

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 246 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI Sd/-

and

HONOURABLE MR. JUSTICE DEVAN M. DESAI Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | NO |
| 2 | To be referred to the Reporter or not ? | NO |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

SKY INDUSTRIES LTD.

Versus

STATE OF GUJARAT

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1

MS SHRUTI DHRUVE, GOVERNMENT PLEADER for the Respondent(s) No. 1,2

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 07/06/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

1. Rule. Learned AGP waives service of rule for the Respondents.

2. This is a petition, filed under Article 226 of the Constitution of India, whereby, the petitioner has prayed for the following reliefs;

“20. ...

A. *This Hon’ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside impugned communication dated 6.10.2022 (annexed at Annexure A) and the Respondents may please be directed to forthwith grant benefit of amnesty scheme to the Petitioner;*

B. *Pending notice, admission and final hearing of this petition, this Hon’ble Court may be pleased to restrain the Respondents from taking coercive recovery in respect of dues for the year 2006-07;*

C. *Ex parte ad interim relief in terms of Prayer B may kindly be granted;*

D.”

3. Heard, learned Advocate, Mr. Uchit Sheth, for the petitioner and learned AGP, Ms. Shruti Dhruve, for the Respondents.

4. Learned Advocate, Mr. Sheth, appearing for the petitioner referred to the averments made in the memo of the petition and submitted that the petitioner is engaged in the business of manufacturing and selling of knitted / woven / braided elastics and it is duly

registered under the VAT and CST Acts. The petitioner is, now, also registered under the Central / Gujarat Goods and Services Tax Act, 2017 ('GST' for brief).

4.1 It was pointed out from the record that the petitioner came to be assessed under the VAT and CST Act for the year 2006-2007 and was issued a demand notice to pay tax along with interest and penalty.

4.1.1 In this regard, reference was made to the impugned order, a copy of which is produced as Annexure-B to the compilation. Being aggrieved with the same, the petitioner filed appeals and challenged the same.

4.2 At this stage, it was submitted that the Government of Gujarat introduced 'Vera Samadhan Yojna, 2019' (referred to as, 'Amnesty Scheme' hereinafter) vide Resolution dated 11.09.2019. However, the said resolution was superseded by the resolution dated 06.12.2019, later on.

4.2.1 It was submitted that the benefit of the Amnesty Scheme was to be made available even in cases, where, the appeals filed by the dealers were pending, provided that they withdrew such appeals and made the full payment of the principal amount of tax. Further, as per the said scheme, once the principal amount of tax was fully paid, the amount towards interest and penalty was to be waived off.

4.2.2 Accordingly, the petitioner made an application for getting the benefit of the Amnesty Scheme within the stipulated time and while so doing, the petitioner also withdrew the appeals filed by it before the concerned appellate authority.

4.2.3 At this stage, learned Advocate, Mr. Sheth, referred to the document / intimation, a copy of which is produced at Page-34 of the compilation.

4.2.4 Learned Advocate, Mr. Sheth, submitted that, as per the application submitted by the petitioner, it was required to pay total tax of Rs.5,37,686/- towards VAT, whereas, towards CST tax, it was required to pay Rs.54,177/-.

4.2.5 It was submitted that Clause-7(3) of the Amnesty Scheme provides that after the submission of application by the petitioner, within the period of 15 days, but, not later than 28.02.2020, the concerned officer of the Respondents was required to intimate the petitioner online, about the amount to be paid under the Amnesty Scheme.

4.2.6 Once again, learned Advocate, Mr. Sheth, referred to the documents produced on the record and pointed out that after the verification of the documents submitted by the petitioner was done, the concerned Officer of the Respondents provided the

details to the petitioner, wherein also, the concerned Officer has referred to the very same amount, which is referred by the petitioner in this application. Accordingly, the petitioner paid the entire amount, as per the calculation given by the officer of the Respondents, and the same was duly accepted by the Respondents.

4.2.7 Now, a grievance is raised by the petitioner that that after the amount of Rs.5,37,686/- is paid by the petitioner, the petitioner is orally informed that it has paid Rs.2,000/- less and therefore, by way of the impugned communication dated 06.10.2022, the petitioner was informed that the application made by it under Amnesty Scheme has been disposed of, on the ground that the petitioner failed to make the payment of full principal amount of tax. Hence, the present petition.

5. Learned Advocate, Mr. Sheth, appearing for the petitioner mainly submitted that the petitioner made the payment, as per the calculation given / verified by the officer of the Respondents under the Amnesty Scheme, which is not in dispute. Now, by way of affidavit of Respondent No.2, it is being contended before this Court that the notice of demand was issued in the year 2011, wherein, the total amount of tax payable by the petitioner was shown to be Rs.5,39,787/-, whereas, the petitioner, in the application under Amnesty Scheme, mentioned the

amount of Rs.5,37,686/-, i.e. the petitioner mentioned Rs.2000/- less, and therefore, the petitioner is not entitled to get the benefit of Amnesty Scheme, which is unjust and improper.

5.1 Learned Advocate, Mr. Sheth, pointed out that, as per Clause 7(3) of the Amnesty Scheme, the concerned Officer of the Respondents was required to verify and intimate the petitioner about the amount of tax to be paid under the Amnesty Scheme and the petitioner paid the tax accordingly, and therefore, there is no error committed by the petitioner

5.2 At this stage, learned Advocate, Mr. Sheth, referred to the decision of the Division Bench of this Court, rendered in the case of '**SUNFLOWERS DEVELOPERS VS. STATE OF GUJARAT**', 2019 SCC OnLine Guj 6611, more particularly, the observations made in Paragraphs-20 and 21, thereof.

