IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9278 of 2021

SAJ Food Products Pvt. Ltd. a registered company having its registered office at Purna Bhaban, 5/1, Acharya Jagdish Chandra Bose Road, Kolkata- 700020 through its authorised representative namely Md. Roshan Afrozuddin Sabir male aged about 36 years son of Md. Sabir Hussain resident of Dr. Siddique Lane, Kanhauli Naka Road, P.S. Town, Musahri, Ramna, Muzaffarpur-842002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Department of State Taxes, New Secretariat, Bailey Road, Patna.
2. The Secretary cum Commissioner, Department of State Taxes, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of State Taxes, Special Circle, Patna.
4. The Deputy Commissioner of State Taxes, Special Circle, Patna.
5. The Union of India New Delhi.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent Nos.1 to 4	:	Mr. Vikash Kumar, SC-11
For the Respondent No.5	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST & CX

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-08-2023

The petitioner, an assessee, under the Bihar Value Added Tax Act, 2005 (for brevity, 'VAT Act'); asserts an entitlement to refund of excess tax paid and eligibility to settle tax dues under a scheme formulated by the State, in a later year. The petitioner is before this Court alleging that the adjustment of the refund would have satisfied the demand under the

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settlement scheme.

2. The petitioner is concerned with the Bihar Settlement of Taxation Disputes (Second) Rules, 2020 (for brevity, 'the Rules of 2020') under which it applied for settlement of the disputes pertaining to the financial year 2016-17. The petitioner also seeks adjustment of the amounts liable to be refunded in the prior years, coming to Rs.27,02,098/- to be credited against the amounts required for settlement of the dues of 2016-17.

3. The petitioner is engaged in the manufacturing and marketing of bakery items, is registered under the Special Circle, Patna and sells its products under a brand name. For the financial year 2014-15, under the Value Added Tax Act, a demand of Rs.66,37,305/- was raised against the petitioner in which, on an appeal filed, 35% of the disputed amount coming to Rs.23,23,057/- was directed to be deposited. The deposit was made and finally the appeal resulted in a remand to the Assessing Authority. A fresh order was passed wherein the tax determined was substantially reduced and the petitioner had an entitlement to refund. The petitioner hence made an application for refund of the excess amounts and also sought credit of such amounts to the dues of the financial year 2016-17.

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4. The refund application was not processed and on 01.07.2017, the VAT regime came to an end and Goods and Services Tax regime commenced; but with sufficient authority in the new enactment to proceed and complete the proceedings under the earlier enactment, by a sunset clause. On 17.03.2018, a notice was issued under Section 31 of the VAT Act in relation to the financial year 2016-17, under the VAT regime, when the petitioner again demanded the excess amounts paid, to be adjusted for the said assessment year. On 01.01.2019, the petitioner filed an application for refund of Rs.27,02,098/- and while the same was pending, an inspection was conducted and the petitioner was called upon to explain a dispute raised on classification of the goods and the correct rate of tax applicable. An order of assessment was passed on 22.01.2019 discarding the objection of the petitioner which is produced as Annexure-4; for the assessment year 2016-17.

5. The petitioner challenged the assessment order in CWJC No.4007 of 2019 and in the meanwhile, the Bihar Settlement of Taxation Disputes Ordinance 2020 (for brevity, 'the Ordinance of 2020') and Bihar Settlement of Taxation Disputes (Second) Rules, 2020 (for brevity 'the Rules of 2020') produced as Annexure-5 and Annexure-5/A, respectively, were

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promulgated. The petitioner hence withdrew the writ petition and availed the opportunity of settlement under the Ordinance of 2020 read with the Rules of 2020.

6. The petitioner filed an application in Form I dated 28.02.2021 produced as Annexure-7, in response to which a memo was issued by the 3rd respondent, Assessing Officer, dated 01.03.2021, asking him to remove the defects in the application (Annexure-8). A written submission was made to the said memo, online, on 04.03.2021, specifically pointing out that the expression, 'dispute' as per the Ordinance of 2020 implied the subject matter of controversy between the petitioner and the respondent Department. It does not mean each and every demand raised with respect to a particular dispute; to be treated as a separate dispute, was the argument. It is the petitioner's contention that the liability of tax, interest and penalty are different demands raised under different heads, but they cannot be understood to mean three separate disputes. The dispute, according to the petitioner was of classification of goods and the rate of tax applicable. The contrary stance taken by the Department as against the classification and rate of tax disclosed by the petitioner was the dispute raised, to settle which the petitioner had made an application. Reliance was also placed on

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Annexure-9 Judgment of this Court in ***CWJC No.7528 of 2017 titled Mehrotra Engineering Works Private Limited v. The State of Bihar; decided on 18.08.2017.***

7. Sri Gautam Kumar Kejriwal, the learned Advocate appearing for the petitioner, argued that there were excess amounts with the Department, which could easily have been adjusted for the settlement of the tax dues under the scheme, for the demand in the year 206-17. Even when the application was filed for settlement under the Ordinance of 2020, the amounts to be refunded were not repaid and if that were adjusted, a proper settlement could have been made. Further, it is contended that the Department could not have raised a defect as against the application filed by the petitioner since the dispute was one and the same and it transpired that; tax, interest and penalty was levied by the Department, which arises from the very same dispute. The learned counsel seeks consideration of the settlement by way of refund; even now, when the period of settlement is over, since the default was on the part of the Department.

