THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.5977 OF 1999

ORAL ORDER: *(per the Hon'ble Sri Justice Dilip B.Bhosale)*

This Writ Petition, under Article 226 of the Constitution of India, challenges the order of the Assistant Commissioner, dated 10.03.1999, rejecting the declaration, dated 29.01.1999, filed by the petitioner under Section 88 of the Finance Act, 1988 (for short, 'the Act') under Kar Vivad Samadhan Scheme, 1998 (for short, 'the Scheme), whereby the petitioner opted the benefit of the Scheme. The order, dated 10.03.1999, reads thus:

> "Subject: CENTRAL EXCISE – Kar Vivad Samadhan Scheme – Declaration filed by M/s. Rishab Polymers Pvt. Ltd., Jeedimetla – Regarding
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> Please refer to the declaration, dated 29.01.1999, filed under the Kar Vivad Samadhan Scheme, 1998.
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> In this connection, I am directed to inform you that the Designated Authority has rejected the declaration since the case stands decided as on the date of filing the declaration and therefore cannot take benefits under the Kar Vivad Samadhan Scheme, 1998.
>
> Yours faithfully,
>
> (S. PAL NIYANDI)
> ASST. COMMISSIONER (KVSS)"

When the declaration, dated 29.01.1999, was filed by the petitioner under the Scheme, admittedly the proceedings initiated by issuing a show cause notice, dated 31.12.1997, had already been finally disposed of vide Order-in-Original No.4 of 1999, dated 28.01.1999. In view thereof, the petitioner's declaration, dated 29.01.1999, was rejected by the Designated Authority.

We have perused the relevant provisions contained in the Scheme, in particular, Sections 88 and 95 thereof. It is not in dispute that even pendency of the proceedings initiated by issuing show cause notice were also covered under the Scheme as clarified by the Central Board of Excise and Customs vide their letter, dated 28.10.1998. It has come on record that the Office of the Commissioner of Customs and Central Excise, Hyderabad, had issued letter dated 08.10.1998 to the petitioner informing them about the Scheme and asking them to opt for the same by filing a declaration.

We have perused the letter, dated 08.10.1998. In the letter, it was specifically mentioned that the petitioner could opt for the Scheme by filing a declaration and if he files such declaration, he was assured that his case would be considered on priority basis. Despite this, the petitioner did not even apply for declaration within the stipulated time. The petitioner,
as a matter of fact, addressed a letter dated 04.11.1998, to the Additional Commissioner of Central Excise and Customs asking him to decide the case initiated against them by issuing the show cause notice. In the letter, the petitioner also mentioned about the clarification issued by the Central Board of Excise and Customs, dated 28.10.1998. Reference to the clarification, dated 28.10.1998, in the letter of the petitioner would show that the petitioner was aware that even pendency of the proceedings initiated by issuing the show cause notice were also covered to avail the benefits of the Scheme. The petitioner lost all opportunities at every stage in filing declaration within the time stipulated under the provisions of the Scheme. The

declaration was filed on 29.01.1999 i.e., after the Order-in-Original, dated 28.01.1999. The petitioner, for the reasons best known to him, did not challenge the Order-in-Original, dated 28.01.1999, till this date. In the circumstances, we find no merit in the Writ Petition.

The Writ Petition, therefore, fails and is dismissed as such. No costs.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO, J

11.03.2015
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