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Neutral Citation No. - 2024:AHC-LKO:41587-DB

A.F.R.

Court No. - 3
Case :- WRIT TAX No. - 114 of 2024
Petitioner :- Eveready Industries India Ltd. Lko. Thru. Signatory Sh. Sounik Mukherjee
Respondent :- State Of U.P. Thru. Secy. Ministry Finance , U.P. Lko. And Another
Counsel for Petitioner :- Atma Ram Verma
Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra,J.
Hon'ble Brij Raj Singh,J.

(Delivered by Hon'ble Mrs. Sangeeta Chandra,J.)

1. Heard Sri Rahul Agarwal alongwith Sri Utkarsh Malviya, learned counsel for the petitioner and Sri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State-respondents.

2. This petition has been filed with the following main prayers:-

> *"Issue a Writ, Order or Direction in the nature of Certiorari quashing the impugned Order passed u/s 74 of the Uttar Pradesh Goods & Service Tax Act, 2017 bearing Reference No.ZDO90224180025M dated 19.02.2024 issued in FORM GST DRC-1 a/w the Rectification Order bearing Ref. No.ZD0904244094478 dated 27.04.2024 issued in FORM GST DRC-08, by the Respondent no.2 (Annexure no.1).*
>
> *(2) Issue a Writ, Order or Direction in the nature of certiorari quashing the impugned Show Cause Notice issued to the petitioner u/ s 74 of the UPGST Act vide Reference No. ZD090823132533D dated 07.08.2023 issued in FORM GST DRC-01 by Respondent no.2 (Annexure No.2)."*

3. It is the case of the petitioner that the company was registered under Uttar Pradesh Goods and Services Tax Act, 2017 (for short 'the Act'). An audit notice was issued to the petitioner on 05.05.2022 vide FORM GST ADT-01 by the Joint Commissioner (Tax Audit), Commercial Tax, Lucknow, requiring the petitioner to produce books of accounts and present its case regarding due discharge of tax liabilities. A survey of the premises of the petitioner was conducted by the Revenue Officials on 11.05.2022. Another notice was issued in FORM GST ADT-01 to the petitioner on 05.01.2023 on similar grounds. The petitioner claims to have complied with all the directions issued by the respondents, however, it was not given any information regarding the action taken in furtherance of audit notices dated 05.05.2022 and 05.01.2023 by the respondent authorities. As per the provisions of Section 65(4) of the Act, if the respondents failed to complete the audit exercise after the lapse of three months from the date of audit, unless the said period has been explicitly extended, it shall be deemed to have concluded upon expiration of the said period. No draft audit report was prepared or issued to the petitioner in FORM GST ADT-02. A show cause notice was issued to the petitioner on 07.08.2023 relying upon the audit FORM GST ADT-01, that were issued on 05.05.2022 and on 05.01.2023. No audit report was ever issued to the petitioner.

4. The impugned show cause notice does not provide any date, place and time of hearing despite the same

being mandatory procedure. In the Columns specified for date, place and time of hearing, the show cause notice mentions NA (not applicable) thereby denying the petitioner any opportunity of hearing. The petitioner submitted its reply on 06.11.2023 and in the said reply, the petitioner has specifically prayed that it may be given personal hearing, if the officer is not satisfied with the written explanation given in reply to the show cause notice.

5. Learned counsel for the petitioner has argued that despite the mandate of Section 75(4) of the Act providing personal hearing and despite the petitioner specifically asking for personal hearing, no opportunity of personal hearing was granted and the impugned order was passed in violation of the settled principles of natural justice.

