IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-36483-2019
Reserved on : 01.08.2022
Pronounced on : 03.02.2023

M/s. Schlumberger Asia Services Limited .... Petitioner

Versus

Union of India and another .... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Puneet Bali, Sr. Advocate assisted by
Mr. Sandeep Goyal, Advocate,
Mr. Arun Gupta, Advocate and
Ms. Isha Malik, Advocate
for the petitioner.

Mr. Sourabh Goel, Sr. Standing Counsel – CBIC assisted by
Ms. Samridhi Jain, Advocate and
Ms. Rani Pal, Advocate
for the respondents.

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PANKAJ JAIN, J.

Present petition has been filed under Articles 226 and 227 of the Constitution of India seeking writ of certiorari or any other appropriate writ, order or direction to the respondents to allow adjustment of the amounts already paid by the petitioner while considering their case under 'Vivad se Vishwas Scheme' notified by way of Finance Act, 2019 (in short 'Act') and to allow refund of excess amounts already paid. The petitioner has made an alternate prayer seeking a writ of certiorari or any other appropriate writ, order or direction to quash the impugned provision of law contained in Section 124(2) and that contained in Section 130(2) of the Act as ultra vires, illegal and unconstitutional.

2. The petitioner is an assessee under the erstwhile service tax regime being a company engaged in providing services in the oil and gas sector. The Service Tax Department requisitioned the month wise data/figure from the petitioner for the period 01.04.2013 to 31.03.2014 in relation to equipment lost. During the course of enquiry, petitioner paid an amount of Rs.4 lakhs on 06.02.2015. The petitioner faced similar enquiry for subsequent financial years as well and was served with show cause notices qua evasion of service tax. The details of the same are as under:-

SCN Details	**Period Involved**	**Service tax demanded**
27/ST/Div-16/ 2015-16 dated October 14, 2015 (**"SCN 1"**)	April 01, 2013-March 31, 2014	INR 7,64,64,303
32/ST/2015-16 dated March 31, 2016 (**"SCN 2"**)	April 01, 2014-March 31, 2015	INR 4,39,15,018
07/ST/Div-XVI/2017-18 dated March 26, 2017 (**"SCN 3"**)	April 01, 2015-March 31, 2016	INR 7,94,89,780
05/Div-East-1/2019-20/84 dated April 09, 2019 (**"SCN 4"**)	April 01, 2016-June 30, 2017	INR 7,72,91,924

3. Qua show cause notices issued for the financial years 2013-14 and 2014-15, service tax liability of Rs.19,98,69,101/- was confirmed by the authority vide order dated 29.12.2017. Petitioner claims to have deposited the same alongwith interest and penalty amount total aggregating to Rs.22,93,69,842/-. The petitioner preferred appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) challenging the order dated 29.12.2017.

4. Petitioner further claims to have deposited an amount of Rs.5,94,68,006/- under protest qua show cause notice issued for the financial year 2016-17 as well. During the pendency of the appeal, respondent promulgated the 2019 Act with an intent to achieve resolution and settlement of legacy cases of Central Excise and Service Tax. The petitioner claims himself to be eligible to claim the benefit of scheme by filing requisite declaration. However, it has been claimed that provision as contained in Section 124 of the Act only allows adjustment of pre-deposits made during the appellate proceedings or deposit made during an enquiry, investigation or audit, but any amount deposited other than the pre-deposit is not qualified for adjustment. Further, as per the provision contained in Section 124(2) of the Act and the proviso appended thereto, the declarant shall not be entitled for refund of any excess amount paid and the same has been further reiterated in the provision contained in Section 130(2) of the Act.

5. Learned senior counsel appearing for the petitioner submits that the offending provision as contained in Section 124(2) and the proviso appended thereto and so contained in Section 130(2) of the Act breed hostile discrimination. He claims that it benefits those who merely deposited pre-deposit amount viz-a-viz honest assessee like the petitioner, who are contesting the demand after having deposited the same under protest.

6. Learned senior counsel for the petitioner in order to substantiate his argument has relied upon law laid down by Apex Court in the case of ***'Union of India vs. N.S. Rathnam and sons' (2015) 10 SCC 681***, wherein the Apex Court held that if the two persons or two sets of persons are similarly situated/placed, they have to be treated

equally. Article 14 would be treated as violated if an exemption is granted to a particular class of persons and is not extended to all similarly situated persons. While dealing with the notification issued under the taxation statute, Apex Court held that the notification has to apply to the entire class and the Government cannot create sub-classification thereby excluding one sub-category, even when both the same categories are of same genus. He further submits that retention of money other than pre-deposit by the Government by resorting to the provision contained in Section 124(2) and those contained in Section 130(2) shall amount to collecting an amount over and above the computed tax liability which will be without authority of law, hence illegal.

7. In the written statement filed by Union of India, it has been claimed that the scheme contained in the Act is a one time measure for liquidation of past disputes arising out of Central Excise and Service Tax and also to ensure disclosure of unpaid taxes by a person eligible to make the declaration. It has been further claimed that as per settled proposition of law, the legislature enjoys wide latitude in taxation statutes and the same should not be subjected to the minute gravities of Article 14 of the Constitution of India. The scheme has been framed in order to resolve legacy disputes and is not intended to suit or not-suit a particular assessee. Moreover, the scheme is optional in nature and there is no compulsion for an assessee to opt for the same which itself is sufficient to demolish the case of the petitioner.

