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

<u>WRIT PETITION NO.6591 OF 2017</u>

<u>O R D E R</u>

(*Per Hon'ble Sri Justice Sanjay Kumar*)

The petitioner assails Clause 5 of Para 2 of the Circular bearing No.174/9/2013-ST dated 25.11.2013 issued by the Central Board of Excise and Customs, New Delhi, and the Order dated 24.12.2014 passed by the Deputy Commissioner, Service Tax Division, Hyderabad-III Commissionerate.

The grievance of the petitioner is as to the manner in which the Service Tax Voluntary Compliance Encouragement Scheme, 2013 is being implemented by the Service Tax authorities at Hyderabad in the context of his application made thereunder. Clause 5 of Para 2 of the Circular bearing No.174/9/2013-ST dated 25.11.2013 clarified, in response to a query whether a declaration could be made under the scheme where the service tax pertaining to the period covered by the scheme had already been paid, that no 'tax dues' would be pending and that a declaration could not be filed. By the Order dated 24.12.2014, the Deputy Commissioner, Service Tax Division, Hyderabad-III Commissionerate, drew an analogy from this clarification and held the petitioner's application liable for rejection on the ground that he failed to make the required payments within time in terms of the scheme.

The application filed on 12.12.2013 by the petitioner under the scheme, in relation to the period April, 2007 to December, 2012, was for a sum of Rs.1,66,840/-. In terms of Section 105(1)(e) in Chapter

IV of the Finance Act, 2013, whereunder this scheme was promulgated, 'tax dues' were defined as under:

> "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

Section 107 of the Finance Act, 2013, required the declarant under the scheme to pay not less than 50% of the tax dues on or before 31.12.2013 and the tax dues remaining to be paid were to be paid on or before 30.06.2014. The petitioner was therefore required to pay a sum of Rs.83,240/- or more on or before 31.12.2013 in terms of the above provision. He paid a sum of Rs.60,000/- on 08.03.2013 and a sum of Rs.30,000/- on 05.11.2013. The balance amount of Rs.76,840/- was paid by him on 28.06.2014. He therefore claimed that he fulfilled the requirements of the scheme.

The Deputy Commissioner was however of the opinion that as the scheme came into force only on 10.05.2013, the payment of Rs.60,000/- made by the petitioner on 08.03.2013 could not be accepted as a payment made under the scheme. He accordingly held that the petitioner had failed to pay 50% of the declared tax dues on or before 31.12.2013. It was on this basis that he concluded that the petitioner's application was liable for rejection.

Ms.K.Mamta Choudary, learned counsel for the petitioner, would place reliance upon the Division Bench judgment of the Gujarat High Court in ***SADGURU CONSTRUCTION CO. V/s. UNION***

OF INDIA[1], wherein this very issue fell for consideration. Para 17 of the said judgment reads as under:

> 'In the present case, admittedly the disputed amount of taxes were deposited by the petitioners with the department after 1.3.2013. However, the same having been deposited before 10.05.2013 that is the date on which the scheme was framed, the department contends that such amount cannot form part of the declaration under the Scheme. In our opinion, the contention ignores the statutory provisions contained in the Scheme of 2013. As we have noticed, the declaration can be made in terms of section 106 of tax dues. The term "tax dues" is defined in section 105(1)(e). If we accept the stand of the department that any tax which is deposited before 10.5.2013 cannot form part of a declaration, the same would substantially mutilate the definition of term "tax dues" contained in section 105(1)(e). If the intention of the legislature was to exclude any tax deposited before the framing of the scheme, the same could have been provided in plain language. On the contrary, the legislature excluded from the purview of declaration only those taxes which were already paid by 1.3.2013. The period between 1.3.2013 and 10.5.2013 would, by necessary application of the provision of the scheme, be covered for declaration under the Scheme itself. In our understanding, for a valid declaration two of the essential conditions were that the proceedings for either declaration or recovery of the tax dues should not be pending on 1.3.2013 and secondly that the tax should not have been deposited before the said date. In the present case, both the conditions were fulfilled.'

In the light of the aforestated conclusive interpretation of the scheme by the Gujarat High Court, Sri M.V.J.K.Kumar, learned counsel for the respondents, was asked as to whether any appeal was filed against the said order by the authorities. Learned counsel fairly conceded that the Gujarat High Court verdict was accepted without

[1] [2015] 81 VST 95 (Gujarat) = [2014] 48 GST 376 (Gujarat)

demur and the same attained finality as no further appeal was preferred by the Union of India or the Service Tax authorities.

If that is so, we are of the opinion that it is not open to the Union of India or the Service Tax authorities to project a different interpretation of the same scheme now, at variance with how it was implemented in the State of Gujarat pursuant to the verdict of the Gujarat High Court. This scheme, being applicable all over India, necessarily has to be implemented uniformly and with consistency. Once the interpretation given to the said scheme by the Gujarat High Court was accepted without protest by the authorities, it is not open to them to take a different stand before this Court presently.

On this short ground, the writ petition is allowed. The order dated 24.12.2014 passed by the Deputy Commissioner, Service Tax Division, Hyderabad-III Commissionerate, is set aside. The petitioner's application under the Service Tax Voluntary Compliance Encouragement Scheme, 2013, shall be processed afresh in the light of its interpretation by the Gujarat High Court, referred to *supra*. This exercise shall be completed expeditiously and in any event, not later than eight weeks from the date of receipt of a copy of this order. 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

19th JULY, 2017

PGS