(2016) 04 JH CK 0174

In the Jharkhand High Court

Case No : I.A. No. 1059 of 2015

Manpreet Engineering and Const. Co. Jamshedpur — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:
Finance Act, 2013 — Section 107(1), 107(3), 108

Citation : (2016) 4 AIRJharR 110 : (2017) 1 JBCJ 157 : (2017) 1 JCR 172

Hon'ble Judges : D.N. Patel and Ananda Sen, JJ.

Bench : Division Bench

Advocate : Binod Poddar, Advocate, for the Petitioner; M/s. Ratnesh Kumar, Sweety Kumari, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—This writ petition has been preferred mainly challenging the order dated 7th April, 2014, passed by the Assistant Commissioner, Central Excise and Service-Tax ?Division-IV, Jamshedpur, whereby this petitioner has been held disqualified from the Voluntary Compliance Encouragement Scheme 2013 (hereinafter to be referred to as the VCES, 2013) and the immunity provided under Section 108(1) of the Finance Act, 201; was withdrawn, as this petitioner has not deposited 50% of the tax dues so declared under Section 107(1) and submitted the proof of such payment to the designated authority. As the requirement under Section 107(3) of the VCES, 2013 was not fulfilled, this petitions was disqualified from VCES, 2013 and the immunity provided under Section 108(1) aforesaid has been withdrawn. Petitioner is challenging the order dated 7th April, 2014 passed by the respondent authorities.

2. Arguments canvassed by the counsel for the petitioner:

? Learned counsel appearing for the petitioner submitted that under the VCES, 2013, declaration was made by this petitioner of Service Tax liabilities amounting to Rs. 3,48,39,667/- for the period from October, 2007 to December, 2012. This declaration was made on 11th July, 2013. Fifty per cent of the aforesaid amount was to be deposited on or before 31st December, 2013. Out of this 50 percent amounts, i.e. Rs. 1,74,19,834/-, petitioner deposited Rs. 1,14,20,000/- by 31st December, 2013 and for remaining Rs. 60,00,000/-, a post dated cheque dated 30th January, 2014 was given to the respondent authorities on 31st December, 2013. Interest upon belated payment has also been made by this petitioner and aforesaid cheque was also encased on 5th February, 2014. Thus, there was no mala fide intention on the part of this petitioner.

? The petitioner was found eligible under the VCES, 2013 and no prejudice has been caused to the respondent because the amount was to be paid on or before 31st December, 2014 looking to VCES, 2013 and it is an admitted fact that this petitioner has deposited the tax as per his declaration before 31st December, 2014.

? It is also submitted by the counsel for the petitioner that no prejudice; has been caused to the respondent as no objection was raised when the cheque was handed over on 31st December, 2013, otherwise this petitioner would have deposited the remaining amount on 31st December, 2013.

? It is submitted by the counsel appearing for the petitioner that there is a substantial compliance by this petitioner and VCES, 2013 should be interpreted leniently and liberally.

? It is further submitted by the counsel for the petitioner that this petitioner has been discriminated and there are several other assesses like the petitioner, who have deposited first instalment after 31st December, 2014 and no Notice has been issued to them. This aspect of the matter have not been properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur and hence, the order passed by the aforesaid authority deserves to be quashed and set aside.

? It is further submitted that under the VCES, 2013, no assessee can be declared disqualified and only the dues can be recovered with interest by the respondents. This aspect of the matter has not been appreciated by the respondent authorities and hence also order dated 7th April, 2014 passed by the respondent authorities deserves to be quashed and set aside.

3. Arguments canvassed by the counsel appearing for the Union of India

? It is submitted by the counsel for the respondent Union of India that the VCES, 2013 cannot be liberally interpreted by this Court, otherwise every assessee will have his own liberal interpretation and all the clauses of the scheme will be in a floating situation and therefore, VCES, 2013 should be interpreted strictly.

? It is submitted by the counsel appearing for the Union of India that as per Section 107(3) of VCES, 2013, the declarant/petitioner has to make the payment of at least 50% of the Service Tax liabilities so declared on or before December, 2013 and the remaining amount is to be paid on or before 30th June, 2014 and if there is any latches in payment of second instalment, further time has been provided up to December, 2014 to make the payment of rest of the amount with interest.

? It is submitted by the counsel for the respondents that the Scheme floated by the respondent is a policy decision of the Union of India. Already leniency has been shown by the Union of India in favour of those declarant''s, who have missed the bus or opted to make voluntary compliance with respect to the payment of the Service Tax liabilities from the year 2007 onwards. Further, under VCES, 2013, the legally payable amount has been divided into two parts. First instalment of minimum 50% should be deposited on or before December, 2013 and the remaining amount ought to be paid on or before June, 2014. It is further submitted by the counsel appearing for the Union of India that further liberty has been given to the declarant that if there is any delay in making payment of second instalment, an assessee can make the payment on or before 31st December, 2014 with interest i.e. the same amount shall now be deposited with interest. Thus, enough leniency has been shown under the VCES. 2013 for the declarant to declare the service tax liabilities voluntarily and to make the payment liberally in two instalments. Further leniency is not required.

