A.F.R.

Neutral Citation No. - 2024:AHC:72949-DB

Court No. - 39

Case :- WRIT TAX No. - 683 of 2023
Petitioner :- Mentha And Allied Products Ltd
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Krishna Mohan Tripathi,Nikhil Agrawal

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Donadi Ramesh,J.

1. Heard Shri Nikhil Agrawal along with Shri Krishna Mohan Tripathi, counsel for the petitioner and Shri Ankur Agarwal, learned Standing Counsel for the revenue.

2. Present writ petition has been filed to challenge the reassessment order dated 28.03.2023 passed in the case of the petitioner under Section 29(7) of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as the 'Act') for the A.Y. 2014-15 (U.P.). Also, challenge has been raised to the order passed by the Additional Commissioner, Grade-1, Moradabad dated 18.3.2023 passed under Section 29(7) of the Act whereby the normal period of limitation to initiate the reassessment proceedings for A.Y. 2014-15 (U.P.) has been extended. Further, challenge has been raised to the reassessment notice dated 22.03.2023.

3. Petitioner is a manufacturer of 'Mentha Oil'. During the A.Y. in question, it purchased various raw materials to manufacture 'Mentha Oil'. Arising from such purchases, it claimed benefit of Input Tax Credit (ITC in short). That claim had been examined by the Assessing Officer in the course of regular assessment proceedings that culminated in the assessment order dated 16.3.2017. In that, the Assessing Officer disallowed ITC claim to

the extent of Rs. 3,24,456/-, being composite amount of ITC claimed against raw materials purchased from unregistered dealers. At the same time, the Assessing Officer allowed ITC claimed by the petitioner, Rs. 6,64,75,453/-.

4. While the assessment was thus completed and that assessment order attained finality, on 13.3.2023, the petitioner was visited with a notice issued under Section 29(7) of the Act. Thereby, the Additional Commissioner proposed to grant permission to the petitioner's assessing authority, to reassess the petitioner for the A.Y. 2014-15 (U.P.), in the extended period of limitation. The 'reason to believe' to reassess the petitioner was founded on the fact that the petitioner had sold 'Mentha Oil' in the course of export, against statutory 'Form I' issued under the Central Sales Tax Act 1956. Treating such sales to be exempt sales, the Assessing Authority was of the opinion that the case of escapement existed. The objections filed by the petitioner were rejected and permission was granted vide impugned order dated 18.3.2023. Consequently, the impugned notice dated 22.3.2023 was issued by the assessing authority and assessment order passed in a hurry, on 28.03.2023.

5. Submission advanced by learned counsel for the petitioner is, the claim for ITC may arise under Section 13 of the Act. If any amount is wrongly claimed, contrary to the provisions of the Act and/or of the Rules framed thereto, proceeding may be undertaken to Reverse Input Tax Credit (RITC in short), under Section 14 of the Act. That proceeding was never initiated - to RITC, Rs. 6,64,75,453/-. In fact, if required, such proceeding may have been initiated only during the course of the tax period. That having expired on 31.3.2015, there survived no jurisdiction with any

authority under the Act to seek RITC, Rs. 6,64,75,453/-, thereafter. Here, such exercise being attempted almost eight years after the end of that limitation, it is described to be without jurisdiction.

6. Second, it has been submitted, reassessment proceeding could be initiated under Section 29 of the Act only in cases involving escapement of turnover. Insofar as the ITC in an issue not involving determination of the 'turnover' of sale or purchase and further inasmuch as the petitioner is not liable to tax on 'turnover of purchase', the reassessment proceeding initiated against the petitioner to RITC, is wholly without jurisdiction.

7. Further, it has been submitted, even on merits, there exists no case of the revenue. 'Mentha Oil' was not generally exempt under the Act. Merely because transactions of export of any commodity were made exempt - for reason of special nature of such transactions, here export transactions, it may never be claimed by the revenue that the goods were exempt from tax or that the raw materials purchased by the petitioner to manufacture such goods namely, 'Mentha Oil' (commodity exported), were not eligible to ITC.

