
(2022) 03 UK CK 0058

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2783 Of 2021

M/s Maurya Enterprises House No. 89 Chattarpur Rudrapur APPELLANT

Vs

Additional Commissioner Central Excise And Service Tax And Others RESPONDENT

Date of Decision : 09-03-2022

Acts Referred:

Central Goods And Services Act, 2017 — Section 107, 174, 174(1), 174(2), 174(2)(c), 174(3)

Finance Act, 1994 — Section 84, 173(1)

General Clauses Act, 1897 — Section 6, 6(1), 6(2)

Citation : (2022) 03 UK CK 0058

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Ravindra Singh, Shobhit Saharia

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. Brief facts of the case are, that the petitioner, which is a sole proprietorship enterprise, was initially issued with the Show Cause Notice No. C.No. V(15)Adj./M-II/Maurya/209/14/10637 dated 30.09.2014, which was issued by the Additional Commissioner, Central Excise and Service Tax, Meerut-II, as a consequence of exercising of his powers under the Finance Act of 1994, whereby, despite issuance of show cause notice dated 30.09.2014, when the petitioner has not participated or approached before the Additional Commissioner, Central Excise and Service Tax, he proceeded to pass an ex parte order on 31.12.2015, whereby, a demand of Rs. 37,22,254/- along with interest and penalties payable on it, was imposed against the petitioner.

2. As a consequence of the said imposition and tax default committed by the petitioner, with the change of law governing the field of taxation pertaining to the firm which was registered under the Finance Act, 1994, when the petitioner

sought a registration under the Goods and Services Tax Act, 2017 (for short "CGST Act, 2017"), he was identified to be a defaulter and as a consequence thereto, his registration made with the CGST was suspended and consequently as such he could not proceed to function as a firm in performing his business under the registration, which could have been given to the petitioner under the CGST Act, 2017.

3. The petitioner, in the present writ petition, had prayed for quashing of the said Demand Notice dated 31.12.2015, which had been issued by the Joint Commissioner to the Central Excise & Service Tax Act, on the ground that they were ex parte orders, but the fact remains, that the challenge given to the said notice was made by the petitioner by filing a writ petition only on 05.12.2021, and that too when the Show Cause Notice No. ZA0508210074670 dated 09.08.2021 was issued by respondent No. 3, with regard to cancellation of the registration of the petitioner as granted under the CGST Act, 2017.

4. When the writ petition was filed before this Court, though at a belated stage, it was on the pretext that the knowledge of the tax dues, which he was otherwise supposed to pay by an order dated 31.12.2015, he could acquire the knowledge of it only by virtue of the notice, which had been issued by respondent No. 3 on 09.08.2021, hence, the writ petition was filed on 05.12.2021.

5. When the matter was taken up initially, the learned counsel for the respondents was directed to complete his instructions and later on, when the proceedings revived back on 05.12.2022, the question emerged for consideration as to whether fixation of tax liability under the Finance Act, 1994, which was harnessed under changed legal circumstances with the enforcement of CGST Act, 2017 and the repealment of Finance Act, 1994, as to which Forum would be available to the petitioner, as against the impugned imposition of tax liability made by the impugned order dated 31.12.2015.

6. The learned counsel for the respondents submitted that if the interpretation to the provisions contained under Section 174 of the CGST Act, 2017 is taken into consideration, which deals with the repealing and savings clause, in fact, under its sub Section (1) of Section 174 of the CGST Act, 2017, the Finance Act, 1994 stood repealed by the implications of sub Section (2) of Section 174.

7. The issue of consideration before this Court is, as to whether the effect of repealment of the amendment of Finance Act, 1994 being Act No. 32 of 1994, as to whether the petitioner's right of Appeal is still protected as it was envisaged under the Finance Act, 1994?

8. It has been argued by the learned counsel for the respondents that if sub Clause (c) of sub Section (2) of Section 174 of the CGST Act, 2017 is taken into consideration, the savings which has been provided therein, it relates to rights, privileges, obligation, or liability acquired, accrued or incurred under the amended Act.

9. What he tries to argue is that by the use of expression obligation or liability as provided under sub Clause (c) of sub Section (2) of Section 174 of the CGST Act, it would be inclusive of the tax liability, which has been settled under the Finance Act, 1994, which stood repealed subsequently by sub Section (2) of Section 174 of the CGST Act, 2017. In that eventuality, if the savings clause saves the obligation or the liability acquired by the assessee, in that eventuality, his rights under Section 84 of the Finance Act, 1994, too of preferring of an Appeal to the Commissioner of Central Excise stands protected.

10. In order to further fortify his above argument, he submits that if the savings clause of Section 174 of the CGST Act, 2017, which is extracted hereunder in its totality, is taken into consideration, particularly, in the light of the implications provided under sub Section (3) of Section 174 of the Act, wherein it has laid down that under Section 6 of the General Clauses Act, 1897, will have an effect over the repealed provision hence in that eventuality under sub Section (1) of Section 174 or under sub Section (2) of Section 174 of the CGST Act, 2017, and in that eventuality, the petitioner would still have a right of preference of an Appeal under Section 84 of the Finance Act, 1994 before the Commissioner of Central Excise.

"174. Repeal and saving. - (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of

any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal."

11. Even if as an effect of Section 174 i.e. repealment of the Finance Act, 1994 is taken into consideration, if the argument of the learned counsel for the petitioner is considered, then too, the order of Joint Commissioner, impugned in the present writ petition, would be appellable under Section 107 of the CGST Act, 2017.

12. Owing to this peculiar situation, where during the intervening period of subsistence of the order of imposition of tax on the petitioner by an order dated 31.12.2015, when the law has undergone a change with the enforcement of the CGST Act, 2017, this Court is of the view that in view of sub Clause (c) of sub Section (2) of Section 174 of the CGST Act, 2017, where it saves the rights and privileges including therewith the obligation and liability, which had accrued as a consequence of the amendment of Finance Act, 1994, in that eventuality, the assessee of the taxes under the Finance Act, 1994 could still avail the remedy of Appeal under Section 84 of the Finance Act, 1994, and the order of the Joint Commissioner, would be appellable under Section 84 of the Finance Act, 1994, which stand repealed to the extent it has been provided under sub Section (2) of Section 174 of the CGST Act, 2017.

13. In that view of the matter, the writ petition is dismissed with liberty reserved for the petitioner to resort to the Appellate proceedings, which are available to him, in accordance with law.