

GAHC010070432020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 2149/2020

1:ASSAM CRICKET ASSOCIATION
HAVING ITS OFFICE AT ACA STADIUM BARSAPARA GHY-18, DIST.-
KAMRUP (M), ASSAM AND REP. BY ITS AUTHORIZED REPRESENTATIVE
SRI DEVAJIT SAIKIA, SECRETARY, ASSAM CRICKET ASSOCIATION

VERSUS

1:THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF FINANCE,
DEPTT. OF REVENUE, NEW DELHI

2:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REP. BY ITS CHAIRMAN
MINISTRY OF FINANCE
DEPTT. OF REVENUE
GOVT. OF INDIA
NEW DELHI

3:THE PRINCIPAL COMMISSIONER
CENTRAL GST
GST BHAWAN
GHY

4:THE DESIGNATED COMMITTEE
CONSTITUTED UNDER RULE 5 OF THE SABKA VISHWAS (LEGACY
DISPUTE RESOLUTION) RULES
2019 HEADED BY THE PRINCIPAL COMMISSIONER CENTRAL GST
GHY

5:ADDL. DIRECTOR GENERAL
DIRECTORATE GENERAL OF CENTRAL EXCISE INTELLIGENCE

KOLKATA ZONAL UNI

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT

Date : 04-05-2020

Heard Mr. B. Gogoi, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned ASGI for the respondent authorities.

2. The petitioner Assam Cricket Association is an assessee under the Finance Act, 1994 as regards their liability to pay service tax. Without going into the detailed facts, it would be suffice to take note of that for the period 2009-2014, that certain conclusion was arrived at against the petitioner that the required amount of service tax was not paid by them. As a consequence thereof, by the order dated 04.09.2017 of the Commissioner GST and Central Excise, Guwahati a penalty of Rs.11,48,82,644.00 (Rupees Eleven Crore Forty Eight Lakhs Eighty Two Thousand Six Hundred Forty Four) was imposed on the petitioner under the 1st Proviso to Section 78 of the Finance Act, 1994. Against such levy and imposition of penalty, the petitioner preferred an appeal before the Custom, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata. In the appeal, the mandatory deposit of 75% of the levied amount was also paid by the petitioner.

3. During the pendency of the appeal, a scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short Scheme 2019) was introduced under Chapter-V of the Finance Act, 1994. As provided in Section 124(1)(a)(ii) of the Finance Act 1994, amongst the various other reliefs that are available, an assessee is also entitled to a relief under the scheme upto 50% of the tax dues if the amount due is more than Rs.50 lakhs.

4. It is the claim of the petitioner that they come within the purview of relief provided in Section 124(i)(a)(ii). Section 125(1)(a) to (h) of the Finance Act, 1994 provides that all persons shall be eligible to a declaration under the Scheme 2019 except for the persons

mentioned in sub-clauses (a) to (h). It is an admitted position of the parties that the petitioner does not come within the purview of the exceptions provided in sub clauses (a) to (h) of Section 125, meaning thereby that they are otherwise eligible to make a declaration under Scheme 2019.

5. In order to claim the benefit under Scheme 2019, the claimants are required to submit the Form SVLDRS-1. One of the columns in the Form SVLDRS-1 pertains to whether any penalty was earlier imposed on the claimant concerned. However, while submitting the Form SVLDRS-1 in the column provided for mentioning whether any penalty imposed upon them, the petitioner stated the penalty to be zero, whereas on the other hand as already noted a penalty of Rs.11,48,82,644.00 (Rupees Eleven Crore Forty Eight Lakhs Eighty Two Thousand Six Hundred Forty Four) was imposed on the petitioner. Because of such mistake in the entry made in the form submitted by the petitioner, the respondent authorities had rejected the claim of the petitioner under Scheme 2019, on the ground that incorrect declaration was made.

6. In the circumstance, the only issue before the Court would be whether the claim of the petitioner for the benefit under Scheme 2019 would stand rejected as because of the aforesaid mistake of not mentioning the penalty or a different view can also be taken in the matter. Admittedly the Finance Act, 1994 wherein, Scheme 2019 has been incorporated does not provide for any provision for re submitting an application claiming the benefit under the scheme.

7. In the circumstance, we are required to look into the matter from the perspective as to whether by not mentioning the penalty in the Form SVLDRS-1, the petitioner had committed an incurable mistake so as to disentitle the petitioner from the benefits under the Scheme 2019 or the mistake that was made can be allowed to be corrected. Apparently, a mistake made can be of two different types, one being a mistake based upon which a legal right is claimed so that the mistake made can be construed to be an act of misleading the authorities to claim a benefit which otherwise a party is not entitled or the mistake made was more of inadvertent nature, which can also be terms as a callous mistake, which does not put the party making such mistake on an undue advantageous position so as to make them entitled to a benefit which they are otherwise not. A mistake that was deliberately made to claim an

undue benefit which the party was otherwise not entitled, would definitely have to be construed to be an incurable mistake but at the same time an inadvertent mistake which may also creep in due to an oversight or because of a callous attitude of the person making the claim but the ultimate result of such mistake would not accrue a benefit which he otherwise would not have been entitled can be accepted to be a curable mistake.

8. In the instant case, the mistake made by the petitioner was that the penalty imposed was stated to be zero whereas it is already on record that the respondent authorities had imposed a penalty of Rs.11,48,82,644.00 (Rupees Eleven Crore Forty Eight Lakhs Eighty Two Thousand Six Hundred Forty Four). In our view the mistake made by the petitioner by not stating about the penalty imposed upon them in Form SVLDRS-1 cannot be said to be a mistake by which the petitioner claimed an undue benefit which they otherwise are not entitled under the law. When we look into the Scheme 2019, we do not find any provision which provides that a person upon whom a penalty is imposed would not be entitled to the benefit given under the scheme. Infact on the contrary the provision of the Scheme 2019 may be such that the benefit of exemption, may even be applicable to the amount of penalty imposed, in which event, the petitioner assessee may be more benefited and would be entitled to a greater exemption if the amount of penalty was mentioned rather than not mentioning the penalty.

9. In the aforesaid circumstance, it is an agreed position of the parties that the petitioner may make an application to the appropriate respondent authority to consider the claim of benefit under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 by allowing the petitioner to make necessary correction in the information provided as regards the earlier penalty imposed on them. It is further agreed that upon such application being made, the authorities would pass an appropriate order thereof as per their discretion.

10. In view of such agreement, this petition stands disposed of by requiring the petitioner to submit an application before the respondent authorities for correction to be made in the information provided in the Form SVLDRS-1 as regards the penalty imposed and upon such application being made, the respondent authorities would pass a reasoned speaking order thereon. The requirement of submitting application be made within a period of 15 days from obtaining the certified copy of the order and upon receiving of the application, the

respondent shall pass an order on the same within a period of 2 months from the date of receipt of the application.

11. It is further provided that the earlier observation in this order as regards the benefit under Section 124(1)(a)(ii) shall not limit the claim of the petitioner to a benefit under that provision alone and if the petitioner is entitled to any other benefit, the petitioner is at liberty to make such claim.

Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant