IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5411 OF 2024

Esquire Electronics
Represented by its Proprietor
Shri. Jagdish Purohit
1st Mezzanine Floor, Office No.15/16,
78B, Ratnadeep, JSS Road, Girgaon,
Mumbai, Maharashtra-400004. ...Petitioner

Versus

1. State of Maharashtra & Ors.
Through its Secretary, Finance Department,
Mantralaya, Mumbai, Maharashtra-400032.

2. The Deputy Commissioner of
State Tax (Appeals), Mumbai
Office of the Deputy Commissioner
of Sales Tax, E-817 (Appeals), GST
Bhavan, Mazgaon, Mumbai-400010.

3. The Assistant Commissioner of State Tax,
Mandvi, Mumbai Office of the Assistant
Commissioner of State Tax, Mandvi_609,
(MUM-VAT-D-836),
Nodal Division-3, Mazgaon, Mumbai-400010. ...Respondents

AND
WRIT PETITION NO. 5127 OF 2024

Esquire Electronics
Represented by its Proprietor
Shri. Jagdish Purohit
1st Mezzanine Floor, Office No.15/16,
78B, Ratnadeep, JSS Road, Girgaon,

Mumbai, Maharashtra-400004. ...Petitioner

Versus

1. State of Maharashtra & Ors.
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Mandvi, Mumbai Office of the Assistant
Commissioner of State Tax, Mandvi_609,
(MUM-VAT-D-836),
Nodal Division-3, Mazgaon, Mumbai-400010. ...Respondents

Mr. Ramachandran Mattiyil a/w Animesh Srivastava for the Petitioner in both Petitions.

Mr. Amar Mishra, AGP for Respondent Nos . 1 to 3 in both Petitions.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 10 September 2025

<u>Oral Judgment.:-</u> ***(Per M. S. Sonak, J.)***

1. Heard learned counsel for the parties.

2. Learned counsel for the parties agree that the issue involved in both these Petitions is identical and therefore, both these Petitions can

be disposed of by a common order.

3. Rule in both the Petitions. The Rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.

4. The Petitioners, aggrieved by the adjudication orders dated 25 July 2024, appealed to the appellate authority on 12 January 2024. These appeals were dismissed by the appellate authority by the impugned order dated 12 July 2024 on the ground that they were instituted beyond the prescribed period of limitation.

5. Mr. Ramachandran Mattiyil, learned counsel for the Petitioner, has, however, placed reliance upon CBIC notification dated 2 November 2023, which is at Exhibit–G in Writ Petition No.5411 of 2024. Based upon the same, he submitted that the time for filing of appeal had been extended to 31 January 2024, and since the Appeals in these cases were instituted on 12 January 2024, they were within this extended period of limitation.

6. Given the above contention, on 3 September 2025, we had made the following order: -

> *"PC:-*
>
> *1. At the request of Mr Amar Mishra who appears for Respondents 1 to 3, we post these matters on 10 September 2025 to enable Mr Mishra to obtain instructions with respect to the notification dated 2 November 2023 (Exhibit 'G') in Writ Petition No. 5411 of 2024.*
>
> *2. Mr Mishra states that copy of the reply will be served upon learned Counsel for the Petitioner latest by tomorrow.*
>
> *3. List both these Petitions on 10 September 2025."*

7. Mr. Mishra, learned counsel for Respondent Nos . 1 to 3, today tenders an Affidavit-in-Reply and, on instructions, submits that the notification dated 2 November 2023 would apply only to orders made by the proper officers on or before 31 March 2023. He submitted that in these Petitions, the proper officer made the orders on 25 July 2023 and therefore the Petitioners cannot claim the benefit of the notification dated 2 November 2023.

8. Mr. Mattiyil, learned counsel for the Petitioners, submitted that the Petitioners have prayed for a grant of amnesty provided by the notification dated 2 November 2023. He relied upon the following four decisions of the Patna High Court and one decision of the Orissa High Court, in which it has been held that there was no rational for fixing the date of 31 March 2023 in the notification dated 2 November 2023 and in the said cases, appeals against orders made after 31 March 2023, but before 2 November 2023 were granted the benefit of extended period of limitation:-

i. ***Nexus Motors Pvt. Ltd. Vs. State of Bihar***[1]

ii. ***M/s. Micro Zone Vs. Union of India & Ors.***[2]

iii. ***Mali Tractors Private Limited Vs. The Union of India***[3]

iv. ***M/s. Prince Sanitation Vs. The State of Bihar***[4]

v. ***M/s. Swati Samantray Vs. The Addl. Commissioner of State Tax (Appeal), CT and GST, Cuttack & Anr.***[5]

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1 (2023) 13 Centax 272 (Pat.)
2 2024 (4) TMI 756 - Patna High Court
3 2025 (1) TMI 979 - Patna High Court
4 2024 (1) TMI 229 - Patna High Court
5 2024 (2) TMI 186 – Orissa High Court

9. We have considered the rival contentions, and we are satisfied that the Petitioners in these Petitions should be granted the benefit of the extended period of limitation for reasons briefly discussed hereinafter.