5.3 It was, therefore, submitted that the present petition be allowed.

6. On the other hand, learned AGP, Ms. Dhruve, appearing for the Respondents, referred to the averments made in the affidavit-in-reply filed on behalf of Respondent No.2 and strongly opposed the present petition.

6.1 It was submitted that, as per the demand notice

issued in the year 2011, the petitioner was required to make the payment of Rs.5,39,787/-, however, the petitioner made the payment of Rs.5,37,686/-, i.e. the petitioner paid Rs.2000/- less towards tax under the Amnesty Scheme, and therefore, the Respondents are justified in issuing the impugned communication dated 06.10.2022.

6.2 Learned AGP referred to Clause-4.1(1) of the Amnesty Scheme, a copy of which is produced at Page-18 of the compilation, and submitted that since the petitioner did not pay the total principal amount outstanding towards tax, the petitioner is rightly denied the benefit of the Amnesty Scheme. It was, therefore, prayed that this petition be dismissed.

7. Having heard the learned Advocates for the parties and having perused the material on record, it would emerge that the concerned authority issued the demand notice in the year 2011, whereby, the petitioner was required to pay Rs.5,39,787/- towards the tax.

7.1. It appears that, later on, the State Government introduced the Amnesty Scheme in the year 2019 and as per Clause-4.1 (1) of the said Scheme, the concerned assessee was required to pay the full principal amount of tax, whereupon, the liability of such an assessee to pay interest and penalty was to be waived off.

7.2 It appears that the petitioner made an application under the Amnesty Scheme. However, while so doing, the petitioner through inadvertence mentioned the amount of outstanding tax as Rs.5,37,686/-, instead of Rs.5,39,787/-.

7.2.1 From a perusal of the record, it is revealed that, as per Clause-7(3) of the Amnesty Scheme, after the submission of application by the petitioner, within the period of 15 days, but, not later than 28.02.2020, the concerned officer of the Respondents was required to intimate the petitioner online, about the amount to be paid under the Amnesty Scheme.

7.2.2 It appears that the concerned Officer of the Respondents verified and intimated the petitioner that he was required to pay Rs.5,37,686/- under the Amnesty Scheme and the petitioner paid the said amount, accordingly.

7.2.3 Now, it is the case of the Respondents that the petitioner was required to pay Rs.5,39,787/-, but, he paid Rs.5,37,686/-, i.e. Rs.2000/- less, and therefore, he cannot be granted the benefit of the Amnesty Scheme.

7.3 At this stage, it would be relevant to refer to the observations made by the Division Bench of this Court in the case of '**SUNFLOWERS DEVELOPERS**' (Supra),

more particularly, in Paragraphs-20 and 21 thereof, which reads thus;

20. In this backdrop, it may be germane to refer to the object behind the above referred amnesty scheme. The preamble of the Amnesty Scheme provides that the Goods and Services Act has been brought into force in the State with effect from 1.7.2017. Prior to the coming into force of this enactment, there were approximately more than 20,000 cases pending at different levels under the Sales Tax Act, Value Added Tax Act, Central Sales Tax Act, Motor Spirit Taxation Act, Entry Tax Act and Sugar Cane Purchase Tax Act. As a result considerable recoveries of the amounts involved in such cases were outstanding. Various business associations in the State had made representations for expeditious and effective disposal of such old cases. By this scheme the Government will get the amounts of old pending recoveries, the business segment will get a huge relief and the administrative cost of the Government will be reduced. Considering this submission a proposal had been made for introducing the Amnesty Scheme. Under this scheme, the outstanding recoveries under the above enactments are to be covered.

21. Thus, the object of the amnesty scheme is to bring about expeditious and effective resolution of old disputes and recoveries of old outstanding dues of the Government and reduction of administrative costs. Since such scheme is applicable to all pending cases, the officers acting under the relevant statutes are expected to respect the object of the scheme and to ensure that the assessees get the benefit under the scheme. Therefore, when a bona fide request is made by an assessee to adjourn the hearing of a case with a view to enable him to avail the benefit of the scheme, the concerned officer is duty bound to respect such request. Therefore, when in the present case, where the matter had not been taken up for hearing for a

considerable period of time, when the petitioners requested the second respondent to keep the assessment proceedings in abeyance as they wanted to avail the benefit of the amnesty scheme, the respondent ought to have respected such request and afforded the petitioners sufficient time to avail the benefit of the amnesty scheme, however, on the contrary, the second respondent, in undue haste, has proceeded to pass an ex-parte high pitched best judgment assessment order under section 34(8) of the GVAT Act.

7.4 Thus, from the observations made by the Division Bench of this Court, as referred to herein above, it can be said that the object of the amnesty scheme is to bring about expeditious and effective resolution of old disputes and recoveries of old outstanding dues of the Government and reduction of administrative costs. Since such scheme is applicable to all pending cases, the officers acting under the relevant statutes are expected to respect the object of the scheme and to ensure that the assessee gets the benefit under the scheme.

7.5 In view of the above discussion, we are of the considered view that merely because the petitioner inadvertently paid Rs.2000/- less towards principal outstanding amount of tax, it cannot be denied the benefit of the Amnesty Scheme. This petition, therefore, deserves to be allowed.

8. In the result, this petition is **ALLOWED** and the impugned communication dated 06.10.2022 is quashed

and set aside.

8.1 The respondents are ***DIRECTED*** to grant the benefit of the Amnesty Scheme to the petitioner, as prayed for by him.

Rule is made absolute, accordingly.

(VIPUL M. PANCHOLI, J)

(D. M. DESAI, J)

UMESH/-



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