BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2023

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 25380 of 2022
and
W.M.P(MD)No. 19462 of 2022

M/s Sav Constructions
Rep by its Managing Partner M.Aravind,
No. 885, Radhapuram Main Road,
Vadakkankulam-627
116, Tirunelveli District. ... Petitioner

Vs

1 The Commissioner of CGST And Central Excise,
No 4, Lalbahadur Shastri Road,
C.R.Building, Bibikulam,
Madurai-625 002.

2 The Designated Authority
Service Tax Voluntary Compliance
Encouragement Scheme, O/o. the Commissioner
of CGST And Central Excise,
C.R.Building,
Bibikulam,
Madurai-625 002.

3 The Assistant Commissioner of
CGST And Central Excise,
Tirunelveli Division,
C.R.Building, Tractor Street,
NGO 'A' Colony,
Tirunelveli-627 002.

4 . The Superintendent of Central Excise,
Service Tax Range, Tirunelveli.

5 The Superintendent of CGST And Central Excise,
Nagercoil Range,
48/1-4, Sivaraj Building 1st Floor,
Tower Junction,
Nagercoil-629 001 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records in O.C.No. 685/2022 (DIN 20220859XO000000BF22) dated 23.08.2022 issued by 5th respondent and quash the same as arbitrary illegal and against the principles of natural justice and consequently direct the 1st respondent to consider the representation, dated 11.10.2022 and to review the case in terms of section 110 of the Finance Act 2013 under Service Tax Voluntary Compliance Encouragement Scheme after verification of records.

For Petitioner : Mr. S.Karunakar

For Respondents : Mr. R.Nandhakumar,
Senior Standing Counsel, assisted by
M/s.S.Ragaventhre,
Junior Standing Counsel

ORDER

This writ petition is filed for ***Writ of Certiorarified Mandamus,*** to quash the impugned order, dated 23.08.2022 issued by 5th respondent and consequently direct the 1st respondent to consider the representation, dated 11.10.2022 and to review the case in terms of section 110 of the Finance Act 2013.

2. Heard Mr. S.Karunakar, the Learned Counsel appearing for the petitioner and Mr. R.Nandhakumar, the Learned Senior Standing Counsel, assisted by M/s.S.Ragaventhre, Junior Standing Counsel appearing for the respondents and perused the material documents placed on record.

3. The petitioner is running a firm carrying out various civil construction work under works contract service. The petitioner was registered assessee under the erstwhile Service Tax holding Registration No. ABEFS4315 DSD001 and subsequently migrated to the regime of GST. The petitioner availed the benefits of “Service Tax Voluntary Compliance Encouragement Scheme” granted under the Finance Act, 2013, which is an amnesty scheme for waiver of

Interest and Penalty and the said scheme imposes certain conditions. One of the conditions is that the declarant shall pay an amount equal to 50% of the declared tax under the Scheme, on or before 31.12.2013 and the balance 50% shall be paid on or before 30.06.2014. Further concession was granted, if the assessee is not able to pay the same, the same shall be paid on or before 31.12.2014, however, it carries interest.

4. In the present case, the petitioner has declared 57,89,270/- and the petitioner had made payment as follows:

S. No.	Date of payment	Amount paid	Remarks
1	20.12.2013	25,00,000/-	50% of tax liability paid before 31.12.2013
2	31.12.2013	4,00,000/-	
3	26.06.2014	15,00,000/-	Paid before 30.06.2014
4	21.02.2015	13,89,270/-	**Paid after due date 31.12.2014**
	Total	59,87,270/-	

It is an admitted fact that the petitioner has paid 50% of Tax liability within the due date of 31.12.2013. The petitioner is liable to pay the balance amount on or before 30.06.2014. However, the petitioner had paid a sum of Rs.15 lakhs on

26.06.2014. The petitioner has to pay the balance of Rs.13,89,270/- on or before 30.06.2014 in order to avoid interest. Even the petitioner was not able to pay along with interest on or before 31.12.2014. But the petitioner had paid the balance amount of Rs.13,89,270/- on 21.02.2015 and was instructed to pay the interest for the belated amount. However, the Office of the Accountant General (Audit) directed the respondents to recover the interest for the entire tax liability of Rs.57,89,270/-. In turn the respondents directed the petitioner to pay the interest for the entire tax liability of Rs.57,89,270/-. Hence, the petitioner is aggrieved.