6. Learned counsel for the petitioner to substantiate his argument, has read out the provisions of Section 75(4) of the Act and has placed reliance upon three judgements of Co-ordinate Benches of this Court in ***Writ- Tax No.1029 of 2021: Bharat Mint & Allied Chemicals Vs. Commissioner, Commercial Tax & others***, **(2022) Vol.48 VLJ 325**, decided on 04.03.2022; ***Writ Tax No.551 of 2023: M/s Mohini Traders Vs. State of U.P. and another,*** decided on 03.05.2023 and ***Writ Tax No.44 of 2024: M/s Mahendra Educational Pvt. Ltd. Vs. State of U.P.,*** decided on 05.03.2024, copies of such orders passed by Co-ordinate Benches have been collectively filed as Annexure No.9 to the writ petition.

7. Learned Counsel appearing on behalf of the State-respondents has argued that against the impugned order of assessment, the petitioner has a statutory remedy under Section 107 of the Act and all the arguments on the merits of the case, can be dealt with by the appellate authority.

8. Learned counsel for the petitioner has argued that the leading judgment of a Co-ordinate Division Bench in ***Bharat Mint & Allied Chemicals*** (supra) has been relied upon in the case of ***M/s Mohini Traders*** (supra) and ***M/ s Mahendra Educational Pvt. Ltd.*** (supra) by two Co-ordinate Division Benches and he has read out the judgment of the Division Bench in ***Bharat Mint & Allied Chemicals*** (supra), wherein the Division Bench has framed two questions to decide; the first related to whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act 2017; and second question was whether under the facts and circumstances of the case, the impugned adjudication order has been passed in breach of principle of natural justice and consequently, it deserved to be quashed in exercise of powers conferred under Article 226 of the Constitution of India.

9. The Co-ordinate Bench dealt with the notice issued to the petitioner under Section 75(4) of the Act and observed that under the column meant for the date, time and place of personal hearing, the officer has noted NA (not

applicable) and then has quoted the language of Section 75(4) of the Act. To decide the controversy, it is appropriate to quote the judgement of ***Bharat Mint & Allied Chemicals*** (supra) in extenso :-

> *"8. Section 75(4) of the Act, 2017 reads as under:-*
>
> *"An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."*
>
> *9. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.*
>
> *10. In the counter affidavit the respondents have taken the stand that no opportunity of hearing is required before passing the assessment order. In support of their contention the respondents have relied upon the judgment of Hon'ble Supreme Court in Union of India and Others Vs. M/s.Jesus Sales Corporation AIR 1996 SC 1509. Perusal of the judgment in the case of M/s. Jesus Sales Corporation (supra) shows that the observation was made by Hon'ble Supreme Court while interpreting 3rd proviso to Section 4 M(1) of the Imports and Exports (Control) Act 1947, which is reproduced below:*
>
> *"Provided also that, where the Appellate authority is of opinion that the deposit to be made will cause undue hardship to the*

appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose."

11. The aforequoted 3rd proviso of Section 4 M (1) of the Act 1947 does not contemplate any opportunity of personal hearing in contrast to the provisions of Section 75(4) of the CGST/UPGST Act, 2017 which specifically mandates for opportunity of hearing before passing the order. The counter affidavit has been filed by an Officer of the rank of Joint Commissioner, Corporate Circle Commercial Tax, Bareilly who has either not read the aforesaid judgment of Hon'ble Supreme Court or was not able to understand it and in a casual manner the counter affidavit has been filed in complete disregard to the statutory mandate of Section 75(4) of the Act 2017.

12. It has also been admitted in the counter affidavit that except permitting the petitioner to reply to the show cause notice, opportunity of personal hearing has not been afforded to the petitioner. Thus the legislative mandate of Section 75(4) of the Act to the authorities to afford opportunity of hearing to the assessee i.e. to follow principles of natural justice, has been completely violated by the respondents while passing the impugned order."