8. Learned Government Advocate Sri Vikash Kumar relied on the counter affidavit filed. It is stated that the re-assessment order under the Act for the period 2016-17 was

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passed on 22.01.2019 under Section 31(1) of the VAT Act based on the findings and an inspection report dated 03.01.2019. The total tax assessed came to Rs.33,37,704.15 and the interest levied was Rs.11,01,442.36. The excess amounts remaining in the credit of the assessee/petitioner was adjusted and the demand notice was issued for Rs.17,37,048.51 evidenced at Annexure-4. Later, a separate order dated 30.01.2019 was passed under Section 31(2) of the VAT Act imposing a penalty of Rs.100,13,112.00 for which a separate demand notice was also issued. Hence the refund due to the petitioner already stood adjusted in the tax dues of the petitioner for the assessment year 2016-17 as is evident from the assessment order and the demand made as per Annexure-4 series.

9. The petitioner filed an application dated 28.02.2021 in Form-I for settlement of dispute under the Ordinance of 2020 for a total amount of Rs.144,52,258.51 for the period 2016-17. The disputed amount of assessed tax, interest and penalty, shown in the application were respectively Rs.33,37,704.15, Rs.11,01,442.35, and Rs.100,13,112.00. As per the Ordinance of 2020, 35% of the assessed tax and 10% each of the interest and penalty were to be paid which came to a total Rs.22,79,652.00. The petitioner filed a claim for the entire disputed claim in a

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single Form-I under the provisions of the Ordinance of 2020, which is alleged to be contrary to Rule 3(2) of the Rules of 2020. The respondent no.3 has issued a deficiency memo which is produced as Annexure-7 for rectification of deficiency which the petitioner failed to comply with. There is no scope for any settlement at this stage is the contention of the learned Government Advocate.

10. We have looked at the Ordinance of 2020 which defines “tax” as the amounts of tax payable by an assessee pursuant to the order of assessment or re-assessment or scrutiny or any other order made or passed under the law or penalty, interest and fine that is imposed/payable by the assessee under any provision of the law. The word “dispute” has been defined as any proceeding, by way of an appeal, revision, miscellaneous revision and so on and so forth, in respect of any levy of tax, interest, fine and penalty. The disputed amount also is stated to be in relation to a dispute on any tax, interest, fine or penalty determined and payable by the party. The Ordinance of 2020 was to come into effect on the date notified in the official gazette by the Commissioner of State Tax and was to remain in force for a period of six months from the said date.

11. The Rules of 2020, in pursuance of Ordinance of

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2020, was notified on 21.09.2020 wherein Form-I was prescribed, as that to be filed, as an application for settlement. Rule 3(2) required separate applications in Form-I to be furnished for every dispute along with copy of annual return or all applicable quarterly returns for the period in dispute.

12. The settlement scheme itself ended on 20.03.2021. The deficiency memo was issued by the Department on 01.03.2021 within the period provided; but the defect noticed was not cured. Admittedly, the petitioner applied for settlement with respect to tax, interest and penalty by one application. Even if tax and interest could have been applied for settlement, with one single application, penalty is a distinct dispute which would have to be sought for settlement separately. An order imposing tax and penalty are distinct orders which are appealable by two proceedings and hence are two disputes, even as per the Ordinance of 2020 and the Rules of 2020.

13. Further Chapter II of the Ordinance of 2020, by Section 3 provides for '*Settlement of Disputes'*. The Table provided therein categorizes disputes relating to: (i) arrear of tax for failure to furnish or produce statutory certificates or declarations, (ii) any other tax & (iii) dispute arising out of penalty, fine or interest; as three separate disputes, with different

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percentage of the dues to be paid for settlement. The Table under the Rules of 2020 also provides for separate authorities before whom application for settlement have to be filed. Insofar as the petitioner's case for the year 2016-17, for settlement of tax, interest and penalty, the dispute falls under Sl. No.1 in the Table under the Rules of 2020, to be filed before the Head of Office where the order under dispute is passed. But the Ordinance of 2020 read with Rule 3(2) of the Rules of 2020, requires separate applications to be filed, which the petitioner did not comply with.

14. First and foremost, before the Settlement Scheme came to be enforced the refund due to the assessee/petitioner was adjusted in the dues of 2016-17 as is seen from the demand raised in Annexure-4 series. ***Modern Hotel v. Commissioner of Excise (2016) 15 SCC 620*** held that the amounts paid up against the dues of a prior year, for renewal of an abkari license, was held to be not entitled to be refunded, based on a settlement of the remaining dues of that prior year, being effected in a subsequent amnesty (settlement) scheme. Then, the petitioners application was defective and despite an opportunity given a proper application was not filed. ***State of Rajasthan v. Khangar Singh (2015) 1 SCC 163*** declared the High Court to be not

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entitled to extend the benefit of the scheme beyond its expiry, when the respondent has not applied within the time provided.

15. In the instant case the refund entitled to the petitioner/assessee was adjusted to the dues of 2016-17, even prior to the Settlement Ordinance and the Rules of 2020. The petitioner applied for the Settlement Scheme with a defective application. In fact, it was defective for two reasons; one, as the Department argues, there should have been separate applications, one for the tax & interest and another for the penalty imposed. Then, the dues applied for settlement was the total demand for the year, without the adjustment of the refunded amounts. The assessee could have applied only for settlement of the balance arrears pending after the adjustment of the amounts refunded. Both the decisions of the Hon'ble Supreme Court, cited in the paragraph above, squarely apply in the instant case to deny the assessee the relief prayed for.

16. ***Mehrotra Engineering Works Private Limited (supra)*** was a case in which the assesses filed an application within time under a Settlement Scheme and also deposited the amounts demanded under the Scheme; but the benefit was denied for not providing proof of satisfaction of dues and withdrawal of the cases filed against the demand raised, before

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the expiry of the Scheme; which was held to be at worst a technical breach. In the present case the breach is not technical and possible of correction.

17. We find the assessee/petitioner to have no valid contentions in the writ petition and the same stands dismissed, without any order as to costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

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CAV DATE	
Uploading Date	18.08.2023
Transmission Date	

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