



IN THE GAUHATI HIGH COURT

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

WRITPETITION (C) No. 1788 of 2021

Rajendra Kumar Deorah,

Proprietor of M/S ITAS G Pharma having its office at
House No. 7, 3rd Floor, Masjid Gali, Sree Nagar,
Guwahati, Assam-781005

.....Petitioner

-Versus-

1. The State of Assam,

To be represented by the Commissioner and
Secretary to the Govt. of Assam, Finance (Taxation)
Department, Dispur, Guwahati- 6.

2. The Deputy Commissioner of State Taxes,
Kar Bhawan, Dispur, Guwahati- 781006.

**3. The Additional Commissioner of State
Taxes,** Assam, Kar Bhawan, Dispur-781006.

4. Superintendent of Taxes, Guwahati, Unit-A,
Kar Bhawan, Dispur-781006.

.....Respondents

:: BEFORE ::
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioners : Dr. Ashok Saraf, Sr. counsel
assisted by Mr. P. Baruah,
Advocate

For the Respondents : Mr. B. Gogoi, SC,
Finance & Taxation

Date of Hearing : **14.02.2023**

Date of Judgment : 03.05.2023

JUDGMENT & ORDER (CAV)

The petitioner carries on the business under the name and style of M/S ITAS G Pharma and having its office in the Sree Nagar area of Guwahati. It is submitted that the petitioner was a registered dealer under the Assam VAT Act, 2003 bearing registration number 18530036665. According to the petitioner for the assessment year 2011-12, it had submitted its return of turnover under the Assam VAT Act, 2003 before the assessing officer and claiming a sum of Rs. 17,29,010/- (Rupees Seventeen Lakh Twenty Nine Thousand Ten Rupees Only) to be the amount refundable to the petitioner. The assessing officer namely, the respondent No 4, completed the assessment and vide the assessment order dated 06.07.2016, a sum of Rs. 17,38,945/- (Rupees Seventeen Lakh Thirty Eight Thousand Nine Hundred Forty Five Only) was determined as

the amount refundable to the petitioner. The said amount became refundable after adjustment of input tax credit and TDS against the output tax liability of the petitioner. It is the submission on behalf of the learned Senior counsel for the petitioner that upon receipt of the order of assessment, necessary steps were taken for filing of the refund application for refund of the excess tax as determined in terms of the order of assessment. A refund application was duly prepared and the same was submitted in the office of respondent No. 4. However, inspite of the application for refund having been submitted, no refund was received by the petitioner. Upon enquiries made from the office of the respondents it was informed that no refund application was available in their records. The petitioner being surprised by such a response and having no other alternative, filed another refund application before the respondent authority amounting to Rs. 17,29,010/- (Rupees Seventeen Lakh Twenty Nine Thousand Ten Rupees Only). The said second refund application was submitted on 18.07.2019 which was duly received by the Office of the assessing officer on the same date. It was submitted by the petitioner before the authorities that any delay that may have occurred in submitting the refund application was due to circumstances beyond the control of the petitioner. It was prayed by the petitioner before the respondents that

delay, if any, should be condoned and refund payable to the petitioner for the assessment year 2011-12 should be refunded to the petitioner.

2. That however, vide the order dated 29.08.2019, the Superintendent of Taxes, Guwahati Unit-1 rejected the application of refund for the petitioner on the ground that as per Section 50 of the Assam VAT Act, 2003 read with Rule 29 of the Assam VAT Rules of 2005, the refund application was required to have been made within the period prescribed namely 180 days from the date of assessment or re-assessment as the case may be. Since the petitioner failed to do so the same was time barred. It is submitted that the Superintendent of Taxes did not consider the letter/application filed by the petitioner along with refund application whereby reasons for delay were explained with a prayer for condonation of such a delay, if any.

3. Being aggrieved by the order dated 29.08.2019 passed by the Superintendent of Taxes, Unit-1, Guwahati, the petitioner filed a revision application before the Additional Commissioner of Taxes, namely respondent No. 3. The same also came to be dismissed vide order dated 25.02.2021 on the ground that there was no substantive evidence for the delay in filing the refund application and the assessing officer was correct

in rejecting the refund application as per provisions of Assam VAT Act, 2003 read with the Rules of 2005.