8. Last, it has been submitted, the entire proceedings had been conducted and completed in great haste. The Additional Commissioner granted permission to the Assessing Officer on 18.3.2023. The Assessing Officer issued notice on 22.3.2023 and thus assumed jurisdiction. Notice was served on the petitioner on 24.3.2023 and the reassessment order was passed on 28.3.2023. Thus, no real and/or reasonable opportunity of hearing was afforded to the petitioner.

9. On the other hand, learned Standing Counsel for the revenue

would contend, besides the jurisdiction vested under Section 14 of the Act, RITC being part of 'tax', its escapement would allow for initiation of reassessment proceeding to arise. Therefore, the wrong availment of ITC may be corrected in the reassessment proceedings. Therefore, RITC would continue to be included within the scope of Section 29 of the Act inasmuch as that was a wrongful deduction claimed by the petitioner. In any case, a wrongful benefit had been availed by the petitioner. Therefore, the revenue authorities are right in their approach in seeking to reverse the same through reassessment procedure. On merits, learned Standing Counsel would submit, all submissions being advanced would remain open to the assessee to raise before the appeal authority.

10. Thus, the learned Standing Counsel has submitted, by virtue of definition of 'tax' under Section 2(ag) of the Act, jurisdiction would vest in the Assessing Officer to initiate reassessment proceedings, on excess availment of ITC.

11. Having heard learned counsel for the parties and having perused the record, merits of the matter apart, first, it must be noted, the reassessment proceedings were conducted in great haste. The Additional Commissioner issued notice proposing to grant permission to the assessing authority to reassess the petitioner - on 13.3.2023. That notice was served on the petitioner on 14.3.2023 (as endorsed on the copy of the notice annexed as Annexure no.10 to the writ petition). In that notice, the date of hearing was fixed for 17.3.2023. Seen in that light, the order was passed by the Additional Commissioner in the shortest time, on 18.3.2023. Yet, we may not draw any adverse inference to quash the proceedings on that count inasmuch as that order was only an order to grant

permission to reassess the petitioner in the extended period of limitation. However, what followed thereafter requires serious consideration.

12. Acting on the order dated 18.3.2023, the Assessing Officer took three days time to issue the reassessment notice to the petitioner. Thus, that notice was first issued on 22.3.2023. It was served on the petitioner on 24.3.2023. Having thus assumed jurisdiction, reasonable opportunity ought to have been granted to the petitioner, to respond. By fixing the date 27.3.2023, only two days' was time granted to respond to the reassessment proceedings. That may never be treated to be adequate. Unless the petitioner had admitted the tax liability, there was no opportunity granted to the petitioner to take up any defence and substantiate the same, before the date fixed. The assessing authority himself took three days' time to prepare and issue the reassessment notice (after the order dated 18.3.2023 was passed by the Additional Commissioner). Yet, he did not grant any reasonable time to the petitioner to respond to such notice. What is glaring and wholly unacceptable is, what followed. Practically, on the first date of hearing itself, the Assessing Authority closed the reassessment proceedings and passed the reassessment order, on the next day.

13. Such a procedure adopted by the assessing authority dilutes the trust that a tax-payer/citizen may place in the rule of law being observed by the statutory authorities. Even if it were a case of a tax evader, the rule of law would, by its very stature and basic requirement, commend to all quasi-judicial authorities including the assessing authority, to conduct their proceedings in a manner that may be fair and therefore inspire confidence in the noticee, irrespective of a his status - whether an honest tax-payer or a tax

evader.

