THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION NO.63 OF 2017

O R D E R

(*Per Hon'ble Sri Justice Sanjay Kumar*)

The Nizam Sugars Limited filed this writ petition assailing the inaction of the Income Tax authorities in granting refund of the tax paid in excess by it for the assessment year 1990-91. The said excess amount along with accrued interest would be in the range of nearly Rs.5.00 crore. It appears that the Deputy Commissioner of Income Tax, Circle-2(3), Hyderabad, prepared the refund order as long back as on 15.04.2013 quantifying the total amount refundable, being the excess tax paid along with interest thereon, at Rs.5,63,62,100/-. The refund however remained on paper constraining the petitioner company to file W.P.No.36220 of 2015 before this Court. By order dated 25.01.2016, this Court disposed of the writ petition directing the Deputy Commissioner of Income Tax, Circle-2(3), Hyderabad, to verify the tax credits and refund the amount due in terms of the refund order dated 15.04.2013 at the earliest and in any event, not later than two months from the date of receipt of a copy of the said order. Pursuant to the said order, the Income Tax authorities addressed letter dated 31.03.2016 to the petitioner company, wherein it was observed that from the earlier correspondence made with the department, some of the challans evidencing payment of the demand were submitted in original to the department and the details of payment and submission of original/copy of challans were reproduced in the form of a table as under:

Sl. No.	Date of payment	Amount in Rs.	Original / copy of challans submitted to the department.
1	**15.3.1994**	**3500000**	**Copy of challan**
2	**29.07.1994**	**1500000**	**Copy of challan**
3	**30.08.1994**	**1500000**	**Copy of challan**
	Sub – total	**6500000**	
4	28.09.1994	1500000	Copy of challan
5	31.10.1994	1500000	Copy of challan
6	29.11.1994	1500000	Copy of challan
7	30.12.1994	1500000	Original challan
8	31.01.1995	1500000	Original challan
9	28.02.1995	1500000	Original challan
10	31.03.1995	1500000	Original challan
11	28.04.1995	1500000	Original challan
12	31.05.1995	1500000	Original challan
13	30.06.1995	1500000	Original challan
	Total amount	21500000	

However, it was observed thereafter that on verification, only original challans mentioned at Serial Nos.1 to 3 were available in relation to the amount of Rs.65,00,000/- paid by the petitioner company, and accordingly, on 02.12.2015 the refund pertaining to this amount along with interest, totaling to Rs.1,14,93,500/-, had been remitted to the petitioner company. The Assistant Commissioner of Income Tax, Circle-2(2), Hyderabad, the signatory to this letter, therefore stated that the challans mentioned at Serial Nos.4 to 13 were not available and the original challans in respect of the said payments should be furnished so as to process the rest of the claim.

The petitioner company responded under letter dated 11.04.2016 informing the Income Tax authorities that the original challans had already been furnished to the department along with covering letters as soon as payment was made and only photocopies of such challans and acknowledgement letters were available with it. The petitioner further stated that the Income Tax authorities should be having two counterfoils of the challan, one supplied by the bank and the other by it. The petitioner pointed out that in the event the amount had not been paid, it should have been reflected in the arrear demand and collection register of the department and further pointed out that no notice for payment of demand had ever been issued. The petitioner company however furnished all the evidence available with it stating that the original challans could not be produced again.

It appears that the petitioner company was thereafter asked by the Income Tax department to furnish an indemnity bond on judicial stamp paper. However, being dissatisfied with the bond submitted by the petitioner company, the Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad, addressed letter dated 09.09.2016 to the petitioner company requesting it to submit a fresh indemnity bond on judicial stamp paper in terms of what was indicated by him therein. The petitioner company complied with this demand also but notwithstanding the same, the Income Tax authorities failed to process the refund still outstanding, constraining the petitioner to move this Court once again by way of this writ petition.

The Deputy Commissioner of Income Tax, Circle-2(2), Hyderabad, filed a counter-affidavit, wherein he stated that in the absence of the original challans in proof of the tax paid, the Income Tax authorities insisted upon production of the petitioner company's bank account statement in proof of the tax credits made from such account so as to verify its claim. In so far as the indemnity issue is concerned, he stated that he had never assured the petitioner company that the refund would be issued based on such indemnity bond and that he had only asked for it by way of abundant caution. He stated that such a bond could not replace verifiable proof as to payment which was required to be furnished for the purpose of permitting the refund. He concluded by stating that he was unable to process the petitioner company's claim due to non-availability of original challans or other verifiable proof of payment of tax.

In its reply, the petitioner company stated that all the original challans issued by the bank had already been submitted to the Income Tax department when payments were made. As regards the bank account statements insisted upon by the Income Tax authorities, the petitioner company stated that it was unable to produce the same as such statements dated back to the years 1994 and 1995 and were not available with the banker itself. The petitioner company therefore sought a direction to the Income Tax authorities to refund the balance amount still due in terms of the refund order dated 15.04.2013.

Perusal of the letter issued by the Assistant Commissioner of Income Tax, Circle-2(2), Hyderabad, on 31.03.2016, after the order dated 25.01.2016 was passed by this Court in W.P.No.36220 of 2015, reflects that he acknowledged thereunder that as per the assessment record, original challans in relation to the payments made from Serial Nos.4 to 13 in the table extracted *supra* were submitted by the petitioner company. Having stated so, it is no longer open to the Income Tax department to claim that it does not have the original challans and insist upon production of the original challans by the petitioner company. Perusal of the photocopies of the challans filed by the petitioner company in this writ petition reflects that the same bear the stamp of the bank and the covering letters addressed by the petitioner company to the Income Tax authority bear the stamp of the said authority in proof of acknowledgement. If the factum of payment claimed by the petitioner company under such covering letters was incorrect, the authorities who affixed their stamp of acknowledgement would have taken measures at that stage itself. The very fact that no such action was initiated at that time speaks in favour of the petitioner. It is also to be kept in mind that the petitioner company is a Government company and the Income Tax authorities are not at liberty to attribute any malafides or wrong intent to it in relying upon such record.

Be it viewed from any angle, we find no merit in the continued obstinacy shown by the Income Tax department in refunding the amounts lawfully and rightfully due to the petitioner company. Despite the time frame fixed by this Court in the earlier order passed as long back as on 25.01.2016, the petitioner company is still awaiting its dues.

The writ petition is accordingly allowed. There shall be a direction to the respondents to forthwith process the refund due and payable to the petitioner in terms of the earlier order dated 15.04.2013 and remit the balance amount payable thereunder along with interest accrued up to the date of payment within two months from today. It shall be open to the Income Tax authorities to seek a fresh indemnity bond from the petitioner company in the prescribed format for the amount which would be refunded now pursuant to this order. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

19th JULY, 2017

Note: Issue C.C. by 24.07.2017.
B/o Svv