4. Being aggrieved by the rejection of the refund application dated 29.08.2019 as well as the rejection of the revision petition by the Addl. Commissioner of Taxes vide order dated 25.02.2021, the present writ petition has been filed praying for issuance of a writ to the respondents to direct release of the refundable amount receivable by the petitioner under the Assam VAT Act of 2003 read with the Rules of 2005.

5. The learned Senior counsel for the petitioner has strenuously urged that once an assessment order is passed by the authorities concerned and any amount is refundable to the petitioner, they are entitled under the law to make application for release of their refund as quantified by the Department. The learned Senior counsel for the petitioner submits that the Superintendent of Taxes dismissed the application for refund without considering the grounds explaining the delay that had occurred in filing the refund application. The revisional authority namely, the Additional Commissioner of Taxes, vide impugned order dated 25.02.2021 further rejected the revision application by upholding the order of the superintendent of Taxes saying that there is no substantive evidence for the delay in filing the refund application. The learned Senior counsel for the

petitioner submits that although a time limit is prescribed under the Act and the Rules, but power has been granted to the respondent authorities to condone such a delay upon sufficient explanation being furnished by the assessee.

6. The learned Senior counsel for the petitioner submits that this Court in a similar matter had interfered with such order passed by the departmental authorities and had remanded the matter to re-decide the question of grant of refund. The learned Senior counsel has referred to the Judgment dated 20.01.2021 passed in W.P(C) No. 6314/2017 in support of his contentions. The learned Senior counsel has further referred to a Judgment of a Division Bench of this Court being Judgment and Order dated 20.02.2018 passed in C. Ex Appeal No. 8/2016. The learned Senior counsel referring to the Judgment submits that a Division Bench of this Court had categorically held that once it is found that the assessee is entitled to refund then denial of a benefit of exemptions and refund on the ground of delay will cause grave injustice which cannot be permitted. The learned Senior counsel referring to the Judgment of the Division Bench submits that this Court had upon consideration of all materials had returned a categorical finding that once it is found that the assessee is eligible for refund then the same cannot be withheld on the ground of

delay as it will cause grave injustice which cannot be permitted. Relying on the Judgment of this Court, the learned Senior counsel submits that in the facts of the present case, the petitioner's entitlement to refund is not questioned as vide the assessment order dated 06.07.2016 and amount of Rs. 17,38,945/-(Rupees Seventeen Lakh Thirty Eight Thousand Nine Hundred Forty Five Only) was held to be refundable. Therefore, the said amount ought to have been refunded by taking into account the explanation furnished by the petitioner explaining the grounds of delay.

7. The learned Sr. Counsel further refers to the Judgment of the Apex Court rendered in ***M/S Shiv Shankar Dal Mills and Others Vs. State of Haryana and Ors.***, reported in ***(1980) 2 SCC 437***. Pressing this Judgment into service, the learned Senior for the petitioner counsel submits that the powers of the constitutional Court bestowed under Article 226 are discretionary in nature and this Court can pass any order to secure justice in terms of public interest and equity. Where a refund is payable to the assessee, the same cannot be withheld or turned down on the negative plea of alternative remedy and the same must be permitted on the basis of the Maxim "*ubi jus ibi remedium*" and on equity. It is submitted that in such cases, the Apex Court held therein that law of limitation is not applicable and any such refund or amount held to be payable to be

assessee should be refunded. It is accordingly submitted that the impugned orders dated 29.08.2019 and 25.02.2021 should be interfered with, set aside and the respondent authorities be directed to forthwith refund the amount of Rs 17,38,945/- held to be refundable vide the assessment order dated 06.07.2016 passed by the respondent No. 4, namely Superintendent of Taxes, Guwahati, Unit A.

8. *Per contra*, Mr. B Gogoi, learned Standing Counsel, Finance (Taxation) disputes the submissions made by the learned Senior counsel for the petitioner. It is submitted by Mr. Gogoi that although the amount has been held to be refundable by assessment order dated 06.07.2016, there is a statutory procedure by which the said refund are required to be released to the concerned assessee like the petitioner. Referring Section 50 read with Rule 29 of the Assam VAT Rules, 2005, it is submitted that refund application has to be submitted in the proper format within the time period prescribed, the same not having been done. There is no infirmity in the orders passed by the respondent No. 4 rejecting the application for refund as well as the order passed by the revisional authority. The learned Standing Counsel referring to the affidavit filed by the Department submits that the prescribed statutory conditions not having been followed by the petitioner, there is no infirmity in the orders which are impugned whereby

the prayer for refund has been rejected. It is submitted that the writ petition merits dismissal as the said statutory provisions are not under challenged and therefore they are binding in nature. The impugned order passed by the respondent authorities are under the powers and procedures laid down under the statute and therefore, there is no infirmity in the orders passed. The learned Standing counsel submits that in view of the fact that there is a statutory mandate in respect of the form and the procedure to be filed by the assessee, the Judgments relied upon by the petitioner are not applicable in the facts of the case.

