under Article 226 of the Constitution of India would not ordinarily interfere with the show cause notices issued, however, where a show cause notice has been issued by an authority wholly without jurisdiction or by way of wrongful usurpation of power, the person aggrieved need not be relegated to avail any statutory alternative remedy available. The Writ Court in exercise of judicial review can interfere with the show cause notices when the same is issued wholly without jurisdiction and/or wrong usurpation of power. In the facts of the present case, there is no dispute that the refunds granted earlier to the petitioners were in pursuance to judicial orders passed by the Apex Court in "M/S SRD Nutrients Private Limited" (Supra) and/or orders passed by this Court in writ applications filed by some of the petitioners. As held by the Apex Court as discussed above, declaration of judgment to be rendered "per incuriam" by latter judgment will not upset the binding effect of the judgment between the litigating parties. As the department sanctioned the refunds in terms of such orders passed in judicial proceedings between the assesseees and the department, the same having attained finality cannot be reopened except by way of the Department taking recourse to available judicial remedies. Unless, such remedies are availed of, attempting to re-open orders passed by Department officers by collaterally by taking recourse to Section 11A cannot be permitted. Reference in this Context may be made to the judgment of the Apex Court rendered in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.*, reported in (1998) 8 SCC 1. The relevant paragraph of the judgment is extracted herein below:

*“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*

*15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.“*

**72.** In that view of the matter, the show cause notices issued are required to be held to have been issued without any jurisdiction and by wrong interpretation of the powers under Section 11A read with Section 11AA and therefore, the same are required to be set aside. In view of all the decisions above, the impugned show cause notices cannot be sustained, the same are accordingly, set aside and quashed.

**73.** The writ petitions are accordingly allowed. No order as to cost.

**JUDGE**

**Comparing Assistant**