(2004) 03 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No''s. 2890 and 2891 of 2004 and W.P.M.P. No''s. 3393 to 3396 of 2004

Better Label Manufacturing Co. Ltd. and Better Label Exports — APPELLANT

Vs

Commissioner of Customs (Port) — RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 173 ELT 12 : (2004) 3 MLJ 64

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : G. Rajagopalan, for the Appellant; V.T. Gopalan, A.S.G., for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—Petitioner has filed a Writ Petition in W.P.No.2302 of 1999 challenging the order of the Central Excise and Gold (Control) Appellate Tribunal (CEGAT) dated 2.2.1998, by which the petitioner companies were imposed a penalty of Rs.1,50,000/- and Rs.1,00,000/- respectively. The said writ petition was presented before the Registry on 28.12.1998. However, it was admitted only on 15.2.1999. In the meanwhile, the petitioner made a declaration to avail the benefit of Kar Vivad Samadhan Scheme invoking Section 95(i)(c) of the Finance (No.2)Act, 1998 (hereinafter referred to as ''the Act''), which reads as follows.

"Section 95: Scheme not to apply in certain cases- The provisions of the scheme shall not apply-

(i)....

(ii)in respect of tax arrear under any indirect tax enactment-

(a)...

(b)...

(c)in a case where no appear or reference or writ petition is admitted or pending before any appellate authority or the High Court or the Supreme Court or no application for revision is pending before the Central Government on the date of declaration made u/s 88."

2. However, the Commissioner of Customs, Chennai, the respondent herein, by a proceedings dated 28.5.1999, refused to give the benefit of Kar Vivad Samadhan Scheme, finding that the petitioner is not entitled for the benefit of Section 95(ii)(c) of the Finance (No.2) Act, 1998, on the ground that the scheme was in force only till 31.12.1998 and the writ petition preferred by the petitioner was admitted only on 15.2.1999.

3. Aggrieved by the same, the petitioner seeks to issue Writ of Certiorarified Mandamus calling for the records of the respondent relating to order dated 28.5.1999 made in F.No.KVS/DECLA/221/1998 and quash the same and direct the respondent to issue final certificate to the petitioner under Karvivad Samadhan Scheme.

4. Mr. G. Rajagopalan, learned Senior Counsel appearing for the petitioner contends that the words ''writ petition is admitted or pending before any appellate authority or the High Court'' as provided u/s 95(ii)(c) of the Act, would only mean that the writ petition is already filed before 31.12.1998 but was not disposed of.

5. Per contra, Mr. V. T. Gopalan, learned Additional Solicitor General, submits that the writ petition, which was not admitted before 31.12.1998 cannot be construed as a pending dispute as on 31.12.1998.

6. I have given careful consideration to the submissions of the learned counsel on both sides.

7. It is true that the word ''pending'' would mean ''undecided issues'' and a legal proceeding is deemed to be pending as soon as it is commenced and until it is concluded. But, nevertheless the commencement of the legal proceedings would not mean the mere presenting of papers to the Registry. I find from the original records that eventhough the papers were presented on 28.12.1998, the papers were returned from the registry for certain compliance on 13.1.1999. Again, the papers were re-presented after compliance only on 25.1.1999. Therefore, it could not be construed that the writ petition was pending as on 28.12.1998 inasmuch as, the presentation of the same by the petitioner itself was not proper and therefore the relief claimed by the petitioner under the Karvivad Samadhan Scheme is barred by limitation. Finding no merits in the writ petitions, they are dismissed.

