



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) No.8227 of 2020

and

WMP (MD) Nos.7635 & 7636 of 2020

M/s.Solamalalai Automobiles Private Limited,
No.28/5B, Melur Road, Uthangudi,
Papanasam Pykara Colony,
Madurai - 625 107.

... Petitioner

Vs.

1.The Designated Committee,
Office of the Commissioner of GST
& Central Excise,
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai - 625 002.

2.Central Board of Indirect Taxes and
Customs, Department of Revenue,
North Block, New Delhi - 110001.

3.Union of India,
Rep.by its Secretary,
Ministry of Finance, Department of
Revenue, North Block,
New Delhi - 110001.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to Form SVLDRS-3 bearing reference L040320SV300451 dated 04.03.2020 issued by the first respondent, quash the same, and direct the first respondent to adjust the moneys paid after deducting the waived amount from the total tax dues as provided for under Section 124(2) of the Scheme.

For Petitioner : M/s.Lakshmi Kumaran
& Sridharan Attorneys

For Respondents : Mr.B.Vijay Karthikeyan

**ORDER**

The petitioner is a private limited company engaged in sales and services of Maruti Suzuki brand cars purchased from M/s. Maruti Udyog Ltd on principal to principal basis. Alleging that the petitioner is liable to pay service tax under various heads to the tune of Rs.5,10,91,364/- together with penalty and interest, the Commissioner of Central Excise, Madurai issued show cause notice No.17/2015 dated 12.10.2015. The petitioner submitted their reply. Not satisfied with the same, the adjudicating authority by order dated 26.02.2018 confirmed the demand and also levied interest and penalty. The petitioner applied for rectification of the said order on the ground that it suffered from mistakes apparent on the face of record. The rectification petition dated 11.06.2018 was rejected as devoid of merits on 05.03.2019.

2.The petitioner did not file any appeal challenging the same. In the meanwhile, the Union Government introduced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 vide Sections 120 to 135 of the Finance (No.2) Act, 2019. Availing the said opportunity, the petitioner filed application in Form SVLDRS 1. The stand of the petitioner is that no further amount is due and payable by them. However, the petitioner's stand was rejected and the application was disposed of by holding that the petitioner has to pay a further sum of Rs.90,70,581/-. Questioning the same, this writ petition has been filed.

3.The respondents have filed their counter affidavits. Their stand is that as against the tax liability of Rs.5,10,91,364/- the petitioner had already deposited a sum of Rs.3,59,73,729/-. The balance tax that remains unpaid is Rs.1,51,17,635/-. The petitioner is entitled to tax relief at the rate of 40% on tax dues. This comes to Rs.60,47,054/-. Therefore, the balance amount payable by the petitioner comes to Rs.90,70,581/-.

4.The learned standing counsel submitted that the scheme provisions have been correctly applied. He relied on the Board circular bearing F No.867/78/2019CX-8 Pt.III dated 25.09.2019. It has been clarified that tax dues is the amount of duty which is outstanding against the declarant. It is the net amount after deducting the dues, the declarant has already paid. Such payment may be in the form of pre-deposits appropriated or paid subsequently by the tax payer voluntarily against the outstanding amount. The circular clarifies that the relief available under Section 124 (1) (c) will be applied to the net outstanding amount so arrived at. In respect of all other categories, any money paid before its appropriation is in the nature of a deposit only. Hence in respect of declarations made under these other categories, the relief will be applied to the outstanding amount and only thereafter the pre-deposits/deposits shall be adjusted. In the said circular, illustrations have also been given. In the light of the circular, according to the learned standing counsel, there is absolutely no



merit in the petitioner's contention. He called for dismissal of this writ petition.

5. The learned counsel for the petitioner submitted that only the question of law arising for consideration is whether as per Section 124(2) of the Act, relief should be calculated after adjustment of tax already deposited or before adjustment of tax already deposited. The learned counsel for the petitioner contended that from a mere reading of Section 124(2), one can note that adjustment of any amount paid as deposit must be made only at the stage of calculating the amount payable. The amount payable is quantified by deducting tax relief from tax due. He also contended that if the stand of the respondents is sustained, the very object of introducing a scheme of this nature would be defeated. His further contention is that the subsequent circular issued by the Board cannot prevail over the statutory provisions of the scheme and in any event, not binding on the High Court.

6. I carefully considered the rival contentions and went through the materials on record. It is necessary at the outset to extract the relevant provisions. Section 124 of the Finance Act reads as follows :

"Relief available under Scheme :

124.(1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:-

(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,-

(i) rupees fifty lakhs or less, then, seventy per cent of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent of the tax dues;

(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(c) where the tax dues are relatable to an amount in arrears and,-

(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent of the tax dues;

(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent of the tax dues;

(iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,-

(A) rupees fifty lakhs or less, then, sixty per cent of the tax dues;



(B) amount indicated is more than rupees fifty lakhs, then, forty per cent of the tax dues;

(d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—

(i) rupees fifty lakhs or less, then, seventy per cent of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund."

