

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5147 of 2023

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M/s Indian Oil Corporation Limited, Barauni Refinery, a Company incorporated under the Companies Act, 1956, having its office situated at Barauni Refinery, P.O.- Barauni Oil Refinery, District Begusarai in the State of Bihar, through its Finance Manager Ajay Kumar, Aged about 36 years, Male, Son of Shri Devchandra Ray, Resident of Kamla Singh Path, Behind Rajnigandha Apartment, Sadaqat Ashram, Phulwari, P.S. Patliputra, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Commercial Taxes Department, Patna.
2. The Commissioner of Commercial Taxes, Commercial Taxes Department, Patna.
3. The Additional Commissioner of State Taxes, Darbhanga Division, Darbhanga.
4. The Joint Commissioner of State Taxes, Begusarai Circle, Begusarai, Bihar.
5. The Deputy Commissioner of State Taxes, Begusarai Circle, Begusarai, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Senior Advocate Mr. Parul Prasad, Advocate Ms. Sushila Agarwal, Advocate Mr. Mohit Agarwal, Advocate Ms. Priya Gupta, Advocate
For the Respondent/s	:	Mr. P.K. Shahi (AG)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-03-2024

The Indian Oil Corporation Limited is before
this Court claiming refund of Rs.1,17,06,169/- paid as



electricity duty to the State Government between January 2011 to October 2011. The petitioner, a Public Sector Undertaking is before this Court for the first time in 2023, seeking a refund of the amounts mistakenly paid, without noticing the exemption notification, during the period January 2011 to October 2011. In addition to the delay occasioned, we are appalled by the gross negligence of the Officers of the Corporation.

2. On facts, suffice it to notice that electricity duty was imposed under the provisions of the Bihar Electricity Duty Act, 1948 and its schedule said notifications. Under Schedule 3 of the Electricity Duty Act, produced as Annexure-1, there was a duty imposed at the rate of 2paise/unit of energy generated in a captive power plant under the head of agriculture, irrigation and industrial purposes. The petitioner had been paying such duty regularly, the captive power plant having been established for industrial purposes.

3. A further notification was issued in the year 2005 to amend the schedule incorporating a further entry at Serial No.3 to the effect that 6% of the value of the energy equivalent to the energy tariff as fixed by the Bihar State Electricity Board shall be leviable for consumption of



electrical energy generated by captive DG Set/Power Plants. The petitioner filed a writ petition challenging the validity of the provisions which stood allowed. The State filed an SLP; which was not successful. The above challenge made by the petitioner is not relevant to the present case but we referred to it, as detailed in the writ petition, only to emphasize that the petitioner had been diligently prosecuting the amendment made to the Electricity Duty Act before this Court, which is relevant insofar as the contention raised that an exemption notification under the very same enactment was omitted to be noticed by the Officers of the P.S.U.

4. Admittedly, by Annexure-2 notification dated 04.01.2021, the payment of electricity duty on electrical energy generated by generator or captive plants for self-consumption was exempted from the levy. Despite the exemption, the petitioner continued to pay the levy at the rate of 2% between January 2011 to October 2011. A refund application was filed on 01.12.2011 and then again, a reminder sent on 21.01.2012, after which the issue went into oblivion. It was revived and resumed, as is evident from paragraph 19 of the writ petition with reminders on 22.01.2020, 28.09.2021, 07.02.2022 and 13.09.2022.



5. We heard learned Senior Counsel S.D. Sanjay for the petitioner and learned Advocate General P.K. Shahi for the respondent. Sri S.D. Sanjay submits that there is unjust enrichment on the part of the State. The learned Advocate General, however, asserts that the delay stands against the petitioner and in any event, the application for refund was neither in the form prescribed nor before the competent authority and the returns too were not filed in accordance with the statute. Sri S.D. Sanjay would counter the arguments pointing out the revised returns produced as Annexure-3 series in the rejoinder.

6. At the outset, we are of the opinion that the delay stands against the petitioners. The amounts claimed now are those remitted between January 2011 to October 2011. Electricity duty was paid under a notification and the amendment made to the notification was also challenged by the petitioner. The petitioner and its officers were always aware and alive to the duty imposed and its ramifications; the subsequent amendments brought in having been agitated before Court. The contention of the petitioner is that its officers failed to notice an exemption notification, which can only be termed as rank negligence.



