

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

CORAM

THE HON'BLE MR. JUSTICE C. SARAVANAN

W.P. No.4696 of 2015

and MP.No.2 of 2015

M/s.Kotec Automative Services India Pvt Ltd.,
Rep. by its Director : Chung Lee Yoon,
Survey No.140/38, Thandalam Village & Post,
Sriperumbudur Tk,
Kancheepuram District.

... Petitioner

Vs.

1. The Commissioner of Service Tax
Newry Towers (sonex)
No.2054, I Block II Avenue
Anna Nagar, Chennai -40.

2.The Assistant Commissioner of service tax
Designated Authority,
Office of the Commissioner of Service Tax
Newry Towers (Sonex)
No.2054, I Block II Avenue,
Nandanam, Chennai - 40.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorari Mandamus to call for the records relating to the impugned proceedings in C.No.IV/16/1029/2013-STC (Tech) - VCES Sl.No.807 dated 30.01.2015 issued by the 2nd respondent and to quash the same as illegal, without authority of law and contrary to the VCES Scheme/provisions and further direct the 2nd respondent to issue appropriate acknowledgment of discharge as per Section 107(7) of Finance Act, 2013.

For Petitioner : M/s.A.Mudi Mannan

For Respondents: Mr.V.Sundareswaran,
Sr. Standing counsel.

ORDER

I have heard the learned counsel for the petitioner and the respondent and perused the affidavit and the documents filed in support of the present petition.

2. The petitioner had availed the benefit of Service Tax Voluntary Compliance Encouragement Scheme, 2013 for settling service tax disputes. It has been framed to encourage assesseees to pay tax due for the period beginning from 1st day of October 2007 and ending with 31st day of December 2012 including cess leviable under any other Act not paid as on 1st day of March 2013. The said scheme was introduced in the Finance Act 2013 with effect from 10.05.2013.

3. As per the scheme any person may declare his service tax due in respect of which no notice or an order of determination under Section 72 or Section 73 or Section 73 A of the chapter V of the Finance Act 1994 has been issued or made before the 1st day of March 2013. A person is required to file a declaration and make full payment of declared tax due and interest thereon and on such receipt of declaration on payment of tax, the designated authority shall issue an acknowledgment of discharge of such tax to the declarant in such form and in such manner as may be prescribed.

4. The scheme allows a persons immunity from penalty, interest and other proceedings. For the purpose of implementing the scheme, the Central Government has also framed Service Tax Voluntary Compliance Encouragement Rules, 2013 vide Notification No.10/2013-ST dated 13.05.2013. As per Rule 6 declarant cannot utilise CENVAT credit for payment of tax due under the scheme.

5. In this case, after the petitioner filed a declaration under the scheme, the impugned order dated 30.01.2015 was passed stating that the petitioner had failed to fulfil the condition laid down under Section 105 (1) (e) of the aforesaid scheme read with Rule 6 (2) of the aforesaid Rules and therefore the petitioner was ineligible for Service Tax Voluntary Compliance Encouragement Scheme, 2013.

6. According to the petitioner, the petitioner was providing erection, commissioning and installation services, maintenance and repair services, works contract services, manpower recruitment agency services construction services, transport of goods by road, site preparation and clearance services to their clients and that the petitioner possessed a valid service tax registration certificate.

7. According to the petitioner during the period between April 2012 to December 2012 the petitioner had paid service tax from the available CENVAT credit to the tune of Rs.63,89,711/- but due to financial problems failed to pay the balance tax liability of Rs.1,04,95,954 and therefore filed a declaration to settle the dispute for the period between April 2012 to December 2012 under the scheme. According to the petitioner, the

petitioner admitted to default of Rs.1,04,95,954 before the 2nd respondent/designated authority.

8. According to the petitioner, the 2nd respondent vide proceeding dated 24.12.2013 acknowledged the declaration filed by the petitioner and after due verification accepted the amount due from the petitioner as Rs.1,04,95,954/- and directed the petitioner to pay the same in two installments of Rs.52,47,977/- each on or before 31.12.2013 and on or before 30.06.2014.

