

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24767 of 2018

1. Apna Awas Construction Private Limited having its registered office at 001, Sundram Enclave, North Sri Krishna Puri, Patna through its Director Prabhat Kumar Singh, son of Dr. Ajit Kumar Singh
2. Prabhat Kumar Singh, aged about 50 years, son of Dr. Ajit Kumar Singh, resident of Maya Kutti, North Shri Krishna Puri, P.S. Shri Krishna Puri, Patna, Bihar

... .. Petitioners

Versus

1. The Chief Commissioner, Department Of Customs, Central Excise and Service Tax, Government of India, Central Revenue Building Annexe, Bir Chand Patel Path, Patna
2. The Deputy Commissioner, Department of Central GST and Central Excise, Government of India, Central Revenue Building Annexe, Bir Chand Patel Path, Patna
3. The Assistant Commissioner, (Patna Division), Department of Central GST and Central Excise, Government of India, Central Revenue Building Annexe, Bir Chand Patel Path, Patna
4. The Assistant Commissioner, (Gaya Division), Department of Central GST and Central Excise, Government of India, Central Revenue Building Annexe, Bir Chand Patel Path, Patna
5. The Superintendent, Department of Central GST and Central Excise, Government of India, Central Revenue Building Annexe, Bir Chand Patel Path, Patna
6. IndusInd Bank Limited having its registered office at 2401, General Thimmayya Road (Cantonment) Pune, Maharashtra through the Branch Manager, Ashiana Nagar, Patna Branch, 10 Abhinav Apartment, Ashiana Digha Road, Ashiana Nagar, Patna, Bihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Singh, Adv.
For the Respondent/s : Mr. Anjani Kumar Sharan, Asstt. S.G.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 27-03-2019

Heard Mr. Rajiv Kumar Singh, learned counsel appearing for the petitioners and Mr. Anjani Kumar Sharan, Assistant Solicitor General for the Union of India in the Department of Customs, Central Excise and Service Tax.



The petitioner prays for a writ in the nature of certiorari for quashing a notice bearing memo no. 1785 dated 20.11.2018 issued in purported exercise of powers vested in the Deputy Commissioner CGST, Central Division, Patna under Section 87 of the Finance Act, 1994, whereby the Indusind Bank of the petitioner has been directed to pay the dues outstanding against the petitioner towards Service Tax. A copy of such notice is impugned at Annexure-9 to the writ petition and has been acted upon and a sum of Rs. 34,32,226/- has been remitted by the Indusind Bank to the Government treasury.

The petitioner is also aggrieved by the order dated 17.11.2014 of the Assistant Commissioner, Custom, Central Excise and Service Tax Division, whereby his declaration under Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereinafter referred to as 'the VCES, 2013') incorporated vide Finance Act, 2013 with effect from 10.05.2013 has been rejected, inter alia, on grounds that two of the deposits made by the petitioner towards his arrears of tax dues was not covered under the Scheme and thus his deposits were not in tune with the declaration so made by him. A copy of such order is impugned at Annexure-5 to the writ petition and it is in consequence of such



decision that the notice under Section 87 of the Finance Act, 1994 was issued and has been taken to its conclusion.

A plea of alternative remedy was raised by Mr. Sharan, learned Assistant Solicitor General as a preliminary objection but in the nature of the issue that engages this Court, we are persuaded to overrule the preliminary objection raised because ‘the VCES, 2013’ under which the dispute arises, provides for no such remedy. We thus proceed to consider the arguments advanced by Mr. Singh to contest the orders impugned and by Mr. Sharan in opposition thereof, on its merits.

The Scheme in question by its very nomenclature is an Encouragement Scheme enabling the Tax Payers to an honourable exit provided, they ensure compliance of the pre-requisites to such benefits by making correct disclosures of tax dues as on 1st March, 2013 pertaining to the period 01.10.2007 until 31.12.2012 and make payment of 50% thereof as until 31.12.2013 as per declaration made and balance 50% by 30th June, 2014 of the year following. Two provisions which would be relevant for consideration of the issue raised and contested by the parties are Clause 105(1)(e) which defines “tax dues” and Clause 107, which reads under:

“105(1)(e) “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.”

“107. Procedure for making declaration and payment of tax dues.-(1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may



be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4) the designated authority shall issue an acknowledgment of discharge of such dues to the declarant in such form and in such manner as may be prescribed.”

As we have already discussed above, “tax dues” means and includes the service tax due or payable under the provisions of the Act for the period 01.10.2007 until 31.12.2012 but has not been paid as on 01.03.2013. The enabling provision which entitles a tax payer to the benefit of the Scheme is Clause 107 and allows him to pay 50% of such tax declared in between the period as until 31.12.2013 and the balance 50% until 30.06.2014. It is not in



dispute that of the tax declared by the petitioner, he made 50% of the payment as until 31.12.2013. The dispute is in relation to two of such deposits made on 07.03.2013 and 12.03.2013 each valued at Rs. 7 lakhs. It is these two deposits made by the petitioner well after 01.03.2013 which is not being accounted for by the respondent authority and the reason is because the Scheme which came into force, was incorporated in the act on 10.05.2013.

