AA becomes *functus officio* - PAO under PMLA loses sheen

NOVEMBER 26, 2020

By Dr M S Krishna Kumar, Advocate

1.1 **EARLIER** this Author had written an article titled ***"COVID-19: Whether the statutory limitation prescribed under special enactments is required to be extended?".***

1.2 In the above article, it was opined that the time limit provided under Prevention of Money Laundering Act 2002 (PMLA) Foreign Exchange Management Act, 1999 (FEMA, 99) cannot be extended in the absence of provisions under the respective statute and in view of overriding provisions contained therein.

2. Recently the very same issue was subject matter of litigation before the Hon'ble Delhi High Court in the case of ***M/s Vikas WSP Ltd Vs Directorate of Enforcement- W.P (C) 3551/2020*** order dated 18.11.2020 - **2020-TIOLCORP-12-HC-DEL-PMLA** . In the above case the property of the Petitioner was attached vide a Provisional Attachment Order (PAO) dated 13.11.2019 under Sec. 5 (1) of the PMLA. As per the scheme of the Act the authority who issues PAO has to file a complaint with the Adjudicating Authority (AA) PMLA, New Delhi under Sec. 5 (5) within 30 days. Hence a complaint in O.C.NO.1228/2019 dated 5.12.2019 was filed before the AA in terms of Sec. 5(5). The Adjudicating Authority, in terms of Sec. 8(1) issued a notice dated 18.12.2019. to the Petitioners After the COVID Pandemic and the lockdown which ensued all over India from 24.3.2020 was partially lifted on 24.4.2020 the AA issued a fresh notice of hearing on 16.6.2020.

3.1 The Petitioner approached the Hon'ble High Court of New Delhi on 15.6.2020 on the ground that the PAO has expired by virtue of Sec.5 (3) of the Act.

3.2 The Counsel for Petitioners raised a plea that order dated 23.3.2020 and 06.05.2020 in suo-moto W.P (C) 3/2020 cannot extend the period under Sec.5 (1) as it is not a period of limitation. He also argued that the Govt of India has extended period of limitation under tax laws and Benami Property Prohibition Act, 1988 but not under PMLA. In suo-moto W.P (C)3/2020 three interim orders were passed on 23.3.2020 - **2020-TIOL-77-SC-MISC-LB**, 6.5.2020 - **2020-TIOLCORP-17-SC-MISC-LB** and 10.7.2020.

3.3 Countering the arguments of the Petitioner, Counsel for Respondent argued that the period of limitation extended by Hon'ble Supreme Court in W.P (C) 3/2020 will also apply to PMLA.

4.1 Hon'ble High Court observed that in the absence of an order passed under Sec.8(3) the PAO (issued under Sec. 5 (1)) ceases to have any effect and lapses on its own.
"â€¦Such lapsing does not require any confirmation from the Authority or any Court of law; it is automatic; it is preemptory in nature."

4.2 Hon'ble High Court observed that Article 300A of the Constitution of India provides every person right to hold and enjoy property, which is emphasized by Hon'ble Supreme Court in the case of ***M.C Mehta Vs UOI 2020 SCC online SC 648***
. The Delhi H.C placed reliance on various judgments upholding right to property. The H.C further by placing reliance on Apex Court judgment in the case of ***New India Assurance Co Ltd Vs Hilli Multipurpose Storage Pvt. Ltd 2015 (16) SCC 20***
observed that there is no power with any authority or Court to extend/relax the validity of PAO.

4.3 The Delhi H.C in the above case further observed that order dated 23.3.2020 of Apex Court in W.P (C) 3/2020 extended only the period of limitation and not the validity of PAO as in the present case, which is more evident from the language used subsequent order (3rd Order) dated 10.7.2020 wherein it was emphasized by Apex Court that earlier interim orders were in relation to period of limitation **and does not extend the period under a Statute to do a particular thing.**

The H.C also observed that PMLA is not covered under the Taxation and Other Laws (Relaxation of Certain Provisions) Ordnance 2020

issued on 31.3.2020.

5. The Delhi H.C held that the PAO dated 13.11.2019 having expired without any order under Sec. 8(3) of the Act as the Adjudicating Authority has become ***functus officio***
cannot proceed with Original Complaint filed under Sec.5(5) seeking confirmation of PAO. The O.C.No.1228/2019 read with notice dated 26.5.2020 was set aside.

[The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)