9. However after the petitioner paid the aforesaid amount, the 2nd respondent by letter dated 17.12.2014 directed the petitioner to pay another sum of Rs.63, 89,711/- in cash which was paid by the petitioner earlier from its CENVAT credit. The petitioner replied to the same by its reply dated 29.12.2014. By a communication dated 30.01.2015, the 2nd respondent has rejected the application filed by the petitioner.

10. Challenging the rejection, the petitioner has impugned the order on the ground that it has been passed in violation of principle of natural justice and contrary to the scheme announced. Petitioner submits that the scheme is applicable to only persons to whom no notice has been issued under Section 72, 73 or 73 A before 01.03.2013 and where no investigation was pending as on the said date and therefore the petitioner satisfied the criteria under the scheme.

11. It is further submitted that Section 105(1)(e) has also defined the expression due tax to mean the service tax due or payable under the chapter or any other amount due or payable under Section 73 A for the period beginning from 1st day of October 2007 and ending on 31st day of December 2012 including cess leviable thereon under any other Act but not paid as on 1st day of March 2013.

12. On the other hand, it is the contention of the respondent that the total service tax liability aggregated to Rs.2,59,58,769/-and out of this liability the petitioner paid an amount of Rs.90,73,104/ in cash and claimed to have adjusted an amount of Rs.63,89,711/- from its CENVAT account contrary to the Rule 6(2) of the aforesaid Rules.

13. I have also considered the scheme announced by the Finance Act 2013. The petitioner has satisfied the requirement of Section 106 (1). However, Proviso to the aforesaid provision

carves out an exception. As per which any person who has furnished return under Section 70 chapter V of the Finance Act 1994 and had disclosed true liability but had not paid the disclosed amounts of service tax or any part thereof, shall not be eligible to make declaration to the period covered by the said return. As per Rule 6 (2) of the aforesaid Rules, tax due shall not be paid from the CENVAT for payment of tax due under the scheme.

14. Prima facie it appears that the petitioner was not eligible to avail the benefit of the scheme as the petitioner appears to have already discharged the tax liability partially by debiting its CENVAT Credit Account. It would imply that the petitioner had already filed returns and admitted the tax liability but failed to pay tax due. Therefore the petitioner was ineligible to avail the benefit of the scheme as per proviso to Section 105(1). Proviso to Section 106 (1) of the Finance Act, 2013 reads as under:-

Provided that any person who has furnished return under section 70 of the Chapter and discloses true liability, but has not paid the disclosed amounts of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return.

15. Thus, if the petitioner had already partially discharged its service liability in terms of the returns filed under Section 70 of the Finance Act, 1994, the petitioner would be ineligible for the benefit of the scheme. On the other hand, if the petitioner opts to the scheme when no returns were filed by the petitioner, the tax liability under the scheme cannot be paid by utilizing the CENVAT credit as per Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2013.

16. The impugned order has not discussed the above issue properly. Therefore, I am inclined to set aside the impugned order and remit the case back to the 2nd respondent to ascertain whether the petitioner was indeed eligible to avail the benefit of aforesaid scheme. In case, the petitioner was eligible for the aforesaid scheme but had paid the amount partly from its CENVAT credit account, respondent may issue appropriate notice under Section 110 of the aforesaid Act and recover the same in terms of Section 87 of the Finance Act, 1994. Respondent shall take appropriate steps to this effect and complete the exercise

within a period of three months from the date of receipt of copy of this order. Before passing orders, petitioner shall be heard in person through its officers or representatives.

17. The writ petition thus stands disposed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

tsh

To

1. The Commissioner of Service Tax
Newry Towers (sonex)
No.2054, I Block II Avenue
Anna Nagar, Chennai -40.

2.The Assistant Commissioner of service tax
Designated Authority,
Office of the Commissioner of Service Tax
Newry Towers (Sonex)
No.2054, I Block II Avenue,
Nandanam, Chennai - 40.

+1 cc to Mr.K.Jayachandran Advocate sr2606
+1 cc to Mr.V.Sundaraswaran Advocate sr2834

सत्यमेव जयते

W.P.No.4696 of 2015

aa03/06/2020

WEB COPY