7. Whatever be the reason, the petitioner continued to pay the electricity duty even after the exemption granted. Then, a half-hearted attempt was made on 01.12.2011 by a mere communication seeking refund, which was also not earnestly followed up by the petitioner or its officers. Admittedly, there was no legal proceedings initiated for refund and the writ petition is filed almost 12 years after the mistaken payment came to the notice of the petitioner. We cannot also ignore the fact that the State, involved in various welfare measures, frames its budget for successive years based on the revenue and deficits of its coffers and the anticipated income and expenditure. It is too late in the day for the State to be asked to refund the amounts, though mistakenly paid.

8. Further, as pointed out by the learned Advocate General, there cannot be any unjust enrichment on the part of the State since a refund would result in unjust enrichment on the part of the petitioner. Admittedly, the petitioner involved in a manufacturing activity, sells its products manufactured using the electricity generated in the captive consumption units. The expenses for generation, which include the duty levied or paid, will also be factored in



the price of the products sold by the petitioner. Learned Senior Counsel, Sri. S.D. Sanjay would feebly protest pointing out the subsidies granted by the Government; which argument does not impress us since the petitioner is a profitable public sector undertaking and the subsidies are borne by the Union Government and not by the petitioner. In the above circumstances, the duty paid has already been factored in the price of the goods manufactured, thus passing it over to the end consumer. The petitioner cannot claim any refund, which would lead to unjust enrichment.

9. *In Jay Vee Rice and General Mills v. The State of Harayana* reported in **(2010) 10 SCC 687**, as relied upon by the State, purchase tax was collected on paddy by the dealers from the District Food and Supplies Collectors along with procurement price. The tax collected was not deposited with the Government on the contention that an amendment in the taxing statute exempted payment of purchase tax. It was held, that the dealers, who collected the purchase tax along with the price of rice, cannot justify retention of the same with themselves, though purchase tax was exempted. The tax collected had to go to the State, was the finding.

10. *Godfrey Philips India Ltd. and another v.*



State of U.P. reported in *(2005) 2 SCC 515* considered levy of luxury tax on tobacco. While finding the levy to be not permissible under Entry 62 of List 11 as tax on luxuries, the declaration was made prospective permitting the State to retain the tax already paid to them after collection by the dealers but making it clear that the bank guarantees furnished in lieu of the tax levy were to be discharged. One other issue considered was that despite obtaining interim orders in the writ petitions, the dealers continued to charge tax from consumers/customers. On the principle of unjust enrichment, the collected tax was directed to be paid to the State Government. The duty liability was on the end consumer, who cannot be found out for effecting refund.

11. A Constitution Bench of the Hon'ble Supreme Court in *Orient Paper Mills Ltd vs The State of Orissa* reported in *AIR 1961 SC 1438* was concerned with a provision which interdicted a dealer from seeking refund, who had collected tax under a provision, which was found to be not leviable for reason of the sale being outside the State. It permitted refund only to the person from whom such tax was collected, refusing it to the dealers who collected it and paid it to the Government. The provision was assailed as one



depriving the dealer, the common law right to claim refund of amounts paid as tax under an error of law. The Supreme Court repelled the challenge, holding that *“if competence to legislate for granting refund of sales tax improperly collected be granted, is there any reason to exclude the power to declare that refund shall be claimed only by the person from whom the dealer has actually realized the amounts by way of sales tax or otherwise?”* affirmatively; in the negative, upholding the provision.

12. The trite principle is that when tax is collected and paid to the State, if the levy is declared illegal or unconstitutional; the dealer who has merely collected the tax and not borne the liability cannot claim a refund; which if granted would lead to unjust enrichment. In such circumstances, where refund is not possible to be made to the end consumer; who had the liability to tax and shouldered the liability to pay, the money be best left with the State for expending on welfare measures for the good of the general public. The same principle applies herein where the products sold by the petitioner, in its sale price would definitely have factored the electricity duty component, which liability arose in the manufacturing process; thus, passing on the liability to



the end consumer of the product manufactured.

13. We find absolutely no reason to entertain the writ petition and dismiss the same leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Harish Kumar, J. I agree

(Harish Kumar, J)

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