



2024:DHC:7016-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 864/2024 & C.M. APPL. Nos. 50403-04/2024

M/S ARYAN CARGO EXPRESS PRIVATE
LIMITED

.....Appellant

Through: Mr. Vaibhav Dang, Advocate

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh and Mr. Akash
Mishra, Advocates for R-
1/UOI.

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Date of Decision: 2nd September, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed under Clause X of the Letters Patent Act, 1866 assailing the judgement dated 2nd July, 2024 passed by the learned Single Judge of this Court in W.P.(C) 3964/2024 titled "*M/s. Aryan Cargo Express Private Limited vs. Union of India & Anr*" whereby the writ petition filed by the appellant was dismissed, *inter alia*, holding that the delay cannot be condoned as that was not prayed for by the appellant in the previous writ petition i.e. W.P.(C) 5803/2020, and thus directed the appellant to pay the late fees in order to get the name of the appellant restored in the Registrar of Companies.

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2. The facts stated in the present appeal are that the respondents published a notice dated 29th October, 2019 under section 248 of the Companies Act, 2013 (for short 'Act') striking off the names of 8114 companies from the Register of Companies (for short 'RoC') including that of the appellant for non-filing of returns. Subsequently, a scheme called "Companies Fresh Start Scheme, 2020" (for short 'CFSS 2020') was notified by the respondents on 30th March, 2020 for facilitating the companies to make a fresh start on a clean slate by filing belated documents without payment of additional fees. The Scheme was valid from 1st April, 2020 to 30th September, 2020. The Scheme was not applicable to those companies against whom a notice under section 248 of the Act had already been initiated.

3. The appellant filed a writ petition bearing W.P.(C) 5803/2020 challenging the notification dated 29th October, 2019 seeking restoration of its name in the RoC. While that writ petition was pending, the respondents floated another Scheme dated 15th January, 2021 called "*Scheme for Condonation of Delay for Companies restored on the Register of Companies between 01 December 2020 and 31 December 2020 under section 252 of the Companies Act, 2013*" (for short 'extended CFSS 2020') for the purpose of condoning the delay in filing of certain documents with the RoC effective from 1st February, 2021. This Scheme was made applicable only to those Companies in respect of whom, an appeal has been filed under section 252 of the Act with the respective National Company Law Tribunal (for short 'NCLT') Bench seeking restoration of their names and was disposed of between 1st December, 2020 and 31st December, 2020 with an order for restoration of the name of the company. Thus, all such



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Companies were entitled for benefits extended under the extended CFSS 2020.

4. In the meanwhile, learned Single Judge *vide* the order dated 11th February, 2021 disposed of the writ petition bearing W.P.(C) 5803/2020 directing the name of the appellant to be restored, subject to the appellant filing its annual returns and balance sheets along with requisite fees in accordance with law within a period of three (3) months. The appellant moved an application in the aforesaid writ petition for extension of time to comply with the order dated 11th February, 2021. Learned Single Judge granted last opportunity to the appellant to comply with the said order, failing which it was left open for the respondents to strike off the name of the appellant from the RoC.

5. The appellant had filed the underlying writ petition seeking direction to respondents to condone the delay on its part and to allow the filing of e-forms in respect of belated annual returns and balance sheets, without charging additional fees. The said writ petition was dismissed *vide* the impugned judgement dated 2nd July, 2024.

6. Mr. Vaibhav Dang, learned counsel for the appellant submits that the learned Single Judge has committed an error in concluding that in the previous round of litigation i.e. W.P.(C) 5803/2020, the Court had only directed the name of the appellant be restored subject to payment of requisite fees and there was no specific direction that the benefit of the exemptions also be granted to the appellant. He states that on that incorrect premise, the learned Single Judge has concluded that the appellant could not seek the relief which was not granted to it *vide* the order dated 11th February, 2021. He refers to the order dated 11th February, 2021 passed in



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W.P.(C) 5803/2020 to submit that the learned Single Judge had in that order directed that the name of the appellant be restored subject to the appellant herein filing its annual return and balance sheet alongwith the requisite fees in accordance with law within a period of three months. According to learned counsel “*requisite fees in accordance with law*” would mean the actual prescribed fees payable and not the additional fees charged as penalty. He states that this construction of the direction was not taken into consideration in the impugned judgment.

7. He refers to the extension of ‘*CFSS 2020*’ by letter/notification dated 15th January, 2021 particularly to para 2 to submit that the reference to “*NCLT*” be read as “*the Delhi High Court*”, so as to entitle the appellant the benefit of the exemption under the “*extended CFSS 2020*”. He submits that since the name of the appellant was not struck off from the RoC by virtue of a speaking order under section 248 of the Act, the appellant could not file its appeal before the NCLT and instead had filed the W.P.(C) 5803/2020. Merely because the appellant had no choice other than to file a writ petition challenging the striking of its name from the RoC instead of approaching the NCLT, cannot be a reason to disentitle the appellant from the benefits of “*extended CFSS 2020*”. In support of the aforesaid contention, learned counsel for appellant also refers to the judgment of the Division Bench of the Madras High Court in ***AGD.P.Ltd. vs. Registrar of Companies, 2018 SCC OnLine Mad 13818***. He states that the learned Division Bench had observed that an application under section 252(3) of the Act can be entertained by NCLT only where there is an order by which the name of the company is struck off.

