

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT PETITION NO.6040 OF 1999

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

M/s. Sarvaraya Sugars Limited assails the order dated 04.03.1999 passed by the Commissioner, Central Excise and Customs, Visakhapatnam, rejecting the declaration filed by it under the Kar Vivad Samadhan Scheme, 1998 (for brevity, the KVSS, 1998) on the ground that the case did not come under the scheme as there was no demand quantifying the short levy as on 31.03.1998. A consequential direction is sought by the petitioner company to accept its declaration dated 28.12.1998.

By order dated 31.03.1999, this Court granted liberty to the petitioner company to deposit the tax as per the declaration made by it under the KVSS, 1998 and directed that the same would be subject to the result of the writ petition.

The KVSS, 1998 was introduced *vide* Chapter IV of the Finance Act No.21 of 1998. Therein, 'tax arrear' was defined in Section 87(m) as follows:

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

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;

(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 under section 88; or

.....’

The petitioner company manufactures sugar at its factory at Chelluru, East Godavari District. Molasses is a by-product of such sugar production and it is liable to excise duty. The petitioner filed a declaration on 07.04.1994 under Rule 173C of the Central Excise Rules, 1944 claiming that the assessable value of molasses used in its captive distillery plant should be fixed at Rs.500/- per metric tonne. However, the Assistant Commissioner of Central Excise, Kakinada, East Godavari District, opined that the price approved for molasses was Rs.1,900/- per metric tonne even in relation to home consumption and issued show-cause notices dated 25.10.1994 and 24.03.1995 stating to this effect. After considering the petitioner company's reply, he passed the Order-in-Original dated 17.11.1995 determining the assessable value of the molasses at a range of Rs.1,600/- per metric tonne to Rs.1,900/- per metric tonne for the period March, 1994 to January, 1995. However, this order was set aside in appeal by the Commissioner (Appeals), Hyderabad, and the matter was remitted for adjudication afresh. Thereupon, Order-in-Original dated 04.02.1998 was passed by the Assistant Commissioner of Central Excise, Kakinada, East Godavari District, determining the assessable value of the molasses at Rs.1,175/- per metric tonne for the period March 1994 to June 1994 and at Rs.1,105/- for December 1994. An appeal was preferred by the petitioner company as against this order before the Commissioner of Central Excise (Appeals). While so, acting upon the fresh Order-in-Original dated 04.02.1998, the Superintendent of Central Excise, Ramachandrapuram, East Godavari, quantified the duty payable by

the petitioner company upon the assessable value determined by the Assistant Commissioner of Central Excise, Kakinada, East Godavari District, and issued demand notice dated 26.10.1998 calling upon the petitioner company to pay the differential amount of Rs.10,76,300/- for March to June 1994 and December 1994.

In the meantime, as the KVSS, 1998 was floated by the Government of India, the petitioner company submitted its declaration on 10.10.1998 to the Commissioner of Central Excise and Customs, Visakhapatnam. However, the Commissioner rejected the declaration under letter dated 17.12.1998 on the ground that the Order-in-Original dated 04.02.1998 did not quantify the amount involved. In the meantime, as the Superintendent of Central Excise, Ramachandrapuram, East Godavari District, issued demand notice dated 26.10.1998 quantifying the actual amount to be paid, the petitioner company submitted a declaration once again under the KVSS, 1998 on 28.12.1998. This declaration was rejected by the Commissioner under his letter dated 04.03.1999 reiterating that no demand had been quantified for the short levy as on 31.03.1998 and that the subsequent quantification would not bring the case of the petitioner company within the ambit of the scheme. Aggrieved thereby, the petitioner company filed this writ petition.

As per the scheme, a declaration was to be made between 01.09.1998 and 31.12.1998 with respect to any duty, fine, penalty or interest which was due and pending as on 31.03.1998. However, any amounts which were subjected to appeal or any other proceedings which were pending before the appellate authorities or any specified authorities stood excluded. The designated authority was required to process the declaration within a period of sixty days from the date of

receipt and determine the amount payable by the declarant in accordance with the provisions of the scheme and grant a certificate in the prescribed format. Upon receipt of the same, the declarant had to pay the amount specified therein within thirty days.

The question in the present case is whether the excise duty payable by the petitioner company was determined as on 31.03.1998. The petitioner company claims it to be so, while the revenue denies it.

