

Court No. - 38

Case :- WRIT TAX No. - 776 of 2022

Petitioner :- M/S Kaydee Audio Vision Pvt. Ltd.

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Praveen Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Praveen Kumar, learned counsel for the assessee and Sri K.R. Singh, learned Chief Standing Counsel alongwith Sri Jagdish Mishra, learned Standing Counsel for the revenue.

2. Present writ petition has been filed seeking quashing of the order dated 22.11.2021 passed by the Appeal Authority; the order dated 09.02.2018 passed by the respondent no.4 under Section 129(3) of the U.P. GST Act, 2017 (hereinafter referred to as the 'Act') and; notice dated 07.12.2019 issued by the Assistant Commissioner (Incharge) Commercial Tax, Mobile Squad, Unit-10, Ghaziabad, proposing to initiate proceedings under Section 130 of the Act.

3. Briefly, it may be noted, earlier, the petitioner had been visited with an order passed under Section 129(3) of the Act dated 09.02.2018 providing for imposition of tax Rs. 5,35,335/- and equal amount of penalty on a transaction on import of goods.

4. At that stage, the petitioner had approached this Court and filed Writ Tax No. 215 of 2018, wherein the petitioner raised challenge to the penalty, amongst others on the ground - the requirement of e-way bill to accompany the goods was not in place in the State of U.P., at the relevant time.

5. Though, the interim order does not make any recital of such ground, a Division Bench of this Court had passed the below quoted order on 22.02.2018 :

"The goods of the petitioner were being carried from Sonipat to NOIDA and have been seized on the basis of certain alleged irregularities found in

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the documents accompanying with the goods.

Learned Standing Counsel prays for and is granted one month's time to file a counter affidavit.

List this matter on 23.03.2018.

The goods of the petitioner as well as the vehicle bearing registration no.HR-55X-2825 be released by the authorities subject to deposit of security other than cash or bank guarantee or in the alternative an indemnity bond equal to the value of tax and penalty leviable subject to the satisfaction of the seizing authority."

6. Thereafter, vide further order dated 15.10.2019 quoted below, the aforesaid writ petition was disposed of:

"Rejoinder affidavit filed today is taken on record.

Heard Shri Praveen Kumar, learned counsel for the petitioner and Shri C.B. Tripathi, learned Standing Counsel for the respondent.

This petition will abide by the decision in Writ Tax No.587 of 2018 reported in 2018 UPTC Vol (100) 126.

The writ petition is accordingly disposed of."

7. It is also on record that similar orders were passed by the Division Bench of this Court, in other cases, as well.

8. Thus, according to the petitioner, the case of the petitioner was covered by an earlier Division Bench pronouncement of this Court in **M/S Godrej & Boyce Manufacturing Co. Ltd. Vs. State of U.P. & Ors., 2018 UPTC (100) 1206.**

9. At the same time, in another matter pertaining to another assessee, with which the petitioner had no concern namely, M/S Kay Pan Fragrance Pvt. Ltd., the revenue authorities assailed the interim order passed by this Court, before the Supreme Court, in **Special Leave Petition (C) No. 25291 of 2019 (State of U.P. & Ors. Vs. M/S Kay Pan Fragrance Pvt. Ltd)**. It now transpires, in those proceedings, the State filed an affidavit in compliance of certain orders passed by the Supreme Court dated 08.11.2019 including therein a list of 284 writ petitions

before this Court that had been disposed of on the date of compliance made by the State (before the Supreme Court). Further, a list of 306 cases that were pending on the date of compliance thus made by the revenue authorities, was also provided.

10. In the first list thus provided, the description of the petitioner's case finds mention at serial no. 106.

11. It is also on record, the petitioner was not heard before the Supreme Court upon such affidavit filed by the State revenue authorities.

12. In such circumstances, vide its order dated 22.11.2019, the Supreme Court disposed of the above described case **State of U.P. & Ors. Vs. M/S Kay Pan Fragrance Pvt. Ltd., 2019 UPTC (103) 1373**. In that, the Supreme Court set aside all orders of this Court, of which description had been given in the compliance affidavit filed by the revenue authorities and also it disposed of all pending writ petitions, of which description was given in that compliance affidavit filed by the State revenue authorities.

13. Further, the Supreme Court issued categorical direction to the revenue authorities to process the claims of the concerned assesseees afresh. Relevant to our discussion, the contents of paragraph nos. 10, 11, 12 and 13 of the report are quoted below:

"10. There is no reason why any other indulgence need be shown to the assesseees, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67(6) of the Act. In the interim orders passed by the High Court which are subject matter of assail before this Court, the High Court has erroneously extricated the assesseees concerned from

paying the applicable tax amount in cash, which is contrary to the said provision.