10. The Court thereafter observed that the stand taken by the respondents that the petitioner has alternative remedy of appeal under Section 107 of the Act cannot be accepted. Insofar as it is settled law that availability of alternative remedy, is not a complete bar to entertain a writ petition under Article 226 of the Constitution of India and has referred to exceptions that have been carved out to alternative remedy by the Hon'ble Supreme Court with regard to three cases i.e. (i) where there is complete lack of jurisdiction in the officer or authority to take the action

or to pass the order impugned; or (ii) where vires of an Act, Rules, Notification or any of its provisions has been challenged; or (iii) where an order prejudicial to the writ petitioner has been passed in total violation of principles of natural justice. There are other exceptions also, which have been mentioned in sub-clauses (iv) to (xi) of the Division Bench judgment, which are being quoted herein-below:-

> *"(iv) Where enforcement of any fundamental right is sought by the petitioner.*
> *(v) Where procedure required for decision has not been adopted.*
> *(vi) Where Tax is levied without authority of law.*
> *(vii) Where decision is an abuse of process of law.*
> *(viii) Where palpable injustice shall be caused to the petitioner, if he is forced to adopt remedies under the statute for enforcement of any fundamental rights guaranteed under the Constitution of India.*
> *(ix) Where a decision or policy decision has already been taken by the Government rendering the remedy of appeal to be an empty formality or futile attempt.*
> *(x) Where there is no factual dispute but merely a pure question of law or interpretation is involved.*
> *(xi) Where show cause notice has been issued with preconceived or premeditated or closed mind."*

11. The Division Bench in the case of ***M/s Mohini Traders*** (supra) has placed reliance upon the judgement rendered in the case of ***M/s Bharat Mint & Allied Chemicals*** (supra) and observed in similar terms in paragraphs 8 and 9 as follows:-

"8. Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms. Here, we note, the impugned order itself has been passed on 25.11.2022, while reply to the show-cause-notice had been entertained on 14.11.2022. The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.

9. Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required."

12. A coordinate Bench sitting at Lucknow in ***M/s Mahendra Educational Pvt. Ltd.*** (supra) has placed reliance upon the Division Bench Judgement in the case of ***M/s Bharat Mint & Allied Chemicals*** (supra) and has quoted the observations made in the case of ***M/s Mohini Traders*** (supra) and observed in paragraph 8 as follows:-

"8. Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required."

13. It has been argued on the basis of observations made by the three Division Benches of this Court that the law is settled insofar as Section 75(4) of the Act is concerned. The officer should not only issue a show cause notice, but also give personal hearing where a request has been received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against any such person.

14. Learned counsel for the State-respondents has pointed out that Section 74 of the Act, which relates to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful- misstatement or suppression of facts. Section 74 of the Act in its entirety is quoted below:-

> *"Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.*
>
> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with*

interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1)

in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded."

15. The action taken against the petitioner under Section 74(9) of the Act does not provide for personal hearing to be given to the concerned person chargeable with tax or penalty. It only states that the proper officer shall after considering the representation, if any, made by the person chargeable with tax determine the amount of tax, interest and penalty due from such person and issue an order.

16. Learned counsel for the petitioner, however, has pointed out that Section 75 of the Act which, as has been published in the text book, is under sub-heading of "General Provisions Relating to Determination of Tax". It has been argued that Section 75 of the Act will apply as a general procedure to be adopted in all actions that are proposed under Sections 73 and 74 of the Act and the procedure prescribed under Section 75 of the Act will have to be followed by the tax authorities even for determination of tax under Section 74 of the Act.

17. Learned counsel appearing for State-respondents has referred to Section 75 (2) of the Act and says that the language of Section 75(2) of the Act is clear that where any appellate authority or appellate Tribunal or Court concludes that the notice issued under sub-section (1) of Section 74 of the Act is not sustainable for the reason that the charges of fraud or any willful-misstatement or suppression of fact to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of Section 73 of the Act.

18. It has been argued that sub-clauses of Section 75 of the Act relate to the procedure to be followed by the Officer after remand of the matter by the appellate authority or tribunal or the court and sub-section (4) should be read in that context and it requires that an opportunity of hearing shall be granted where a request is

received in writing from the person chargeable with tax or penalty or where an adverse decision is contemplated against such person.