7. The expression "amount in arrears" has been defined in Section 121 (c) as follows :

"121. In this Scheme, unless the context otherwise requires,—

(a) ...

(b) ...

(c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of—

(i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or

(ii) an order in appeal relating to the declarant attaining finality; or

(iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it."

"Tax dues" has been defined in Section 123 as follows :

"123. For the purposes of the Scheme, "tax dues" means— (a) where—



(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

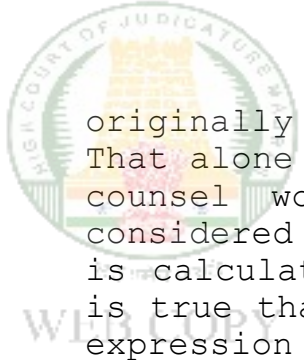
(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019."

On first principles, one can hold that the board circulars cannot water down the scheme provisions. The proviso to Section 124 (2) of the Act states that if the amount of pre-deposit or deposit paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the Designated Committee, the declarant shall not be entitled to any refund. From this, one can safely conclude that the calculation of relief must be done on the tax dues as described in the various categories set out in Section 124(1). The expression "tax dues" has to be understood in the appropriate context. Three different situations are envisaged. It can relate to the amount of duty or the amount of penalty or the amount in arrears or the amount quantified. The deduction of the pre-deposit or deposit already paid by the declarant shall be made only after the calculation is done. The learned counsel appearing for the petitioner is right in this regard. Otherwise, the proviso to Section 124(2) of the Act will be rendered meaningless. No part of the statute can be ignored by the Court.

8. The applicants seeking relief under the scheme can be classified into several categories. (i) those against whom show cause notice has been issued and adjudicating authority has not passed final order, (ii) those against whom final order has been passed and the matter is pending at the appellate stage, (iii) those against whom final order has been passed and who have not challenged the order. Such applicants even while contesting the cases against them would have made deposits. The case on hand does not fall under Section 124 (1) (a) or (b) of the Act. It falls only under Section 124 (1) (c) of the Act. If the tax dues is more than Fifty lakhs, then 40% of the tax dues will be the relief granted. Now, the question is how to quantify the petitioner's relief.

9. As already pointed out, "tax dues" has been defined in Section 123 of the Act. The case on hand falls under Section 123(e) of the Act. It means "Where an amount in arrears relating to the declarant is due, the amount in arrears". The petitioner had already paid a sum of Rs.3,59,73,729/-. The balance amount



originally payable by the petitioner was only Rs.1,51,17,635/-. That alone can be called as the amount in arrears. The petitioner's counsel would contend that the amount already paid should be considered as a deposit and it should be deducted only after relief is calculated on the entire tax liability of Rs.5,10,91,364/-. It is true that the provision talks of "deposit or pre-deposit". That expression can only refer to those payments made by the declarant even while he is still contesting his liability. If an amount has already been deposited in respect of the duty without demur, then it cannot be called as deposit or pre-deposit. In other words, the payment should have been made without prejudice to the stand of the declarant or assessee. In the case on hand, the payment made by the petitioner was not of such a nature. It was voluntarily paid towards tax liability.

10.Appropriation had already taken place. In fact, the petitioner's grievance before the original authority was that without taking into account the payment of Rs.3,59,73,729/-, the order had been passed. The original authority had in fact directed the recovery officers to take into account the the said claim. Having cleared his liability in part, now for the purpose of availing the benefit under the scheme, the petitioner cannot turn around and claim that what was paid by him was only "deposit" and not the tax amount. Even though I sustain the contention of the petitioner's counsel as regards the mode of calculation, still in the case on hand, it will not come to his rescue. The amount in arrears due from the petitioner was only Rs.1,51,17,635/-. Therefore, 40% of the said amount is Rs.60,47,054/-. The Designated Committee rightly applied the scheme provisions and granted relief to the petitioner. No interference is called for.

11.The writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Designated Committee,
Office of the Commissioner of GST
& Central Excise,
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai - 625 002.

2. Central Board of Indirect Taxes and
Customs, Department of Revenue,
North Block, New Delhi - 110001.

3. The Secretary,
Ministry of Finance, Department of
Revenue, North Block,
New Delhi - 110001.

+1 CC to Mr.B. VIJAY KARTHIKEYAN, Advocate (SR-16808[F] dated
15/09/2020)

+1 CC to Mr.S.JEYASINGH, Advocate (SR-17027[F] dated 16/09/2020)

**WP(MD) No.8227 of 2020
and**

**WMP(MD) Nos.7635 & 7636 of 2020
14.09.2020**

VB (06.10.2020) 7P 6C