14. Even if the proceeding was at risk of becoming time barred, Section 29(7) of the Act provided sufficient safeguard inasmuch as if the assessing authority was of the view that the normal period of limitation was about to expire within days, he ought to have applied to the Commissioner to issue necessary directions in that regard. Merely because the Assessing Officer may have himself woken up late on the issue of alleged escapement of turnover, he may not have caused undue prejudice to the assessee - by closing the proceedings on the first date of hearing itself.

15. Leaving that issue for a while, we find, the Act defines the terms "turnover of purchase" and "turnover of sale" under Section 2(ap) and Section 2(aq) of the Act. They read as below:

*"**2. Defintions**.....*

***(ap) "turnover of purchase"** with its cognate expressions means the aggregate of the amounts of purchase prices paid or payable in respect of purchase of goods made by a dealer either directly or through another dealer, whether on his own account or on account of others, after deducting the amount, if any, refunded by the seller in respect of any goods returned to such seller within such period as may be prescribed;*

***(aq) "turnover of sale"** means the aggregate of amount of sale prices of goods, sold or supplied or distributed by way of sale by a dealer, either directly or through another, whether on his own account or on account of others."*

16. Then, Section 13(1) of the Act provides for allowance of ITC to the extent provided therein. The petitioner being manufacturer was entitled to claim ITC in terms of Clause 2 of the table appended to sub-section (1) of Section 13 of the Act. Section 13 (1) of the Act reads as below:

*"**13. Input tax credit.- (1)** Subject to provisions of this Act, dealers referred to in the following clauses and holding valid registration certificate under this Act, shall, in respect of*

taxable goods purchased from within the State and mentioned in such clauses, subject to conditions given therein and such other conditions and restrictions as may be prescribed, be allowed credit of an amount, as input tax credit, to the extent provided by or under the relevant clause."

17. Then, Section 13(11) of the Act reads as below:

*"**(11)** Where it appears to the assessing authority that amount of input tax or amount of input tax credit shown in any statement furnished by any dealer is incorrect or is not worthy of credence, it may, after giving reasonable opportunity of being heard to such dealer and after making such inquiry as it may deem fit, determine the amount of input tax or amount of input tax credit, as the case may be, by making an order in writing;*

Provided that where matter relates to any tax return submitted under section 24 or in any assessment proceedings under any section of this Act, proceedings shall be completed in accordance with provisions of relevant sections.

Explanation. For the purposes of this section,-

(i) goods for use in manufacture of any goods includes goods required for use, consumption or utilization in manufacture or processing of such goods or goods required for use in packing of such manufactured or processed goods;

(ii) manufacture of any goods includes processing of such goods and packing of such manufactured or processed goods; and

(iii)where during the process of manufacture of any taxable goods any exempt goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of taxable goods. Conversely, where during the process of manufacture of any exempt goods any taxable goods are produced as by-product or waste-product; it shall be deemed that purchased goods have been used in the manufacture of exempt goods.

[(iv) where during the process of manufacture of any vat goods any non-vat goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of vat goods. Similarly, where during the process of manufacture of any non vat goods any vat goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of non vat goods.] (w.e.f. 01.01.2008)"

18. Further, Section 14 of the Act provides for reversal of ITC where such ITC may have been claimed against the provisions of the Act or the Rules framed thereunder or may have otherwise

been wrongly claimed. For ready reference, provisions of Section 14 of the Act read as below:

*"**14. Reverse input tax credit.- (1)** Consistent with the provisions of this Act, the State Government may prescribe the circumstances in which and the goods in respect of which input tax credit shall be neither claimed nor allowed.*

(2) Where, in respect of any goods, a dealer has already claimed input tax credit against the provisions of this Act or the rules framed there under or has wrongly claimed input tax credit in respect of any goods, benefit of input tax credit to the extent it is not admissible, shall stand reversed and such amount of reverse input tax credit shall be deducted from the amount of input tax credit already claimed by the dealer in the tax period in which event giving rise to reverse input tax credit has occurred:

Provided that where event, giving rise to reverse input tax credit, comes to the notice of the dealer after the tax return, for the tax period in which such event has occurred, has been submitted, the dealer shall be liable to pay such amount of reverse input tax credit within thirty days after the event comes to the notice of the dealer, along with simple interest at a rate of fifteen percent per annum for the period commencing on the date following the last date prescribed for submitting tax return of the tax period in which event has occurred and ending on the date on which amount has been deposited."