We completely fail to appreciate as to how when the Scheme itself conceives of the tax dues standing as on 01.03.2013 and is retroactive in operation to account for the arrears dues for the period 01.10.2007 until 31.12.2012 for being treated as tax arrears as on 01.03.2013, a deposit made on 07.03.2013 and 12.03.2013, can be ignored, simply because the Scheme got incorporated on 10.05.2013. A plain reading of the Scheme would confirm that there is no such exclusionary clause present which ignores a deposit made by a tax payer in between the period 01.03.2013 and 10.05.2013 i.e. the date on which Scheme got incorporated, rather if the Scheme takes into its fold the tax dues as existing on 01.03.2013, then in our opinion every deposit made by a tax payer since after 01.03.2013 would constitute a deposit towards tax arrears so declared.



The order of the Assistant Commissioner, Central Excise and Service Tax Division dated 17.11.2014 completely fails on reasons as well as on the interpretation of the Scheme rather reflects a complete misappreciation of the stipulations present thereunder.

Our attention has been invited to an opinion given by the Bombay High Court in Service Tax Appeal No. 01 of 2018 (**Dr. Yeshwant Dhume Vs. Assistant Commissioner, Service Tax**) and to the Judgment of Gujarat High Court in the case of **Sadguru Construction Co. vs. Union of India**, since reported in 2014 (36)S.T.R3 (Guj.). Their Lordships of the Bombay and Gujarat High Court have considered and rejected the same objections as raised by the statutory authority under the Service Tax in the present case. For the sake of ready reference, we are persuaded to reproduce the relevant extract of the opinion expressed by the Bombay High Court and Gujarat High Court on the issue:

Re: Bombay High Court

“7. So far as the payment of amount of service tax before the date of declaration of the scheme i.e. 10 May 2013 vis-a-vis applicability of the scheme is concerned, reliance is placed on the Judgment in the matter of Sadguru Construction Co. v. Union of India, delivered by the Division Bench of Gujarat High Court reported in 2014 LawSuit (Guj) 1620. The



Appellant herein is similarly placed as in the case of the Petitioner before Gujarat High Court. Gujarat High Court has held that 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 March 2013, and secondly, that the tax should not have been deposited before the said date. In the instant matter, both the conditions are fulfilled. It would be for the Appellate Authority to consider the Judgment and take a decision in the Appeal.”

Re: Gujarat High Court

“16. Combined reading of Section 106 with Section 105(1)(e) would make it clear that the position of a declarant vis-a-vis his service tax dues would have to be ascertained as on 1-3-2013, declaration of such a person would not be accepted. Likewise, arrear of tax which could be declared in such declaration would be the service tax due or payable for the period between 1-10-2007 to 31-12-2012 and which sum is not paid before 1-3-2013. In plain terms, therefore, if any service tax is due and payable by a person for the aforesaid period, the same would be included in the definition of the expression “tax dues” if the same has not been paid as on 1-3-2013.

17. 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 10-5-2013 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.”



Another patent illegality which surfaces in the present proceeding is that even if two of the deposits made by the petitioner in the opinion of the statutory authority did not qualify for the benefit under 'the VCES, 2013', nonetheless it was a deposit towards tax arrears and thus was not capable of being ignored to disqualify the petitioner of the declaration so made about the tax arrears. We find it rather strange that despite there being no dispute on the deposit towards the arrears of taxes by the petitioner, yet under the cover of Clause 110 of 'the VCES, 2013' that the respondent authorities in the Customs, Central Excise and Service Tax Department has proceeded to invoke the provision of Section 87 of Finance Act, 1994 to recover a sum of Rs. 34,32,226/- from the petitioner, inter alia, on grounds that the petitioner had failed to pay taxes in conformity of the declaration. We would find it difficult to trace a single instance of an abuse of statutory power which is present in the present case because in our opinion even if under the misplaced understanding of the Assistant Commissioner, two deposits made by the petitioner did not qualify under the Scheme, it was nevertheless a tax deposit and to that extent the petitioner could not be held a defaulter for being proceeded under the provisions of Section 87 of the Finance Act, 1994.



For the reasons so discussed, we quash the order dated 17.11.2014 together with the attachment notice dated 20.11.2018, impugned at Annexures-5 and 9 respectively to the writ petition and consequently direct the respondents to forthwith remit the amount recovered from the petitioner to the tune of Rs. 34,32,226/- within a period of four weeks of receipt/production of a copy of the judgment, failing which the petitioner would be entitled to interest quantified at 10% of the amount payable from the date it was recovered from the petitioner until its payment.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.04.2019
Transmission Date	NA

