IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS.609, 619, 620, 621 AND 622 OF 2018

Goa Ispat Ltd.
Madkaim Industrial Estate,
Madkaim, Goa. ... Petitioner

Versus

Asst. Commissioner of Commercial
Taxes,
Old High Court,
Panaji-Goa. ... Respondents

Mr. Yogesh V. Nadkarni and Ms. Divya Shirgam, Advocates for the Petitioner.

Ms. Priyanka Kamat, Additional Government Advocate for the Respondents in Writ Petition No.609/2018.

Ms. Susan Linhares, Additional Government Advocate for the Respondents in Writ Petition no.619/2018.

Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondents in Writ Petition no.620/2018.

Mr. Amir Jamadar, Additional Government Advocate for the Respondents in Writ Petition no.621/2018.

Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondents in Writ Petition no.622/2018.

Coram :- C. V. BHADANG, J.

Date :- 1st March 2019.

ORAL ORDER

1. All these petitions are between the same parties and involve a common question and are being disposed off finally by this common order by consent of parties.

2. For the sake of convenience, the facts as obtaining in Writ Petition No.609/2018 are set out as under :

That, the Commercial Tax Officer (CTO) Panaji by a notice dated 15.02.2011, the petitioner was intimated about assessment of tax, under the Goa Tax on Entry of Goods Act, 2000 (Act of 2000, for short) of ₹39,41,508/- for the year ending 31.03.2005.

3. The petitioner preferred an appeal against the same to the Assistant Commissioner of Commercial Taxes under Section 28 of the Act of 2000 which came to be dismissed on 13.02.2012. Being aggrieved by the said order, the petitioner filed an appeal under Section 29(1) of the Act of 2000 before the Administrative Tribunal at Panaji, being Appeal No.1/2012.

4. During the pendency of the appeal, the appellant submitted an application in prescribed Form-I as per the

provisions of the Goa (Recovery of Arrears of Tax through Settlement) Act 2009, as amended Goa (Recovery of Arrears of Tax through Settlement)(Amendment) Act, 2016 on 01.03.2017. It appears that the designated authority issued an intimation to the petitioner in Form-II in terms of Section 6(2) of the Act of 2009 as amended requiring the petitioner to pay the amount by generating an e-challan within 20 days from the receipt of the letter and to furnish a self attested photo copy of the receipt in the office of the Assistant Commissioner of Commercial Taxes. It appears that the petitioner could not comply with the said intimation and failed to deposit the amount within the period as prescribed. Hence, on 24.07.2017, the Assistant Commissioner of Commercial Taxes intimated to the petitioner that its application for settlement in Form-I is "not eligible for consideration for settlement scheme" as per the provisions of the Act of 2009 as amended and therefore it was rejected.

5. On 04.08.2017, the learned Administrative Tribunal dismissed the appeal no.1/2012 in the following terms :

> "The Ld. Advocate for the Appellant submits that the matter is settled and amount as directed by the Respondent could not be deposited due to financial problems.

> As the matter is already settled, nothing survives in this appeal. The appeal is dismissed. The application for stay stands disposed accordingly"

6. On 11.12.2017, the petitioner filed an application under Section 29(8) of the Act of 2000 for review of the order dated 04.08.2017 passed by the Administrative Tribunal, thereby seeking restoration of the appeal. It was contended that the matter was never settled, inasmuch as the petitioner was unable to deposit the amount as required by the intimation Form-II and therefore the appeal could not have been dismissed, nor could be deemed to have been withdrawn. The Administrative Tribunal by the impugned order dated 27.03.2018 has dismissed the said application, which order is the subject matter of challenge in this petition.

7. The facts in the connected petitions are identical, except the amount of assessment, the assessment year and the date of seeking settlement in Form-I and its rejection.

8. I have heard Mr. Nadkarni, the learned Counsel for the petitioner in these petitions and the respective learned Additional Government Advocates appearing for the respondents. Perused record.

9. It is submitted by Mr. Nadkarni, the learned Counsel for the petitioner that the settlement never came about on account of failure of the petitioner, to comply with the intimation under Section 6(2) of the Act and thus the order dated 04.08.2017 demonstrates a patent error on the face of the record. It is submitted that the matter cannot be said to have been settled when the respondent had not deposited the dues on account of the financial constraints as has been recorded in the order dated 04.08.2017. It is submitted that the rejection of the application for settlement being under Section 8(2) of the Act, the proviso to Section 11 of the Act of 2009 as amended would apply and the appeal will have to be heard on merits. It is submitted that the Administrative Tribunal was in error in importing a concept of wilful default, which is not applicable in the context of the provisions of the Act of 2009 as amended.

10. The learned Additional Government Advocates on behalf of the respondents have contended that the application for settlement filed by the petitioner was indeed entertained and the petitioner was required to pay the amount of arrears, within the specified time, as per the intimation issued in Form-II. It is submitted that the petitioner having failed to pay the amount, cannot now seek restoration of the appeals. It is

submitted that the rejection of the application for settlement in the present case is not referable to Section 8(2) of the Act of 2009 as amended and, therefore, the proviso to Section 11 of the said Act will not apply.

11. I have carefully considered the circumstances and the substances made. The material facts, apart from being undisputed are matters of record. It is a matter of record that during the pendency of the appeal, the petitioner filed an application in terms of Section 5 of the Act of 2009 as amended in Form-I. The Assistant Commissioner of Commercial Taxes acting on the same issued an intimation under Section 6(2) of the Act in Form-II asking the petitioner to deposit the amount within 20 days of the receipt of the intimation which the petitioner failed to do and hence by a subsequent communication dated 24.07.2017, the petitioner was informed that the application for settlement in Form-I is not eligible for settlement scheme and, therefore, rejected the same. The question is whether in such circumstances, the petitioner would be entitled to the benefit of proviso to Section 11 of the Act of 2009 as amended.

12. In order to appreciate the rival contentions, it is necessary to notice the scheme of the Act of 2009 as

amended, to the extent relevant. Section 4 of the Act provides that subject to the other provisions of the Act, an applicant shall be eligible to make an application for settlement of his arrears of tax, interest or penalty for the specified period, in respect of which a dispute is raised before an authority including the appellate authority or Court. Such an application has to be made as per Section 5 of the Act in Form-I on or before 31.03.2016. The designated authority is required to determine the amount and then issue an intimation in Form-II as per Section 6(2) of the Act. If the arrears are paid as per the intimation, a 'certificate of settlement', is issued in Form-III as per Section 8(1) of the Act. As per Section 10 of the said Act, on production of the certificate of settlement, before the appellate or the revisional authority, the review, the appeal or revision pending before such authority, 'shall be deemed to have been withdrawn by the applicant' from the date of the making of the application under Section 5(i) of the said Act. Section 11 of the Act provides that no assessing authority, reviewing authority, appellate authority or revisional authority shall proceed to decide any assessment, review, appeal or revision under the relevant Act relating to any period in respect of which an application has been made under Section 5 of the said Act.

13. Section 8 and Section 11 are relevant for the purpose and they read thus :

> Section 8 – Settlement of arrears and issue of certificate of settlement- (1) The designated authority, on being satisfied that the applicant has paid the amount determined under section 6, shall issue a certificate of settlement in form as specified in Part C of the Schedule hereto, to the applicant and thereupon, such applicant shall be discharged from his liability to make payment of the balance amount of arrears of tax, interest and penalty to which he was liable before settlement.
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> (2) The designated authority may, by an Order, for reasons to be recorded in writing, reject the application of the applicant on the ground that no question of settlement arises or rectify or amend the certificate of settlement issued under sub-section (1):
>
> Provided that no order adversely affecting the applicant shall be passed without giving him a reasonable opportunity of being heard:
>
> Provided further than an appeal against the order of the designated authority shall lie to the Commissioner and such appeal shall be

made within a period of sixty days from the date of such order.

Section 11 - Reviewing, appellate and revisional authority not to proceed in certain cases.- No assessing authority, reviewing authority, appellate authority or revisional authority shall proceed to decide any assessment, review, appeal or revision under the relevant Act relating to any period in respect of which an application has been made under Section 5 of this Act:

Provided that such authority shall proceed to decide such assessment, review, appeal or revision for such period in accordance with the provisions of the relevant Act, if a certificate of settlement referred to in sub-section (1) of Section 8 refused to the applicant by an order passed by the designated authority in writing under sub-section (2) of Section 8.

