

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.963 OF 1999

1. Sadhana Textile Mills Private Ltd.,
an existing Company, under the
provisions of the Companies Act,
1956, and having its Registered
Office at Pandurang Budhkar Marg,
Worli, Bombay – 400 018.

2. Sanjay Purshottam Badiani,
of Bombay Indian Inhabitant,
a Shareholder of Petitioner No.1,
residing at “Pratap Mansion”,
10, Laburnam Road, Gamdevi,
Bombay – 400 007.

.... Petitioners

- Versus -

1. Union of India
through the Secretary,
Ministry of Finance, Department
of Revenue & Banking, North
Block, Central Secretariat,
New Delhi.

2. The Commissioner of Central
Excise, Bombay IV, having his
office at Central Excise Building,
115, Maharshi Karve Road,
Opp: Churchgate, Bombay-400 020,
being the designated authority
under Kar Vivad Samadhan Scheme
under Finance Act No.2 of 1998.

.... Respondents

Mr. S.U. Kamdar, Senior Counsel with Mr. Y.S. Kamdar,
Mr. N.C. Parekh, Mr. S.A. Vyas, Mr. N.J. Marjadi &
Ms Palak Patel i/by M/s. Mansukhlal Hiralal & Co.
for the Petitioners.

Mr. Swapnil Bangur with Mr. Sham V. Walve for
Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : FEBRUARY 27, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioners are seeking a writ, order or direction calling for the papers and proceedings pertaining to order/letter dated 8-2-1999 and after ascertaining its legality and validity to quash and set aside the same.

2. The petitioners are also seeking a writ of mandamus or any writ or direction in the nature thereof directing the respondents to forthwith accept and act upon the petitioners' declaration furnished under a scheme which is styled as Kar Vivad Samadhan Scheme, 1998 and to pass the requisite orders

in terms thereof. In other words, a long standing dispute between the petitioners and the Department be settled in accordance with the Scheme.

3. The petitioners state that by the impugned order dated 8-2-1999, the Office of the Commissioner of Central Excise, Mumbai-IV, informed the petitioners that Declaration No.46/98, dated 10-12-1998, filed by the petitioners under Kar Vivad Samadhan Scheme, 1998 for settlement was considered, but it was noticed that a sum of Rs.54,67,867/-, claimed by the petitioners as tax arrears under dispute are in fact the outcome of the Hon'ble Supreme Court's Judgment in Writ Petition Nos.2693 of 1993 and 12744 of 1984. Since the Hon'ble Supreme Court of India has given a decision in favour of the Revenue, these dues are payable. The matter has already been decided by the Hon'ble Supreme Court and the amount in arrears is the balance amount of total duty payable by the petitioners. It cannot be said that the amount in question is in dispute as no appeal is pending against the same in the Supreme Court. Hence, the tax arrears in question are not in dispute as on

the date of filing of the declaration. So, the benefit of the Scheme cannot be extended to the declarant.

4. One of the grounds raised to challenge this order by the petitioners is that the declaration was maintainable. The petitioners are fully eligible to avail of the Scheme by filing a declaration because there is an admitted tax arrears, according to the excise authorities, in the above sum and prior to 1-4-1998. The alleged tax arrears have not attained finality inasmuch as the petitioners have disputed the same by filing an appeal before the Commissioner (Appeals). Importantly, the Department admitted that a sum of Rs.55 lakhs recoverable as tax arrears prior to 1-4-1998 has been disputed. The letter dated 8-2-1999 (impugned letter) also disputes this position. Hence, there is an application fully maintainable and covered by the Scheme. When this writ petition was placed before us, Mr. Kamdar, learned Senior Counsel appearing in support of the same, relied on two Judgments of the Hon'ble Supreme Court of India. The first in the case of **Swastika Enterprises and Ors. Vs. Commissioner of Customs and Ors.**, reported in (2015) 10

SCC 573 and the later was a Judgment in the case of **NRC Ltd. Vs. Union of India**, reported in 2015 (325) E.L.T. 474 (S.C.).

5. In both these Judgments, the Hon'ble Supreme Court has held that requirement of availing of the Scheme and provided by Section 95 of the Finance Act, 1998 cannot be said to be not fulfilled. The Scheme will not apply only in respect of tax arrears under any indirect tax enactment. It will apply in a case where show cause notice or notice of demand under any indirect tax enactment has been issued. Once a show cause notice has been issued and there is a dispute raised, then, the matter could not be said to be not within the Scheme because of a date stipulated by the Revenue for the Scheme to come into effect. In other words, the Hon'ble Supreme Court had, in both Judgments, held that there was a clear demand notice, which was issued. Mr. Kamdar, relying upon these two Judgments but which the petitioners do not admit to be covering the dispute, would submit that the petitioners have become liable to pay to the Department a total sum of Rs.98,86,101.79. Out of this amount, the Department has already encashed the Bank

Guarantees furnished by the petitioners from time to time in the sum of Rs.44,18,233.81. The Department's case is that balance excise duty of Rs.54,67,867.98 is payable. The petitioners have disputed this position. They have said that in law they are not liable to pay any duty whatsoever and the claim in that regard of the Department is time barred. Thus, the petitioners' stand is that a mere demand notice is not a show cause notice and it cannot be treated as a show cause notice. That is how initially it was pointed out that the position remains the same and they are not bound and liable to merely comply with the demand notice of the Department. Moreover, the petitioners have filed an appeal against the order of the Assistant Commissioner of Central Excise, dated 9-11-1998. The petitioners have thus disputed the demand and the appeal is pending.

6. In the light of the above factual position and the two Judgments of the Hon'ble Supreme Court of India, it is conceded equally by the Department that their stand, as contained in the impugned letter, is unsustainable in law. The matter is covered by the said two Judgments. In the circumstances, we allow this

writ petition and quash and set aside the impugned letter dated 8-2-1999. We direct that the declaration of the petitioners shall now be proceeded with and decided in accordance with law.

7. On 5-5-1999, an interim order was passed by this Court on the condition that 50% of the amount is to be deposited in this Court within a period of six weeks. We are informed that the same has been deposited in this Court and duly invested. Now, on conclusion of this Judgment, the Revenue can collect the same with accrued interest. The Prothonotary & Senior Master to act on an authenticated copy of this Judgment and allow the Revenue to take away the sum with accrued interest.

8. Rule is made absolute in terms of prayer clauses (a) and (b). No order as to costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)