5. The contention of the respondents is that once the declarant violated the conditions of the scheme he is not entitled to the benefits of the scheme. Hence the petitioner is bound to pay interest to the entire tax liability to the tune of Rs.59,87,270/- and not only for the belated payment 13,89,270/-. Under section 108 of the Finance Act, 2013 it states that the declarant, upon payment of the tax dues declared by them under 107(1) and the interest payable under the provisions to sub section 107(4), should get immunity for penalty, interest or any other proceedings under Finance Act. Hence it is construed that the petitioner fails to pay the declared tax dues or part thereof along with interest on or before 31.12.2014 and hence the petitioner would not be eligible to the immunity. In C&AG Report No.22 of 2016, Board has accepted the view that immunity under the provisions of section 108 of the Finance Act, 2013 would be extended only to such declarant who make payment of tax dues declares in accordance with the provision of section 107 of the Finance Act, 2013. Moreover, the Amnesty Scheme should be strictly interpreted and the time limit specified have to be strictly adhered to. The scheme partakes the nature of settlement, from the terms of settlement neither party can be permitted to resile as held by Kerala High Court in Kasmisons Builders Pvt Ltd. Vs Assistant Commissioner of Service Tax. Hence the respondents prayed to dismiss the writ petition.

6. The petitioner relies on ***Section 110 of the Finance Act, 2013 (17 of 2013)*** and the same is extracted hereunder:

> ***"110:*** *Where the declarant fails to pay the tax dues,* ***either fully or in part****, as declared by him,* **such dues** *along with interest thereon shall be recovered under the provisions of Section 87 of the Chapter".*

The section states “fails to pay tax dues, either fully or in part, such dues along interest shall be recovered”. The respondents interpret it “fully tax liability”. This Court is of the considered opinion that on the comprehensive reading of the section would clearly indicate the phrase “such dues” would definitely mean the unpaid portion only. Since only the unpaid portion alone can be considered as “dues”. The respondents are adding words which is not found in the section. If the interpretation of the respondents is taken, then the same would attract the principle of “Casus Omissus”. Therefore, the section states interest in leviable for the unpaid portion alone.

7. Moreover in tax laws if two interpretations are possible then the one which is advantageous to the assessee ought to be applied as held by the Hon’ble Three Judges Bench of Supreme Court vide its judgment dated 27.05.1997 in the case of Commissioner of Income Tax Bombay etc. Vs. Podar Cement Pvt. Ltd. etc. and the relevant portion is extracted hereunder:

> *“At this juncture, we can also refer to the judgment cited by Mr. Syali regarding updating construction of the words used in the statute. In State (Through CBI/New Delhi) v. S.J. Choudhary, [1996] 2 SCC 428, this Court has quoted the following passage with approval in support of updating construction”.*

"Statutory Interpretation by Francis Bcnnion, 2nd Edn., Section 288 with the heading "Presumption that updating construction to be given" states one of the rules thus : (p.617)

"x x x x x x x (2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

"x x x x x x x In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further, stated thus : (pp. 618-19) "In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as 'a living Constitution', so an ongoing British Act is regarded as 'a living Act'. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not than exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal development. The drafter will try to foresee the future, and allow for it in the wording.

"x x x x x x x An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in the year out. It also comprises processing by executive officials."

Applying the above principle also, the view taken by the High Courts of Patna, Punjab and Haryana, etc. can be supported.

Assuming that there are two possible interpretations on Section 22 of the Act, which is akin to a charging Section, it is well settled, ***that the one which is favourable to the assessee has to be preferred.*** *Even on that principle the view taken by the High Courts of Patna, Punjab and Haryana, etc. has to be preferred rather than the contrary view taken by the High Courts of Delhi and Andhra Pradesh.*

Accordingly, we hold that the views taken by the High Courts of Allahabad, Patna, Rajasthan, Punjab and Haryana are the correct views. The contrary view taken by the Delhi High Court is not correct."

In the present case, even if two interpretations are possible then the one which is favourable to the assessee has to be preferred. Therefore, on this ground also the petitioner is entitled to relief.

8. Generally, the respondents levy interest for the unpaid portion of the tax liability. Even as per tax laws, when the portion of the tax liability is paid the respondents cannot levy interest for the entire tax liability. If the respondents are allowed to levy interest for the entire tax liability, when the portion of the tax is paid, then the same is without any authority of law.

9. Even in normal commercial parlance any person is entitled to interest for the unpaid portion only. In the present case, the petitioner has paid 90% of the tax liability, but failed to pay the balance amount, then the petitioner is liable to pay interest for the balance amount alone.

10. Therefore, this Court is of the considered opinion that the interest cannot be levied for the entire amount of Rs.57,89,270/-. This impugned order, dated 23.08.2022 is hereby quashed. Consequently, the respondents shall recalculate the interest portion for the amount of Rs.13,89,270/- and recover the same. Once the petitioner has paid the interest for the balance amount of Rs. 13,89,270/-, the respondents shall release the attachment of bank account.

11. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

18.07.2023

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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