11. In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

12. We reiterate that any order passed by the High Court which is contrary to the stated provisions need not be given effect to in respect of all the cases referred in the affidavit by the State Government before this Court and fresh cases which may have been filed or likely to be filed before the High Court in connection with the subject matter of these appeals, by all concerned and are deemed to have been set aside/modified in terms of this order.

13. In view of this order, all the Writ Petitions pending before the High Court, list whereof has been furnished in the affidavit are deemed to have been disposed of accordingly. We have passed this common order to cover all cases of seizure during the relevant period, to obviate inconsistency in application of Law and also to do away with multiple appeals required to be filed by the State/assessee to assail the unstable orders/directions passed by the High Court in subject writ petition(s) referred to in the affidavit filed by the State before this Court. Accordingly, the appeals are disposed of in the aforestated terms. All pending applications are also disposed of"

14. It is thereafter, on 07.12.2019, the impugned notice came to be issued to the petitioner by the Assistant Commissioner (Incharge) Commercial Tax, Mobil Squad, Unit-10, Ghaziabad.

15. It has been specifically pleaded by the petitioner that though it submitted a reply thereto (Annexure No. 12 to the writ petition), no further proceedings were drawn up and

explanation was not considered by the respondent authorities.

16. At that stage, the petitioner preferred an appeal against the original order dated 09.02.2018 passed under Section 129(3) of the Act, creating the demand of tax and penalty. That appeal was filed on 17.06.2020. It has been dismissed as time barred by order dated 22.11.2021.

17. In such circumstances, the matter was heard at some length, on the last two dates. On the last date, Sri M.C. Chaturvedi, learned Additional Advocate General had assisted the Court. He had prayed and had been granted time to obtain further instructions in the matter such that the piquant situation that has arisen upon orders passed by two Constitutional Courts namely, this Court and the Supreme Court, may be addressed such that neither party may be prejudiced. That course has become necessary as in the first place, the Supreme Court had set aside the order passed by this Court in M/S Kay Pan Fragrance Pvt. Ltd. (supra). Yet, it had exercised its powers under Article 142 of the Constitution of India and made that order applicable to all cases of which details were given by the State in the compliance affidavit, including this case of the petitioner.

18. Those (other parties) were not before the Supreme Court. They were neither heard nor were aware of the order passed by the Supreme Court, at the relevant time. This fact has become necessary to note because the period of limitation prescribed under the Uttar Pradesh Goods & Services Tax Act, 2017 is not fluid. Rather, it is rigid. The first appeal may have been filed against the order dated 09.02.2018, within a period of 90 days. That period of limitation could be extended and delay condoned for a further period of 30 days only. Since, the petitioner and other similarly situated assesseees had filed writ petition/s before this Court, all such assessee's had lost their right of appeal, in an ex-parte manner.

19. It is a settled principle in law - no party may be prejudiced by an act of Court. While, the Supreme Court set aside all the orders passed by this Court in different cases as were disclosed by the State in its compliance affidavit, it can never be accepted that it was the intention of the Supreme Court to render the assessee remediless or to take away their right of appeal. In fact the order of the Supreme Court clearly indicates to the contrary. Thus, it was provided by the Supreme Court that in compliance of its order, the revenue authority shall necessarily make compliance within a period of four weeks.

20. It remained for the State authorities to have correctly apprised the Supreme Court, at that stage, itself that the remedy of appeal had been lost by most of the assesseees.

21. Be that as it may, this Court cannot turn a blind eye to the harsh facts and their consequence, as have been noted above. Accordingly, a query was put to the learned Chief Standing Counsel, today, if the State would waive its objection as to limitation, in these circumstances. Sri K.R. Singh, learned Chief Standing Counsel has fairly stated, since the circumstances are unique and not such as may be blamed on the assesseees, the State would not raise any objection to limitation if the appeal/s is/are filed by aggrieved assesseees, within reasonable time.

22. Accordingly, the present writ petition is **allowed**. The appellate order dated 22.11.2021 is set aside. The matter is remitted to the appellate authority to decide the appeal afresh, on merits without raising any objection as to limitation. That exercise may be completed, within a period of three months from today.

23. In the interest of justice, it is further provided, the jurisdictional revenue authorities shall issue fresh notices to all remaining assesseees affected by the order of the Supreme Court

in **M/S Kay Pan Fragrance Pvt. Ltd. (supra)** and clearly communicate to them a gist of this order, giving them an opportunity to file an appeal, if any, within ninety days from receipt of that communication, against the individual order/s existing against that individual assessee.

24. Any appeal proposed to be filed by an aggrieved assessee may disclose the date of service of notice served in compliance of this order. The limitation to file the appeal be computed accordingly.

25. Also, adequate communication of this order be made to all first appellate authorities such that appeals (pending and to be filed) by assessees affected by the order of M/S Kay Pan Fragrance Pvt. Ltd. (supra) may be entertained without raising any objection as to limitation.

Order Date :- 31.5.2022

Abhilash/S.Chaurasia