19. It has however been argued by the learned counsel for the petitioner that if such an interpretation is given to Section 75 of the Act and its sub clauses, it would render a situation anomalous and he has read out sub-sections (5), (6), (7), (8) and (9) of Section 75 of the Act. Section 75 of the Act in its entirety is quoted below:-

> *"Section 75. General provisions relating to determination of tax.*
>
> *(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.*
>
> *(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*
>
> *(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.*
>
> *(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty,*

or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings. (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the

Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

20. Learned counsel for the petitioner has also argued that Section 75(4) of the Act would be rendered otiose if this Court comes to the conclusion that the argument raised by the learned counsel for the State-respondents is liable to be accepted as Section 74(1) of the Act also contemplates issuance of a notice and calling for a reply. It has been submitted that Sections 73, 74 and 75 of the Act lay down one integrated scheme regarding imposition of tax or penalty and the procedure to be followed by the Taxing Officer.

21. This Court having considered the submissions made by the learned counsel for the parties has gone through the leading judgment in the case of ***M/s Bharat Mint & Allied Chemicals*** (supra) and finds that the said

judgment although has read into the language of Section 75(4) of the Act and the right of "personal" hearing, it has not mentioned any *casus omissus* on the part of the legislature reading into the statute words like "personal" hearing" as the Act itself only states that an opportunity of hearing shall be given.

22. The golden rule for construing Wills, Statutes, and in fact, all written instruments has been stated in *Grey versus Pearson* (1857) 6 HL cases 61 as: –

> *"the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther"*

23. However Jervis, C J, in ***Abley v Dale***, 11, CB 378; as quoted by the Supreme Court in the case of ***M/s Trutuf Safety Glass Industries versus Commissioner of Sales Tax*, UP** , 2007 (7) SCC 242, has further observed that the latter part of this golden rule must, however, be applied with with much caution. "If the precise words used are plain and unambiguous, in a statute, we are bound to construe them in their ordinary sense, even though it leads in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied, where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we

see, or fancy, an absurdity, or manifest injustice from an adherence to the literal meaning".

24. In ***Commissioner of Sales Tax versus Parson Tools and Plants***, **1975 (4) SCC 22,** the Supreme Court observed that the will of the legislature is the supreme law of the land, and demands, perfect obedience. Judicial power is never exercised for the purpose of giving effect to the will of the judges; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law. Therefore, where the legislature clearly declares its intent in the scheme and language of a Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law; if the Statute is a taxing Statute. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent Statute, or even if there is *casus omissus* in a Statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, or by implication, something that it thinks to be a general principle of justice and equity. To do so, would be entrenching upon the preserve of the legislature, the primary function of a Court of law, being *jus dicere* and not *jus dare*.

25. In ***Godrej and Boyce Manufacturing Company Limited Vs Deputy Commissioner of I.T., Mumbai***

***and another*, 2017 (7) SCC 421**; the Supreme Court had observed that where the words of the Statute are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal rule. It further observed that it is the bounden duty and obligation of the Court to interpret the Statue as it is. It further observed that it is contrary to all rules of construction to read words into a Statute which the legislature in its wisdom, has deliberately not incorporated.

26. Lord Hailsham in ***Pearl Berg versus Varty***, (1972) 2 All ER 6; observed in regard to importation of the principles of natural justice into a Statute, which is a clear and complete code by itself, thus:–

> *"it is true, of course that the courts will lean heavily against any construction of a Statute which would be manifestly unfair. But they have no power to amend or supplement the language of a Statute, merely because in one view of the matter, a subject feels himself entitled to a larger degree of say in the making of a decision than a Statute awards him. Still less is it the function of the courts to form first a judgement on the fairness of an act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgement,––."*

27. As a matter of first principle, a *casus omissus* cannot be supplied by the Court, unless there is a clear case of necessity and when reason is found within the Statute itself.(See *Padmasundara Rao (dead) and others Vs State of Tamil Nadu and others* AIR 2002 Supreme Court 1334).

