(2003) 11 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 13895 of 2003

Safeguard Surgicals APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:
Kar Vivad Samadhan Scheme, 1998 — Section 90(2)

Citation : (2004) 113 ECR 741 : (2005) 183 ELT 13

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Paresh M. Dave and B.B. Naik, for the Appellant; D.N. Patel, SCGSC, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—RULE. Service of rule is waived by learned Sr. Central Government Standing Counsel Shri D.N. Patel for the respondent authorities. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are aggrieved by an order dated 28-1-2000 passed by respondent No. 2, whereby the petitioners were communicated that they had not paid the amount payable under Kar Vivad Samadhan Scheme (for short, ''KVSS'') within 30 days from the date of receipt of Form No. 28 under KVSS, 1998 and, therefore, the petitioners were not entitled to any benefit under the scheme.

3. Learned advocate Shri P.M. Dave appearing for the petitioners has submitted that the petitioners wanted to avail of benefit under the KVSS and had, therefore, approached respondent No. 2. Necessary declaration was filed by the petitioners on 29-11-1998, and in pursuance thereof, the designated authority had issued a certificate on 8-1-1999. The said certificate was served upon the petitioners on 1-2-1999. According to the certificate issued to the petitioners, a sum of Rs. 10,66,527/- was to be paid under the provision of Section 90(2) of the KVSS on or before 3-3-1999.

4. It has been submitted by the learned advocate that the petitioners had deposited a sum of Rs. 3 lakhs with this court in another legal proceedings and by virtue of an order passed by this court on 22-12-1998, the said amount was treated to have been paid in pursuance of the certificate. Thereafter, the petitioners had paid a sum of Rs. 2,66,527/- on 22-2-1999 and a further sum, being the last instalment, had been paid by an account payee cheque for Rs. 5 lakhs on 27-2-1999. Thus, in all, a sum of. Rs. 10,66,527/- had already been paid and, therefore, according to the petitioners, the petitioners were entitled to the benefit under the scheme.

5. It has been submitted by the learned advocate that according to the respondent authorities, the cheque for Rs. 5 lakhs had been honoured on 4-3-1999 and the amount had been deposited in the bank account of respondent No. 3 on 4-3-1999. In the circumstances, respondent No. 2 came to the conclusion that the entire amount of Rs. 10,66,527/- had not been paid within 30 days and, therefore, the petitioners were not entitled to any benefit under the scheme.

6. It is the case of the petitioners that the cheque had been deposited on 27-2-1999 along with necessary challan in the bank a/c of respondent No. 3 and as the said cheque had been honoured subsequently, the liability to make the payment of the petitioners had come to an end on deposit of the cheque as the cheque had been cleared or honoured subsequently. It has been submitted by him that the reasons given by respondent No. 2 in his letter dated 28-1-2000 that the amount had not been paid within 30 days, i.e., on or before 3-3-1999, is not correct because the last cheque had already been deposited on 27-2-1999. It has been submitted by him that the conclusion arrived at by respondent No. 2 with regard to not making payment within the time prescribed is not correct.

7. On the other hand, learned Senior Central Government Standing Counsel Shri D.N. Patel appearing for the respondents has submitted that the cheque for Rs. 5 lakhs deposited by the petitioners had been cleared on 4-3-1999. The last day for making payment of the entire amount was 3-3-1999, and as the last instalment of Rs. 5 lakhs had been received by the respondent authorities on 4-3-1999, it cannot be said that the entire amount of Rs. 10,66,527/- has been paid on or before 3-3-1999 i.e. within 30 days from the date on which the certificate had been issued under the provisions of Section 90(2) of KVSS. He has therefore justified the impugned order passed by respondent No. 2.

8. We have heard the learned advocates and have considered the judgments, referred to by them.

9. It is not in dispute that the first two instalments, whereby Rs. 5,66,527/- had been paid by the petitioners, were paid in time. The question is only with regard to the last instalment of Rs. 5 lakhs. It is also not disputed that the petitioners had deposited the cheque for Rs. 5 lakhs on 27-2-1999 along with necessary challan in the bank designated by the Central Board of Excise and Customs. The

cheque had been cleared on 4-3-1999 i.e. one day after the date on which the entire amount was required to be paid by the petitioners. Looking to the aforestated undisputed factual position, this Court has to decide whether the last instalment of Rs. 5 lakhs can be said to have been paid within the prescribed period, especially when the cheque had been deposited in the Bank designated by the Central Board of Excise and Customs within a period of 30 days from the date on which the certificate was served upon the petitioners i.e. on 1-2-1999.

10. In our opinion, the view taken by respondent No. 2 is not correct. The Hon''ble Supreme Court, in the case of K. Saraswathy alias K. Kalpana (Dead) by Lrs. Vs. P.S.S. Somasundaram Chettiar, has held that, when any payment is made by cheque, it must be deemed to have been made on the date when the cheque is given, if the said cheque is encashed or honoured in due course. Looking to the aforestated judgment delivered by the Hon''ble Supreme Court, one has to come to a conclusion that the payment was made on 27-2-1999, the day on which the cheque had been deposited in the Bank with challan, as the cheque had been honoured and was credited in the account of the concerned respondent on 4-3-1999.

11. Similar view has been taken by this Court in the case of Kangold (India) Ltd v. Commissioner of Income Tax (1999) 239 ITR 843, arising under the provisions of Voluntary Disclosure of Income Scheme of 1997.

12. Looking to the law laid down by the Hon''ble Supreme Court and a Division Bench of this Court, in our opinion, respondent No. 2 was not right when he came to a conclusion that simply because the cheque had been encashed on 4-3-1999, it cannot be said that the amount was not paid within the prescribed period of 30 days. In our opinion, the last instalment of Rs. 5 lakhs must be treated to have been paid on 27-2-1999 i.e. within the period prescribed and, therefore, in our opinion, the order passed by respondent No. 2 dated 28-1-2000 is bad in law. We, therefore, quash and set aside the said order and direct respondent No. 2 to give benefit under the scheme to the petitioners as if the entire amount of Rs. 10,66,527/- had been paid to the respondent authorities within the time prescribed.

13. In view of the fact that the impugned order passed by respondent No. 2 is quashed and set aside, respondent No. 2 is directed to issue final certificate under the provisions of KVSS preferably within a period of two months from the date of receipt of a certified copy of this judgment.

The petition is therefore disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.