IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9480 of 2014

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Lucky Biscuit Company, a partnership firm having its office at Raghunandan Nagar (Near Bankaghat Railway Station), P. O. + P.S. Patna City, District - Patna through its partner Shri. Madhukar Nath Bareria, son of Shri. Dwarka Nath Bareria, P.O. Chowk Patna City, P.S. Jhaauganj, District - Patna.

.... Petitioner

Versus

1. Commissioner, Customs, Central Excise and Service Tax, having its office at Central Revenue Building (Annexe Building), 2nd Floor, Beerchand Patel Path, Patna - 800001.
2. Additional Commissioner, Customs, Central Excise and Service Tax having its office at Central Revenue Building (Annexe Building), 2nd Floor, Beerchand Patel Path, Patna - 800001.
3. Deputy Commissioner of Central Excise & Service Tax, Patna Division - 14, Rukunpura, Bailey Road, Patna - 1.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. D.V.Pathy, Advocate Mr. Abhi Sarkar, Advocate
For the Respondents	:	Mrs. Nivedita Nirvikar, Sr. Standing Counsel

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 30-01-2015 The only grievance of the petitioner is about the inaction or refusal on the part of the respondents herein, to refund the amount that has been recovered in the proceedings, referable to the Service Tax Act.

The petitioner is a manufacturer of biscuits. It incurs transport charges either for importing raw materials, or for exporting the finished goods.

In the context of payment of service tax, the Central Government issued a notification dated 20th of June, 2003, providing for abatement (deduction) to the extent of 75% of the transport charges tax. For the period October, 2007 and March, 2008, the petitioner claimed the benefit of abatement to the extent of Rs.25,13,580/-. The Additional Commissioner, Central Excise & Service Tax, Patna, however, rejected the claim, through order dated 26.4.2010. Corresponding amount is said to have been recovered from the petitioner. The petitioner filed an appeal before the Commissioner (Appeals), Customs & Central Excise, Service Tax, Patna, which was rejected through order dated 19.12.2011. Thereafter, the petitioner carried the matter to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata. The Tribunal allowed the appeal. After receiving the order of the Tribunal, the petitioner submitted an application on 10.2.2014 with a prayer to refund the amount recovered from it.

The grievance of the petitioner is against non-payment of the amount.

Heard Mr. D.V. Pathy, learned counsel for the petitioner and Mrs. Nivedita Nirvikar, learned Senior Standing Counsel appearing for the respondents.

Whenever the authorities of the Central Excise and Service Tax Department deduct the amount, in excess of what is permissible under law, Section 11-B of the Central Excise Act, 1994 itself provides for refund of the same, and in certain cases with interest.

The petitioner has filed an application for refund. It claimed benefit of abatement/deduction on the basis of the notification. By placing his own interpretation, the Assessing Officer rejected the claim and the same was affirmed by the appellate authority. The Tribunal discussed the matter at length and after referring to the notification and discussing the issues involved allowed the appeal, setting aside the proceedings, and directing the respondents to refund the amount.

On instruction, Mrs. Nivedita Nirvikar, learned Senior Standing Counsel for the Central Government submits that non-payment was on account of non-filing the claim in the prescribed form. If the representation was not proper, necessary formalities ought to have been taken for returning it. We do not find any justification on the part of the respondents for non-payment of the amount.

Accordingly, the writ petition is allowed. The respondents are directed to refund the amount covered by order dated 24th February, 2014 passed by the CESTAT, Kolkata with interest, as provided under law, within four weeks from today.

The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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