
(2003) 02 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No. 41339 of 1999 (T-TAR)

Hydromatik Belgaum Pvt. Ltd.

APPELLANT

Vs

Commr. of C. Ex.

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Finance Act, 1988 — Section 89

Kar Vivad Samadhan Rules, 1998 — Rule 3 (1) (b)

Citation : (2003) 154 ELT 49

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : B.N. Gururaj and K.S. Ravishankar, for the Appellant; Ashok Harnahlli, CGSC and S. Doreraj, Addl. CGSC, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Petitioner submitted a declaration on 24-12-1998 u/s 89 of the Finance Act r/w Rule 3(1)(b) of the Kar Vivad Samadhan Rules, 1998. It was declared therein that an application for restoration of his appeal is pending before the Tribunal at Chennai. No action was taken. Subsequently, the CEGAT, Chennai, in MC No. 239/99 restored the appeal to its original file. The respondent in terms of Annexure-D, letter dated 11-1-1999 wanted the petitioner to produce documentary evidence with regard to restoration of appeal by the CEGAT. Petitioner produced Annexure-F enclosing court orders. After receiving the said order the respondent rejected the declaration in terms of an Annexure-C endorsement dated 1-7-1999. Petitioner is before me challenging this endorsement.

2. Heard the learned counsel for the parties.

3. Learned counsel for the petitioner invites my attention to the material facts to contend that Annexure-C has to be set aside on the facts, of this case. According to the learned counsel, once the appeal is restored, it is deemed to have been pending on the date of his declaration. He also relies on several judgments.

4. In the light of the submission of the learned counsel, I have carefully perused the material on record. Material on record reveals pendency of proceedings with regard to recalling of an ex parte order at the time of declaration made by him. Subsequently, the appeal was restored to its original file. After recalling the same the Commissioner has now rejected the case of the petitioner on the ground that no dispute was pending in appeal before the CEGAT, Chennai, on the date of filing the declaration and that the restoration of appeals was ordered by CEGAT only subsequently. It is fairly well settled that once the appeal is restored it relates back to the earlier period as well. In this connection, it is relevant to notice the two judgments of the two different High Courts. The Punjab and Haryana High Court in *Sat Kartar Trading Co. Vs. Commissioner of Income Tax*, , has ruled at page 862 as under;

"The short question for our consideration is whether the reference application filed by the petitioner before the Tribunal can be said to be pending on January 29, 1999. It is true that on January 29, 1999, when the declaration was filed with the respondent, the reference application of the petitioner had already been dismissed and as such no fault could be found with the order of the respondent dated February 26, 1999, intimating the petitioner that its declaration under the KVS Scheme was invalid as on the date of its filing no reference application was pending. However, it is also equally true that the Tribunal by its subsequent order dated May 27, 1999, has accepted the contention of the petitioner that it had no notice about the date of hearing in the reference application on January 29, 1999, and as such the ex parte order passed on that date was illegal and needed to be recalled. The Tribunal, therefore, recalled its ex parts order dated January 29, 1999 and restored the reference application filed by the petitioner to its original position. The effect of this order was that the impugned order dated January 29, 1999 ceased to exist and the position existing prior to its passing stood restored. Once the order dated January, 29, 1999 is held to be non-existent it is but natural that all consequential results flowing therefrom also ceased to have any effect. Accordingly, the impugned order dated February 26, 1999 rejecting the declaration filed by the petitioner on the basis of the order dated January 29, 1999, must also be held to have been rendered ineffective. It would, therefore be in the interest of justice to vacate the impugned order dated February 26, 1999, and restore the matter to the file of the respondent with the observation that the declaration filed by the petitioner under the KVS Scheme on January 29, 1999, may be considered in the light of the fact that the reference application filed by the petitioner was pending before the tribunal on that date. The respondent shall now process the declaration afresh and dispose of it in accordance with law."

The Madhya Pradesh High Court in 2002 (256) ITR 65 has ruled as under;

"The term "restoration" itself contemplates that the original position reverts back and the application filed by the petitioner on July 8, 1999 was wrongfully rejected and it should have been considered on the merits in accordance with the

Scheme. Merely because the appeal had been decided subsequently on May 10, 2000, that could not come in the way of consideration of the declaration made under the Scheme,"

Following these judgments, I deem it proper to hold that the subsequent restoration would revert back to the date of the application and the application of the petitioner has to be considered on its merits. In my view, Annexure-C is clearly unsustainable in law. In these circumstances, this petition is allowed. Annexure-C is set aside. Respondents are directed to consider the declaration submitted by the petitioner on its merits and pass orders in accordance with law.