

HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

MAIN CASE NO: **W.P.No.3194 of 2024**

PROCEEDING SHEET

SL. NO	DATE	ORDER	OFFICE NOTE
	28.08.2024	<p><u>SP,J & RRN,J</u></p> <p>Ms. Mannat Waraich and Ms. Jaya Rishi, learned counsel representing Sri Aly Ahmed Basith, learned counsel for the petitioner. Sri Swaroop Oorilla, learned Special Government Pleader for State tax for respondents.</p> <p>Orders dictated separately.</p> <p>The Writ Petition is allowed. (<i>Vide</i> separate order)</p> <p>B/o.GVR/DUA</p>	

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU
RAJESHWAR RAO**

WRIT PETITION No.3194 of 2024

ORDER: *(Per Hon'ble Justice Sujoy Paul)*

This petition filed under Article 226 of the Constitution impugns the show cause notices dated 31.10.2022 and 19.01.2024.

Factual background:

2. The admitted facts between the parties are that the Assessment Order (A.O.) No.71625 dated 04.11.2020 (Annexure P-3) was issued by the Assistant Commissioner (CT), Audit, Begumpet Division, Hyderabad, confirming the demand of Rs.3,25,87,464/-, for the period 2015-16, 2016-17 and 2017-18 (up to June 2017). In furtherance thereof, on 28.11.2020, A.O.No.77097 (Annexure P-10) was issued by the Assistant Commissioner (CT), Audit, Begumpet Division, Hyderabad, demanding penalty of 25% on the tax demand, amounting to Rs.81,46,866/-.

3. The petitioner, feeling aggrieved by the aforesaid orders preferred appeals before the Appellate Deputy Commissioner

challenging the A.Os issued demanding Value Added Tax (VAT) and penalty and pre-deposited an amount equivalent to 12.5% of the tax and penalty, which was increased to 50% of the demand of tax and penalty.

4. The One Time Settlement (**OTS**) schemes dated 09.05.2022, 25.06.2022 and 04.07.2022 were launched by the Government of Telangana *vide* G.O.Ms.Nos.45, 61 and 71 respectively, to enable the tax payers to settle the disputed tax amounts under the **Telangana Value Added Tax Act, 2005** (VAT Act) and the **Central Sales Tax Act, 1956** (CST Act).

5. Respondent No.1 in prescribed Form No.1 sent an intimation dated 17.05.2022 (Annexure P-14) to the petitioner under the OTS scheme for paying the tax demand of Rs.3,25,87,464/- and tax balance of Rs.1,22,20,164/-. This intimation was in relation to A.O.Nos.71625 and 77097.

6. The petitioner preferred an application in prescribed Form No.2 on 22.06.2022 (Annexure P-15) showing its willingness for availment of OTS scheme pursuant to aforesaid A.Os. On 11.07.2022, the concerned Audit Officer wrote a letter to

respondent No.1 indicating short levy of tax and penalty as confirmed in A.O.Nos.71625 and 77097. During the course of hearing, Sri Swaroop Oorilla, learned Special Government Pleader for State tax appearing for respondents, informed that this letter was indeed received by the respondents.

7. On 16.08.2022, the petitioner deposited the desired amount *vide* challan No.6201664297 (Annexure P-16). Consequently, by letter of acceptance dated 17.08.2022, respondent No.2 acknowledged the receipt of arrears and recorded settlement *vide* Annexure P-17.

Petitioner's Contentions:

8. Learned counsel for the petitioner submits that the impugned show cause notice dated 31.10.2022 came as bolt from blue to the petitioner whereby respondent No.1 on the strength of objections raised by Auditor General - Audit, proposed raise in demand to the tune of Rs.7,58,43,382/-. In turn, the petitioner filed detailed response on merits and also raised objections that after having entered into the OTS, it is no more open to issue show cause notice. The revised show cause notice dated 19.01.2024 was issued by respondent No.1 revising the tax

proposed to the tune of Rs.2,46,53,240/- in lieu of previous determination of Rs.7,58,43,382/-.

9. The bone of contention of the learned counsel for the petitioner is that G.O.Ms.No.45, dated 09.05.2022, (paragraph No.5(e)(iii)) makes it clear that application so preferred by the tax payer needs to be scrutinized by a (3) Member Committee consisting of AC(ST) of Circle, DC(ST) and JC(ST) of the Division. A confirmation letter needs to be sent to the applicant by accepting/rejecting/modifying the proposal of the applicant. Clause (iv) further shows that on receipt of confirmation letter, the applicant will make the payment and submit the payment details along with necessary documents and the application for withdrawal of appeal (wherever applicable).

10. It is submitted that proceedings for OTS (Annexure P-17) shows that in view of payment made by the petitioner, as per G.Os, pending cases were withdrawn and stood settled.

11. Learned counsel for the petitioner raised two fold submissions. *Firstly*, it is submitted that after having entered into OTS, the respondents have no authority, jurisdiction and

competence to issue show cause notice. In none of the notices, the enabling provision of the Act on the strength of which notices were issued was spelled out. *Secondly*, there is no allegation of any fraud being committed by the petitioner. Thus, the respondents issued show cause notices without any authority of law. By placing reliance on the judgment of the Supreme Court in **Killick Nixon Ltd., Mumbai Vs. Deputy Commissioner of Income Tax, Mumbai**¹, it is submitted that the only difference in between this case and the case of **Killick Nixon** (supra) is that in the said case OTS was arrived at by the statutory scheme i.e., *Kar Vivad Samadhan Scheme, 1998*, whereas, in the instant case it was under G.O.Ms., which were issued by the State Government as policy decisions. Learned counsel for the petitioner pointed out that the Apex Court disapproved action of respondents in asking the petitioner to pay the tax for a period, for which, under the scheme settlement was already arrived at.

Stand of Revenue:

12. Sri Swaroop Oorilla, learned Special Government Pleader for State tax for respondents, raised objection about the maintainability of this petition by placing the reliance on the

¹ (2003) 1 SCC 145

judgments of the Supreme Court in **Union of India Vs. Kunisetty Satyanarayana**² and **Union of India Vs. Coastal Container Transporters Association**³. The objection is that the petitioner has called in question the validity of show cause notices. A petition against show-cause notice is not maintainable and since the petitioner has already filed reply, he should await the decision and if it goes against him, he may avail appropriate remedy.

13. Learned Special Government Pleader for respondents, by placing reliance on Section 32 of the VAT Act submits that this provision nowhere puts any embargo/bar for the Commissioner and other prescribed authorities to undertake the exercise of revision, even if OTS is arrived at. In absence of any such impediment in the statutory provision, merely because the settlement is arrived at, no fault can be found in the show cause notices. Lastly, learned Special Government Pleader, placed reliance on the judgment of the Supreme Court reported in **Bijnor Urban Cooperative Bank Limited, Bijnor Vs. Meenal Agarwal**⁴, to bolster the submission that no one has a right to claim settlement under OTS scheme.

² (2006) 12 SCC 28

³ (2019) 20 SCC 446

⁴ (2023) 2 SCC 805

14. Parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

15. At the outset, we deem it proper to deal with the objection of learned Special Government Pleader regarding maintainability of petition against the show cause notices. He placed reliance on two judgments of the Supreme Court in **Kunisetty Satyanarayana** and **Coastal Container Transporters Association** (both supra). However, a plain reading of both the judgments makes it clear that the Supreme Court made it clear that the correctness of allegations/facts cannot be gone into by this Court at the stage of show cause notice. Interestingly, in the second judgment, on which reliance is placed by learned Special Government Pleader i.e., **Coastal Container Transporters Association** (supra), it was made clear that while exercising power under Article 226 of the Constitution, unless there exists lack of jurisdiction, interference may not be made. In the instant case, as noticed above, sheet anchor of arguments of learned counsel for the petitioner is regarding authority/jurisdiction to issue show cause notice after

entering into OTS. Thus, both the judgments cited by learned Special Government Pleader cannot be pressed into service.

16. So far question of jurisdiction of authority in issuing the show cause notice is concerned, it is apt to take note of one important event. The OTS schemes came into being in between May to July, 2022. Respondent No.1, on his own intimated the petitioner on 17.05.2022 about the tax demands etc., pursuant to both A.Os, which can be settled under OTS. The petitioner gave his willing on 22.06.2022. Importantly, on 11.07.2022, the Audit Officer informed alleged short levy of tax and penalty to respondent No.1. Despite the knowledge of said communication, OTS was entered on 17.08.2022.