10. Admittedly, in these Petitions, the adjudicating authority made orders on 25 July 2023, i.e. beyond 31 March 2023. However, the appeals were lodged on 12 January 2024, i.e. before the extended date of limitation of 31 January 2024.

11. An identical issue arose before the Division Bench of the Patna High Court, comprising K Vinod Chandran, Chief Justice (as His Lordship then was) and Rajiv Roy, J., in the case of ***Nexus Motors Pvt. Ltd.*** (supra). The Division Bench, after referring to the notification dated 2 November 2023, held that there was no rationale for fixing the cut-off date of 31 March 2024 since the notification itself was brought out on 2 November 2023. Relevant observations are in paragraphs 4, 5 and 6, which are quoted below for the convenience of reference: -

> *"4. The difficulty insofar as its application to the petitioner's case is the date on which the proper officer, being the Assessing Officer, having passed the order which was challenged in appeal, on 27.04.2023. The notification which was brought out on 02.11.2023 only permits appeals to be filed from orders passed by the proper officer on or before 31.03.2023, in cases in which it was not instituted in time or within the time permitted for a delayed appeal, and in cases where such delayed appeals beyond the stipulation in 107(4) has been rejected. The petitioner would not squarely fall under the notification.*
>
> *5. We do not see any rationale for the date fixed of 31.03.2023, as a cut off date. We notice that the notification itself was brought out on 02.11.2023 and in such circumstances any order passed in at*

least three months before that date; the time provided for filing an appeal, ought to have been considered for such beneficial treatment.

6. In the above circumstances, we are of the opinion that the petitioner also can be allowed to comply with the conditions in Notification No. 53 of 2023 upon which the order passed in appeal would stand set aside and a fresh consideration will be made by the first Appellate Authority. It is made clear that the petitioner has to fulfill all the criteria as stated in the notification."

12. To the same effect are the remaining three decisions of the Patna High Court and one decision of the Orissa High Court. As noted earlier, in this case, the adjudicating authorities issued their orders on 25 July 2023, which is at least three months prior to the notification of 2 November 2025.

13. Mr. Mishra was unable to say whether the revenue had challenged the above-referred decisions of the Patna High Court and Orissa High Court before the Hon'ble Supreme Court. No decision, taking any contrary view, was also brought to our notice.

14. Considering the above circumstances and following the decisions of the Patna High Court and Orissa High Court, we allow these Petitions, set aside the impugned orders dated 12 July 2024 and restore Petitioners' appeals to the file of the appellate authority for considering the same on their own merits and in accordance with law. All contentions of all the parties on the merits of the matter are left open to be decided by the appellate authority in the first instance.

15. At this stage, Mr. Mishra points out that the issue of maintainability of the appeals may be left open because even if the issue of delay may not now come in the Petitioners' way, still the Petitioners are required to comply with other requirements for maintaining the appeal.

He refers to paragraph 3 of the notification dated 2 November 2023, which reads as follows: -

> *"3. No appeal shall be filed under this notification, unless the appellant has paid-*
>
> *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*
>
> *(b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.*

16. In paragraph 6 of ***Nexus Motors Pvt. Ltd.*** (supra), the Division Bench of the Patna High Court has clarified that the restoration of the appeals would be subject to compliance with the conditions specified in paragraph 11 above. Accordingly, we clarify that even restoration of appeals which are subject matter of these Petitions would be subject to compliance with the conditions in paragraph 6 of the judgment quoted above, no doubt, with the modification referred to hereinafter.

17. Mr. Mattiyil, learned counsel for the Petitioner, pointed out that the Petitioners have paid an amount corresponding to 10% when, in fact, at the time of filing the appeal, the Petitioners should have been paid an amount corresponding to 12.5%. On instructions, Mr. Mattiyil states that within four weeks from the date of uploading of this order, the Petitioners will pay the differential amount.

18. Therefore, if the differential amount is paid within four weeks from the upload of this order, then the appellate authority must decide the appeals on merits, treating such payment as substantial compliance with

the peculiar circumstances of this case.

19. The Rule is made absolute in the above terms without the costs.

20. All concerned are to act upon an authenticated copy of this order.

(Advait M. Sethna, J) **(M. S. Sonak, J.)**