

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE RAKESH THAPLIYAL

14TH JUNE, 2023

SPECIAL APPEAL No. 91 OF 2023

Between:

Dev Versha Publication Private
Limited and others.

...Appellants

and

The Union of India and others.

...Respondents

Counsel for the appellants. : Mr. Shekhar Vyas, Mr. Pulak Raj
Mullick and Mr. Sahil Mullick, learned
counsels.

Counsel for respondent nos. 2 & 3. : Mr. Shobhit Saharia, learned Senior
Standing Counsel.

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

The present Special Appeal is directed against the order dated 17.03.2023, passed by the learned Single Judge dismissing the appellants' Writ Petition, i.e. WPMS No. 2739 of 2022, on the ground that the order impugned in the Writ Petition, i.e. the Adjudication Order No. 35/COMMR/DDN/2022 dated 30.06.2022 passed by the Commissioner, CGST, Dehradun is an appealable order under Section 35 of the Finance Act, 1994.

2. We may observe that the order impugned in the Writ Petition, having been passed by the

Commissioner, an appeal is maintainable against it before the Tribunal, under Section 35B of the Central Excise Act, 1944.

3. The submission of learned counsel for the appellants is that a Writ Petition was maintainable, since according to the appellants, the Commissioner had no jurisdiction to pass the order impugned in the Writ Petition. This plea is premised on the repeal of Chapter V of the Finance Act, 1994 by Section 173 of the Central Goods and Services Tax Act, 2017, w.e.f. 01.07.2017. Sections 173 and 174 of the Central Goods and Services Tax Act, 2017 read as follows :-

“173. Amendment of Act 32 of 1994.— Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

174. Repeal and saving.— (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

4. The case of the appellant is that, since Chapter V of the Finance Act, 1994 was omitted on 01.07.2017, no liability towards Service Tax, under Chapter V of the Finance Act, 1994, could be fastened upon the appellants

after the repeal of Chapter V of the Finance Act, 1994, even in respect of the period preceding the said repeal on 01.07.2017. The submission of the appellants is that, in respect of the period when the Service Tax regime was in force, the proceedings should have been initiated prior to the repeal of the Service Tax regime on 01.07.2017, and that they could not be initiated after the said repeal. It is argued that only such proceedings which had been initiated prior to 01.07.2017, could be continued. However, fresh proceedings could not have been initiated-if not already initiated post 01.07.2017, after 01.07.2017.

5. The aforesaid submission of the appellants is clearly misconceived in our view. This is evident from a plain reading of Section 174(2), which, despite the repeal and amendment of the Finance Act, 1994, saved the previous operation of the amended Act or repealed Acts, and orders or anything duly done or suffered thereunder. The amendment/ repeal did not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts, or orders under such repealed or amended Acts. The repeal/ amendment also did not affect any duty, tax, surcharge, fine, penalty, interest as are due, or may

become due, or any forfeiture, or punishment - incurred or inflicted, in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts. Section 174(2)(e) also saved and protected the right of Revenue to undertake investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and further provided that any such *“investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be **instituted**, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed”*.

(emphasis supplied)

6. The submission of the appellants that the institution of the proceedings should have taken place before 01.07.2017, needs only to be noted to be rejected. The saving clause (e) expressly permits the

institution of the proceedings or remedy despite the amendment/ repeal.

7. If the liability of the assessee survived in respect of the taxing laws in force prior to its repeal/ amendment even after such repeal/ amendment, it does not stand to reason that the machinery for fixation and realization of such liability would not be available to the State.

8. A similar submission, as raised by the appellants, has been rejected by several High Courts, including the Delhi High Court in ***Vianaar Homes Private Limited v. Assistant Commissioner (Circle-12), Central Goods & Services Tax, Audit-II, Delhi & Ors., (W.P.(C) 2245/2020 & CM APPL.7832/2020)*** decided on 03.11.2020 & ***Matrix Forex Services Pvt. Ltd. v. Union of India and Ors., (W.P.(C) 12638/2019 & CM APPL. 51623/2019)*** decided on 11.04.2023, and; by the Madras High Court in ***M/s Amirta International Institute of Hotel Management (Now known as Chennais Amirta International Institute of Hotel Management) v. The Principal Commissioner of CGST & Central Excise, 2023 0 Supreme (Mad) 216.***

9. The appellants have sought to place reliance on certain interim orders passed in proceedings by the Delhi High Court and the Jharkhand High Court.

10. In our view, such interim orders are neither here, nor there, as they do not finally decide the controversy, which stands determined by the Delhi High Court in the aforesaid two judgments, and by the Madras High Court in the judgment taken note of hereinabove.

11. We, therefore, do not find any merit in the plea of the appellants that the Commissioner lacked jurisdiction to pass the order impugned in the Writ Petition.

12. So far as other pleas of the appellants are concerned, it is open to the appellants to raise the same in the statutory appeal under Section 35B of the Central Excise Act, 1944.

13. We, therefore, dismiss this appeal with liberty to the appellant to avail of the statutory remedy of appeal against the adjudication order dated 30.06.2022. The time spent by the appellants before this Court shall be excluded, while dealing with any application seeking condonation of delay in preferring the appeal.

14. Consequently, pending application(s), if any, also stand disposed of accordingly.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 14th June, 2023
Rahul