

(2023) 01 OHC CK 0107

In the Orissa High Court

Case No : Writ Petition (C) No.16724 Of 2014

Pramod Kumar Pradhan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Contract Act, 1872 — Section 22
Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 —
Section 3
Income Tax Act, 1961 — Section 220, 220(2)
Employees' State Insurance Act, 1948 — Section 75, 77, 77(1A)(b)

Citation : (2023) 01 OHC CK 0107

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : K. Ray, A. K. Baral, P. K. Parhi, A. P. Ray, P. P. Ray

Final Decision : Disposed Of

Judgement

Arindam Sinha, J.

1. Mr. Nayak, learned advocate appearing on behalf of petitioner had moved the writ petition on 3rd January, 2023. He had submitted, his client was liable to pay the contribution and interest as there was default. Criminal proceeding was launched by the corporation. Then, the corporation provided amnesty scheme, under which the demand was paid. The payment was made on 30th May, 2007. Long thereafter, by impugned notice dated 4th July, 2013, the corporation raised further demand, in addition to the earlier demand, paid up under the amnesty scheme. He relies on clause (b) under sub-section (1-A) in section 77 of Employees' State Insurance Act, 1948 to submit, the special statute provides for limitation barring the demand in impugned notice.

2. Mr. A. P. Ray, learned advocate appearing on behalf of the corporation, on that date had submitted, demand by impugned notice was in respect of interest that was erroneously omitted in the demand earlier made and paid under amnesty.

His further submission was that section 77 only operates in respect of proceedings before the insurance Court. He had relied on judgment of the Supreme Court in Goetze (India) Limited v. Employees' State Insurance Corporation, reported in AIR 2008 SC 3122 to submit, law was declared that liability to pay interest is statutory. There is no power of waiver. The question of any compromise or settlement does not really arise

3. On hearing both sides, Court had made observations. In this context paragraph 3 from order dated 3rd January, 2023 is reproduced below.

"3. Observations have been made by Court in context of another judgment of the Supreme Court in Employees' State Insurance Corporation v. F. Fibre Bangalore (P) Ltd., reported in (1997) 1 SCC 625, paragraph 5. Mr. A.P.Ray prays for adjournment."

4. Today Mr. K. Ray relies on judgment of the Supreme Court in Vikrant Tyres Ltd v. ITO, Mysore, reported in AIR 2001 SC 800. Paragraph 11 is reproduced below.

"11. The High Court also fell in error in relying on Section 3 of the Validation Act to construe Section 220(2) in the manner in which it has done in the impugned judgment. Section 3 of the Validation Act, in our opinion, cannot be relied upon to construe the authority of the Revenue to demand interest under Section 220 of the Act. The said Section was enacted to cope up with a different fact-situation. That Section only revives the old demand notice which had never been satisfied by the assessee and which notice got quashed during some stage of the challenge and finally the said quashed notice gets restored by an order of a higher forum. In such situation, Section 3 of the Validation Act restores the original demand notice which was never satisfied by the assessee and the said Section does away with the need to issue a fresh notice. Beyond that, that Section cannot be resorted to for reviving a demand notice which is already fully satisfied."

(emphasis supplied)

5. Mr. A. P. Ray in response to reliance on Vikrant Tyres Ltd. (supra) relies on view taken by the Full Bench of Punjab and Haryana High Court in E.S.I. Corpn., Chandigarh v. Oswal Woollen Mills, reported in 1980 Lab IC 1064. Relied upon passage is reproduced below.

"It is a hallowed rule of construction that in construing a statute, the definitions from an altogether different enactment are not helpful and indeed dangerous to advert to and the more so, where their language is plainly and significantly different."

(emphasis supplied)

6. The facts are, there was default by petitioner. That led to accrual and demand of interest on aggregate default along with the principal dues. In addition the corporation resorted to initiate criminal proceeding in accordance with law, for

recovery. Court has ascertained that the amnesty granted to petitioner was in fact that itself and not waiver. On petitioner having paid the aggregate demand, he obtained amnesty from the criminal prosecution. In other words, the corporation, upon recovery, did not prosecute. Instead, it withdrew and the proceeding was dropped.

