IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8055 of 2019

Godrej and Boyce Mfg. Co. Ltd. having registered under the Companies Act 1956, through authorized signatory, Prem Prakash, Male aged about 43 years, son of Sri Suraj Sao, registered business premises situated at 6th Floor, Grand Plaza, Frazer Road, P.S.- Kotwali, District- Patna-800001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary cum Commissioner of State Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Additional Commissioner of State Tax (Administration), Central Division, Patna.
3. Deputy Commissioner of State Tax Patliputra Circle, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 9047 of 2019

Godrej and Boyce Mfg. Co. Ltd. having registered under the Companies Act 1956, through authorized signatory, Prem Prakash, Male, aged about 43 years, son of Sri Suraj Sao, registered business premises situated at 6th Floor, Grand Plaza, Frazer Road, P.S.- Kotwali, District- Patna-800001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of State Taxes, Bihar, Patna having its office at Vikash Bhawan, Baily Road, Patna.
2. Additional Commissioner of State Tax (Administration) Central Division, Patna.
3. Deputy Commissioner of State Tax, Patliputra Circle, Patna.

... ... Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 8055 of 2019)

For the Petitioner/s : Mr. Prabhash Ranjan Thakur, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 9047 of 2019)

For the Petitioner/s : Mr. Prabhash Ranjan Thakur, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 03-07-2019

Heard Mr. Prabhash Ranjan Thakur, learned counsel appearing for the petitioner in the two writ petitions and Mr. Vikash Kumar, learned Standing Counsel No.11 for the State.

The two writ petitions relate to the same petitioner and even the cause of action is the same inasmuch as the refund applications for the financial year 2001-02 and 2002-03 respectively filed on 18.01.2008 has been rejected as time barred.

We note from the pleadings on record that even when a demand showing surplus deposit was issued on 18.01.2008 in each of the cases, the petitioner filed refund applications on 26.06.2015 in each of the two cases and which has obviously been rejected because the proviso attached to section 42 of the Bihar Finance Act, 1981 (hereinafter referred to as 'the Act') allowed no refund of surplus tax unless it was made within 3 years from the date of service on the dealer, a notice of such excess deposit.

In so far as the present case is concerned, as we have noted, the notice of excess deposit was issued in each of the two cases on 18.01.2008 vide Annexure 2 and the petitioner having slept over his right to seek refund in terms of the proviso to section 42 of 'the Act' chose to represent only on 26.06.2015 which has been rejected by order dated 11.06.2016 passed by the statutory authority, a copy of which is impugned at Annexure 3 to CWJC No.8055 of 2019.

The statutory position that the claim was time barred is not in dispute rather we allowed the State to intimate whether or not even if the petitioner was not entitled to refund, he could seek adjustment of the said deposit against his tax liability that the matter was adjourned and when taken up today Mr. Vikash Kumar, learned Standing Counsel No.11 invites our attention to the provisions of rule 34(2) (c) of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as 'the Rules') to submit that, be it a case of refund or a case of adjustment, the option lies on the petitioner but the time for exercising option is fixed. It is submitted that in case the assessee seeks a refund in cash, an order to such effect is to be passed by the statutory authority in Form XXII while a claim for adjustment is to be passed in Form XXIA. Proceeding herefrom it is submitted by Mr. Vikash Kumar, learned Standing Counsel No.11 that such option can only be exercised in tune with the time limit provided in the proviso attached to section 42 of 'the Act' and not beyond that.

Mr. Thakur, learned counsel appearing for the petitioner in the two writ petitions attempts to contest the position by relying upon a judgment of the Supreme Court reported in **(1974) 3 SCC 251 (State of Mysore vs. Mallick Hashim & Co.)** and in reference to the opinion at paragraph 5 he submits that a lawful entitlement cannot be denied. We completely agree with the submission advanced by Mr. Thakur that a lawful claim certainly cannot be denied provided the claim is lawful.

In so far as the present case is concerned, the refund claim became time barred on expiry of 3 years of service of notice of surplus deposit and which was issued on 18.01.2008. The judgment relied upon by Mr. Thakur, learned counsel appearing for the petitioner is in a different context inasmuch as in the said case the statutory rules were framed beyond the rule making power available in 'the Act' and it is bearing note of such position that the bar to refund was struck down by the High Court and which opinion was affirmed by the Supreme Court.

The case in hand is on a different pedestal for here the substantive provisions of section 42 of 'the Act' itself debars a claim on expiry of 3 years of notice showing surplus and it is not that such power was usurped by the State under the rule making power. The reliance on the judgment of the Supreme Court is thus misplaced and for the reasons and discussions that we have made hereinabove we find absolutely no infirmity in the action complained of.

The writ petitions are accordingly dismissed.

(Jyoti Saran, J)

(Partha Sarthy, J)

skpathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.07.2019
Transmission Date	NA