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

\+ W.P.(C) 14366/2024

M/S SREE ANANTA EXIM .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Mr. Ayush Mittal, Ms. Maninder Kaur and Ms. Oshin Maggu, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Awadhesh Kumar Singh, Adv. for R-1.
Mr. Harpreet Singh, SSC with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates.

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\+ W.P.(C) 14383/2024

M/S RAMADA ENGINEERING INDUSTRY .....Petitioner

Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Mr. Ayush Mittal, Ms. Maninder Kaur and Ms. Oshin Maggu, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Badar Mahmood, SSC for UOI with Mr. Ammar Ahmad, Adv.
Mr. Harpreet Singh, SSC with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **14.10.2024**

CM APPL. 60131/2024 (EXEMPTION) in W.P.(C) 14366/2024

CM APPL. 60166/2024 (EXEMPTION) in W.P.(C) 14383/2024

Allowed, subject to all just exceptions.

The application shall stand disposed of.

W.P.(C) 14366/2024 & CM APPL. 60130/2024 STAY
W.P.(C) 14383/2024 & CM APPL. 60165/2024 STAY

1. These two writ petitions had been preferred by co-noticees and impugn the **Show Cause Notice**[1] under Section 74 of the **Central Goods and Services Tax Act, 2017**[2].

2. The principal ground of challenge which was canvassed by Mr. Maggu, learned counsel who appears for the writ petitioner, was of the impugned notices being for a consolidated Financial Period 2017-18, 2018-19 and 2019-20.

3. Mr. Maggu contends that bearing in mind the language in which sub-sections (9) and (10) of Section 74 of the Act stand couched, the impugned notice which seeks to commence assessment for a consolidated period would not sustain.

4. He also seeks to draw sustenance in this respect from the decision of the Supreme Court in the **State of Jammu & Kashmir and Others Vs. Caltex India (Ltd.)**[3]. Mr. Maggu, especially draws our attention to the following observations as rendered by the Supreme Court in that decision:

> "It was lastly contended by the Solicitor-General that the High Court was in error in taking the view that the taxing authorities were not entitled to levy sales-tax for the period from January 1, 1955 to September 6, 1955, because the assessment was one composite whole relating to the entire period from January 1, 1955 to May, 1959, and the assessment which was bad in part was

[1] SCN
[2] Act
[3] 1965 SCC OnLine SC 168

infected throughout and must be treated as invalid. In our opinion, the criticism of the Solicitor-General on this point is well-founded and must be accepted as correct. It is true that there was one order of assessment for the period from January 1, 1955 to May, 1959 but the assessment can be easily split up and dissected and the items of sale can be separated and taxed for different periods. In reading the conclusion that the entire assessment was invalid the High Court has relied on the decision of the Judicial Committee in **Bennett & White (Calgary) Ltd. v. Municipal District of Sugar City No. 5(1)** in which Lord Reid observed as follows at page 816 of the Report:

> "When an assessment is not for an entire sum, but for separate sums, dissected and earmarked each of them to a separate assessable item, a court can sever the items and cut out one or more along with the sum attributed to it, while affirming the residue. But where the assessment consists of a single undivided sum in respect of the totality of property treated as assessable, and when one component (not dismissible as "de minimis") is on any view not assessable and wrongly included, it would seem clear that such a procedure is barred, and the assessment is bad wholly".

But the principle has no application in the present case because the sales-tax is imposed, in ultimate analysis, on receipts from individuals sales or purchases of goods effected during the entire period and it is possible to separate the assessment of the receipts derived from the sales for the period from January 1, 1955 to September 6, 1955 and to allow the taxing authorities to enforce the statute with respect to the sales taking place in this period and also prevent them by grant of a writ from imposing the tax with regard to sales for the exempted period. In other words, the assessment for the period from January 1, 1955 to September 6, 1955 can be separated and dissected from the assessment of the rest of the period and the High Court was in error in holding that the assessment for the entire period was invalid in toto. The view that we have expressed is borne out by the decision of this Court in The State of Bombay v The United Motors (India) Ltd.**"**

5. We however find ourselves unable to sustain the challenge bearing in mind the following facts. Sub-sections (9) and (10) of Section 74 of the Act are concerned with the determination of the amount of tax and the ultimate liability that may come to be raised. They are not concerned with the commencement of proceedings or the

issuance of notice itself. In our considered opinion even though the notice may be for a consolidated period, the same would not relieve the respondents from independently assessing each financial period before quantifying a demand and passing a final order as contemplated under Section 74 of the Act. The respondents would statutorily be obliged to examine the facts as they obtain for each tax period and any explanation that the petitioner may choose to proffer. The right of the respondent to assess each tax period independently would not be effaced merely because a consolidated notice came to be issued.

6. Even in *Caltex India (Ltd.),* the underlying theme of the decision was of each financial period being liable to be assessed separately. As we read the aforesaid decision and peruse Section 74 of the Act, we find ourselves unable to accept the challenge which Mr. Maggu raises to the impugned SCN and which is confined to the same being for the consolidated financial years referred to above.

7. Accordingly, while the challenge to the impugned SCN fails and the writ petition shall stand dismissed, we only observe that the respondents shall be duly obligated to frame separate assessment orders for each of the financial years in question.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 14, 2024/ib