7. It is not disputed at the Bar that the amnesty was obtained by petitioner on paying aggregate demand, as calculated by the corporation. The corporation now says, it made mistake in the calculation. Hence, upon discovery, subsequent demand by impugned notice dated 4th July, 2013, issued long after the payment was made on 30th May, 2007. Question for adjudication is whether this subsequent demand is barred by clause-(b) under sub-section (1-A) in section 77. Clause-(b) is reproduced below.

"(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

Provided that no claim shall be made by the Corporation after five year of the period to which the claim relates;"

8. Cause of action for the corporation, on the claim subsequently made by impugned notice dated 4th July, 2013, undoubtedly arose in respect of original demand made, followed by prosecution. Hence, by the clause, petitioner asserts that impugned notice is barred, for it to be set aside and quashed.

9. In *F. Fibre Bangalore (P) Ltd.* (supra) the Supreme Court declared that by necessary implication of provision under section 75, (Act of 1948), when the employer denies liability or applicability of provisions in the Act or quantum of contribution, it is for him to approach the insurance Court. Instead of doing so petitioner has moved the writ Court challenging the notice. The challenge is not so much a dispute but that the demand itself is barred by law and in raising it, the corporation acted in excess of its powers.

10. Sub-section (2) in section 220 of Income Tax Act, 1961 is reproduced below without the provisos.

"(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub- section (1) and ending with the day on which the amount is paid:"

In *Vikrant Tyres Ltd.* (supra) the Supreme Court found that section 3 in Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 could not be relied upon to construe authority of revenue to demand interest under section 220 in the Act, of 1961. The provision in the validation Act only revived the old

demand notice, which had never been satisfied by the assessee and which notice was quashed during some stage of the challenge and finally restored by order of higher forum. In such situation section 3 of the validation Act restored original demand, which was not satisfied, doing away with issuance of fresh notice of demand. However, that section cannot be resorted to for reviving a demand notice, which is already fully satisfied. On behalf of petitioner contention is that impugned notice arises out of a fully satisfied demand and hence, the challenge is covered by *Vikrant Tyres Ltd. (supra)*, for it to be set aside and quashed.

11. Therefore, on the one hand we have a satisfied demand and subsequent plea of mistake and on the other, the claim based on mistake, contended to be barred by limitation as cause of action for it arose on original demand.

12. In this situation some illumination may be had from section 22 in Contract Act, 1872. The section is reproduced below.

"22. Contract caused by mistake of one party as to matter of fact.—A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact."

True it is that petitioner and the corporation do not have contractual relation. The demand originally made and subsequently, as caused by mistake in calculation earlier, is a statutory demand as declared in *Goetze (supra)*. Nevertheless, the principle of the provision can be applied. The principle is that the contract is not voidable merely because it was caused by one of the parties to it being under mistake as to a matter of fact. So also impugned notice is not voidable or bad because it was caused by the corporation being under mistake in having raised original demand. Petitioner's obligation to pay is statutory. The statute (Act of 1948) provides for determination, demand and recovery, including by initiation of criminal proceedings. In the circumstances, it cannot be said that cause for the demand under impugned notice stands barred because the corporation sought to enforce, under the cause, original demand but made a mistake in calculating it. Thus, though original demand as made was satisfied yet, by reason of mistake made, it cannot be said to have been fully satisfied. There was subsequent discovery of the mistake and hence, belated impugned notice making the demand reviving original demand. The Validation Act of 1964 being applicable to tax laws cannot be applied to do away with issuance of fresh notice. Impugned notice was in order. *Oswal Woollen Mills (supra)* is not applicable as the view was with regard to taking aid in construction of a statute from definition(s) of another.

13. For reasons aforesaid no interference is warranted with impugned notice. Petitioner has four weeks from date to comply with the notice in paying the demand.

14. It is made clear that impugned notice specified balance to be paid towards prosecution cases at Rs.30120/-. Petitioner is required to pay that sum within the time directed.

15. The writ petition is disposed of.

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