19. Then, Section 15 of the Act provides, the gross amount of ITC admissible may be adjusted against the gross amount of tax payable for the tax period. It would determine the net amount of tax payable for that tax period.

20. Plainly, ITC is not part of determination of turnover or tax liablity. On the contrary, it is an allowance that arises to certain dealers in the prescribed manner, upon fulfillment of specified circumstances. That amount may be corrected both at the instance of the assessee as also the assessing officer. Once crystallized, the allowance thus created would be adjusted against the gross tax liability that may arise against the assessee. By its very nature, ITC is different and distinct from assessment/determination of turnover. It is an allowance utilized to pay tax dues. Neither the legislature intended nor there is any warrant to otherwise reach a conclusion

that computation of ITC allowance is part and parcel of procedure to assess the 'turnover of sale' or 'turnover of purchase' of goods. However, in its wisdom, the legislature has otherwise included computation of ITC as part of regular assessment proceedings, only.

21. Thus, Section 25 of the Act includes within the scope of the power of the assessing authority to make a regular assessment order, amongst others, "the amount of tax payable and amount of input tax credit admissible, in any case" as part and parcel of regular assessment proceeding. Also, Section 26 of the Act relating to assessment of tax reads as below:

*"**26. Assessment of tax for an assessment year.-** Subject to provisions of this Act, in respect of every taxable dealer, for each assessment year, there shall be an assessment of tax payable by him and amount of input tax credit admissible to him:*

Provided that where the dealer has carried on business during a part of the assessment year, such assessment shall be for such part of the assessment year :

[PROVIDED FURTHER that in case of person who being a dealer other than a registered dealer brings any taxable goods from outside the State, the assessing authority may make separate assessments for each receipt of such goods by the dealer."

22. Again, amount of ITC admissible has been included as part of the regular assessment that may be made.

23. Next, under Section 27 of the Act, it is provided, the deemed assessment order that may arise in certain circumstances, would include, the amount of ITC shown admissible in the return, specifically with respect to regular assessment order passed by the Assessing Authority. Upon due application of mind, under Section 28(2) of the Act, the Assessing Authority has been vested with the power to determine not only the turnover but also the amount of ITC admissible or the RITC payable by the dealer.

24. In the present case, the Assessing Authority did exercise that power while passing the regular assessment order dated 16.3.2017. Therein, he made the following observation:

"आर०आई०सी० करते हुये रु*0 66799909-00* का दावा किया गया है।

आई०टी०सी० की विस्तृत जाँच की गयी ।*?* जाँच पर अपंजीकृत व टैक्स इनवाइस से खरीदे गये जीएलसी रु*0 16759-00,* प्लान्ट रिपेयर एण्ड मैन्टीनैन्स रु*0 235177-00,* ईटीपी रु*0 10803-00,* लैब रनिगें एण्ड मैन्टीनैन्स रु*0 20-00,* मिसलेनियस मैन्युफैक्चरिंग रु*0 15646-00,* आफीस मैन्टीनेन्स रु*0 1165-00,* एवॅस्टोर्स रु*0 44886-00* कुल रु*0 324456-00* की आई०टी०सी० नियम-*21(i) (v)* के अन्तर्गत अनुमन्य योग्य नहीं है। अतः रु*0 324456-00* की आई०टी०सी० रिवर्स की जाती है । इस प्रकार कुल *(66799909-324456)* रु*0 66475453-00?* की आई०टी०सी० विपरीत तथ्य *?*के अभाव में अनुमन्य की जाती है। इसके अतिरिक्त वर्ष *11-12, 12-13* एवं *13-14* की केपिट्ल मुडस से संबंधित *1/3* आई०टी०सी० क्रमश रु० *38692-00, 69039-00* व रु*0 40888-00* कुल रु*0 148619-00* क्लेम की गयी है *!????"*