? It is further submitted that it is not a matter to be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, otherwise there will be no end to liberal approach, which may vary from assesses to assesses because the tendency of an assesses is cither not to make payment or to make delayed payment of the taxes.

? It is further submitted by the counsel for the Union of India that as per Section 110 of the VCES, 2013, if the declarant fails to pay the tax dues either full or in part, it can be recovered with interest under Section 87 of the Finance Act, 1994. In the facts of the present case, 50% of the declared service tax, so far as present petitioner is concerned, amounts Rs. 1,74,19,834/- (Total amount of Service Tax liability from October, 2007 to December, 2012 comes to Rs. 3,48,39,667/-), whereas the petitioner has deposited only Rs. 1,14,20,000/- before 31st December, 2013. As this amount, viz. 1,74,19,834/- has not been paid on or before 31st December, 2013 as per Section 107(3) of the Finance Act, 2013, there is a clear breach of the VCES, 2013 by tins petitioner. The amount cannot be deposited as per the sweet will of the assessee. This amount has to be deposited as per the guidelines provided under VCES, 2013. For the rest amount of the first 50%, a cheque of Rs. 60,00,000/- was given on December, 2013 and that too a post dated cheque. Date of the cheque is 30th January, 2014 and it was encased on 5th February, 2014. Thus, there is an admitted fact that on or before December, 2013 minimum, 50% of the Service-tax so declared by the declarant was not paid. This aspect of the matter was properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur while passing the order dated 7th April, 2014 and the immunity granted under Section 108(1) of the Finance Act 2013 was rightly withdrawn and no error has been committed by the authority while passing the aforesaid order dated 7th April, 2014, hence, this writ petition may not be entertained.

? It is further submitted by the counsel for the respondents that there is no question of discriminatory treatment being meted out to this declarant and that there cannot be equality in illegality. If any declarant has got the benefit of the VCES, 2013, as per the petitioner, illegally, that does not mean that this petitioner is legally entitled to get the benefit of the scheme even though the clauses of the VCES, 2013 is violated.

? It is further submitted by the counsel for the respondents that there is no question of mala fide intention of the respondents to allow any deviation from the guidelines provided in the VCES, 2013. Such type of voluntary disclosure scheme, by itself is a leniency shown by the respondents. As provided under VCES, 2013, even in the methodology relating to the payment also there is leniency looking to the past liabilities of a declarant and the payment was to be made within one year as provided. Every declarant cannot have his own interpretation of the provisions of the VCES, 2013 and his own style of making payment of service tax so declared by him. If the declarant wants to get the benefit of the VCES, 2013 the declarant has to obey all the clauses of the scheme. This aspect of the matter has also been properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur, while passing the order dated 7th April, 2014 (Annexure 7) and hence, this writ petition may not be entertained by this court.

Reasons

2. Having heard counsel appearing for both sides and looking to the facts and circumstances of this case, we see no ground to entertain this writ petition mainly for the following facts and reasons:

(1) The respondent Union of India floated ?Voluntary Compliance Encouragement Scheme, 2013.? This Scheme was introduced by the Finance Act, 2013. Under this scheme, service tax liabilities can be declared by a declarant and the relevant section is 107, which reads as under:

"107(1) Subject to the provisions of the Scheme, a person may make a declaration to the designated authority on or before the 31st Day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December; 2013, pay not less than fitly per cent, of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under Sub-Section (31 shall be paid by the declarant on or before the 30th day

of June, 2014.

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same ore or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under Section 75 or as the case may be. Section 73 B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under the Scheme along with a copy of acknowledge issued to him under subsection (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

(Emphasis supplied)

(II) In view of the aforesaid provisions of VCES, 2013, this petitioner declared service tax liabilities for the period running from October, 2007 to December, 2012 amounting to Rs. 3,48,39,667/-.

As per Section 107(3) as quoted above, at least 50% of this liability shall be deposited on or before December, 2013. Thus, the petitioner was liable to deposit Rs. 1,74,19,834/-, whereas he deposited Rs. 1,14,20,000/-. Thus, there was a short payment of Rs. 60,00,000/-.

It further appears from the facts of the case that this petitioner-declarant under the VCES, 2013 gave a post dated cheque on 31st December, 2013 for Rs. 60.00,000/- to the respondents. This post dated cheque was of 30th January, 2014, which was encased on 5th February, 2014. Thus, admittedly, this petitioner-declarant has not deposited 50% of the service tax liability on or before December, 2013, which is a violation of Section 107(3) of the Finance Act. 2013. It is submitted by the counsel for the petitioner that there was no mala fide intention on their part and a liberal interpretation of the VCES, 2013 is to be made by the court and the petitioner may be given the benefit of the VCES, 2013 because remaining was paid before 31st December, 2014.

