(2015) 03 BOM CK 0229

In the Bombay High Court

Case No : Writ Petition No. 2219 of 2014

Indokem Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:
Finance Act, 1994 — Section 70, 72, 73, 73(a), 73A

Citation : (2015) 38 STR 464

Hon'ble Judges : S.C. Dharmadhikari, J;S.P. Deshmukh, J

Bench : Division Bench

Advocate : Prakash Shah a/w D.H. Nadkarni i/b. Legal Solutions, for the Appellant; Pradeep S. Jetly a/w. Suchitra Kamble, Advocates for the Respondent

Judgement

1. This Writ Petition challenges the order dated 30th June, 2014, which has been passed by the Designated Authority (Respondent No. 3). The said Authority was implementing a Voluntary Compliance Encouragement Scheme (hereinafter referred to as "VCES", for short). The Petitioner''s grievance is that it is a company incorporated under the Companies Act, 1956, engaged, inter alia, in the manufacture of a Textile Dyes, Sizing Chemicals and Textile Auxiliaries. It was also engaged in providing Renting of Immovable Property Services and Management, Maintenance and Repair Services, within the meaning of Chapter V of the Finance Act, 1994.

2. The petitioner gave its commercial premises on leave and licence to various occupants for carrying out commercial activity. These occupants challenged the levy of service tax on renting of immovable property services, but that challenge failed.

3. Eventually, the petitioner in terms of the half yearly returns computed the service tax liability. However, because of the on going litigation, the computation was not in terms of the relevant statutory provisions and Rules. The Government of India in the Budget of 2013, proposed the above scheme so as to encourage voluntary compliance. The broad features of the scheme are indicated and if

parries like the petitioner who have not made a declaration in terms of the liability to pay tax make such a declaration then that has to be dealt with in accordance with the scheme. The petitioner filed an application dated 4th December, 2013, in the relevant form under the scheme disclosing the liability which was not correctly disclosed in the return for the period October 2007 to March 2012. They declared tax dues of Rs. 31,54,010/- and Rs. 2,65,431/- pertaining to the two services rendered and noted herein above. The receipt of the petitioner''s application was acknowledged and after that the petitioner paid the entire service tax, in one installment.

4. Thereafter a notice to appear for a hearing was issued and duly received by the petitioner. At such hearing, the third respondent rejected the application/ declaration. That is how this writ petition has been filed.

5. Mr. Shah appearing on behalf of the petitioner submits that the order passed by the third respondent to the extent it rejects the declaration is ex facie without jurisdiction. It is liable to be quashed and set aside because there is nothing in the scheme nor in the statute which would enable the third respondent to partly reject the VCES -1 declaration. Mr. Shah invites our attention to the order and submits that the third respondent has given a treatment to the service tax liability as if the third respondent was not considering any such scheme, but computing the tax liability, so as to pass an adjudication order. Mr. Shah would submit that the power to pass such an order must be. traceable and to the scheme itself. The only power which the said third respondent derives is in terms of the first proviso to Section 106(1) of the Finance Act, 1994. The reading of this proviso as also the scheme would indicate that there is no power conferred in the Respondent No. 3. If the scheme can be availed of by non filers or stop filers or persons who had not made a truthful declaration in the return, then, the application should have been scrutinized in its entirety. He, therefore, submits that the writ petition be allowed and a direction be issued to the Authority to reconsider the application in accordance with the scheme and law.

6. Mr. Jetly appearing on behalf of the respondents on the other hand would Support the impugned order. He would submit that the Respondent No. 3 has found that the declaration that is made and together with a written explanation has been referred by the authority in paragraph 4(c) of the impugned order. The scrutiny of this enabled the commercial Respondent No. 3 to conclude that in the general value declared in the S.T. 3 returns, the figure either is more or equal to the value declared in the VCS except during certain months where the value of service provider shown in the VCS declaration is higher than the value of the service provider declared in the respective S.T. 3 return. Mr. Jetly submits that something over and above the value declared in the declaration is to be taken into consideration. That is how the break up has been given. The order, therefore, is clearly traceable to the provisions which we have noted above. In the circumstances, this Court should not interfere with the order of the Designated Authority. It is the Designated Authority which is given the power to

administer the scheme. If it is to scrutinise and verify the application, then, its views should not be substituted by this Court unless they are found to be totally erroneous in law or arbitrary and perverse. Such is not the position. Therefore, the writ petition be dismissed.