25. Having done that, the Assessing Officer exhausted the power vested in him to RITC. We do not find any provision of law where under the assessing officer was permitted to initiate fresh proceedings to redetermine the ITC or to compute RITC payable by the petitioner by seeking to reassess the petitioner, thereafter. The provision of Section 29(1) of the Act is *pari materia* to the provision of Section 21 of the U.P. Trade Tax Act, 1948 - the law that pre-existed the enforcement of the Act. For ready reference, Section 29 of the Act reads as below:

*"**29. Assessment of tax of turnover escaped from assessment.-** (1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or re-assess the dealer to tax according to law:*

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment or full assessment as the case may be.

Explanation I: - Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

Explanation II: - For the purpose of this section and of section 31, "assessing authority" means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

Explanation III: - Notwithstanding the issuance of notice under this sub-section, where an order of assessment or re-assessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by an order of assessment or re-assessment made under this section in pursuance of such notice."

26. While there is no doubt as to the meaning of the words "reason to believe" - that lay the foundation of jurisdiction to reassess and therefore we do not propose to discuss the same, the subject matter of reassessment proceedings has been specified by the legislature. First, it is referable to "turnover of a dealer". *Per se*, the word "turnover" has not been defined. However, the phrase "turnover of purchase" and "turnover of sale" defined under Section 2(ap) and 2(aq) leave no manner of doubt that the subject matter of reassessment may be the determination of aggregate of the amount of purchase prices or the sale prices of goods purchased or sold by the assessee, as the case may be. Therefore, the jurisdiction to reassess may arise if the Assessing Officer forms "reason to believe" that the said "turnover of purchase" or "turnover of sale" of goods by the assessee had been "under assessed" i.e. the correct/higher figures of such turnover had not been considered.

27. Second, reassessment proceedings could be initiated where wrong/lower rate of "tax" may have been applied either to the "turnover of purchase" or the "turnover of sale" of goods as determined, as the case may be. Thus, Section 2(ag) of the Act reads as below:

"[(ag) "tax" means a tax leviable under this Act, on the sale or purchase or both, as the case may be, of goods other than news paper; and shall include,-

(i) Composition money either at an agreed rate or in lump sum, as the case may be, payable,

in lieu of actual amount of tax due on turnover of sales, in accordance with provisions of section 6 or section 6A;

(ii) amount of reverse input tax credit;]"

28. At the same time, RITC is not to be assessed (qua the "turnover" of either purchase or sale of goods at any "rate"), that may be either described as "lower" than that at which it may be "assessable" in law. The "rate" of tax is referable only to the rate of tax to be charged as prescribed under of the Schedule to the Act. On the other hand, RITC that may have been wrongly claimed may never described as a "rate" of tax on the "turnover". By using the words "rate" in conjunction with "assessed"/"under assessed lower than that at which it is assessable", the legislature has unexceptionally confined the scope of reassessment proceeding to that part of assessment procedure as may involve determination of chargeable tax liability that would arise either on sale or purchase of goods i.e. the amount of tax that would be chargeable on "rate" basis on those activities.

29. On the other hand, ITC did not arise as a "rate" applied to "turnover". It was an "allowance" created/arising upon fulfillment of statutory conditions. If those conditions were not fulfilled, RITC could be done, under Section 14 of the Act and also in the course of regular assessment - for reason of that power specifically vested by the legislature. No such power/jurisdiction has been vested under Section 29(1) of the Act to assume jurisdiction to initiate reassessment proceedings to redetermine ITC or to RITC. Therefore ITC - that remained an allowance to be utilized to discharge tax liability (that may either be self-assessed by the assessee or assessed by the assessing officer), continued to fall outside the scope of a reassessment proceedings, by its nature as

an allowance on activity carried on by the petitioner and not by way of a tax that was chargeable at any rate specified under the Schedule to the Act.