9. The learned counsels for the parties have been heard. Pleading on record have been carefully perused. The Judgments cited at the bar have also been perused.

10. There is no dispute that vide assessment order dated 06.07.2016 and amount of Rs. 17,38,945/- (Rupees Seventeen Lakh Thirty Eight Thousand Nine Hundred Forty Five Only) has been held to be payable as refund to the petitioner. There is also no dispute that the statute prescribes the procedure which is to be followed by the department in addressing the refunds. Section 50 of the Assam VAT Act reads as under.

Section 50. Refund- (1) Subject to other provisions of this Act and the rules made thereunder, if it is found on the assessment

or re-assessment, as the case may be that a dealer has paid tax, interest or penalty in excess of what is due from him, the Prescribed Authority shall, on the claim being made by the dealer in the prescribed manner and within the prescribed time, refund to such dealer the amount of tax, penalty and interest paid in excess by him;

Provided that, such refund shall be made after adjustment of the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by the dealer on the date of passing of order for such refund.

*(2) * * **

Rules 26 of the Assam VAT Rules, 2005 reads as under.

Rule 29. Refund- *(1)(a) The application for refund as referred to in sub-section (1) of Section 50 shall be made in Form-37 within one hundred and eighty days from the date of assessment or reassessment, as the case may be.*

Provided that an application for refund made after the said period may be admitted by the Prescribed Authority, if he is satisfied that the dealer had sufficient cause for not making the application within the said period.

*(b) * * **

11. It is seen that under the provisions of the Act and the Rules, there is a procedure prescribed and time frame laid down. The assessing officer before whom the application was filed dismissed/rejected the application

vide impugned order dated 29.08.2019 the same order is also extracted below:

"GOVT OF ASSAM

OFFICE OF THE ASSISTANT COMMISSIONER OF TAXES:: Guwahati Unit-A::

No. 1693

Date. 29th August, 2019

To,

N/S Itas G Pharma

M.L.N. Road Panbazar, Ghy-1

Sub:- Refund Application.

Ref: - Your refund application for the period 2011-12 & 2012-13 dated 24/07/2019.

With reference to the above, I would like to inform you that as per provisions of Section 50 of the Assam Value Added Tax Act, 03, read with rule 29 of the Assam Value Added Rules, 05, the application for refund shall have to be made within 180 days from the date of assessment or re-assessment as the case may be. However, it is found that you have failed to do so and as such the case is time barred. Hence your refund petition is rejected.

(D. Mahanta)

*Superintendent of Taxes,
Guwahati, Unit-A"*

12. This order has held that the application has been rejected as the same is not made within 180 days and accordingly the refund application was dismissed.

13. The provisions of the statute read with the Rules thus give power to the authorities to consider such application beyond limitation on such grounds and reasons mentioned as may be applicable. However, in the impugned order dated 29.08.2019 passed by the Superintendent of Taxes, Guwahati, Unit-A, there is no reference to any such grounds or reasons which are stated to have been furnished by the petitioner. It is not the submission of the respondent Department that no such grounds as contended by the petitioner, had been furnished before the Superintendent of Taxes for consideration of the application which was filed beyond limitation, explaining the circumstances under which the delay had occurred. On the contrary the revisional authority namely, Addl. Commissioner of State Taxes vide its impugned order dated 25.02.2021 had considered the grounds and rejected them to be not bona fide and sufficient explanation of the delay.

14. In the opinion of this Court, where the first authority namely the Superintendent of Taxes, Guwahati, Unit-A in his order did not refer to any of the grounds submitted in explaining the delay that had occurred by the

petitioner, perhaps there was no occasion for the revisional authority to consider the grounds and render a finding as to whether the same is sufficient or insufficient. Such power under the Act and the Rules is not bestowed upon the revisional authority. Rather it is the assessing authority who is conferred with the powers to grant or reject refund applications beyond the period prescribed upon such consideration of the grounds and reasons mentioned.

