(2016) 04 DEL CK 0181

In the Delhi High Court

Case No : Writ Petition (C) No. 2562 of 1999

Maruti Udyog Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Citation : (2016) 336 ELT 227

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : M.P. Devnath, Abhishek Anand and Yogendra Aldak, Advocates, for the Petitioner; Rahul Kaushik, Sr. Standing Counsel with Bhavishya Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. A short point involved in this writ petition is whether the rejection of the Petitioner?s application for being considered under Kar Vivad Samadhan Scheme (?KVSS?) as communicated by order dated 9th March, 1999 by the Assistant Commissioner (Tech) of the Office of the Commissioner of Central Excise, Delhi-III was justified in law?

2. The petitioner is manufacturer of various types of motor vehicles. On 24th December, 1996, the Commissioner of Central Excise (CCE) passed an order confirming the central excise demand of Rs. 26,59,620/- and penalty of like amount against the petitioner. The appeal filed by the petitioner against the said order was decided by the Customs, Excise & Gold (Control) Appellate Tribunal (?CEGAT?) by order dated 22nd December, 1998 [2001 (134) E.L.T. 188 (Tribunal)] by a majority of 2:1. The CEGAT confirmed the demand of excise duty as determined by the CCE but reduced the penalty to Rs. 5 lakhs.

3. Against the aforementioned order of the CEGAT, the petitioner preferred an application for reference under Section 35G of the Central Excise Act, 1944 (CE Act) raising certain questions to be referred to the High Court. This reference

application (?RA?) which was filed on 31st December, 1998 was numbered as E/450/98-B1.

4. The KVSS was introduced by the Finance Act, 1998 and the benefit of the scheme could be availed of by filing a declaration up to 31st December, 1998. This date was extended subsequently up to 31st January, 1999. The petitioner sought to avail the benefit under the KVSS and filed declaration under Section 88 of the Finance Act, 1998 on 11th January, 1999. In the said declaration, the petitioner referred to the pending RA before the CEGAT. The petitioner offered to pay 50% of the disputed tax amount and sought waiver of the balance 50% and the entire amount of penalty.

5. On 9th March, 1999, the Assistant Commissioner of Central Excise issued a letter to the petitioner stating that the petitioner cannot seek to apply under KVSS. It was stated that the RA filed before the CEGAT was not on a point of law and "It has no meaning and will not alter the decision of CEGAT". Accordingly, the petitioner?s declaration filed on 11th January, 1999 was returned to the petitioner and it was asked to pay the amount of tax arrears in full.

6. Against the aforementioned order the petitioner made a representation on 20th March, 1999, in which a reference was made to the circular issued by the Central Board of Direct Taxes (?CBDT?) on 3rd September, 1998 wherein in response to a question as to when a reference could be said to be pending, the answer was "If the taxpayer has filed within the statutory time a legally valid reference application under Section 256(1) or 256(2) of the Income Tax Act, 1961, the condition of pendency of reference could be said to have been satisfied".

7. The petitioner has also referred to another clarification/circular issued by the Government of India the relevant portion of which reads as follows :

"4. The legal provisions for the scheme were incorporated in Chapter-IV of the Finance (No.2) Act, 1998. It may be observed that no separate schemes for Direct Tax side and Indirect Tax side have been incorporated and the scheme is common. One has, therefore, to read carefully the relevant portions of Chapter IV so as to understand its scope, the benefits available, the procedure to be followed for claiming benefits under the scheme, etc., insofar as it relates to Customs and Central Excise cases".

8. However, the petitioner?s representation dated 20th March, 1999 was again turned down by a letter dated 13th April, 1999, stating that the declaration furnished by the petitioner was not covered under the ambit of KVSS. It was in the above circumstances that the petitioner has approached this Court with a prayer that the aforementioned two letters dated 9th March, 1999 and 13th April, 1999 be set aside and the respondents be directed to accept the declaration filed by the petitioner under the KVSS and pass suitable orders under Section 90 of the Finance Act, 1998.

9. This Court by order dated 28th April, 1999 directed notice to issue in this petition aid directed that no coercive steps would be taken for recovery of the disputed amount. Later by an order dated 10th August, 1999 the said interim order was vacated. It was stated that the petitioner would pay the balance amount of duty without prejudice to its rights and contentions. On the previous date, i.e., on 1st March, 2006, this Court had required counsel for both the sides to inform the Court whether the RA filed by the petitioner was pending before the CEGAT (now CESTAT).

10. Learned counsel for the petitioner states that as per the enquiries made by the petitioner, the RA filed by it before the CESTAT is still pending consideration.

11. The short question that arises for consideration is whether the pendency of the petitioner?s RA before the CESTAT satisfies the requirement for acceptance of the petitioner?s declaration under the KVSS.

12. Learned counsel for the respondent has drawn attention to the decision of the Supreme Court in CIT v. Shatrusailya Digvijay Singh Jadeja - 2005 (192) E.L.T. 3 (S.C.), where it was held that the mere fact that an appeal that has been filed may not be maintainable would not mean that no appeal is pending before the Court. In such circumstances the filing of the declaration under KVSS could not be held to be ineffective or infructuous. However, as already noticed, the KVSS was no different in its application whether it was under the Income Tax Act, 1961 (IT Act) or wealth tax or even the excise duty.

13. In Swan Mills Ltd. v. UOI - 2007 (214) E.L.T. 322 (S.C.), the Supreme Court was considering whether the mere fact that an appeal filed before the Commissioner (Appeals) after the prescribed period of limitation and when the delay had not been condoned would disentitle the consideration of the declaration filed under the KVSS. This question arose in the context of the demand raised under Central Excise Act, 1944. The question was answered by holding that even where the appeal may have been time-barred it should be treated as pending as far as consideration of the declaration under the KVSS was concerned. This position has been reiterated in the judgment of the Madras High Court in Better Label Manufacturing Co. Ltd. v. Commissioner of Customs, 2008 (228) E.L.T. 331 (Mad.).

14. As far as the present case is concerned, the only reason given by the respondent for not considering the declaration filed by the petitioner was because the RA was pending before the CESTAT but not ?admitted. In other words the respondent did note that the RA is pending before the CESTAT. It has been clarified even in the circular issued by the CBDT that "If the taxpayer has filed within the statutory time a legally valid reference application under Section 256(1) or 256(2)" of the IT Act (corresponding to Section 35G of the CE Act) 1944 "the condition of pendency of reference could be said to have been satisfied".

15. Further it has been clarified that there could be cases where there may be no

procedure for admitting an appeal and in such cases the mere proof of filing an appeal would be sufficient. In other words, as far as the RA filed by the petitioner is concerned, since there is no procedure of ?admitting? such an RA, the mere proof of pendency of the RA before the CESTAT should be sufficient for accepting the declaration filed by the petitioner under the KVSS.

16. For the aforementioned reasons the impugned letters dated 9th March, 1999 and 13th April, 1999 issued by the respondent No. 3 are hereby quashed. A direction is issued to the respondent to accept the declaration filed by the petitioner under the KVSS and furnish it in accordance with law. It is made clear that the amount paid by the petitioner pursuant to the order of this Court will be subject to adjustment depending upon the decision taken by the respondent in terms of KVSS.

17. The writ petition is disposed of in the above terms.

