IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2023

PRONOUNCED ON : 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.6697, 6700 & 6701 of 2020
and
WMP.Nos.7948,7949,7952,7955,7957 & 7958 of 2020

Goodearth Maritime Limited
rep.by its Authorized Signatory
A.Sreevidhya ... Petitioner in all W.Ps.

vs.

The Designated Committee under Sabka Vishwas
Legacy Disputes Resolution Scheme, 2019
(Commissioner of GST & Central Excise
& Joint Commissioner of GST & Central Excise)
Chennai South Commissionerate,
MHU Building, No.692, Anna Salai,
Nandanam, Chennai 600 035. ... Respondent in all W.Ps.

Prayer in W.P.No.6697 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the Form SVLDRS – 3 No.L120220SV301883 (Declaration ARN No:LD3112190011000) and direct the respondents to issue a discharge

Certificate under Form SVLDRS – 4, without insistence of any further payment.

Prayer in W.P.No.6700 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the Form SVLDRS – 3 No.L120220SV301898 (Declaration ARN No:LD3112190010686) and direct the respondents to issue a discharge Certificate under Form SVLDRS – 4, without insistence of any further payment.

Prayer in W.P.No.6701 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the Form SVLDRS – 3 No.L120220SV301888 (Declaration ARN No:LD3112190010509) and direct the respondents to issue a discharge Certificate under Form SVLDRS – 4, without insistence of any further payment.

In all W.Ps.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel

COMMON ORDER

The petitioner has challenged the impugned communications all dated 12.02.2020 in Form SVLDRS -3, whereby the Designated Authority has asked the petitioner to pay the amounts towards arrears of tax in terms of Section 124(1)(c) of the Sabka Vishwas (Legacy Dispute Resolution Scheme Rules, 2019 in the Finance Act, 2019.

2. An interim order dated 17.03.2020 was passed by this Court at the time of admission. Para 4 of the said order reads as under:-

> In view of the above, this Court is of the opinion that a prima facie case has been made out by the petitioner. Hence, there shall be an order of interim stay, in the above petitions, on a condition that the petitioner deposits a sum of Rs.31,95,832/-, Rs.37,24,422/- and Rs.97,63,032/- respectively (totalling to Rs.1,66,83,286/-) before the respondent within a period of two weeks from the date of receipt of a copy of this order".

3. By the impugned communications dated 12.02.2020 in Form SVLDRS-3, the petitioner has been called upon to pay an amount of Rs.2,00,19,942/- as detailed below:-

S.No.	*SOD No.& Date*	ST Demand Confirmed In O/O No.62-63 dated (Rs.)	SVLDRS Form I ARN/date	Amount Quantified by the petitioner in SVLDRS-1#.	*Amount quantified as payable after relief under theSVLDR Scheme (Rs.) in Form SVLDRS-3**
1	SCN No.5/2014 Dt.21.10.2014	63,91,664.00	LD31129001 1000/31.12. 2019	**31,95,832**	38,34,998
2	192/2013 Dt.05.06.2013	74,48,843.00	LD3112190 010509/21. 01.2020	**37,24,422**	44,69,306
3	133/2014 Dt.19.05.2014	1,95,26,064.00	LD3112190 010686/21. 01.2020	**97,63,032**	1,17,15,638
	TotaL	**3,33,66,571**		**1,66,83,286**	**2,00,19,942**

Note: [# Calculated at 50% of the amount confirmed; *Calculated at 60% of the amount confirmed]

4. The petitioner had earlier received Show Cause Notice No.5/2014 dated 21.10.2014 and three different statement of Demands for the service provided

by the petitioner for the period between July 2012 to March 2014. In this case, the dispute is confined to the show cause notice and the statement of demands in the above table.

5. These Show Cause Notices, Statement of Demands culminated in Order in Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017 in file bearing reference C.No.109/183/2013-ST-III Adj.

6. By Order in Original No.CHN-SVTAX-003-COM-62-65/2016-17 dated 22.02.2017, the Commissioner of Service Tax III Commissionerate, Chennai-40 confirmed the amount of **Rs.3,37,48,486/-** towards tax and **Rs.33,94,847/-** towards penalty.

7. The petitioner claims to have invoked the powers under Section 74 of the Finance Act, 1994 to rectify the alleged mistakes in so far as demand proposed in SOD N0.133/2014 dated 19.05.2014 and confirmed vide Order in Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017.

8. It is submitted that the petitioner thus did not file an appeal against the Order in Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017 under Section 86 of the Finance Act, 1994 before Customs Exercise and Service Tax Appellate Tribunal (CESTAT) as the application under Section 74 of the Finance Act for rectification was mistake pending before the Commissioner who passed Order in Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017.

9. In the written submission dated 09.11.2016 filed before the adjudicating authority, the petitioner pointed out that there are serious mistakes committed in quantifying the demand proposed in SOD No.133 of 2014 dated 19.05.2014.

10. It was submitted that a disproportionately high demand had been proposed for a short period of 3 months. It is submitted that these submissions were also noted by the Commissioner in paras 4.18 and 4.19 of the Order-in-

Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017 to which the Commissioner had neither given any finding nor corrected the errors in quantification in the application filed under Section 74 of the Finance Act, 1994.

11. Hence, the petitioner vide letter dated 07.06.2017 requested for rectification of the above mistake in Order in Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017 under Section 74 of the Finance Act, 1994.

12. It is submitted that reminders were also sent to the Commissioner on 26.03.2019, 17.07.2019 and 04.09.2019 respectively. However, the petitioner did not get any reply from the Commissioner.

13. The specific case of the petitioner is that the petitioner was issued with a Show Cause Notice dated 21.10.2014 for the period between April 2012 to June 2012 under Section 73(1) of the Finance Act, 1994 and consequently

interest and penalty under Sections 75 & 76 of the Finance Act, 1994 and thereafter, the petitioner was issued with periodical statement of demand under Section 73(1)(a) of the Finance Act, 1994 as above for the succeeding period which ultimately culminated in Order in Original No.CHN-SVTAX-003-COM-62-65/2016-17 dated 22.02.2017.

14. It is submitted that with the announcement of Sabka Vishwas (Legacy Dispute Resolution)Scheme, 2019 under Chapter V of Finance Act, 2019, the petitioner opted to settle the dispute under the aforesaid Scheme.

15. The specific case of the petitioner is that once the jurisdiction under Section 74 of the Finance Act, 1994 was invoked to rectify the mistake in Original No.CHN-SVTAX-003-COM-62 to 65-2016-17 dated 22.02.2017. the application of the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019was to be viewed for the perspective of Section 124(1)(a)(ii) of the Finance Act, 2019 i.e. whereone or more appeals arising out of such notice was pending as on the 30th day of June, 2019 and not under the

arrears category.

16. According to the petitioner, the rectification application filed under Section 74 of the Finance Act, 1994 was to be treated on par which appeal under Section 76 of the said Act. Thus, according to the petitioner, the petitioner was required to pay only 50% of the tax due under Section 124(1)(a)(ii) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and not 60% of amount confirmed in Order in Original 62 to 65/2016-17 in terms of Section 124(1)(c)(ii) of Chapter V of Finance Act, 2019.

17. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Division Bench of the Bombay High Court in ***Ashwini Builders & Developers Pvt.Ltd., vs. Asstt.Commr.C.Ex& S.T.,Division-1, Satara,*** 2022(61)G.S.T.L.5 (Bom.).

18. The learned Senior Panel Counsel for the respondent on the other hand would submit that there are no authentic records to show that the petitioner had indeed filed a rectification application under Section 74 of the

Finance Act, 1994 on 09.11.2016.

19. It is submitted that although the petitioner has stated that it had applied for Rectification of Mistake under Section 74 of the Finance Act, 1974 vide letter dated 07.06.2017, there are no records to show that the above application was indeed filed. It is submitted that a mere affixing of rubber stamp is not sufficient.

20. It is submitted that the subsequent reminder merely referred to application filed on 09.06.2017 which has not been acknowledged.

21. By way of re-joinder, the petitioner would submit that the second reminder was sent on17.07.2019 by way of speed post and third reminder on 04.09.2019 which was also duly acknowledged and there was no action taken pursuant to the aforesaid reminders.

22. It is submitted that there is no dispute regarding the filing of the

rectification application under Section 74 of the Finance Act 1994 on 09.06.2017 and it is for the first time in this writ petition, the respondents have disputed filing of the rectification application under Section 74 of the Finance Act 1994. The respondent has taken a specific plea that no application was filed under Section 74 of the Act.

23. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondent.

24. The petitioner had filed the applications in Form SVLDRS-1 in time. Thus, the petitioner is entitled to settle the dispute under the aforesaid scheme.

25. The petitioner has quantified the amount payable under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in terms of Section 124(1)(a)(ii) of the Finance Act, 2019. However, the respondent has quantified the amount payable by the petitioner in terms of Section 124(1)(c)(ii) of the Act. Section 124(1)and Section 124(1)(c) of the Finance Act, 2019 read as

under:-

124(1)(a) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019	
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 -	(c)where the tax dues are relatable to an amount arrears and -
(i)Rupees fifty lakhs or less then, seventy per cent of the tax dues;	i) the amount of duty as, rupees fifty lakhs or less, then, sixty per cent, of the tax dues;
(ii)**More than rupees fifty lakhs, then, fifty percent of the tax dues;**	(ii)**the amount of duty as 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,-

26. Initiation of rectification proceeding under Section 74 of the Finance Act, 1994 cannot be equated with an appear under Section 86 of the Finance Act,1994. Pendency of the rectification application cannot be considered as the case in respect of which, one or more appeals arising out of such notice was pending as on 30.06.2019**.**

27. An appeal would mean an appeal before an Appellate Authority**.** What was said to be pending before the Commissioner of Service Tax III, Commissionerate was an application for rectification under Section 74 of the Finance Act, 1994 and not an appeal under Section 86 of the Finance Act 1994.

28. An appellate remedy under Section 86 of the Finance Act, 1994 before the Appellate Authority is very different from a rectification proceeding under Section 74 of the Finance Act, 1994 before the same authority who passed the order.

29. The scope of appeal is different from a scope of application filed under Section 74 of the Finance Act, 1994. An application under Section 74 of the Finance Act, 1994 is for rectification of mistake for rectifying any mistake apparent from the record.

30. Where as, an appeal is a proceeding taken to rectify an erroneous decision of a authority by submitting the question to a higher forum. In an appeal, the higher forum reconsiders the decision of a lower forum, on both questions of fact and questions of law. The appellate forum can confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

31. The word "appeal" has to be construed in its plain and natural sense without the insertion of qualifying words. In its natural and ordinary meaning, an appeal is a remedy by which a cause determined by an inferior forum is subjected before a supérior forum for the purpose of testing the correctness of the decision given by Appeal the inferior forum. The right of appeal is a

substantive and valuable right of any appellant who is normally a person aggrieved by the impugned decision in **Bolin Chetia v. Jogadish Bhuyan,** (2005) 6 SCC81.

32. Although, an appeal is a continuation and rehearing of the original proceeding, appellate forum is entitled to take into account even facts and events which came into existence to it after passing of decree appealed against. Hence, if new enactment comes into force during pendency of the appeal, appellate court can also mould the relief by applying the new enactment [See **Dilip v. Mohd. Azizul Haq** (2000) 3 SCC 607].

33. On the other hand, scope of interference under Section 74 of the Finance Act, 1994 is limited. Proceeding under Section 74 of the Finance Act, 1994 is before the same authority who passed the order sought to be rectified.

34. The power to rectify an order is confined only to remove the error apparent on the fact of record. Therefore, a rectification proceeding under

Section 74 of the Finance Act, 1994 cannot be considered to be an appellate proceeding before the Appellate Authority under Section 86 of the Finance Act, 1994 although, proceeding initiated proceeding under Section 74 of the Finance Act, 1994 may also result in reversal of the decision sought to be rectified.

35. For the sake of clarity, Sections 74 & 86 of the Finance Act, 1994 are reproduced below:-

Section 74 of the Finance Act, 1994	***Section 86 of the Finance Act, 1994***
(1) With a view to rectifying any mistake apparent from the record, the [Central Excise Officer]who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order. (2)Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the [Central Excise Officer] passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so	(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order. Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with

Section 74 of the Finance Act, 1994	*Section 86 of the Finance Act, 1994*
considered and decided. (3) Subject to the other provisions of this section, the Central Excise Officer concerned - (a) may make an amendment under sub-section (1) of his own motion; or (b) shall make such amendment if any mistake is brought to his notice by the assessee or the Principal Commissioner of Central Excise or Commissioner of Central Excise or the Commissioner of Central Excise (Appeals). (4) An amendment, which has the effect of enhancing the liability of the assessee or reducing a refund, shall not be made under this section unless the Central Excise Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard. (5) Where an amendment is made under this section, an order shall be passed in writing by the Central Excise Officer concerned. 6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the liability of an assessee or increasing the refund, the Central Excise Officer shall make any refund which may be due to such assessee	the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944): Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012 (23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944)." (1A) (i)The Board may, by order, constitute such Committees as may be necessary for the purposes of this Chapter. (ii)Every Committee constituted under clause (i) shall consist of two Principal Chief Commissioners of Central Excise and Chief Commissioners of Central Excise or two Principal Commissioners of Central Excise or Commissioners of Central Excise] as the case may be. (2) The Committee of Principal Chief Commissioners of Central Excise or Chief Commissioners of Central Excise] may, if it objects to any order passed by the Principal Commissioner of Central Excise or Commissioner

Section 74 of the Finance Act, 1994	*Section 86 of the Finance Act, 1994*
(7) Where any such amendment has the effect of enhancing the liability of the assessee or reducing the refund already made, the Central Excise Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly .	of Central Excise under section 73 or section 83A [***],direct the [Principal Commissioner of Central Excise or Commissioner of Central Excise] to appeal to the Appellate Tribunal against the order. Provided that where the Committee of Principal Chief Commissioners of Central Excise and Chief Commissioners of Central Excise differs in its opinion against the order of the Principal Commissioner of Central Excise or Commissioner of Central Excise], it shall state 29 the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise is not legal or proper, direct the Principal Commissioner of Central Excise or Commissioner of Central Excise]to appeal to the Appellate Tribunal against the order. (2A)The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order : - Provided that where the Committee

Section 74 of the Finance Act, 1994	*Section 86 of the Finance Act, 1994*
	of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional [Principal Chief Commissioners of Central Excise or Chief Commissioner] who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order. Explanation. — For the purposes of this sub-section,"jurisdictional Principal Chief Commissioners or Chief Commissioner" means the Principal Chief Commissioners or Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter. (3) Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Principal Chief Commissioners or Chief Commissioners or, as the case may be, the Committee of Commissioners. (4) The Principal Commissioner of

Section 74 of the Finance Act, 1994	*Section 86 of the Finance Act, 1994*
	Central Excise or Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Principal Commissioner of Central Excise or Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A)] by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Principal Commissioner of Central Excise or Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3). (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub- section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period .

Section 74 of the Finance Act, 1994	*Section 86 of the Finance Act, 1994*
	(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, (a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees . (b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees; (c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees : Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

Section 74 of the Finance Act, 1994	*Section 86 of the Finance Act, 1994*
	(6A) Every application made before the Appellate Tribunal, (a) in an appeal **** for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees : Provided that no such fee shall be payable in the case of an application filed by the Principal Commissioner of Central Excise or Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section. (7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

36. Once the language in taxing statute is clear, there is no scope in interpreting the same as the tax provisions has to be read as it is and nothing is to be intended. In this connection, the decision of the Privy Council in ***Cape Brandy Syndicate* v. *Inland Revenue Commissioner*** [(1921) 1KB 64] wherein it has been held as follows :-

> "*In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only took fairly at the language used.*"

37. This view has also been followed by the Hon'ble Supreme Court repeatedly in several cases dealing with taxing enactment. In **Commissioner v. Dilip Kumar and Company**2018 (361) E.L.T. 577 (S.C.) it was observed as follows:-

> **26.** *Justice G.P. Singh, in his treatise 'Principles of Statutory Interpretation' (14th ed. 2016 p.-879) after referring to Re, Micklethwait, (1885) 11 Ex 452; Partington v. A.G.,*

(1869) LR 4 HL 100; Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT, Jaipur, (2014) 11 SCC 672, State Bank of Travancore v. Commissioner of Income Tax, (1986) 2 SCC 11 and Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, summed up the law in the following manner -

> "*A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means : 'The subject is not to be taxed without clear words for that purpose : and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words : "In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in,*

nothing is to be implied. One can only look fairly at the language used."

It was further observed :-

> "*In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation...."*

Yet again, it was observed :-

> "*It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, "the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him", [Russel v. Scott, (1948) 2 All ER 1]. The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts, (1928) AC 143]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram, (1969) 3 All ER 215]. It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect [IRC v. Ross and Coutler, (1948) 1 All ER 616]."*

38. Further elaborating on this aspect, the Learned author has stated as follows :-

> "*Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Express Mill v. Municipal Committee, Wardha, AIR 1958 SC 341]. If the Legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co., AIR 1960 SC 1182]. But equitable considerations are not relevant in construing a taxing statute, [CIT, W.B. v. Central India Industries, AIR 1972 SC 397], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jha v. Expenditure Tax Officer, Hyderabad, AIR 1972 SC 2319]. It is well-settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the Legislature to determine the same [Kapil Mohan v. Commr. of Income Tax, Delhi, AIR 1999 SC 573]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the Court should not concern itself with the intention of the Legislature when the language expressing such intention is plain and unambiguous [State of Madhya Pradesh v. Rakesh Kohli &Anr., (2012) 6 SCC 312]. But just as reliance upon equity does not avail an assesse, so it does not avail*

the Revenue."

39. The passages extracted above, were quoted with approval by Courts in atleast two decisions being **Commissioner of Income Tax v. Kasturi Sons Ltd.,** (1999) 3 SCC 346 and **State of West Bengal v. Kesoram Industries Limited,** (2004) 10 SCC 201 [hereinafter referred as 'Kesoram Industries case' for brevity]. In the latter decision, a Bench of seven-Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute *:*

> "*(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed : it cannot imply anything which is not expressed : it cannot import provisions in the statute so as to supply any deficiency : (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer "*

40. Therefore, the petitioner is not entitled to settle the amount under the aforesaid Scheme in terms of Section 124(1)(a)(ii) as no appeal was pending

before the Appellate Tribunal.

41. The case of the petitioner was to be considered from the perspective of the definition of the expression " amount in arrears" as defined in Section 121(c)(i) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 . which reads asfollows:-

> 121(c) " **amount in arrears"** means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, or account of –
>
> (i) **No appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal**; or
>
> (ii) an order in appeal relating to the declarant attaining finality; or
>
> (iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it".

42. None of the decisions cited by the learned counsel for the petitioner are relevant. If the petitioner had filed an appeal before the Customs Excise and Service Tax Appellate Tribunal against the Order in Original No.62-65/2016-17 dated 22.02.2017, passed by the Commissioner of Service Tax, Service Tax III Commissionerate, Chennai-40, the petitioner would have been entitled to have the case settled under Section 124(1)(a) (ii) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as claimed by the petitioner in the respective Form - SVLDRS -1 filed by the petitioner.

43. Therefore, there is no merits in the submissions of the petitioner that the case of the petitioner has to be settled in terms of Section 124(1)(a) of Chapter V of Finance Act, 2019 contrary under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

44. However, considering the fact that the petitioner was given a temporary relief by this Court while passing order dated 17.03.2020, the petitioner cannot be denied the benefit of Sabka Vishwas - (Legacy Dispute

Resolution) Scheme, 2019 if the petitioner has complied with the said order by depositing Rs.1,66,83,286/- within a period of two weeks as was ordered.

45. In view of the above, the following orders to be passed:-

(i) The petitioner shall pay an amount of **Rs.33,36,656/-** (Rs.2,00,19,942 – Rs.1,66,83,286/-) within a period of 30 days from the date of receipt of a copy of this order, provided the petitioner has paid a sum of **Rs.1,66,83,286/-** as was ordered on 17.03.2020.

(ii) The petitioner shall also pay the interest at 12% p.a. on the delayed payment of (Rs.1,66,83,286/- and Rs.33,36,656/-) Rs**.2,00,19,942/-** from the date of expiry of 30 days from the receipt of Form SVLDRS-3.

(iii) In case, the petitioner had failed to pay the amount of Rs.1,66,83,286/- as ordered on 17.03.2020 and fails to pay the amounts as ordered now, the benefit of Sabka

Vishwas - (Legacy Dispute Resolution) Scheme, 2019 shall not be extended to the petitioner.

46. These writ petitions stand disposed with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

31.01.2014

Index : Yes/No
Neutral Citation : Yes/No
kkd

To

The Designated Committee under Sabka Vishwas
Legacy Disputes Resolution Scheme, 2019
(Commissioner of GST & Central Excise
& Joint Commissioner of GST & Central Excise)
Chennai South Commissionerate,
MHU Building, No.692, Anna Salai,
Nandanam, Chennai 600 035.

C.SARAVANAN, J.

kkd

Pre-delivery Common Order in
W.PNos.6697,6700 & 6701 of 2020

31.01.2024