14. It can thus be seen that while under the substantive provisions of Section 11, no assessing authority, reviewing authority, appellate authority or revisional authority can proceed to decide any assessment, review, appeal or revision under the relevant Act relating to any period in respect of which an application has been made under Section 5 of the Act, the proviso appended thereto says that such authority shall proceed to decide such assessment, review, appeal or

revision for such period in accordance with the provisions of the relevant Act, if a certificate of settlement referred to in sub-section(1) of Section 8 is refused to the applicant by an order passed by the designated authority in writing under sub-section (2) of Section 8. In other words, if the settlement as applied for under Section 5 of the Act, is refused by an order passed by the designated authority under sub-section (2) of Section 8 of the Act, the appeal or the revision as the case may be has to proceed. Thus, the question is whether the rejection of the application, filed by the petitioner in the present case, is referable to Section 8(2) of the Act.

15. Sub-section (2) of Section 8 provides that the designated authority may, by order, for reasons to be recorded in writing, reject the application of the applicant on the ground that "no question of settlement arises." In this regard, it is possible to envisage, two situations in which the application in Form-I can be rejected by the designated authority, (i) where such an application is rejected at the threshold where the person is not found to be eligible for such a settlement within the meaning of Section 4 of the Act, and (ii) where the designated authority entertains the application, issues an intimation in Form-II under Section 6(2) of the Act, which the concerned assessee fails to comply by deposit of the

amount of the dues, as in the present case. Both these rejections are nevertheless rejections under Section 8(2) of the Act , as 'no question of settlement' would arise in such a case. There is nothing in sub-section (2) of Section 8 to exclude the rejection in the later case as above. The learned Administrative Tribunal has found that the petitioner having wilfully failed to deposit the dues in compliance with the intimation in Form-II, is not now entitled to the restoration of the appeal which, in my considered view, cannot be accepted. If the reasoning articulated by the learned Administrative Tribunal is accepted, it will create two categories of rejections which are not contemplated by sub-section (2) of Section 8 of the Act. Under the said Section, a rejection is a rejection, which may be on account of the non-eligibility of the assessee or even failure of the assessee to comply with the intimation under Section 6(2) of the Act. Thus, in my considered view, the rejection in the present case is referable to sub-section 2 of Section 8 of the Act and if that be so, the proviso to Section 11 of the Act would be attracted requiring the appellate authority to proceed with the appeals, on their own merits.

16. It may be mentioned that an assessee has a statutory right to file an appeal as the case may be which cannot be taken away or affected except in accordance with the

provisions of Section 10 of the Act of 2009 as amended. In other words, it is only when a certificate of settlement is issued under sub-section (1) of Section 8 of the Act, the review, appeal or revision as the case may be, shall be deemed to have been withdrawn by the applicant from the date of making of the application under sub-section (1) of Section 5 and not otherwise. In other words, when the settlement is refused by an order passed by the designated authority under sub-section (2) of Section 8 of the Act, the appeal will have to continue.

17. A bare perusal of the order dated 04.08.2017 would show that the submissions on behalf of the petitioners as recorded in the first and the second part are in-congruent. The matter cannot be said to be settled if the petitioner had failed to deposit the dues due to financial constraints. For this reason also, it can be seen that there was an error apparent on the face of the record in the order dated 04.08.2017. This, in my considered view, the appeals will have to be heard on merits.

18. At this stage, Mr. Nadkarni, the learned Counsel for the petitioner submitted that out of the total arrears, the petitioner has deposited ₹10,00,000/- towards dues together

in these petitions. The learned Counsel for the petitioner, on instructions, states that the petitioner shall deposit Rs.10,00,000/- against the total dues before the first respondent within three weeks from today. Statement so made is accepted.

19. In the result, I pass the following :

ORDER

(i) The Writ Petitions are allowed.

(ii) The impugned order is hereby set aside subject to the petitioner depositing a total amount of Rs.10,00,000/- against the total dues before the first respondent within three weeks from today.

(iii) On such a deposit being made and production of a receipt thereof, the appeals filed before the Administrative Tribunal shall stand restored to file of the learned Tribunal, for disposal according to law.

(iv) The rival contentions of the parties on merits, in the appeals, are left open.

(v) The petitioner to remain present before the Administrative Tribunal on 02.04.2019 at 10.00 a.m.

C. V. BHADANG, J.

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