28. In ***Institute of Chartered Accountants of India versus M/s Price Waterhouse and another,*** **AIR 1998 Supreme Court 74**; the Supreme Court had observed that the object of interpreting a Statute is to ascertain the intention of the legislature in enacting it. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said, and also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Courts cannot aid the legislature's defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. It is contrary to all rules of construction to read words into a Statute unless it is absolutely necessary to do so. Principles of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament, unless clear reason for it is to be found within the corners of the Act itself.

29. In ***D.R. Venkatachalam and others, etc Vs. Deputy Transport Commissioner and others, AIR 1977 Supreme Court 842***, it was observed that courts must avoid the danger of *a priori* determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are

not entitled to usurp legislative function under the guise of interpretation.

30. The Supreme Court in the case of ***Bharat Aluminium Company vs Kaiser Aluminium Technical Services Inc.,*** reported in **2012 (9) SCC 552**, has held that the Court must proceed on the footing that the legislature intended what it has said. Even where there is a *casus omissus,* it is for others than the Courts to remedy the defect. it has quoted the House of Lords in *Duport Steels Ltd Vs. Sirs,* 1980, All ER 529 (HL) in observing:-

> *"– – the role of the Judiciary is confined to ascertain from the words that Parliament has approved as expressing its intention what that intention was, and to give effect to it. Where the meaning of the statutory words are plain and unambiguous, it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to the plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. ....,Under our constitution, it is Parliament's opinion on these matters that is paramount.."*

31. In *Canada Sugar Refining Company Limited versus The Queen (Canada)* 1898 AC 735, Lord Davey observed that "the good expositor of an Act of Parliament should make construction on all the parts together, and not of one part only by itself. Every clause of a Statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole Statute …"

32. Two principles of construction, one relating to *casus omissus,* and the other in regard to reading the Statute as a whole, – appear to be well settled. Under the first principle, the *casus omissus* cannot be supplied by the Court, except in the case of clear necessity, and when reason for it is found in the four corners of the Statute itself, but at the same time a *casus omissus* should not be readily inferred, and for that purpose, all parts of the Statute or the section must be construed together, and every clause of a section should be construed with reference to the context and other clauses thereof, so that the construction to be put on a particular provision makes it consistent of the whole Statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. An intention to produce an unreasonable result is not to be imputed to a Statute, if there is some other construction available. Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, as per *Lord Reid in Luke v. IRC* (1966 AC 557), where it has been observed "this is not a new problem, though our standard of drafting is such that itrarely emerges".

33. In *Commissioner of Customs (Import), Mumbai Versus Dilip Kumar and Company and others*, 2018 (9)

SCC page 1, a Constitution Bench of the Supreme Court was interpreting an exemption clause as per customs Notification 20 of 1999, relating to concessional rate of Duty pertaining to prawn feed. The concessional duty was denied by the department to the respondent, who had imported a consignment of Vitamin E 50 powder (feed grade) on the ground that the goods under import contained chemical ingredients for animal feed, and not animal feed/prawn feed. The Supreme Court observed that in the matter of interpretation of charging section of taxation Statute, this rule of interpretation is mandatory that if there are two views possible in the matter of interpretation of the charging section, the one favourable to the assessee needs to be applied.

