Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 14266 of 2025

Jyotsna Paul
versus
Union of India & Ors.

For the petitioner	:	Mr. Dinabandhu Chowdhury Mr. Amal Kr. Saha Mr. Soumyadip Panda
For the CGST Authority	:	Mr. Shiv Shankar Banerjee Mr. Kaustav Kanti Maiti
Heard on	:	29.10.2025.
Judgment on	:	**29.10.2025**

Raja Basu Chowdhury, J (Oral):

1. The petitioner seeks to challenge an order passed on 25th May, 2016 for contravention of the provisions of Sections 66, 68 and 69 of the Finance Act, 1994. According to the petitioner, the husband of the petitioner was engaged as works contractor in Bankura district and had been carrying on business under the name and style of M/s Manik Lal Pal. Record reveals that the show cause notice had been issued on 15th October, 2013 alleging evasion of tax to the extent of Rs. 5,93,056/- in respect of the financial years 2008-09 to 2012-13. It is also the case of the petitioner that a Voluntary Compliance

Encouragement Scheme, 2013 (VCES) (hereinafter referred to as the said Scheme) was introduced, by the Central Government. The petitioner contends that her husband had taken benefit of the said Scheme and had made payment of Rs. 1,19,142/- for the period covering the financial years 2008-09 to 2012-13 and also deposited Rs. 59,571/- being a preconditioned deposit for availing the said scheme. The balance amount was also deposited by her husband after calculating interest up to 1st August, 2014 aggregating Rs. 1,20,136/-. It is also her contention that upon verification and satisfaction the designated authority had issued form VESC-3 certifying acknowledgement of discharge. The petitioner contends that once, the petitioner's husband had availed such scheme, and obtained discharge no further proceedings could have been initiated or continued against her husband in respect of the said period and as such it is submitted that the order passed by the Joint Commissioner of Customs under Section 73 of the said Act dated 25th May, 2016 is nonest and should be set aside. It is still further submitted that from time to time the petitioner's husband during his life time had duly notified the authorities of the above development but of no avail.

2. Mr. Banerjee, learned advocate representing the respondents on the other hand would submit that simply because the petitioner's husband had made a declaration in terms of the said scheme and had made payment of the amount in terms of the declaration, the

same does not absolve the petitioner to making payment of the tax liability. Admittedly, in this case, a proceeding had been initiated against the petitioner's husband on 15th October, 2013 which culminated in the order dated 25th May, 2016. The declaration was filed belatedly after the show-cause was issued. He would submit on instructions that the petitioner's husband though being obliged to make a true declaration did not do so. The petitioner's husband had in fact made the declaration incorrectly and had made short payment of the tax payable by him and accordingly the certificate issued in form VCES-3 on 2nd September, 2014 cannot be enforced by the petitioner.

3. According to Mr. Banerjee, since the petitioner's husband had not made an honest declaration, there was no irregularity on the part of the respondents in proceeding with the show cause. In fact, the petitioner's representative did not make appropriate disclosure which also resulted in the order. It is too late in the day for the petitioner to question the same.

4. Having heard the learned advocates appearing for the parties, I find that in the instant case, a show cause cum demand notice was issued on the petitioner's husband on 15th October, 2013. However, before such show cause could be proceeded with, the petitioner's husband appears to have made a declaration in form VCES -1 on 31st December, 2013 declaring his tax lability thereby seeking

exemption and an immunity from payment of interest and other proceedings in terms of the paragraph 108 of the scheme.

5. Records would reveal that the petitioner's husband's declaration was found to be in order and accordingly the final payment made by the petitioner's husband was accepted and a certificate of discharge in form VCES-3 was issued and forwarded to the petitioner's husband. As would appear from the above, the aforesaid certificate read with declaration filed by the petitioner's husband, the entire tax liability of the petitioner's husband prior to 2013 stood discharged by issuance of form VCES-3.

6. In this context, it would be relevant to note that though Mr. Banerjee, learned advocate representing the respondents had contended that the petitioner's husband did not make complete and full disclosure in the declaration and accordingly in terms of paragraph 109 of the scheme was not entitled to refund of the amount paid by him, I, however, find that the paragraph 111 of the scheme itself provides for the consequences for making a false declaration or untrue declaration. To more fully appreciate the same, the relevant paragraph is extracted herein below:

> **"***<u>Failure to make true declaration</u>*
>
> *111. (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dies not paid or short-paid.*

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply."

7. From the above, it may be noted that in case there is false declaration and/or short payment of tax and where the Commissioner of Central Excise has reasons to believe that the declaration as made by the declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause as to why he should not pay tax dues or the amount of tax which is short paid.

8. Mr. Banerjee, learned advocate, is candid enough to acknowledge the fact on instructions that in this case, no such procedure was adopted.

9. I find that paragraph 111 of the scheme provides for a finality of the proceedings. The same provides that after expiry of one year, no action shall be taken under sub paragraph (1). Admittedly, more than a year has lapsed since the prior to passing of the order dated 25th May, 2016. Consequentially, it is too late in the day for the respondents to contend that the petitioner's husband has made any false declaration. In any event, no document to show that the Central Excise Commissioner had reasons to believe that the declarant had made any false declaration is available on record.

From the order impugned, it would transpire that the matter pertains to tax dues for the period 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13.

10. Records would reveal that the aforesaid show case dated 15th October, 2013 was ultimately proceeded with in the year 2016, though there is no reflection in the said order as regards the discharge in form VCES-3.

11. In responding to the query from the Court, Mr. Banerjee, learned advocate representing the respondents, has submitted that the genuinity of the certificate or the payment made by the petitioner's husband in pursuance of the aforesaid declaration are not in dispute.

12. I have also noted that in terms of paragraph 106 of the scheme, since no show-cause was issued prior to 1st March, 2013, as such the petitioner's husband was eligible to make such declaration and seek benefit under the scheme. As such the petitioner and her husband were entitled to immunity in terms of paragraph 108 of the scheme. To morefully appreciate the same, the above paragraph is extracted hereinbelow:

> ***"Immunity from penalty, interest and other proceedings***
>
> ***108.*** *(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-*

section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration."

13. In the light of the above, I am of the view that since the proceedings which was initiated on the basis of the show cause dated 15th October, 2013 should not have been proceeded further to culminate in the order dated 25th May, 2016 as in the interregnum the discharge certificate was issued by the respondents in form VCES-3, the above order dated 25th May, 2016, read with form VCES-3 and paragraph 108 of the scheme, cannot be enforced.

14. The order of attachment of the petitioner's bank account, if any, made by the respondents in respect of the above liability accordingly stands quashed.

15. The writ petition is accordingly allowed.

16. There shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Sayandeep
A.R. (Court)