17. In the light of Paragraph No.5 (e)(iii) of G.O.Ms.No.45 dated 09.05.2022 (Annexure P-13), it can be presumed that the application of the petitioner was scrutinized by a competent Committee consisting of three senior members. The pivotal question needs to be decided is whether after entering into such settlement under OTS, it was open to the respondents to issue the impugned show cause notice.

18. Pausing here for a moment, it is apt to consider the contention of learned Special Government Pleader on this aspect by placing reliance on Section 32 of the VAT Act. He submits that it is open to the Revisionary Authority to undertake aforesaid exercise, even if OTS has taken place. Section 32 nowhere puts any bar for such exercise. In our view, Section 32 became part of the statute book when OTS scheme was not there. In ordinary circumstances, no doubt, the power envisaged under Section 32 can be pressed into service. However, whether this power can be exercised even after OTS is recorded, is the core issue.

19. The Apex Court in **Killick Nixon Ltd.**, (supra) under Para 19 recorded as under:

“19. As far as the provisions of KVSS are concerned, we agree with the contention of the learned Senior Counsel for the assessee that the order to be made by the Designated Authority under Section 90 is a considered order which is intended to be conclusive in respect of tax arrears and sums payable after such determination towards full and final settlement of tax arrears. Once the declarant makes payment of the amount so determined under Section 90, the immunity under Section 91 springs into effect. We are also of the view that upon such declaration being made, tax arrears being determined, paid and certificate issued under the KVSS, **there is no jurisdiction for the Assessing Officer to reopen the assessment by a notice under Section 143 of the Act** except where the case falls under the proviso (2) of sub-section (1) of Section 90 as it is found that any material particular furnished in the declaration is found to be false. In the present case, it is not the case of the Revenue that any material particular furnished by the appellant-assessee in the declaration was found to be false.

Consequently, the Assessing Officer could not have re-opened the assessment by a notice under Section 143 of the Act.”

(Emphasis Supplied)

20. As rightly pointed by learned counsel for the petitioner that the scheme under consideration in **Killick Nixon** (supra) had statutory force, whereas in the instance case the OTS schemes are policy decisions. However, the fact remains that very purpose of bringing such OTS scheme is to encourage the tax payers to settle their disputes. Interestingly, in the OTS scheme issued by the Government of Telangana, the entire exercise of determination of tax/penalty amount was in the hands of the respondents and for that purpose, a committee consisting of senior officers was constituted. After having undertaken the entire exercise of determination of amount, a proposal was given by the respondents to the petitioner, which was duly accepted. The most important thing is that between the date of acceptance dated 22.06.2022 and actual recording of OTS on 17.08.2022, the Audit Officer by communication dated 11.07.2022 informed the respondents about the alleged short levy of tax/penalty. Despite having full knowledge about it, the respondent entered into OTS. There is no allegation against the petitioner in the show cause notice that

petitioner had committed any fraud. Thus, if the respondents have entered into OTS despite knowledge of Audit Officer letter dated 11.07.2022 with eyes opened, it will be presumed that they have considered the objection and did not find worth in it for exercising powers under Section 32 of the VAT Act or otherwise. So far, the judgment of Supreme Court in the case of **Bijnor Urban Cooperative Bank Limited** (supra) is concerned suffice it to say that the said judgment is not relevant in the present matter because the petitioner is not claiming any relief regarding the OTS. Admittedly, the said settlement had already been arrived at between the parties.

21. Putting it differently, *in the peculiar facts and circumstances of this case*, in our opinion, after having entered into OTS, it was not open for the respondents to issue the impugned show cause notice. Curtains were finally drawn by the respondents by entering into OTS. If we permit the respondents to undertake aforesaid exercise of issuance of show cause notices even after entering into settlement, the very purpose of such scheme will vanish in thin air. This practice will certainly discourage the tax payers to enter into settlement. The settlement should draw the curtains for all

times to come otherwise the very meaning of OTS will pale into insignificance.

22. In view of foregoing discussions, the impugned show cause notices cannot sustain judicial scrutiny. The Writ Petition is **allowed** and the impugned show cause notices dated 31.10.2022 and 19.01.2024 are hereby set aside. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SUJOY PAUL

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date: 28.08.2024
GVR/DUA