

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7619 of 2023

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Progressive Constructions Limited a Private Limited Company incorporated under the Companies Act, 1956 having its office at Nariyar, Muzaffarpur, Bihar 851112 through its authorized signatory Adari Doctor Venkata Satya Narayana Raju, (Male, aged about 53 Years) son of Late Adari Sanyasi Naidu residing at 57-4-39, Durga Nagar, Kancharapalem, Ward No. 36, Visakhapatnam, Andhra Pradesh - 530008.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Joint Commissioner of State Tax, West Circle, Muzaffarpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy, Advocate
Mr. Hiresh Karan, Advocate
Mr. Sadashiv Tiwari, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2023

The petitioner is aggrieved with the order passed on a refund application which is produced as Annexure-3. Annexure-3 order says that the Tribunal order which led to the application for refund is proposed to be challenged by the Department before the



High Court and hence, there is no finality insofar as the issue agitated before the Tribunal. The Officer entrusted with the statutory authority to consider refund applications has dismissed the refund application leaving liberty to the petitioner/assessee to approach the authority after the matter is settled.

2. We have to notice that the appellate order is dated 28.07.2022 as produced by the petitioner in the writ petition as Annexure-1. Even as on today, there is no appeal filed from the said order.

3. We heard Shri D.V. Pathy, learned counsel for the petitioner and Shri Vikash Kumar, learned counsel for the respondents. Learned Government Advocate would contend that the Commissioner has agreed to the proposal of filing an appeal from the order of the Tribunal and the appeal would be filed within one or two days. The learned Government Advocate points out that even otherwise the appellant has been left the remedy to file a fresh refund application after the issue is decided by the High Court.

4. We first looked at Section 79 which provides for an appeal before the High Court, which appeal would be maintainable only if the High Court is satisfied that there is a substantial question of law arising in the case. The limitation for filing an appeal under Section 79 is 90 days from the date of communication of the order, to the dealer or the Commissioner. It is trite that by operation of the Limitation Act, a delayed appeal would be maintainable before the



High Court, again, if the High Court is satisfied of the grounds stated, as explanation for the delay caused and for its condonation. Insofar as limitation is concerned, the 90 days prescribed in Section 79 expired on 27.10.2022 and we reiterate that even now an appeal has not been filed. At the time when the impugned order was passed i.e., on 06.04.2023, the period for filing the appeal had long expired and there was not even a delayed appeal filed before the High Court.

5. In this context, we also looked at the provisions for refund as available in Chapter XI; Sections 68 to 71. Section 68(1) empowers the prescribed authority to refund any amount of tax, penalty and interest paid by an assessee in excess of the amount due from him, subject to the other provisions of the Act and the Rules made thereunder. Section 69 is the provisional refund, which we are not concerned with. Section 70 speaks of interest on delayed refund and sub-section (1) mandates that if the amount required to be refunded by the prescribed authority, to any person, is not refunded within 90 days of the amount having become refundable, the prescribed authority shall pay simple interest at the rate of six per cent per annum from the date immediately following the expiry of the period of 90 days; if the amounts are thus not refunded to him or the application for refund is not rejected. The proviso to Section 70(1) also requires the refund to be made, pursuant to the order of the Tribunal, High Court or the Supreme Court, with interest under sub-section (1) from the date immediately following the expiry of the



period of 90 days from the date on which the order of the Tribunal, High Court or Supreme Court is received by the Officer, whose order forms the subject matter of the proceeding before the higher authority. Sub-Section (2) of Section 70 also mandates that if the delay in granting the refund is attributable to the person who seeks such refund, then that period shall be excluded for the purpose of computing interest. Hence, in effect what the impugned order achieves, by its rejection, is that the petitioner is disabled from claiming any interest until the matter is disposed of by the High Court and a fresh application for refund is filed before the authority. In fact, if the refund application was allowed and the High Court reverses the order of the Tribunal, then there would be interest mulcted on the petitioner as provided in the statute, from the date of refund till its repayment; which is a statutory obligation.

6. In the case of orders challenged in the superior courts, there is a specific provision under Section 71 empowering the authority considering the refund to withhold such refund and keep it in abeyance. Section 71 specifically provides that when an order giving rise to a refund is the subject matter of an appeal or further proceeding, then the authority competent to grant such refund, if of the opinion that the disbursal of refund amounts would adversely affect the interest of Revenue, then with the previous approval of the Commissioner, the refund can be withheld till such time as it deems fit. The Commissioner by a proviso, has also been given the



discretion to permit the refund if the situation does not warrant withholding of such refund. The order of the Commissioner as argued by the learned Government Advocate agreeing to the proposal for filing an appeal, does not fall within the ambit of Section 71. An invocation of Section 71 can only occur when an appeal is filed and the order enabling refund is subject matter of an appeal.

7. In the teeth of the provisions for refund, as we noticed above, we cannot but deprecate the conduct of the State Tax Authority in rejecting the application for refund. At best, what the authorities could have done, is keeping it in abeyance till the appeal was filed without rejecting it peremptorily. Even keeping in abeyance an application for refund till an appeal is filed by the State, in its own sweet time, would also be worthy of being found faulty, in the facts and circumstances of the case. In any event, we find that the present order passed by the authority is in derogation of the statutory provisions and an attempt to outreach the statutory mandate of paying interest to the petitioner/ assessee. We deprecate the conduct of the Officer in the strongest of terms and allow the writ petition, setting aside the impugned order and directing restoration of the refund application before the appropriate authority. In the facts and circumstances of the case, we are also inclined to award cost of Rs. 2500/- (Two thousand five hundred) being the cost of the present litigation to the petitioner, which shall be paid by the Officer who passed the impugned order, within a period of two weeks.



8. The writ petition is allowed, but however, the same is directed to be posted after two weeks, only to ensure that the amount of cost directed has been paid.

9. Post on 08.08.2023.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.07.2023
Transmission Date	