34. The Supreme Court further observed that the principles of interpretation of statutes come in handy here. In spite of the fact that experts in the field assist in drafting Act and Rules, there are many occasions where the language used and the phrases employed in the Statute are not perfect. Therefore, Judges and Courts need to interpret the words. The purpose of interpretation is essentially to know the intention of the legislature. Whether the legislature intended to apply the law in a given case; whether the legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be given only by knowing the intention of Legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids

and external aids, which are tools for interpreting the Statutes. The long title, the preamble, the heading, the marginal note, punctuation, illustrations, definitions, or exclusionary clause, proviso to a section, explanation, examples, a Schedule to the Act, et cetera are internal aids to construction. The external aids to construction are Parliamentary debates, history leading to the legislation, other statutes which have a bearing, dictionaries, thesaurus etc. It is well accepted that a Statute must be construed according to the intention of the legislature and the Courts should act upon the true intention of the legislation while applying the law and while interpreting the law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In other words, legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object, which comprehends the mischief and its remedy to which the enactment is directed. The well settled principle is that when the words in a Statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences.

In applying the rule of plain meaning, any hardship and inconvenience cannot be the basis to alter the meaning of the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in

the context in which it is used, keeping in view the legislative purpose. Not only that, if the plain construction leads to an anomaly or absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation.

35. After referring to Justice GP Singh's 'Principles of Statutory Interpretation' and several English case laws and also judgements of the Supreme Court, the Constitution Bench in paragraph 34 of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and others*, 2018 (9) SCC 1, has observed as under: –

> *"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 escaping if the letter of the law fails to catch him on account of Legislature's failure to express itself clearly"*

36. When we examine the scheme of Sections 73, 74 and 75 of the Act taken together, we find that under Section 74, the procedure for determination of tax not paid or

short paid or erroneously refunded or input tax credit, wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts is provided. Under sub-section (1) and (2) and (3), the proper officer shall serve a notice on the person chargeable with such tax requiring him to show cause as to why he should not pay the amount specified in the notice along with interest thereon under Section 50 and a penalty equivalent to the tax specified in the notice.

37. Such notice should be given at least six months prior to the time limit specified in Section 10 for issuance of order; along with a statement containing the details of tax, not paid or short paid or erroneously refunded or input tax credit wrongly availed.

38. Sub-Section (4) provides that service of statement under sub-Section (3) shall be deemed to be service of notice under sub-Section (1) of Section 73.

Under sub-Section (5) of Section 74, the person chargeable with tax may before service of notice under sub-Section (1) pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to 50% of such tax on the basis of his own ascertainment or as ascertained by the proper officer and inform him in writing of such payment. Under sub-Section (6), the proper officer on receipt of such information shall not serve any notice under sub-Section (1) in respect of tax payable if he is satisfied with such payment, however, if he is not satisfied,

then, under Sub-Section (7), he shall proceed to issue notice as provided for under sub-Section (1) in respect of such amount, which falls short of the amount actually payable. This can be deemed to be a second notice, or a second opportunity given to the assessee in respect of the amount which falls short of the amount, actually payable. If on service of such notice, the person chargeable with Tax pays the tax along with interest under Section 50 and a penalty equivalent to 25% of such tax, all proceedings in respect of the said notice shall be deemed to be concluded. Penalty in sub-Section (8) is equivalent to 25% of such tax as against penalty, which is payable under sub-Section (1), which is equivalent to the tax specified in the notice.

Under sub-Section (9), the proper officer shall after considering the representation if any, made by the person chargeable with tax, determine the amount of tax, interest, and penalty due from such person and issue an order.

Under sub-Section (10), the limitation is provided within which the proper Officer shall issue order under sub-Section (9).

Under sub-Section (11), where any person is served with an order issued under sub-Section (9) and he pays the tax along with interest payable thereon under Section 50 and a penalty equivalent to 50% of such tax payable within 30 days of communication of the order, all

proceedings in respect of such notice shall be deemed to be concluded.

39. It is evident from the scheme of Section 74 that initially a notice along with a statement of tax payable along with penalty has to be issued by the proper officer within the time limit as prescribed, to which a representation can be made by the assessee in case he is dissatisfied with such computation of tax and penalty. On the other hand, in case the assessee pays the amount as given in the notice along with interest payable thereon and penalty, then the proper officer may issue orders which may conclude the proceedings.