8. He submits that *CFSS 2020* was initially brought into force *vide* the



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letter dated 30th March, 2020. He states that the respondents had granted exemption to defaulting companies from payment of additional fees as also immunity from launching prosecution or proceedings for imposing penalty on account of delay in certain filings. He further submits that the scheme provided payment of normal fees for filing documents with effect from 01st April, 2020 to 30th September, 2020. He also states that as per sub clause (ix)(a) of clause 6 of *CFSS 2020*, companies against which action for final notice for striking off the name under section 248 of the Act had already been initiated, were not entitled for *CFSS 2020*. He submits that the appellant was not entitled to apply under the said scheme.

9. Learned counsel for appellant submits that the “*extended CFSS 2020*” which was extended by the respondents *vide* the letter dated 15th January, 2021 ought to cover the case of the appellant, inasmuch as according to para 2 thereof, all those companies which had preferred appeals under section 252 of the Act against the striking off the names before the NCLT and the NCLT Benches had passed restoration orders from 1st December, 2020 till 31st December, 2020, were extended the benefit under *CFSS 2020*. He states that the only difference between those companies and the appellant is that the appellant obtained its orders from this Court and not the NCLT. He states that for this reason, the appellant cannot be denied the benefits under “*extended CFSS 2020*”.

10. *Per Contra*, Ms. Nidhi Raman, learned CGSC for respondent-UIO states that the appellant has not filed its Returns and other relevant documents from the year 2015. It was on this basis that the respondents *vide* the notification dated 29th October, 2019 exercised its powers under sub section (5) of section 248 of the Act and struck off the name of 8114



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companies including the present appellant. She states that nothing prevented or prohibited the appellant from challenging the same before the NCLT.

11. She also refers to the judgment in the case of *Mukut Pathak and Others vs. Union of India & Others, 2019 SCC OnLine Del 10868*, particularly to para 115 of the said judgment to submit that the learned Single Judge, even in that matter, had clarified that the petitioners therein would continue to be liable to pay penalties as prescribed under the Act. By referring to para 3 of the said judgment, she submits that it was not only the Directors of those companies but the companies themselves who were also party to the aforesaid judgment. According to her, the direction in para 115 would also apply to the appellant.

12. Learned counsel for respondent-UOI also refers to the judgment dated 11th February, 2021 in W.P.(C) 5803/2020 to submit that the restoration of the name of the appellant in the RoC was directed on the said date, whereas the “*extended CFSS 2020*” was applicable only to the orders of restoration passed by NCLT with effect from 1st December, 2020 to 31st December, 2020. According to her, by the time the name of the appellant was restored, the period of eligibility stipulated in “*extended CFSS 2020*” expired and the scheme was no more available to the appellant. She prays that the present appeal therefore, be dismissed.

13. In rejoinder, learned counsel for appellant submits that in the absence of a proper speaking order as envisaged under section 248(6) of the Act, the appellant could not file an appeal before the NCLT under section 252 of the Act. He states that such preclusion cannot come in the way of the appellant seeking benefits of “*extended CFSS 2020*” particularly when similar



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benefits have been granted to all those companies who had obtained restoration orders from the NCLT. According to him, this would be an apparent discrimination.

14. He also submits that the appellant even otherwise is entitled to benefits as envisaged under section 460 of the Act. By referring to the grounds of challenge averred in the underlying writ petition, learned counsel for appellant submits that the appellant had actually sought benefits under section 460 of the Act which was not considered by the learned Single Judge. He states that the said benefit is independent of the exemption envisaged under “*extended CFSS 2020*”.

15. He refers to sub clause (v) of clause 5 of the “*extended CFSS 2020*” to submit that all those companies which fell within its ambit were required to pay normal fees and no additional fees was to be paid. He submits that the said benefit, whether under section 460 of the Act or the “*extended CFSS 2020*” could not have been denied to the appellant. On that basis, he states that the present appeal be allowed and a direction that the benefits under *extended CFSS 2020* be also granted to the appellant.

16. We have heard learned counsel for the parties, perused the *CFSS 2020* and the “*extended CFSS 2020*” as also the judgments referred to by the learned counsel.

17. Since the issue involved in the present case revolves around the controversy as to whether the benefits of a particular scheme brought into force by the respondents as an exemption notification could be applicable to the appellant in the fact situation obtaining in the present case, it would be appropriate to consider the law in this regard.