30. The third "event" that could give rise to initiate reassessment proceedings could be where any "deduction" or "exemption" from tax had been wrongly claimed - again with respect to the "turnover of purchase" or the "turnover of sale" of goods, as the case may be. It is true, Section 2(ag) of the Act defines "tax" and includes therein RITC. Classically, that eventuality could arise where certain expenses or charges liable to be deducted from the "turnover of purchase" or "turnover of sale" of goods, may have been wrongly claimed or allowed - in excess of the allowable claim.

31. The last eventuality were reassessment could be initiated was where any "exemption" from tax may have been wrongly claimed viz-a-viz the "turnover of purchase" or the "turnover of sale" of goods. Typically, that eventuality would arise where the goods may have been wrongly described/assessed to tax - treating the same to be exempt from payment of tax.

32. Undeniably, Section 29(1) of the Act is the only provision that could give rise to jurisdiction to initiate reassessment proceedings. It does not include within its scope an eventuality where ITC may have been wrongly computed i.e. in excess of its entitlement. In absence of any jurisdiction vested (by the legislature), in the Assessing Officer to initiate reassessment proceedings to recompute the ITC or to disallow ITC or to RITC, there is no other principle in law available, as may allow the revenue to assume that jurisdiction. That jurisdiction must remain referable and confined to determine/redetermine the correct figure of turnover and/or the

quantum of tax chargeable thereon. RITC not being part of the assessment of turnover, any doubt as to its computation may never give rise to a valid reassessment proceedings. Thus jurisdiction to reassess may never arise under Section 29 of the Act - to RITC, where purchase turnover giving rise to ITC was not first disturbed under Section 29 of the Act, for reason of it's escapement. The issue whether RITC may be done where jurisdiction may have been validly initiated, is not before us. That issue may be dealt with in appropriate case.

33. Thus, the scheme of the Act is - the computation of correct ITC may be examined by the Assessing Authority, not later than the stage of making the regular assessment order i.e. at the stage of Section 28 of the Act. That order may remain amenable to jurisdiction of *suo moto* revision. Suffice to note, that jurisdiction has not arisen in the present case. Therefore, the reassessment proceedings initiated against the petitioner only to RITC was without jurisdiction.

34. Even otherwise, the Assessing Officer appears to have wrongly placed reliance on the decision of the Karnataka High Court in **M/s Shayamaraju & Co. (India) Pvt. Ltd. & Ors. vs. Union of India, (2011) NTN (Vol-46) 87**. That was a case arising under entirely different provision of law namely, Special Economic Zones Act, 2005. Only this much may be noted that in the said case, the following questions were considered by that Court.

"In the light of the above contentions, the questions that would arise for consideration are,

(i) Whether export duty can be levied under the provisions of the Special Economic Zones Act, 2005?

(ii) Whether export duty could be imposed under the Customs Act, 1962 while incorporating the definition of the expression "export" under the SEZ Act, 2005, into the Customs Act,

1962?"