8. We have heard counsel for the parties and have gone through the records of the case.

9. Before adverting to the facts of the present case, it will be apt to run through the provisions contained in Sections 124 and 130 of the Act:-

> **"124.** (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:—
>
> (a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—
>
> (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;
>
> (ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;
>
> (b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;
>
> (c) where the tax dues are relatable to an amount in arrears and,—
>
> (i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. Of the tax dues;
>
> (ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;
>
> (iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—
>
> (A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;
>
> (B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of the tax dues;
>
> (d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

130. (1) Any amount paid under this Scheme,—

(a) shall not be paid through the input tax credit account under the indirect tax enactment or any other Act;

(b) shall not be refundable under any circumstances;

(c) shall not, under the indirect tax enactment or under any other Act,—

(i) be taken as input tax credit; or

(ii) entitle any person to take input tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.

(2) In case any predeposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded."

10. A bare perusal of the afore reproduced provisions shall reveal that while declaring the scheme, legislature in its own wisdom has repeatedly reiterated that the declarant under the scheme shall not be

entitled for any refund irrespective of the fact as to whether the amount of pre-deposit or deposit already paid by the declarant exceeds the amount payable under the scheme.

11. Learned senior counsel for the petitioner is wrong in ascertaining that Section 124 violates Article 14 and breeds hostile discrimination. Trite it is wooden equality is neither feasible nor the mandate of Part-II of the Constitution of India.

12. Reliance by the learned senior counsel appearing for the petitioner on law laid down in ***N.S. Rathnam and sons case (supra)*** is misconceived. In the said case, the issue involved two notifications of even date pertaining to same goods. The duty leviable on the said goods was governed by Section 3 of the Customs Tariff Act, 1975. Duty was payable by two different methods permissible under the statutory scheme itself. Option was left to the assessee to choose either of the two. Since duty paid by using either of the method was statutorily treated as validly paid. Apex Court held as under:-

> "The important factors for the purposes of parity are same in the instant case, viz. the goods are same; they fall under the same heading and the custom duty is leviable as per the Act which has been paid. Therefore, the impugned notification giving exemption only to those persons who paid a particular amount of duty, namely Rs.1400/- per LDT, would not mean that such persons belong to a different category and would be entitled to exemption and not other persons like the respondent herein, who paid the duty on the same goods under the same Act but on the formula which he opted and which is permissible, which rate of duty comes to Rs.1035/- per LDT."

13. In the present case, a bare reading of the Act would reveal that though it has been enacted with reference to a fiscal statute, it does not create or exempt levy of tax. It has been enacted with the objective to reduce legacy litigation involving disputed levies of indirect taxes. The object of the scheme is to liquidate the legacy dispute and not to grant any kind of amnesty. It is a legislation to reduce the legacy litigation against positive payment of a part of the disputed dues of tax to encourage voluntary disclosures of undisclosed evaded taxes with an intent to end old or pending indirect tax disputes.

14. As per settled law statutes are not to be construed as theorems of Euclid but with some imagination of the purpose which lie behind them. The interpretation cannot be too literal in meaning of words that it misses the soul and sees the skin only. With respect to the fiscal statutes, it is trite law that the tests of vice of discrimination in the taxating law is less rigorous. Reference can be made to the observations made by the Apex Court in ***Federation of Hotel & Restaurant Association of India vs. Union of India (1989) 3 SCC 634,*** wherein Apex Court held that:-

> *"xx xx xx*
>
> *46. It is now well settled though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal-policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real*

effect of its provisions. A legislature does not as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.

47. But, with all this latitude certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class. But this alone is not sufficient. Differentia must have a rational nexus with the object sought to be achieved by the law. The State, in the exercise of its Governmental power, has, of necessity, to make laws operating differently in relation to different groups or class of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience."

15. Similarly, in the case of ***'Union of India vs. NITDIP Textile Processors Private Limited (2012) 1 SCC 226'***, Apex Court held as under:-

"xx xx xx

> *67. It has been laid down in a large number of decisions of this Court that a taxation Statute, for the reasons of functional expediency and even otherwise, can pick and choose to tax some. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the Judicature cannot rush in where even the Legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the tax payers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assesses are accidental and inevitable and are inherent in every taxing Statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line."*

16. We find that the provisions contained in Sections 124 and 130 of the Act have close nexus and are in consonance with the objective sought to be achieved by the legislature in enacting the Act. The object sought to be achieved is to end the disputes without creating liabilities. Legislature in its own wisdom in order to achieve the objective of encashing the disputes has reiterated the underlying condition i.e. no refund has to be granted. The scheme is optional. The petitioner is under no obligation to opt for the same. Petitioner may opt after weighing benefits or may opt to continue with pending appeal. The argument raised by senior counsel for the petitioner that the same will be discriminatory to the petitioner as the assessee who has not deposited more than the pre-deposit will have a march over an assessee like

petitioner who has deposited more than pre-deposit is misconceived. If the said argument is stretched further, it would mean that the assessee who has not disputed the demand and deposited the whole amount is the one who is bound to loose the most. He also can invoke Article 14 to say that he is the only one who has been left out of the scheme. The same shall result in an absurd situation and the objective sought to be achieved shall remain a far cry.

17. Thus, finding no merit in the present writ petition, the same is ordered to be dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

03.02.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes