IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE HIRDESH

WP. No.3005 of 2022

BETWEEN:-

DINESH KALWAY S/O RATNAKAR RAO KALWAY, AGED ABOUT 51 YEARS, PROPRIETOR : M/S BALAJI MARKETING R/O, 106, GIRNAR APARTMENT, NEAR TAIYABALI PETORL PUMP, NAPIER TOWN, JABALPUR (M.P.)

.....PETITIONER

(BY SHRI G.N. PUROHIT, SENIOR ADVOCATE WITH SHRI ESHAN TRIPATHI, ADVOCATE)

AND

1. **THE UNION OF INDIA THROUGH THE SECRETARY, FINANCE, NORTH BLOCK, NEW DELHI.**

2. **DESIGNATED COMMITTEE UNDER SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019) THROUGH ITS CHAIRMAN, GST BHAWAN, NAPIER TOWN, JABALPUR (M.P.)**

3. **COMMISSIONER, GST & CENTRAL EXCISE, SERVICE TAX, GST BHAWAN, OPP**

ROOPALI HOTEL, NAPIER TOWN, JABALPUR (M.P.)

.....RESPONDENTS

(BY SHRI GAJENDRA SINGH THAKUR – ADVOCATE FOR RESPONDENT NO.3)

Reserved on : 02.05.2023

Pronounced on : 12.06.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, ***Hon'ble Shri Justice Sheel Nagu*** *pronounced the following:*

ORDER

The short question of law herein is as to whether in the face of provision contained in Section 128 of the Finance Act, 2019 and Rule 6(6) of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for brevity ***"SVLDRS Scheme, 2019"***), the Designated Committee under the said Scheme after issuing statement declaring the reduced amount of tax payable of Rs.8,97,037.20, and the petitioner having paid this amount on 15.02.2020, can the said Committee exercise power u/S 128 of the Finance Act, 2019 after expiry of 30 days of issuance of statement to modify the same *suo moto* on discovering arithmetical/clerical mistake.

2. The entire gamut of the facts involved are not being discussed to avoid prolixity and only relevant figures and facts are being detailed below:

(i) Vide Annexure P/5 dated 16.01.2020, a statement u/S 127 was issued under the said Scheme treating the case of petitioner to be under the category of "litigation" based upon the total tax dues, for the period from 01.04.2016 to 01.06.2017 as Rs.29,90,124.00 and the reduced amount payable under the Scheme to be Rs.8,97,037.20. On 15.02.2020, petitioner paid the said reduced amount of Rs. Rs.8,97,037.20.

(ii) The Designated Committee noticed that the amount of CENVAT Credit of Rs.23,52,894/- as proposed to be disallowed and reversed in show cause notice dated 18.03.2019 had not been included while computing "tax dues". Hence, the Revenue to safeguard its interest decided to issue a rectified SVLDRS Form-3 on 28.02.2020 estimating the modified tax dues as Rs.53,43,018/- and the reduced amount of tax payable under the Scheme to be Rs.26,71,509/-.

(iii) Since the amount payable under the Scheme i.e. Rs.26,71,509/- was not paid by petitioner, Form SVLDRS-IV was not issued by the Revenue.

(iv) Consequently, the recovery proceedings impugned herein have been initiated by the Revenue.

3. The question in the aforesaid factual background is as to whether the Designated Committee once have issued statement on 16.01.2020 vide Annexure P/5 u/S 128 of the Finance Act, 2019 review the same after expiry of 30 days i.e. on 28.02.2020.

4. It is settled principle of law in jurisprudence that in cases pertaining to provisions concerning concession/relaxation/discount/rebate, doubt if any has to be resolved in favour of the Revenue. The reason is not far to see. The principal object of a Taxing Statute is to collect revenue for the State. If the said Statute extends a benefit/ relaxation/ concession/ discount/rebate then to ensure that such concessional provisions do not offend the said principal object, the Courts have laid down that such concessional provisions under Taxing Statute are to be read in favour of Revenue in case of doubt. This Court is bolstered in it's view by the decision of Apex Court in the case of ***Union of India and others vs. Wood Papers Ltd. and another, (1990) 4 SCC 256*** relevant extract of which are produced below:

> *"**4.** Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly.*

> *Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification.*

The aforesaid judgment of ***Wood Papers Ltd.*** (supra) has been subsequently followed in ***Novopan India Ltd., Hyderabad vs. Collector of Central Excise and Customs, Hyderabad, 1994 Supp. (3) SCC 606*** wherein the Apex Court has held as under:

> ***"16.*** *We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals [1992 Supp (1) SCC 21] — and in Union of India v. Wood Papers [(1990) 4 SCC 256] referred to therein — represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee — assuming that the said principle is good and sound — does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemical [1992 Supp (1) SCC 21] and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [(1969) 2 SCR 253] that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

5. Moreso, it is further settled in law that whenever a statutory provision prescribes a thing to be done within a certain period of time without further stipulating the consequence of failure to do so, then the provision relating to the time period prescribed cannot be treated as mandatory. This Court is supported in the said view by the decision of Apex Court in ***Sharif-Ud-Din vs. Abdul Gani Lone, (1980) 1 SCC 403*** relevant extract of which is reproduced below:

> ***"9.*** *The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such*

permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

5.1 When the aforesaid two principles of law i.e. the concessional provision in Taxing Statute to be read in favour of Revenue in case of doubt and in absence of any consequence given for failure to follow the time schedule provided to perform a particular duty, are read in conjunction, then what comes out loud and clear is that the provision of Section 128 of the Finance Act, 2019 is a part of SVLDRS Scheme, 2019 which was promulgated as a one time measure for resolving tax disputes and reducing litigation. Thus, the Scheme essentially extends concession. Thus, going by the principle laid down in the case of Apex Court in ***Wood Papers Ltd.*** (supra) and ***Novopan India Ltd., Hyderabad*** (supra), it is obvious that provision of Section 128 of the Finance Act, 2019 in case of any doubt is to be read in favour of the Revenue. More so, the non-prescription of any consequence for not reviewing the statement within 30 days is a clear indication of the fact that provision of Section 128 of the Scheme is not mandatory. As a necessary fall out, the time period of 30 days stipulated in Section 128 is relaxable if reasons are assigned by the Revenue which do not fall foul of reasonableness clause under Article 14 of Constitution.

6. In the conspectus of above discussion, the factual matrix herein reveals that the power of review u/S 128 of the Scheme was exercised in

public interest of avoiding loss to the public exchequer. Due to oversight, CENVAT CREDIT of Rs.23,52,892/- was not included while computing "tax dues" which led to the ultimate relief of Rs.8,97,037.20 under the Scheme, instead of the due amount of Rs.26,71,509/-. If this oversight was not detected and remedied, the Revenue would have been put to loss of Rs.17,74,472.20 (Rs.26,71,509.00 – Rs.8,97,037.20).

7. Thus, the reason assigned for delayed review cannot be termed as arbitrary and thus is saved from being sacrificed at the alter of Article 14 of the Constitution.

8. Consequently, it is obvious that the action of the Revenue which is impugned herein cannot be found fault with.

9. Accordingly, petition having no substance is **dismissed** sans cost.

(SHEEL NAGU)
JUDGE

(HIRDESH)
JUDGE

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