

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12142 of 2015

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M/s Hebe Ispat at Rashidchak Agamkuan, District Patna through its Partner Sri Ishwar Prasad Goenka Son of Late Bhola Ram Goenka R/o Hira Nand Sah Lane, P.S. Chowk, Patna City, District Patna.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes Department, Government of Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Administration), Patna Division, Patna.
3. The Assistant Commissioner of Commercial Taxes (In-charge), Patna City West Circle, Patna City, District Patna.
4. The Director, Department of Industries, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. P.C. Agrawal, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C.-11 Mr. Srilam Krishna, A.C. to S.C.-11

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-08-2016

Heard learned counsel for the parties.

2. The petitioner seeks sales tax incentives under the Industrial Policy, 1995 and to disburse the amount collected as Sales Tax in the years 2003-04 to 2011-12 as also to pay the said amount with interest accrued thereon.

3. The petitioner is a partnership firm, which established a new small scale industrial unit for the manufacturing of Steel Bars and structures. The petitioner asserts that for the industrial growth in



the State, the State of Bihar issued Industrial Policy for providing incentives and tax benefits under the Sales Tax Laws in the shape of exemption from sales tax for specific period on purchase of raw materials as well as sale of finished goods as per the Industrial Policy, 1995. The unit of the petitioner was registered before the General Manager, District Industries Centre, Patna, Directorate of Industries, Government of Bihar on 29th of August, 2000 and was granted registration certificate by the Assistant Commissioner of Commercial Taxes (In-charge), Patna City West Circle, Patna City. The petitioner commenced commercial production on 10th of March, 2004 and, thus, entitled to exemption from the sales tax for the period of 8 years in terms of Notification Nos. S.O. 478 and 479 dated 22nd of December, 1995, as amended by Notification Nos.57 and 58 on 2nd of March, 2000.

4. The petitioner was served a show cause notice as to why the application for exemption should not be rejected on the ground that the registration from the Industry Department has not been obtained prior to 31st of August, 2000, which was a condition for the grant of benefits under the Industrial policy. The petitioner filed a writ petition before this Court bearing C.W.J.C. No. 15616 of 2004, which was allowed on 13th of January, 2009. The matter was remanded back to the authorities to consider the case of the petitioner

afresh.

5. The stand of the petitioner is that action of the respondents withholding the amount of money of the petitioner, which he is legally entitled to, is causing irreparable loss. In these circumstances, the petitioner invoked the writ jurisdiction of this Court.

6. In the counter affidavit, the stand of the respondents is that the notifications granting exemption from the sales tax stands withdrawn when Bihar Value Added Tax Act, 2005 (hereinafter referred to as “ the VAT Act”) came into force with effect from 1st of April, 2005. Instead of exemption, the deferment was provided in terms of Section 96 read with section 57 of the Bihar Value Added Tax Act, 2005, and that the petitioner has not satisfied the pre-conditions for availing the exemption from the sales tax, even when such policy was in force.

7. Learned counsel for the petitioner vehemently argued that the petitioner has set up the unit on the strength of the representations made in the Industrial Policy, 1995 and thus keeping in view the principle of promissory estoppel, the respondents cannot be permitted to withdraw the benefit of exemption even after enactment of the VAT Act. The reliance is placed upon Mahabir Vegetable Oils (P) Ltd. Vs. State of Haryana and others, (2006) 3

SCC 620, S.V.A. Steel Re-Rolling Mills Limited and others Vs. State of Kerala and others, (2014) 4 SCC 186, Devi Multiplex and another Vs. State of Gujarat and others, (2015) 9 SCC 132 and Manuelsons Hotels Private Limited Vs. State of Kerala and others, (2016) 6 SCC 766.

8. On the other hand, the learned counsel for the respondents refers to the Supreme Court's order reported in Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, (1992) 2 SCC 411 and Mafatlal Industries Ltd. and others Vs. Union of India and others, (1997) 5 SCC 536 to contend that the petitioner has collected the amount of sales tax from the customers, therefore, any benefit of exemption would amount to undue enrichment, which is not permissible.

9. A perusal of the writ application shows that the show cause notice as to why the registration be not declined was issued on 13th of May, 2004. The same was withdrawn on 21st of August, 2004. Though the order was set aside on 13th of January, 2009 but it was with a direction to re-consider the case of the petitioner afresh. In the meantime, the VAT Act came into force with effect from 1st of April, 2005. It does not provide grant of exemption but instead provides for deferment of tax, if it is opted for.

10. The judgments referred to by learned counsel for the



petitioner applied the principle of promissory estoppel when the State Government have sought to modify the policies of granting exemption either from payment of the electricity dues or from payment of the sales tax, but none of the judgments deals with the situation where the provision for exemption has been nullified by a statute such as in the present case when VAT Act has been enacted with effect from 1st of April, 2005. The argument raised by learned counsel for the petitioner that exemption can be withdrawn if it is in public interest does not merit acceptance as enactment of law by special legislature presupposes that it is in public interest. The principle of promissory estoppel cannot be extended against law. Once the VAT Act does not prescribe for exemption, therefore, the principle of promissory estoppel cannot be extended to claim exemption for the purpose of raw material as well as for the sale of finished goods. Such judgments are not applicable to the facts of the present case. The promissory estoppel is a doctrine in equity and does not operate against law.

11. The argument of learned counsel for the respondents is that registration of the petitioner was cancelled and that the petitioner has collected the sales tax prior to commencement of VAT Act with effect from 1st of April, 2005 and thus any refund of the said amount will amount to undue enrichment. We find merit in the said argument. It is not the case set up by the petitioner that he has not

collected the amount of sales tax from the consumers. In the case of indirect taxation, the burden is presumed to have passed on the consumers. Therefore, refund of such benefit to a firm will be an act of undue enrichment. In Mafatlal's case (supra) the Supreme Court held to the following effect:

“108. xxxx xxxx xxxx

(iii) A claim for refund, whether made under the provisions of the Act as contemplated in Proposition (i) above or in a suit or writ petition in the situations contemplated by Proposition (ii) above, can succeed only if the petitioner/plaintiff alleges and establishes that he has not passed on the burden of duty to another person/other persons. His refund claim shall be allowed/decreed only when he establishes that he has not passed on the burden of the duty or to the extent he has not so passed on, as the case may be. Whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the above requirement, as explained in the body of the judgment. Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State, i.e., by the people. There is no immorality or impropriety involved in such a proposition.

The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends. In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The

power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched.”

12. In view of the aforesaid judgment, we do not find any merit in the present writ application, as the petitioner cannot claim benefit of principles of promissory estoppel consequent to enactment of VAT Act and also for the reason that any refund of the indirect taxation i.e. the amount of sales tax will amount to undue enrichment.

13. In view thereof, we do not find any merit in the writ application. The same is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Narendra/-

AFR/NAFR	NAFR
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