Sri Pushyam Kiran, learned counsel for the petitioner company, would contend that once the assessable value of the molasses was fixed by the Assistant Commissioner of Customs and Central Excise, Kakinada Division, at Rs.1,175/- per metric tonne for March, April, May and June 1994 and at Rs.1,105/- per metric tonne for December 1994, under the Order-in-Original dated 04.02.1998, the duty payable by the petitioner company stood determined and as such determination was prior to 31.03.1998, the declaration filed by the petitioner company was well within the ambit of the scheme. Learned counsel would state that issuance of the demand notice dated 26.10.1998 thereafter was only a ministerial exercise of working out the actual figure in terms of the said determination.

Relying upon the counter affidavit, Sri B.Narasimha Sarma, learned counsel for the respondents, would contend that the language of Section 87(m) of the Finance Act No.21 of 1998 puts it beyond doubt that there must be actual quantification of the amount due and payable and as such quantification in the present case took place long after 31.03.1998, the petitioner company could not take advantage of the scheme. Learned counsel would assert that the literal meaning of the provision must be taken and given full effect to and by doing so, the case of the petitioner company stood excluded.

It is no doubt true that in so far as an indirect tax enactment is concerned, which is what we are dealing with in the present case, the amount of duty determined as due or payable under that enactment should be due and payable as on 31.03.1998 and remain unpaid as on the date of making the declaration under the scheme. Taken at face value, this may mean not merely determination of the duty but also quantification of the actual amount. However, this literal interpretation of the provision was not accepted by the Supreme Court while dealing with a case arising under the scheme in relation to a direct tax enactment in **DR RENUKA DATLA V/s. COMMISSIONER OF INCOMETAX, KARNATAKA**¹. It may be noted that even in relation to direct tax enactments, Section 87(m) requires the amount of tax determined on or before 31.03.1998 under such direct tax enactment in respect of an assessment year, as modified in consequence of giving effect to an appellate order, to remain unpaid as on the date of the declaration. It is therefore clear that even in the case of direct tax enactments, the actual amount has to be determined on or before 31.03.1998. However, the Supreme Court opined that only those tax arrears which were determined before 31.03.1998 and which remained unpaid as on the date of declaration would qualify for settlement under the KVSS, 1998. The Supreme Court held that determination under Section 87(m)(i) by definition, therefore, is that which was modified and not the modification itself. It was pointed out that there is no requirement under Section 87(m) for the modification to have been completed on or before 31.03.1998 and to hold that such modification must also be completed by 31.03.1998 would mean that in respect of a determination on

¹ (2003) 2 SCC 19

31.03.1998, the appellate order and consequent modification would all have to be completed on the same date. Given the language of Section 87(m), the Supreme Court held that it would be practically impossible and clearly could not have been intended. In that case, determination of the amount of tax by the original assessment order was on 31.03.1995, i.e., well before 31.12.1998. This determination was modified by orders dated 17.11.1997 and 31.12.1998 pursuant to the order of the Commissioner of Income Tax (Appeals). The determination on 31.12.1998, as pointed out by the Supreme Court, was not fresh assessment for the purpose of the scheme but only a modification of the original determination under the assessment order. As the modified demand had not been paid by the declarant as on the date when the declaration was made, the Supreme Court held that the same was covered by the scheme.

Applying this analogy to the case on hand, it is an admitted fact that there was prior determination of the duty payable by the petitioner company in relation to the molasses used by it for its home consumption for the period in question under the Order-in-Original dated 17.11.1995, long before 31.03.1998. It was against this determination that the petitioner company filed an appeal before the Commissioner (Appeals) whereupon the matter was remanded for consideration afresh, resulting in the Order-in-Original dated 04.02.1998. As rightly pointed out by Sri Pushyam Kiran, learned counsel, once the Assistant Commissioner, under this fresh order, determined the assessable value of the molasses at Rs.1,175/- per metric tonne for the period March 1994 to June 1994 and at Rs.1,105/- per metric tonne for December 1994, the duty due and payable by the petitioner company stood crystallized. Only

calculation of the actual amount payable after deducting the duty already paid by the petitioner company remained and the same was undertaken under the demand notice dated 26.10.1998 issued by the Superintendent, Customs & Central Excise, Ramachandrapuram.

That being so, be it viewed in the light of the law laid down in **DR RENUKA DATLA¹** or on facts, this Court finds that the amount of duty due and payable by the petitioner company stood determined and crystallized as on 31.03.1998. The actual demand notice merely carried out the ministerial task of working out the calculation based on such determination. The petitioner-company's declaration was therefore squarely covered by the provisions of the scheme. As it is stated that the petitioner company already paid the amounts due in terms of its declaration pursuant to the liberty granted by this Court, the respondents are directed to consider the declaration of the petitioner under the Kar Vivad Samadhan Scheme, 1998 and pass appropriate orders thereon. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

4th AUGUST, 2017
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