15. In the facts and circumstances of the case, it is seen that there is no denial by the respondent department that grounds and reasons were furnished before the assessing authority. Rather From the impugned order dated 25.02.2021 passed by the Revisional authority, it is seen that certain explanations were furnished by the petitioner explaining the delay that had occurred. As such, it is evident that the assessing authority who was required to consider the explanations furnished explaining the delay that had occurred in filing any application for refund did not consider such grounds as the same is not discernable from the impugned order dated 29.08.2019 passed by the respondent No. 4. Coming to the Judgments referred by the learned Senior counsel for the petitioner, it is seen that in C.Ex. Appeal No. 8/2016 a Division Bench of this Court had categorically held that refunds due to the assessee cannot be denied or rejected on the

ground of limitation. The Apex Court in *M/S Shiv Shankar Dal Mills (Supra)* has also laid down the law succinctly that any amount which is payable back is refund cannot be restrained by the respondent authority on the ground of limitation. Apex Court held that limitation under such cases are not applicable. A similar issue was earlier dealt with by this Court had vide Judgment and Order dated 20.01.2021 passed in W.P(C) No. 6314/2017 and under similar circumstances directed the respondent authority to reconsider the order rejecting the prayer for refund on the ground of limitation.

16. The apex Court in ***N Balakrishnan Vs M. Krishnamurthy***, reported in ***(1998) 7 SCC 123*** had considered the words "sufficient cause". The Apex court held that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules or limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so

suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period time.

17. Condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is not matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should

lean against acceptance of the explanation. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

18. Upon consideration of the facts and circumstances of the case and also the Judgments as discussed above, it is seen that the impugned order dated 29.08.2019 passed by the respondent No. 4 merely rejected the refund application without consideration of the grounds which were urged by the respondent. The Revisional authority on the other hand considered the grounds and held the same to be not applicable or not sufficient and accordingly rejected the revision petition.

19. As discussed above, this Court is of the view that as per the statute it is the assessing authority namely the Superintendent of Taxes, Guwahati, Unit-A, respondent No. 4, who is at the first instance required to consider the grounds furnished by the assessee and render its finding as to whether the same are sufficient explanations for the delay that had occurred. The said authority must also keep in mind that the refund which the petitioner has sought for has already been determined by an adjudicatory process by

way of assessment order dated 06.07.2016 passed by the Superintendent of Taxes. The Department does not deny that refund is payable to the assessee. In view of the law laid down by the Apex Court as well as by a Division Bench of this Court discussed above, it is held that while rejecting applications for refund there must be a decision rendered by the authority prescribed under the Act and the Rules as to the sufficiency of the grounds urged pleading for condonation of delay. The authority prescribed must also consider the right of the assessee for such refunds which are receivable by the assessee pursuant to any adjudicatory proceedings held by the department.

20. This court is of view that this matter should be remanded back to the respondent No. 4 Superintendent of Taxes, Guwahati, Unit-A to re-decide the application of refund together with the grounds urged seeking condonation of delay as the same was not done by the Superintendent of Taxes as is evident from the impugned order dated 29.08.2019 passed by the Superintendent of Taxes. Accordingly, in view of the discussions above, the matter is remanded back to the respondent No. 4, Superintendent of Taxes to re-decide the issue by setting aside the order dated 29.08.2019 passed by the Superintendent of Taxes.

21. In view of the discussions above and the decision arrived at to remand the matter for a fresh decision by the Superintendent of Taxes and the interference with the order dated 29.08.2019 passed by the respondent No. 4, the impugned order dated 25.02.2021 passed by the Addl. Commissioner of Taxes, Assam and the revision petition is also interfered with and set aside. In view of the fact that the prescription under the Act and the Rules for consideration of the grounds urged for delay is primarily vested on the assessing Officer namely the Superintendent of Taxes in the present case and not the revisional authority. The impugned order dated 29.08.2019 and impugned order dated 25.02.2021 are therefore set aside and quashed. Matter is directed above is remanded back to the respondent No. 4 to re-decide the issue within a period of four week from the date of receipt of certified copy of this order.

22. The writ petition is accordingly allowed and disposed of in terms of the above.

JUDGE

Comparing Assistant