IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4777 of 2021

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M/s Cadbury India Ltd. (now known as Mondelez India Food Pvt. Ltd.) an existing company incorporated under the Companies Act having its branch office at Khata No. 1822, P.O. and P.S.- Didarganj, Patna, through Anil Kumar, Analyst Accounting Tax, East Branch, resident of S/o Shri Gajanand, Khalini, P.S.- Shimla Urban (T), District- Shimla, Himachal Pradesh- 171002.

... ... Petitioner/s

Versus

1. The State of Bihar through Principle Secretary cum Commissioner of Commercial Taxes, Vikas Bhawan, Patna, Bihar.
2. The Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna.
3. The Joint Commissioner of Commercial Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumr Vikash, Advocate
Mr. Anuj Kumar, Advocate

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

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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Date : 25-01-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

"1. (i) To direct the Respondent authorities to consider the case of the Petitioner Company and to extent to them the benefit of the Bihar Settlement of Taxation Disputes Ordinance, 2020 (Settlement Scheme, 2020), for settlement of its tax litigation for Assessment Years 2010-11 to 2013-14, which by Notification No. S.O. 166 dated 21.09.2020 has been extended till 21.03.2021;

(ii) To further direct the Respondent authorities to forthwith refund along with application interest, the entire amount of Rs. 4,22,13,347/- allegedly due from the Petitioner for the Assessment Years 2010-11 to 2013-14, and coercively recovered through Demand Drafts No. 322900, 322901, 322902 and 322903 dated 12.03.2020 from the Petitioner’s Bank Account No. 0679563000 at Duetsche Bank, Dr. D.N. Road, Fort, Mumbai, pursuant to the Attachment Notice No. 1059 dated 03.03.2020 issued by the Respondent No. 3 since the statutory appeal and stay application against the orders of Respondent No. 3 is pending adjudication before the competent Tribunal i.e. Commercial Tax Tribunal, Bihar (hereinafter referred to as ‘Tribunal’).

B. For grant any other relief/s which the Petitioner is found entitled to in course of hearing of the present petition.”

Learned counsel for the petitioner prays that petitioner does not press Prayer No. (i).

In so far as Prayer No. (ii) is concerned, we notice that with respect to Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14 petitioner has already preferred appeal [Case No. PT No. 125/2019, 126/2019, 127/2019 and 128/2019], which is pending consideration before the Commercial Taxes Tribunal, Bihar. We also notice that in one such appeal pertaining to the year 2013-14, petitioner had moved an appropriate application seeking stay of the operation of the impugned demand raised by the Revenue, subject matter of the said appeal [Appeal Case No. PT-128/19], in which on 23rd of October, 2019 (Annexure-5 series), the Tribunal had passed an order directing the petitioner to deposit 50 per cent of the impugned demand within a specified period. The order was to be complied with on or before 7th of February, 2020.

Undisputedly, the petitioner did not comply with the said order. Resultantly, the Revenue proceeded to recover the amount towards payment of VAT assessed to be payable by the petitioner and the total sum with respect to all the four accounting years being ₹4,22,13,347/-.

In a tabular form, the dues found be payable by the petitioner are indicated as under:-

FY	Net Demand	Payment Made (Rs.)	% Payment made against Disputed amount	Dues (Rs.)
2010-11	3,28,57,198	1,28,57,198	39%	2,00,00,000
2011-12	2,41,29,004	1,08,58,057	45%	1,32,70,947
2012-13	1,52,86,876	68,79,094	45%	84,07,782
2013-14	9,72,033	4,37,415	45%	5,34,618
	7,32,45,111			4,22,13,347

The said amount was recovered from the petitioner's bank account held with Deustche Bank, Dr. D.N. Road, Fort, Mumbai- 400001.

It is not disputed that with respect to the other three years i.e. 2010-11, 2011-12 and 2012-13 petitioner's application for interim stay is pending consideration before the Tribunal. However, the reason for its pendency before the Tribunal, is not clear.

The petitioner's prayer for refund of the amount recovered in excess of 50% of the amount cannot be granted by this Court. The total amount recovered is not in excess of the total demand impugned in the Appeals pending before the Tribunal. Rather than filing the instant petition, petitioner ought to have pursued pending application for grant of interim relief and release of the amount recovered, if found by the Tribunal to be in excess of the orders which may be passed therein.

Be that as it may, it is always open for the petitioner to move the Tribunal for expeditious disposal of the application for grant of interim stay. Should the Tribunal arrive at a conclusion that the amount to be deposited is less than the amount recovered by the Revenue, it is always open for the petitioner to seek reimbursement thereof in accordance with law.

At this stage, Shri Kumar Vikash, learned counsel for the petitioner prays that a direction can be issued to the Tribunal to decide the appeals on merits itself.

Well, we are inclined to agree with such submission and more so in view of the fact that the matter pertains to the year 2010-11 onwards, and that the appeals are pending consideration since the year 2019 onwards.

As such, we dispose of the present petition, inter alia in the following terms:-

(a) Parties are directed to appear before the Appellate Authority on 7th of February, 2022 at 10:30 A.M., if possible, through digital mode;

(b) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(c) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take any unnecessary adjournment;

(d) The Appellate Authority shall positively decide the appeals on merits expeditiously, preferably within a period of two months from the date of appearance of the parties;

(e) A copy of the reasoned and speaking order passed by the Appellate Authority shall be supplied to the parties;

(f) Hearing shall be after complying with the principles of natural justice and giving adequate opportunity of hearing, including placing all the relevant materials on record;

(g) In the event of the Tribunal setting aside the order impugned in the respective appeals, petitioner shall be immediately entitled for refund of the amount in accordance with law;

(h) Liberty reserved to the parties to challenge the order, if required and desired, in accordance with law;

(i) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law, should the need so arise with the matter being adjudicated by the Tribunal;

(j) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(k) We have not expressed any opinion on merits and all issues are left open;

(l) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	27.01.2022
Transmission Date	