35. Answering those questions, the Karnataka High Court has observed as below:

"A reading of Rule 23 of the SEZ Rules, 2006 would indicate that supplies from the DTA to a SEZ would be eligible for export benefits as admissible under the FTP. The procedure to claim such benefits is provided under Rules 24 and 30. Rule 27 permits a unit or a developer under the SEZ to import or procure from the DTA all types of goods without payment of duty or procure form the DTA such goods after availing export entitlements. This would lead to the conclusion that export entitlements available on account of either the export of goods from the DTA to the SEZ are available either to the DTA supplier or a SEZ unit or a developer, at their option. Therefore, duty drawback and other export benefits would be available to either party at their option. Such provision exempts goods brought in by the SEZ unit from all levies and duties and since the duty is leviable on the goods, it is not rational to contend that the export leviable on the goods, it is not rational to contend that the export from the DTA to the SEZ should be taxed be taxed while the inward movement of the goods from the DTA to the SEZ would be exempt. It is thus clear from the Statement of objects to the SEZ Act that the intention of the Legislature was to make available goods and services to the developer or unit, within the SEZ free of taxes and duties. Hence, the levy of export duty is neither expressly nor impliedly contemplated under the Act. The movement of goods from the DTA to the SEZ is treated as an export under the SEZ Act only by a legal fiction for the purposes of the Act, namely, for making available benefits as in the case of actual exports drawback and other export benefits to the SEZ unit or the developer of a DTA supplier at their option. To construe this movement of goods as entailing a liability of payment of duty would run counter to the purpose for which the legal fiction is created under the SEZ Act. The levy of export duty as is evident arises under the Customs law and not under the SEZ Act. The levy of customs duty on exports is sanctioned by Entry-83 of List-I of the VII Schedule to the Constitution.

The respondents seeking to rely on the provisions of the SEZ Act would render the provisions unconstitutional as a levy of customs duty on export of goods from India cannot be with reference to the provisions of the SEZ Act. The authorities under the SEZ Act are without jurisdiction in seeking to enforce the liability which could arise only under the Customs Act. Hence, the instructions issued by the respondents under the impugned notifications are wholly illegal and cannot be sustained. It is therefore, declared that no export duty as would be payable for supply of goods by the parties in the DTA to the petitioners in the SEZs and all proceedings initiated in this regard are therefore liable to be quashed.

The petitions are allowed accordingly."

36. We are unable to appreciate how the petitioner's Assessing

Authority could be persuaded by the above reasoning to reach a conclusion that any turnover had escaped assessment at the hands of the petitioner or that excess ITC had been allowed. Plainly, the ratio of the decision noticed by the Assessing Authority does not lead to that conclusion. What may be inferred therefrom, on a subjective consideration of that opinion expressed by the Karnataka High Court, may never have formed a "reason to believe" to initiate reassessment proceedings against the petitioner. Unless Mentha Oil was a commodity generally exempt under the Act or the Central Sales Tax Act, 1956, no ineligibility may have been earned by the petitioner to claim ITC on purchase of raw materials used to manufacture Mentha Oil, merely because quantities of it were exported outside the country leading to conditional exemption from levy domestic tax - for reason of special nature of the export transaction.

37. Thus, the submission of learned Standing Counsel that the Assessing Officer could exercise the jurisdiction to reassess the petitioner to RITC, is misconceived. Reassessment notice being jurisdictional, it could not be issued except where jurisdiction to reassess an assessee arose strictly in accordance with the law. As discussed above, those conditions did not exist in the present case. Merely because RITC is included in the definition of 'tax' under Section 2(ag) of the Act, makes no difference to valid assumption of jurisdiction to reassess which issue must be decided only on the strength of language of Section 29 of the Act.

38. Insofar as Section 29 of the Act did not empower the assessing authority to generally initiate the assessment proceedings on a sweeping allegation of escapement of "tax" but, on a specific allegation of escapement from assessment of any turnover of a dealer etc. based on a "reason to believe" (as discussed above), we

find no merit in the objection being raised by the State that the reassessment proceedings were within jurisdiction, in this case.

39. Thus, there was inherent and complete lack of jurisdiction to reassess the petitioner only to RITC. Also, the reassessment order was passed in complete violation of principles of natural justice. On both counts, the bar of alternative remedy is lifted, in the present facts.

40. In view of the above, writ petition deserves and is **allowed**. The impugned order dated 28.3.2023 is quashed. No order as to cost.

Order Date :- 25.4.2024
Prakhar

(Donadi Ramesh, J.) **(S.D. Singh, J.)**