We are not accepting this argument mainly for the following reasons:

(a) The VCES, 2013 is already a liberal scheme floated for those declarant''s, who have committed breach of the taxing statute, especially in payment of Service Tax. Thus, the scheme itself is a liberal approach of the Union of India to encourage voluntary declaration.

(b) Looking to the clauses of the VCES, 2013, especially, 107 thereof, the payment of the service tax liability is divided into two instalments. First instalment is of minimum 50% to be paid on or before 31st December, 2013, whereas the remaining amount of the service tax liability is to be discharged by the assessee-declarant on or before 30th June, 2014. This is the second liberal approach in the scheme floated by the Union of India.

(c) In the second instalment also, which was to be paid on or before 30th June, 2014, if any declarant has got any difficulty he can make the payment on or before 31st December, 2014, but, in this eventuality the payment shall be made with interest. This is the another liberal approach of the Union of India as provided under the VCES, 2013.

(d) The scheme is nothing but a policy decision of Union of India and this court will be extremely slow and careful in making further liberal interpretation of the VCES. 2013. because this court can replace an existing scheme with a better one. The clauses of VCES, 2913 cannot be changed by this court. If Section 107(3) directs the declarant to make the payment of at least 50% of the service tax so declared under Sub-section (If of Section 107 to be paid on or before December, 2013. court cannot give further instalment in the first instalment to the effect that part of the payment can be made on or before 31st December, 2013 and the remaining amount can be paid later on This is not permissible while exercising powers under Article 226 of the Constitution of India.

(III) It appears on perusal of VCES, 2013 that the clauses of the scheme are drafted very clearly and they are bereft of any ambiguity. What is to be paid that has already been mentioned in Section 107. We cannot replace all these section In a taxing statute interpretation ought to be made strictly. Court can neither replace all these clauses of VCES, 2013 nor further instalment''s can be given by the court in exercise of powers under Article 226 of the Constitution of the India. The so called theory argued by the counsel for the petitioner, viz. ?substantial compliance? has no place in a taxing statute, otherwise every declarant or assesses will partly comply with a scheme or provision of the taxing statute and will say that there is substantial compliance, which will lead to nothing but chaos and court cannot be a party to this.

(IV) Likewise, ?No prejudice? theory in the payment of taxes cannot be advanced by the erring assessee or erring declarant. There is no question of any prejudice caused to the Union of India and once the clauses of the VCES, 2013 is violated, the declarant is not entitled to get benefit of the said scheme.

(V) Counsel for the petitioner has also submitted that never any objection was raised by the respondent while receiving the post dated cheque. This cheque was given on 31st December, 2013 and the date of the cheque was 31st January, 2014.

We are not accepting this argument also mainly for the reason that even if the respondents would have objected neither there was any time left with this declarant to sell over its property and make payment of the dues nor the respondents have any power, jurisdiction and authority to go against the clauses of VCES, 2013, especially 107(3) thereof to accommodate the petitioner. Cheque might have been encased, but it makes no difference because to encase it is not a violation so far as Section 107(3) is concerned.

(VI) These aspects of the matter have been properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur while passing the order dated 7th April, 2014. It ought to be kept in mind that whenever such voluntary dis-closer scheme is floated, further leniency should not be given by the Court to the declarant apart from what has been provided under the scheme, otherwise, there will be no end of liberal approach. Moreover, payment of tax has a direct nexus with the budget of the country. There are fixed dates for payment of taxes. Realisation of taxes after due date is a matter of policy decision of the Union of India. Hence, this court will not extend the period for the payment of tax dues unless the scheme in question gives that liberty to the declarant.

As stated herein above, in the facts of the present case, so far as the payment of first instalment is concerned, which was minimum 50% of the tax dues so declared was to be paid on or before 31st December, 2013 and there is no provision under the VCES. 2013 for relaxation in the payment of first instalment. So far as second instalment is concerned, it was to be paid on or before 30th June, 2014. However, there is slight leniency in the payment of second instalment, viz. if the second instalment is not paid before 30th June, 2014, the declarant can make the payment on or 31st December, 2014, but, with interest. Thus, this petitioner-declarant has committed a breach of Section 107(3) of the VCES. 2013 in making the payment of first instalment and hence, he is not entitled to get the benefits provided under this scheme.

(VII) As submitted by the counsel for the petitioner, some errors might have been committed by the department in case of one or two declarant, but no benefit of those errors can be extended to the present petitioner because there is no equality in illegality committed by this respondent.

3. As a cumulative effect of the aforesaid facts and reasons, there is no substance in this writ petition, as no error has been committed by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur, while passing the order dated 7th April, 2014, hence, this writ petition is hereby dismissed.

I.A. No. 1059 of 2015

4. In the light of dismissal of the writ petition, this interlocutory application also stands disposed of.

