

(2008) 11 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 12756 of 1999

G.K. Steels (Coimbatore) Ltd.

APPELLANT

Vs

The Commissioner of Central Excise and The Assistant
Commissioner of Central Excise, Coimbatore II Division

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Finance Act — Section 88, 95

Citation : (2009) 238 ELT 709

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Jinasanan, for the Appellant; K. Ravichandrababu, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner is a manufacturer of hot re-rolled products. The petitioner's manufactured goods fall under Chapter Heading

72 of the Central Excise Tariff Act, 1985. The petitioner was issued a Show Cause Notice dated 05.03.1998 calling upon him to show cause as

to why a differential duty of Rs. 29,01,015/- should not be demanded and further penalty should not be imposed on them under the Central Excise

Rules. At this stage, the petitioner wanted to take advantage of the Kar Vivad Samadhan Scheme 1998 (for short KVSS) introduced by the

Finance Act 21 of 1998 with effect from 01.08.1998. Section 95(ii) reads as follows:

95. Scheme not to apply in certain cases:

(i)...

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

(a) in a case where prosecution for any offence punishable under any provisions of any indirect tax enactment has been instituted on or before the

date of filing of the declaration u/s 88, in respect of any tax arrear in respect of such case under such indirect tax enactment;

(b) in a case where show cause notice or a notice of demand under any indirect tax enactment has not been issued;

(c) in a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or 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. Before taking advantage of the concession granted by the Central Government, the petitioner filed a declaration under Form 1B before the

authority for the purpose of availing the benefit under the KVSS. The first respondent Commissioner by an order dated 01.03.1999 rejected the

entertaining of the petitioner's declaration under Form 1B on the ground that he is not eligible for availing the KVSS since there was no dispute

before any Court/Appellate Forum or Authority as required u/s 95(ii)(c) of the Finance Act. It is also stated that the petitioner has not disputed the

order passed by the Commissioner dated 16.09.1997. Since there was no dispute and since there was no petition pending before any forum, he

was intimated that he cannot avail KVSS.

3. Challenging the said order, the petitioner filed the present writ petition, which was admitted on 30.07.1999. This Court also directed the

petitioner to deposit 50% of the duty within a time frame. It is stated by Mr. Jenasenan, learned Counsel appearing for the petitioner that the

petitioner has deposited Rs. 10.5 lakhs pursuant to the interim order. However, Mr. Ravichandrababu, learned Central Government Standing

counsel for the respondents states that this would fall short of Rs. 4 lakhs. As 50% of Rs. 29 lakhs will come to Rs. 14.5 lakhs and therefore this

would not amount to complying with the interim order. In any event, since the order passed by this Court is only self-working order and the

respondents had not taken any further action, taking advantage of the absence of any interim order, Mr. Jenasenan, learned Counsel for the

petitioner submitted that the impugned order is erroneous because the authority considered the case of the petitioner only u/s 95(ii)(c) and did not

advert to the other sub clause found in the very same section. As pointed out by him, the notice dated 05.03.1998 in demanding certain amount

including threat of penalty will be squarely covered by Section 95(ii)(b) and therefore, his case has to be considered under the KVSS.

4. Per contra, Mr. Ravichandrababu, learned Central Government Standing Counsel for the respondents submitted that in the case of the petitioner

the present notice was not the first notice and the finality has already been reached on the proceedings initiated against him. He also relied upon a

Judgment of the Hon'ble Supreme Court in Lajya Dyeing and Bleaching Works Vs. Union of India (UOI), , wherein, the Supreme Court in

Paragraph No. 14 observed as follows:

14. The question then arises is whether the appellants are entitled to the benefit of the Kar Vivad Samadhan Scheme. Section 95 of the Scheme

makes it clear that in cases where no appeal or reference or writ petition is admitted or pending before the appellate court or the High Court or the

Supreme Court and where no application for revision is made before the Central Government, the Scheme is not to apply. In this case, admittedly,

on the due date i.e. 31-3-1998 there was no pending appeal, reference, writ petition or application. Under these circumstances, the declaration

was correctly rejected.

5. It is not clear as to how the said Judgment is of any assistance to the respondents, where the Supreme Court had considered the case of the

petitioner therein only on the claim made u/s 95(ii)(c) whereas in the present case, Section 95(ii)(b) is pressed service. Therefore, the case of the

petitioner merits acceptance. Therefore, they have not considered the claim of the petitioner to consider his case under KVSS and also the Form

1B declaration filed by him.

6. In the light of Section 95(ii)(b), the writ petition stands allowed. The respondents are directed to consider the declaration made by the petitioner

under the Kar Vivad Samadhan Scheme, 1998 introduced by the Finance Act 21 of 1998 in accordance with law. Such exercise will be

undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs.