

(2001) 02 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No. 6752 of 1999

Vee Kay Ar Paints

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Finance (No. 2) Act, 1998 — Section 87, 88, 95

Citation : (2001) 133 ELT 56

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : Habibullah Basha for N. Sudhakar, for the Appellant; K. Veeraraghavan, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—There was a search in the premises of the petitioner on 16-3-1997 at which large quantity of undisclosed

manufactured goods were seized. The goods were paint which is the item manufactured, by the assessee. The value of the goods found to have

been manufactured from September 1996 to March 1997 was Rs. 1,18,16,859. The assessee shortly thereafter paid a sum of Rs. 50,000/-

described as "deposit" for past clearances. That deposit was made without any demand having been raised therefor. On 16-9-1997, a show cause

notice was issued to the assessee alleging contravention of various provisions of the Central Excise Rules. It was also stated therein that the

assessee had manufactured goods for in excess of the S.S.I, exemption limit of Rs. 30 lakhs and; that even after the ceiling having been crossed,

had continued to remove the goods without payment of duty. It was further stated in the notice that the goods of the value of Rs. 4,29,620/- was

seized from the premises of one of the factories and goods of the value of Rs. 2,31,634/- from another factory belonging to the assessee. That

show cause notice did not quantify the amount of duty payable on the goods cleared without payment of duty and the goods which had been

manufactured and were awaiting clearance.

2. Subsequently, another show cause notice was issued to the assessee on 29-7-1998 in which the quantification was made an enquiry having

been conducted in between the dates of the two show cause notices. The amount of duty demanded in the second show cause notice was Rs. 33,

41,740/-.

3. The assessee filed a declaration under the Kar Vivad Samadhan Scheme, being part of the Finance (No. 2) Act of 1998, on 18-12-1999

wherein it referred to the two show cause notices and sought an order on declaration to enable him to make the payment in terms of that scheme.

4. That declaration was rejected on 1-3-1999 by the designated authority in which it was stated that the assessee had filed a declaration in respect

of the show cause notice No. 10/98, dated 29-7-1998 involving a duty amount of Rs. 36,41, 749/-, but that the scheme does not cover such

pending notice.

5. Counsel for the assessee contended that the order is cryptic and also erroneous inasmuch as the show cause notice of 29-7-1998 must be read

alongwith the earlier show cause notice of September 1997, and so read must be regarded as relating back to the date of the first show cause

notice and the quantification made in the show cause notice be deemed to have been made on the date of the first show cause notice. Counsel also

contended that the acceptance of the payment of Rs. 50,0007- in March, 1997 would also imply that the quantification had been made.

6. The assessee could have claimed the benefit of the Samadhan Scheme, only if he can bring himself within the four corners thereof. The scheme is

applicable to "tax arrears" which is defined in Section 87(m) of the scheme. Sub-clause (ii) of Section 87(m) which sets out definition of tax arrears

in relation to indirect taxes reads as under :

87(m) ""tax arrear"" means, -

(i)...

(ii) in relation to indirect tax enactment, -

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined

as due or payable under that enactment as on the 31st day of March, 1998, but remaining unpaid as on the date of making a declaration u/s 88, or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which

constitutes the subject matter of a demand notice or a show cause notice issued on or before the 31st day of March, 1998 under that enactment

but remaining unpaid on the date of making a declaration u/s 88, but does not include any demand relating to erroneous refund and where a show

cause notice is issued to the declaration in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such

seized goods where such duties on the seized goods have not been quantified.

7. As is clear from the perusal of that definition, where a show cause notice has been issued to a declarant in respect of a seizure of goods and

demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

It is also a requirement of the scheme that the show cause notice must have been issued on or before 31-3-1998. These conditions have been

satisfied in the case of the declarant assessee. The second show cause notice on which the assessee relied was issued subsequent to 31-3-1998,

which the first show cause notice, though issued prior to that date, did not quantify the amount. The second show cause notice was not of any

relevance so far as the scheme was concerned. What was material was, the show cause notice that has been issued in September 1997 which did

not quantify the duty.

8. Counsel, however, contended that u/s 95 of the Act, these are not reasons specified for making the scheme inapplicable. Counsel after referring

to Section 95(ii) of the Act submitted that the scheme being beneficial to the assessee it should be construed liberally. The submission so made

ignores the fact that Section 95 itself in "in respect of tax arrears" and is subject to the definition of "tax arrears" in Section 87(m) of the Act.

9. I do not find any merit in this petition. Petition is dismissed.