

Court No. - 03

Case :- WRIT TAX No. - 723 of 2022

Petitioner :- S R Cold Storage

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Abhinav Mehrotra, Satya Vrata Mehrotra

Counsel for Respondent :- A.S.G.I., Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Sri Abhinav Mehrotra, learned counsel for the petitioner and Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Anand Tiwari, learned Central Government Standing Counsel for respondent No.1 and Sri Gaurav Mahajan, learned counsel for the respondent-department **on the question of reduction of cost imposed by our judgment and order dated 11.08.2022.**

2. Learned Additional Solicitor General of India has stated on instructions that the department is taking all action in the light of and in compliance to the observations made in the judgment dated 11.08.2022 passed in the above-noted writ petition. He further states that action for improvement in working, is also being taken as per details given in the affidavit of compliance dated 01.09.2022 filed by Preeti Jain Das, Principal Commissioner of Income Tax-I, Kanpur on behalf of the respondent No.1. He states that the Central Board of Direct Taxes has also issued an order dated 31.08.2022 to the Principal Chief Commissioner of Income Tax-I, Kanpur, as under:

confidential

***"F. No. 279/Misc/M-78/2022-ITJ(Part)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
ITJ Section

*Room No. 12, 5th Floor,
Jeevan Vihar Building,
Parliament Street, New Delhi
Dated 31st August, 2022*

To
The Principal Chief Commissioner of Income Tax

Kanpur

Sir,

Sub:- Compliance to orders of Hon'ble Allahabad High Court in Civil Misc. Writ Petition (Tax) No. 723 of 2022 S.R. Cold Storage v. Union of India and others – Reg.

Ref: (i) Hon'ble High Court order on above subject delivered on 11.08.2022.
(ii) Letter F. No. Pr. CCIT/KNP/JCIT(T&J)/Writ/10/2022-23/3097 dated 22.08.2022 of Pr. CCIT, UP (West) & Uttarakhand, Kanpur.

Kindly refer to the above.

2. In this regard, it has been informed that an explanation has been called from the Jurisdictional Assessing Officer (JAO) regarding the circumstances in which the case of the assessee was reopened without proper verification of the information uploaded on the departmental functionally.

3. The undersigned is directed to convey that a copy of the explanation so obtained may kindly be sent to the O/o DGIT (Vigilance) along with comments of the Supervisory Authority, at the earliest for necessary action at their end. A copy of the same may also be marked to this office.

4. This issue with the approval of Member (A&J), CBDT.

Yours Faithfully

(Tanay Sharma)
DCIT (OSD) ITJ-I, CBDT"

3. Learned A.S.G.I. submits that the cost may be reduced considering the action being taken by the department to improve its working and to rule out the possibility of recurrence of such instances which unnecessarily resulted in initiation of proceedings against the petitioner and caused him to file the above noted writ petition. He further submits that the respondent-department is conscious of its mistake and, therefore, undertakes to improve its working and to take all lawful action against the erring officers so as to avoid repetition of such instances in future.

4. Sri Abhinav Mehrotra, learned counsel for the petitioner has not opposed the reduction of cost but referred to averments made in Paragraphs-15 and 17 of the objection/ rejoinder affidavit dated 04.11.2022 (filed in reply to the affidavit of compliance of the respondent No.1 dated 01.09.2022), as under:

"15. That, in response to the contents of Paragraph No. 11 of the Affidavit of

Compliance Dt. 01.09.2022, it is submitted that the question of imposition of Cost has been a subject matter of judicial consideration and in a large number of cases, the Hon'ble Supreme Court has categorically enunciated the principles concerning imposition of cost."

Case Law	Particulars
<p><i>Salem Advocate Bar Association T.N. v. Union of India (2005) 6 SCC 344</i></p>	<p><i>"Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages filing of frivolous suits. It also leads to taking up of frivolous defences. Further wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow. When Section 35(2) provides for cost to follow</i></p>
<p><i>Ramrameshwari Devi v. Nirmala Devi (2011) 8 SCC 249</i></p>	<p><i>54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.</i></p> <p><i>55. The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years.</i></p> <p><i>56. On consideration of totality of the facts and</i></p>

	<p><i>circumstances of this case, we do not find any infirmity in the</i></p> <p><i>well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs.2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.</i></p>
<p><i>Punjab State Power Corporation Ltd. v. Atma Singh Grewal (2014) 13 SCC 666</i></p>	<p><i>No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. (Ramrameshwari Devi v. Nirmala Devi (2011) 104 AIC 19 (SC) : 2011 (88) ALR 223 (SC) : 2011 (114) RD 284 (SC). However, the moot question is as to whether imposition of costs alone will prove deterrent? We don't think so. We are of the firm opinion that imposition of cost on the State/ PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the concerned officer be passed only in those cases where appeal is found to be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for.</i></p>
<p><i>Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar (2017) 5 SCC 496</i></p>	<p><i>13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.</i></p> <p><i>14. Courts across the legal system - this Court not being an exception – are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and</i></p>

	<p><i>pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.”</i></p>
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17. That, in response to the contents of Paragraph No. 13 of the Affidavit of Compliance dt. 01.09.2022, it is submitted that the deponent most respectfully submits itself to the discretion of the Hon’ble Court in the matter of award of cost and the decision shall not be disputed by the petitioner, in any manner.”

5. We have no reason to doubt the statement made by learned ASGI before this Court. Therefore, **considering his request and steps being taken by the respondent-department to improve its working so as to rule out possibility of harassment of genuine assesseees in the hands of the departmental-officers, we reduce the cost from Rs.50 lacs to Rs.5 lacs with the consent of learned**

counsel for the petitioner and accordingly modify our judgment dated 11.08.2022 in respect of cost only. The cost shall be deposited by the respondents within one month from today in terms of the directions given in the judgment dated 11.08.2022.

6. All pending applications, if any, stand disposed of.

Order Date :- 19.12.2022

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