7. With the assistance both Counsel we have perused the writ petition and all the annexures. The Third respondent had before it the declaration/application filed. "That is filed by the petitioner declaring tax dues respect of the above services. The Voluntary Compliance Encouragement Scheme was invoked by the petitioner, so as to make a declaration of the service tax liability. The authority has referred to the fact that on scrutiny of the annexures/calculation sheets submitted along with this application, vis-?-vis, the service tax - 3 returns filed in the past in respect of the above services, it appeared that the tax dues of Rs. 31,51,010/- claimed under the declaration for the above period in respect of renting of immovable property service has already been disclosed in the respective S.T. 3 returns, and the said disclosed dues of Rs. 31,54,010/-, are not paid during the respective period. Therefore, the petitioner did not appear eligible to make declaration for the period, as envisaged under the first proviso to Section 106(1) of the Finance Act. Therefore, a notice dated 26th December, 2013 proposing rejection of this declaration relating to renting of immovable property service for the tax dues of Rs. 31,54,010/- was issued.

8. The petitioner had appeared and pointed out that though S.T. 3 returns were filed earlier but they are eligible for the scheme as true liability was not disclosed at the time of filing of S.T. 3 returns. Therefore, written submissions were also filed in support of this oral assertion. At the personal hearing, the Respondent No. 3 undertook the task of preparing tables and making a comparative analysis and these two tables which have been referred by him from page Nos. 28 to 30 of the impugned order would indicate as to how he arrived at the conclusion that it is only in some S.T. 3 returns that the figures disclosed therein do not match with the declaration under the scheme. How he could have omitted the figures indicated in the scheme or make his own calculation so as to bifurcate the declaration or the liability in terms thereof, has not been indicated in the impugned order at all. If the persons like the petitioner can make the declaration and in terms of the scheme, then, there should be something in the enactment and namely the Finance Act so as to make the bifurcation or a breakup of the liability to pay tax. The Respondent No. 3 has referred to Section 106(1) of the Finance Act and the proviso therein to arrive at the conclusion that any person who has furnished return under Section 70 of Chapter and disclosed his true liability but has not paid the disclosed amount of service tax or any part thereof, then he is not eligible for the declaration for the period covered by the said return. We do not understand as to how merely because what has been disclosed as true liability in the returns filed pertaining to service tax by parties like the petitioner that the amount not paid in furtherance of such disclosure would disable the parties like the petitioner from presenting the declaration in the scheme. Mr. Jetly was unable to point out any provision by which parties like the

petitioners are not eligible for the VCS scheme. The contravention of the first proviso has been highlighted in the impugned order. In that regard what we find is that the Service Tax Voluntarily Compliance Encouragement Scheme, 2013, is referable to chapter VI of the Finance Act, 2013, the definitions therein are referable to clause 105 of this scheme. Therein the term "Tax dues" is defined "to mean the service tax due as payable under the Chapter V of the Finance Act, 1994 or any other amount due or payable under Section 73A thereof for the period beginning from 1st October, 2007 and ending on 31st December, 2012 including a cess thereon under any of the act for the time being in force, but not paid as on the 1st day of March, 2013. There appears to be no dispute that the declaration filed by the petitioner pertains to this period and that the tax or the dues has not been paid on 1st day of March, 2013. What has been indicated by clause 106 is that any person may declare his tax dues in respect of which no notice or order of determination under Sections 72 or 73 or 73(a) of the Chapter has been issued or made before the 1st day of March, 2013, provided any person who has furnished return under Section 70 of the Chapter and disclosed his true liability but had not paid his tax amount for the service tax or part thereof shall not be eligible to make declaration for the period covered by the said return. This proviso, therefore, disables such a person from making a declaration for the period covered by the return. That a distinct eventuality then that is dealt with in the impugned order, Here, the authority undertakes the task of bifurcating or computing the liability by showing some disparity or difference in the figures of the service tax returns, and the disclosures or the declarations filed in a prescribed form pursuant to this scheme. We have no provision therefore before us which would enable us to sustain the exercise and which is carried out by the Respondent No. 3. The declaration which has been made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short levied or short paid and in terms of clause 106(2) is a situation which is not before us and equally not before the Designated Authority also. We do not see how therefore the clauses of the scheme would enable the authority to come to this conclusion. The further stipulation in the scheme and particularly the Service Tax voluntary Compliance Encouragement Rules, 2013, indicate as to how the Designated Authority ought to have dealt with the declaration terms of the scheme. It may be that the eventual order or direction would uphold the declaration or while upholding it issue such other orders and directions, as are permissible in the scheme. However, to reject the scheme outright by the exercise undertaken was not permissible. In the light of the above discussion, this Writ Petition succeeds. The impugned order is quashed and set aside. The declaration now shall be dealt with and scrutinized in terms of the Service Tax voluntary Compliance Encouragement Scheme, 2013 and the Service Tax Voluntary Compliance Encouragement Rules, 2013. All contentions of both sides in relation thereto are kept open. Beyond interfering with the exercise undertaken and in our limited jurisdiction, we have not expressed any opinion on the merits of the declaration or the contentions in relation thereto.