It is when the assessee is dissatisfied then, whether in addition to being given an opportunity for submitting representation, he is also entitled to personal hearing is the question that this court has to decide.

40. Section 75 starts with the subheading '*General Provisions relating to Determination of Tax*'. It has been argued that Section 75 of the Act will apply as a general procedure to be adopted in all actions that are proposed to be taken under Section 73 and 74 of the Act. As against the argument raised by the learned Standing Counsel appearing for the State Respondents, that Section 75 deals with the procedure to be followed by the proper officer after remand of the matter to him by the Tribunal or the Court; it has been argued that if such an interpretation is given to Section 75 of the Act, it would

render the situation anomalous as many of the sub-Sections of Section 75 would become *otiose*.

41. We have gone through the language of Section 75. Indeed sub-Section (1), sub-Section (2) and sub Section (3) relate to determination to be made by the proper officer after the Court or the Appellate Tribunal quashes the original order and remands the matter for a fresh determination to the proper officer. However, from sub-Section (4) onwards the procedure to be followed by the proper officer in determination of tax is given in detail. Sub-Section (4) of Section 75 provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax **or** penalty, or where any adverse decision is contemplated against such person. Sub-Section (5) provides that if sufficient cause is shown by the person chargeable with tax, the proper officer shall grant time to the said person and **adjourn the hearing** for reasons to be recorded in writing: provided that no such adjournment shall be granted for more than three times to a person during the proceedings. Sub-Section (6), (7), (8), (9), (10) and (11) of Section 75 relate to the Order to be passed in by the proper officer, determining the amount of tax, interest, and penalty, in conformity with the notice issued to the assessee, and also to nature of the adjudication proceedings and the limitation for concluding the same.

42. It is evident that Sub-Section (1), (2), (3), (8) and (11) deal with adjudication by the proper officer after

remand either by the Appellate Tribunal or the Courts, whereas sub-Sections (4) and (5), (6), (7), (9) and (10), in Section 75 deal with assessment before the matter is taken up in appeal and remanded to the proper officer for reconsideration on merit.

43. If we take recourse to internal aids to construction of the charging Section then 'Sub-heading' being an internal aid, can be validly referred to while determining the true purport of the words '*opportunity of hearing*'. Sub-heading of Section 75 clearly states that it describes the '*General Provisions relating to Determining of Tax*'; then most certainly Section 75 deals with all kinds of hearings for determining tax, both at the first instance and also on remand. Also sub-Section (4) is followed by sub-Section (5), which requires an officer to adjourn a hearing on the request of the person chargeable to Tax, in case sufficient cause is shown by such person after recording reasons for such adjournment in writing. Such words as are used for granting more time to the assessee and adjourning the hearing can only be interpreted to mean giving "personal" hearing. Adjournment is granted in cases where hearing is continuing. It cannot be said to relate to giving time extensions for giving written reply to the show cause notice.

44. Taking into account the settled principles of interpretation of Statutes, (a) all Sections of a Statue need to be read together, (b) no words, Section in a Statute can be rendered otiose, (c) any ambiguity in a charging

Section must be read in favour of the assessee, (d) a casus omissus can be supplied if the Court, having an overall view of the scheme of the Statute is convinced that the legislature did intend a certain manner of conducting predecisional hearing but draftsman failed to add the necessary words to make it plain and beyond doubt; we are of the considered opinion that word "personal" can easily be construed to have been intended to be added but has been left out erroneously. We, therefore, are in respectful agreement with the three Coordinate Bench decisions cited at the Bar by learned counsel for the petitioner.

45. The Writ Petition is ***allowed*** and the orders dated 19.02.2024 and 27.04.2024 are set aside. The matter is remitted back to the proper officer to provide opportunity of personal hearing to the petitioner and then to pass a fresh order in accordance with statutory provisions.

[Justice Brij Raj Singh] [Justice Sangeeta Chandra]

Order Date :-31/05/2024
Rahul/-