

GAHC010004972023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/417/2023

UDALGURI BEVERAGES PVT. LTD.
A COMPANY REGD. UNDER THE PROVISIONS OF THE COMPANIES ACT,
1956 HAVING ITS REGD. OFFICE AT VILLAGE DINJAN IN THE DIST. OF
DIBRUGARH, ASSAM AND HEAD OFFICE SITUATED AT 234, G.N.B. ROAD,
GHY-03, IN THE DIST. OF KAMRUP (M), ASSAM AND IN THE PRESENT
PROCEEDINGS REP. BY MR. H.S.KUMBHAT, ONE OF THE DIRECTORS OF
THE PETITIONER COMPANY

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FINANCE
(TAXATION) DEPTT., DISPUR, GHY

2:COMMISSIONER OF STATE TAXES
(EARLIER KNOWN AS COMMISSIONER OF TAXES)
ASSAM
KAR BHAWAN
DISPUR
GHY-06

3:THE SUPERINTENDENT OF TAXES
GUWAHATI
UNIT-D
KAR BHAWAN
DISPUR
GHY-0

Advocate for the Petitioner : DR. ASHOK SARAF

Advocate for the Respondent : SC, FINANCE AND TAXATION

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

14.02.2023

Heard Mr. A.K. Saraf, learned Senior counsel assisted by Mr. P. Baruah, learned counsel for the petitioner and Mr. B. Gogoi, learned Standing counsel, Finance and Taxation Department for the respondents.

2. The petitioner is aggrieved by the order dated 20.07.2022 issued by the Superintendent of Taxes, Circle-5, Unit-D, Guwahati. By the said impugned order, an amount of Rs. 24,81,606/- has been declared to be input tax credit stated to have been claimed by the petitioner for the month of June, 2017 under the Assam Value Added Tax Act, 2003. By the said order, besides the excess claim of input tax credit stated to be recoverable to the tune of Rs. 24,81,606/-, an interest of Rs. 22,33,445/- has also been held to be payable by the petitioner. The total amount under the said order stated to be recoverable from the petitioner amounts to Rs. 47,15,051/- Pursuant to the said order, a notice of demand was also issued by the respondent Department seeking recoverable of the amount due.

3. The learned Senior Counsel for the petitioner submits that a perusal of the impugned order reveals that the amount stated to be recoverable pertains to the excess input tax credit for the month of June, 2017 under the Assam Value Added Tax Act, 2003. It is submitted that the said amount was never utilized by the petitioner during the earlier VAT regime. The said amount was utilized pursuant to the incorporation of the GST Act with effect from July, 2017. He submits that when there is no claim under the VAT Act, there is no question of

recovery. It is not the case of the Department that the input tax credit benefit was wrongly utilized or used beyond the permissible limit for the said month under the VAT Act. It is reiterated that this amount was never utilized for payment of VAT under the Assam Vat Act but the same was utilized for payment of GST.

4. Mr. B. Gogoi, learned Standing counsel submits that instructions are required in the matter. Therefore, prays for four weeks time.

5. Under the circumstances, issue Notice, returnable in four weeks.

6. Since Mr. Gogoi appears for all the respondents, no separate notice be issued to the respondents. However, sufficient extra copies of the writ petition be furnished to learned Standing Counsel by the learned counsel for the petitioner within three working days.

7. The respondents are at liberty to file counter affidavit.

8. Considering the prayers made, the impugned order dated 20.07.2022 along with Demand of Notice dated 27.07.2022 shall remain stayed until further orders.

9. List after four weeks.

JUDGE

Comparing Assistant