IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18364 of 2002 (O&M)
Date of decision: 25.04.2023

M/s S.V. Industries

.....Petitioner

Versus

Union of India and another

....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: None for the petitioner.

Mr. Ajay Kalra, Senior Standing Counsel,
for the respondents.

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Ritu Bahri, J.

The petitioner is seeking a writ in the nature of certiorari to quash the impugned certificate of intimation (Form 2-B) dated 29.12.1998 (Annexure P-1) issued by the designated authority and letter dated 26.04.2001 (Annexure P-3) issued by the Commissioner, Central Excise, Chandigarh-II. Further prayer has been made for issuance of direction to respondent No.2 to issue the certificate for full and final settlement of the case with a further direction to refund the amount of Rs.7500/-, which was charged from the petitioner-firm.

The petitioner is a registered firm. Vide order dated 10.10.1994, passed against the petitioner-firm, the Collector, Central Excise, Chandigarh, had demanded central excise duty of Rs.20,33,868/- (Basic Excise Duty Rs.18,90,539/- + Special Excise Duty Rs.1,43,329/-). The said authority had also imposed a Redumption Fine of Rs.7500/- and penalty of Rs.5,00,000/-. Against the said order, petitioner-firm filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi.

In the year 1998, a Kar Vivad Samadhan Scheme (Section 88 of the Finance (No.2) Act, 1988) was introduced. The aim of the said Scheme was to settle certain categories of disputes involving arrears of taxes (including duties, fines, penalties or interest). The Scheme extended only to those cases, where show cause notices or demand notices forming subject matter of proceedings had been issued on or before 31.03.1998. The time limit for availing the benefits of Samadhan Scheme was for four months and was to apply to declarations filed on or after 01.09.1998, but not later than 31.12.1998.

The petitioner did not pursue its appeal against the order dated 10.10.1994, which was pending before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. Rather, the petitioner filed a declaration in the format prescribed under the Scheme i.e. Form No.1-B before the Designated Authority on 10.11.1998, acknowledged on 13.11.1998. At the time of filing declaration under the Samadhan Scheme, a total amount of Rs.7,50,000/- (Rs.7,00,000/- as duty + Rs.50,000/- as penalty) had already been deposited and the following amounts were in arrears on the date of filing of declaration i.e. 10.11.1998:-

> "Duty : Rs.13,33,868/- (Rs.20,33,868 – Rs.7,00,000)
>
> Redemption Fine : Nil(as Rs.7500 as R.F. was ordered to be appropriated from Bank guarantee);
>
> Penalty : Rs.4,50,000/-"

The Designated Authority, vide certificate of Intimation (Form 2-B) dated 29.12.1998 determined that a sum of Rs.6,66,934/- was payable as duty and Rs.7500/- was payable as personal penalty (P.P.). This amount was directed to be paid within a period of 30 days. Vide letter dated 31.12.1998 (Annexure P-2), the petitioner-firm was informed about the above said order. The petitioner deposited a sum of Rs.6,66,934/- vide T.R. 6, Challan No.108 dated 25.01.1999, but did not deposit the sum of Rs.7500/- as it was not legally payable under the Scheme. This is the only question to be decided in the present petition.

Upon notice, respondents filed their written statement and prayed for dismissal of the writ petition.

Reference, at this stage, can be made to the order dated 31.08.2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in ***Kedia Great Galleon Ltd. vs. Commissioner of Central Excise, Indore,*** Appeal No. E/1190/2000-D, wherein in a similar situation, the matter was referred under the 'Kar Vivad Samadhan Scheme'. In that case the redemption fine of Rs.1.5 Lakhs was imposed. It was held that once the matter got settled under the Kar Vivad Samadhan Scheme, order imposing fine passed by the Commissioner of Central Excise had no validity.

The 'Kar Vivad Samadhan Scheme' was formulated only to settle the dispute with respect to imposition of penalty and tax dues etc. The redemption fine could not be imposed. In this backdrop, failure to deposit Rs.7500/- by the petitioner, cannot be made a ground for not issuing the certificate of declaration of full and final settlement of the dispute under the aforesaid Scheme.

In view of the above discussion, the impugned certificate of intimation (Form 2-B) dated 29.12.1998 (Annexure P-1) issued by the designated authority along with letter dated 26.04.2001 (Annexure P-3) issued by the Commissioner, Central Excise, Chandigarh-II, is set aside.

Petition stands allowed accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

25.04.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No