18. It is trite that a notification granting benefit of exemptions from a



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regime, whether taxation or otherwise, is to be strictly construed. This of course, is dependent also on the facts of each case. The question whether party falls in the notification or in the exemption clause, has to be strictly construed and when once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The Courts are to examine as to whether the party seeking such benefit under such exemption notification is found to be entitled to such benefits or not. In case, a party is found to be eligible within the conditions prescribed, the notification is to be construed liberally. In contradistinction thereto, if a party is found to be ineligible as per the conditions prescribed, the notification is to be construed strictly. All that is to be seen is the legislative intent or the economic justification behind such notification. It would be apposite to refer to the judgement of the Supreme Court in ***Union of India v. Wood Papers Ltd., (1990) 4 SCC 256*** wherein it was held as under:-

“4. Entitlement of exemption depends on construction of the expression “any factory commencing production” used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play



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should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification.”

Also see the judgements of the Supreme Court in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company & Ors, (2018) 9 SCC 1*** and ***K.H. Nazar vs. Mathew K. Jacob & Ors, (2020) 14 SCC 126***.

19. It is thus, on the above premise that we need to examine the CFSS 2020 as well as the “extended CFSS 2020”. A perusal of the CFSS 2020 dated 30th March, 2020 reveals that the benefit of exemption from charging additional fees and grant of immunity from launching prosecution on account of delay associated with certain filings was notified in respect of only those companies which were not in the excepted category as per sub clause (ix) (a) of clause 6 thereof. It is also apparent that the said benefit was to come into force with effect from 1st April, 2020 to 30th September, 2020. It is also apparent that only those companies which had made a default in filing of any of the documents, statements, Returns etc., including annual statutory documents on the MCA-21 Registry which were entitled to apply for benefits under CFSS 2020. Sub clause (ix) (a) of clause 6 of CFSS 2020 reads as under:-

*“(ix) **Scheme not to apply in certain cases** – This scheme shall not apply:-
a. to companies against which action for final notice for striking off the name u/s 248 of the Act (previously section 560 of Companies Act, 1956) has already been initiated by the Designated authority.”*

20. It is not denied by the appellant that action under section 248 of the Act was already notified *vide* the notification dated 29th October, 2019 striking off the name of the appellant from RoC. Since the appellant, as on that date, fell within the excepted category, it is apparent that CFSS 2020



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dated 30th March, 2020 is not applicable to the appellant.

21. So far as the “*extended CFSS 2020*” dated 15th January, 2021 is concerned, the same is applicable only to those companies in respect of whom the NCLT, in appeals filed under section 252 of the Act, has passed orders for restoration of the names and disposed of those appeals between 1st December, 2020 and 31st December, 2020. It is observed that in respect of those Companies alone, no additional fees were payable. Learned counsel for the appellant would have us replace the reference to “*NCLT*” with the “*Delhi High Court*” and made an endeavour to read the para 2 of the “*extended CFSS 2020*” in that light and attempted to make it applicable to the appellant. We have, for the sake of assumption, considered the replacement as contended. In our considered opinion, even if we read “*Delhi High Court*” in place of “*NCLT*”, the benefit of exemption notification under “*extended CFSS 2020*” shall still not be available to the appellant. This is for the reason that the scheme envisages entitlement to companies, whose restoration orders were passed between 1st December, 2020 and 31st December, 2020. It is an undoubted fact that the restoration of the name of the appellant was directed vide the order dated 11th February, 2021 in W.P.(C) 5803/2020. Thus, in view of the fact that the order restoring the name of the appellant was not passed between 1st December, 2020 and 31st December, 2020, even if we are to assume replacement of ‘*NCLT*’ with ‘*Delhi High Court*’, the exemption notification of “*extended CFSS 2020*” cannot be made applicable to the appellant.

22. So far as the argument of learned counsel for the appellant regarding grant of benefits under section 460 of the Act, even if the appellant is not



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found entitled to avail benefit under “*extended CFSS 2020*” is concerned, the same is noted only to be rejected. On a plain reading of *CFSS 2020*, which was brought into force by virtue of the notification dated 30th March, 2020 or the “*extended CFSS 2020*” notified on 15th January, 2021, it is clear that the same was enforced by the respondents in exercise of powers under section 460 of the Act. It is unfathomable to countenance a situation where benefits under section 460 of the Act are brought into force by issuance of a notification by the respondents, under which the appellant is found ineligible and yet, it would be permissible for the appellant to seek the same benefits by reference to the original section. This is impermissible. We have already held above that the appellant was clearly not entitled to the benefit of “*extended CFSS 2020*” and thus, this cannot be a second bite at the cherry.

23. In view of the aforesaid examination of law as also the applicability of “*extended CFSS 2020*” on merits by us, the other arguments of learned counsel for the appellant as also the respondents, pale into insignificance.

24. In that view of the matter, we find no reason to interfere with the impugned judgment and resultantly, the appeal along with pending applications, if any, is dismissed, however, without any order as to costs.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 02, 2024/kct