
(2008) 03 MAD CK 0115

In the Madras High Court

Case No : Writ Appeals No's. 2619, 2821 and 2824 of 2004

Better Label Manufacturing Co. Ltd.

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Finance Act, 1998 — Section 87, 88, 92, 95
Income Tax Act, 1961 — Section 246, 260A, 264

Citation : (2008) 228 ELT 331

Hon'ble Judges : K. Raviraja Pandian, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : G. Rajagopalan for P. Rose Kamalam, for the Appellant; K. Ravichandra Babu, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—Writ Appeals Nos.2619 and 2824 of 2004 have been filed against the common order passed by a learned single Judge of this Court dated 31.03.2004 in writ petitions Nos. 2890 and 2891 of 2004 by which the appellant was non suited for the prayer to call for the records relating to the order of the respondent the Commissioner of Customs, (Port) Chennai dated 28.05.1999 to have it disposed off under the Kar Vivad Samadhan scheme and for a further direction to the respondent to issue final certificate to the appellant under the said scheme.

2. The learned single Judge, after referring to Section 95 of Finance (No. 2) Act, 1998 has ultimately held that it is true that the word "pending" would mean "undecided issues" and a legal proceedings deemed to have been 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. Even though the papers were presented on 28.12.1998, the papers were returned from the Registry for certain compliance on 13.01.1999. Again the papers were represented after compliance only on

25.01.1999. In those circumstances of the case, 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 appellant itself was not proper and therefore, the relief claimed by the appellant under the Kar Vivad Samadhan Scheme is barred by limitation. Before us the correctness of the said order is canvassed in these two appeals.

3. Learned Counsel for the revenue placed before this Court a decision of a Division Bench of this Court in the case of Smt. Jayapradha Vs. Chief Commissioner of Income Tax and Another, and also the decision in the case of Computwel Systems P. Ltd. Vs. W. Hasan and Another, .

4. We heard the learned Counsel on either side and perused the materials available on record.

5. The very provision Section 95(i)(c) of Finance (No. 2) Act, 1998 which is in respect of tax arrears under any direct tax enactment came up for consideration before the Supreme Court on more than one occasion and the Supreme Court held that it is enough that if an appeal or a case is pending though it is irregular or incomplete.

6. In the case of Commissioner of Income Tax, Rajkot Vs. Shatrusailya Digvijaysingh Jadeja, , after taking into consideration the earlier judgments on this issue in the cases of Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, , Dr. (Mrs.) Renuka Datla and Others Vs. Commissioner of Income Tax, Karnataka and Another, , and Computwel Systems P. Ltd. Vs. W. Hasan and Another, , the Supreme Court has held as follows:

10. The basic point which we are required to consider in this case is the meaning of the word "pending" in Section 95(i)(c) of the said Scheme.

11. The object of the Scheme was to make an offer by the Government to settle tax arrears locked in litigation at a substantial discount. It provided that any tax arrears could be settled by declaring them and paying the prescribed amount of tax arrears, and it offered benefits and immunities from penalty and prosecution. In several matters, the Government found that a large number of cases were pending at the recovery stage and, therefore, the Government came out with the said Scheme under which it was able to unlock the frozen assets and recover the tax arrears.

12. In our view, the Scheme was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier Voluntary Disclosure Scheme. As stated above, the said Scheme was a complete code by itself. Its object was to put an end to all pending matters in the form of appeals, references, revisions and writ petitions under the IT Act/WT Act. Keeping in mind the above object, we have to examine Section 95(i)(c) of the Scheme, which was different from appeals u/s 246, revisions u/s 264, appeals u/s 260A, etc. of the IT Act and similar provisions under the WT Act. Under the IT Act, there is a difference between appeals, revisions and references. However,

those differences were obliterated and appeals, revisions and references were put on par u/s 95(i)(c) of the Scheme. The object behind Section 95(i)(c) in putting on par appeals, references and revisions was to put an end to litigation in various forms and at various stages under the IT Act/Wealth Tax Act and, therefore, the rulings on the scope of appeals and revisions under the IT Act or on Voluntary Disclosure Scheme, will not apply to this case.

13. One more aspect needs to be looked into. The Finance (2) Act, 1998 introduced a scheme called the Kar Vivad Samadhan Scheme, 1998. It was a recovery scheme. Under the Scheme, the tax arrears had to be outstanding as on 31-3-1998. u/s 87(f), "disputed tax" was defined to mean total tax determined and payable under the IT Act/Wealth Tax Act in respect of an assessment year but which remained unpaid as on the date of making of the declaration from which TDS, self-assessed tax, advance tax paid, if any, had to be deducted u/s 90; the DA had to determine the amount payable and for that purpose, he had to determine the tax arrear as well as the disputed amount as defined u/s 87(f). Thus, the DA had to make an assessment of tax arrears, disputed amount and amount payable for each year of assessment; that the appeal was barred against the order u/s 90 (see Section 92); that such determination had to be done within 60 days from the receipt of the declaration and based thereon the DA had to issue a certificate. In other words, till the completion of the aforesaid exercise, the appellant could not have paid the amount of tax and, therefore, the appellant was not liable to pay interest as his liability accrued only after the ascertainment of the amount payable u/s 90. In the present matter, that exercise has been completed; that taxes have been recovered by the sale of lands; that amounts have been paid pursuant to the determination by the DA, may be under the orders of the High Court and, therefore, we do not wish to reopen the matter.

14. In Renuka Datla (Dr.) this Court has held on interpretation of Section 95(i)(c) that if the appeal or revision is pending on the date of the filing of the declaration u/s 88 of the Scheme, it is not for the DA to hold that the appeal/revision was "sham", "ineffective" or "infructuous" as it has.

15. In Raja Kulkarni v. State of Bombay AIR 1954 SC 73 this Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the appellate court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent e.g. when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court.

16. To the same effect is the law laid down by the judgment of this Court in

Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, , in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent.

7. In the case of Swan Mills Ltd. Vs. Union of India (UOI) and Others, the very provision in respect of indirect tax has been considered by the Supreme Court with which we are concerned in this case. After extracting the paragraphs 10 to 16 in Shatrusailya's case, which has been extracted above, ultimately held that the ratio in the case of Shatrusailya's case is clearly applicable to the case of Swan Mills and the appeal has to be treated as pending.

8. As the issue on hand is squarely covered by the two decisions in Shatrusailya's and Swan Mills Ltd.'s case which also has taken into consideration the decision of the Supreme Court in Computwel Systems case, which has taken a slightly different view by holding that even irregular or incomplete filing of the appeal would come within the purview and ambit of Section 95(ii)(c) of the Act, the order of the learned single Judge has to be set aside and is set aside. The appeals are allowed. No costs.

9. In view of the order passed in these two appeals, writ appeal No. 2821 of 2004 has become infructuous and is dismissed as such. No costs.