IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14714 of 2023

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M/S Anusuya Blenders Pvt. Ltd. a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Bandhpar Begampur, P.S. Didarganj, District - Patna City - 800009 through its Director Shri Vinay Kumar Lal Das, Male, aged about 64 years, son of Late Satya Narain Lal Das, resident of Mohalla Tripolia, Alamganj, P.S.- Alamganj, District- Patna - 800007.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Commercial Taxes/State Taxes Bihar, Patna.
2. The Commissioner, State Taxes, Bihar, Patna.
3. The Joint Commissioner, State Taxes, Patna City, East Circle, Patna City, Patna.
4. Treasury Officer, Patna City, East.
5. The State Bank of India, Patna City Chowk, Patna City through its Branch Manager.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satyabir Bharti, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC-11)
Mr.Rakesh Kumar Singh, Advocate

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

Date : 10-07-2024

The petitioner was an assessee registered under the Bihar Value Added Tax Act, 2005 (for brevity ‘VAT Act’), who claimed refund of Rs. 16,99,325/- which has also been accepted by the Department in the revised assessment order passed and a negative demand raised on that count. The petitioner had also sought for penal interest for the undue delay in refunding the amounts due to the petitioner. When the matter was taken up, it was admitted by the learned counsel for the petitioner that the refund has now been made on 08.05.2024, when the writ petition was pending. What remains for consideration is the interest payable to the petitioner which was not paid by the Department. It is the case of the petitioner that Section 70 of the VAT Act specifies 6% simple interest to be paid, which the petitioner is entitled to.

2. We heard Shri Satyabir Bharti for the petitioner and Shri Vikash Kumar (SC-11) for the State.

3. It was submitted on behalf of the petitioner that in the assessment year 2012-13, the petitioner was assessed under the VAT Act for a total amount of Rs. 17,49,345/-. Demand notices were issued on 06.03.2018 and recovery was effected on 28.03.2018 and 31.03.2018. The petitioner filed an appeal in which by Annexure P/5 dated 14.06.2018, there was a remand. On remand, the Assessing Officer heard the petitioners and revised the earlier assessment by Annexure P/6 dated 10.01.2019 wherein the final demand was substantially reduced and what remained was only Rs. 49,996/-. There was also a notice of demand issued under Section 25 and Section 39 of the VAT Act in Form A-VIII which showed a negative demand of

Rs. 16,99,325/-; meaning that the same has to be refunded. An application of refund was filed as is seen from Annexure-P/8 in Form A-VIII on 25.02.2019. The Department failed to process the same. The recovery of the amounts is also sought to be substantiated by production of Annexure- P/4 Register-VIII which clearly indicates the payments made on 28.03.2018 (Rs. 3,40,000/-) and 02.04.2018 (Rs. 14,09,325.20).

4. Learned Government Pleader on the other hand submitted that on the application for refund being filed on 25.02.2019, immediately the respondent had sought for the challans by which the payments were effected to the Treasury Department; which was received only on 12.10.2023. Relying on the counter affidavit, it is submitted that the delay was occasioned only by reason of the delay in obtaining the Treasury Challans which would evidence the payment. Hence, the refund became due only on the receipt of the Treasury Certificate. There can be no interest paid as provided in Section 70 is the contention taken.

5. As of now, the original assessment, payment of tax; as per the demand raised, the reassessment; wherein substantial reduction of tax was made, are all admitted by both parties. It is also clear that the refund has been effected. The only question is

as to whether interest can be claimed by the petitioner; that too the statutory interest as available under Section 70.

6. In the context of the petitioner having filed Annexure-P/8 application for refund on 25.02.2019 in response to the negative demand raised on 21.02.2019, the claim for interest under Section 70 cannot be faulted. We have to, however, look at the counter affidavit filed by the Officer of the Taxes Department. In the counter affidavit dated 12.10.2023, the Department through its officer claims that after the fresh assessment order on remand, it had sought for Treasury Certificates from the Treasury Officer, Patna City as to the payment made by the petitioner against the tax liability created as per the earlier assessment order. Initially, the Treasury Officer intimated the Taxes Department that no amounts have been deposited, upon which the respondents wrote to the State Bank of India to verify the payments made to the Treasury Officer. The Bank asserted that the payments were made and it is the contention in the counter affidavit that despite the respondent authorities requesting the Treasury Officer multiple times to furnish a Treasury Certificate, regarding the payment made by the petitioner, no such certificates were issued.

7. While considering the liability of the State to make

the refund with statutory interest, we cannot absolve the Taxes Department from the statutory levy merely on the Treasury Officer, another Officer of the State, having not promptly produced the certificates which are required for enabling the refund. We have to immediately notice that it is not the case of the Department that the petitioner failed in producing any challans or certificates. The petitioner also had made an application for refund within time. We cannot but observe that Annexure-P/4 is the evidence of payment made, obtained by the petitioner from the portal of the Department itself.

8. The respondent-bank also has filed a counter affidavit. The payment made on 28.03.2018 is an amount of Rs. 3,40,000/- by e-payment and the payment made on 02.04.2018 is reflected in the statement produced as per Annexure-C/A wherein the Bihar Commercial Taxes Department account has been credited with Rs. 14,09,325.20.

9. Section 70 of the VAT Act provides for interest on delayed payment which is simple interest at the rate of 6% per annum on the amounts to be refunded. Sub-section (1) provides that the interest would run if the refund is not made within 60 days and sub-section (2) further provides that if there is delay in making refund, beyond the 60 days period and the same is on

account of the delay attributable to the assessee, then that period shall be excluded. In the present case, we have found from the facts that there can be no delay found on the assessee who is the petitioner herein.

10. The State has raised unreasonable grounds to absolve itself from the liability to refund, in the counter affidavit. As we found, the delay of the Treasury Officer in not certifying the deposit made cannot at all absolve the State from its statutory liability to pay interest, if the refund is not made within 60 days. The deposit made is also very clear from the ledger of the account of the Department maintained with the State Bank of India and also from the Register maintained by the Department, an extract of which is produced as Annexure-P/4. The contention raised is misconceived, misplaced and misconstrued and we do not expect the officials of the Department who are not only tax collectors, but also facilitators of business, to raise such unreasonable grounds to absolve the State from the statutory liability.

11. We hence, deprecate the manner in which the counter affidavit has been filed and there requires to be a caution expressed, but nevertheless considering the fact that it is public money, we impose a cost of Rs. 5000/- to be paid to the

petitioner, a tax payer, and as discernible from the facts of the particular assessment, was subjected to a huge levy, which was substantially reduced on a remand made in an appeal filed. There was considerable delay in affecting the refund and the petitioner had to approach this Court for refund with interest. The costs imposed shall also be paid along with the interest liability created under Section 70, which we have upheld. The respondent-State shall compute the interest and pay the same along with the costs within three months of the uploading of this judgment, failing which 6% simple interest will run on the interest component in which event the State would be entitled to recover the additional interest liability from the Officer who committed default in making refund as directed by this Court.

12. The writ petition stands allowed with directions and costs as above.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.07.2024
Transmission Date	