

Appeal can be restored if appellant is unsuccessful in availing benefit under Amnesty Scheme - SC

18 September 2023



Summary

In a significant ruling, the Supreme Court (SC) has held that the appellant can seek restoration of the appeal when it is unsuccessful in benefiting from the Amnesty Scheme. The SC noted that the withdrawal of the appeal was a pre-condition under the Amnesty Scheme. However, this did not prevent the appellant from pursuing his statutory remedy. The SC further stated that since the appellant did not avail any benefit under the Amnesty Scheme, he was entitled to be heard in the appeal on merits.

Facts of the case

- P. M. Paul (the appellant) is a dealer registered under the KVAT Act. The Sales Tax officer cancelled the appellant's KVAT registration, assuming that he had permanently closed his business since no transactions had occurred and the dealership registration was not renewed.
- The appellant challenged the Sales Tax officer's order before the Joint Commissioner (Appeals) and contested an assessment order imposing a tax liability.
- While the matters were pending before the appellate authority, the appellant tried to take advantage of an amnesty scheme introduced by the government of Kerala and withdrew the appeal in order to be eligible for the scheme. However, the appellant could not avail any benefit under the Amnesty Scheme as he failed to pay the required amount.
- Therefore, the appellant sought the restoration of his appeal against the Sales Tax officer's order, which was dismissed by the appellate authority, stating that there were no valid grounds for seeking restoration.
- Further, the appellant filed a writ petition before the High Court of Kerala (HC) to challenge the order of the dismissal,

wherein the HC upheld the appellate authority's order.

- Aggrieved by the decisions, the appellant appealed to the SC.

Issues before the Supreme Court:

- Whether the appellant can seek the restoration of his appeal after initially withdrawing it as a pre-condition for availing benefits under the Amnesty Scheme?

Supreme Court's observations and order (SLP 8386/2023 vide order dated 1 September 2023):

- **Unsuccessful Amnesty Scheme application:** The SC noted that the appellant had initially withdrawn his appeal as a pre-condition to avail the benefit of the Amnesty Scheme introduced by the government, which required the absence of pending proceedings. However, the appellant's decision to withdraw the appeal did not result in the successful application of the Amnesty Scheme, which became a crucial factor in this case.
- **No legal bar for seeking restoration:** The SC emphasised that no legal bar prevents the appellant from seeking the restoration of his appeal once he was unsuccessful in obtaining the benefits under the Amnesty Scheme. The SC clarified that the withdrawal of the

appeal was done to fulfil the pre-requisite condition under the Amnesty Scheme. However, this did not permanently preclude the appellant from pursuing his statutory remedy.

- **Right to seek statutory remedy:** The SC recognised that the appeal is a statutory remedy available to the appellant, highlighting that the withdrawal was a procedural step related to the Amnesty Scheme rather than a forfeiture of his legal rights. Additionally, the SC granted the appellant the liberty to seek interim relief before the appellate authority, with the instruction that any such application should be considered expeditiously and in accordance with the law, thereby ensuring the protection of his rights during the appeal process.

Our comments

This is a significant and welcome ruling, wherein the SC has ruled that as the appeal is a statutory remedy, there is no specific restriction on seeking the restoration of the appeal if the assessee is not successful in availing benefit under the Amnesty Scheme.

The SC has also provided liberty to the assessee to seek interim relief before the appellate authority. Thus, the ruling will provide relief and safeguard taxpayers from undue hardship caused by the authorities in similar cases.

Considering that the government has recently introduced various amnesty schemes for clearing pending litigations under erstwhile indirect tax laws, this ruling may be relevant for businesses that have applied for availing benefits under various amnesty schemes but were unsuccessful.

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