IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.9769 of 2020
and WMP.No.11894 of 2020

Malabar Erectors,
Rep. by its Partner,
M.C.Abdul Rafeequ
75/5, Masjid Street,
Omalur, Salem-636 455. ...Petitioner

Vs.

1. Union of India,
   Rep. by Secretary, Dept. of Revenue,
   Ministry of Finance, North Block,
   New Delhi - 110 001.

2. The Central Board of Indirect Taxes and Customs,
   Department of Revenue,
   Represented by its Chairman,
   Ministry of Finance, Government of India,
   North Block, New Delhi.

3. The Deputy Commissioner,
   Member, Designated Committee
   Under Sabka Vishwas (Legacy Dispute Resolution) Scheme
   GST Bhawan, No.1, Foulke's Compound,
   Anaimedu, Salem.

4. The Assistant Commissioner,
   Salem II Division,
   GST Bhawan, No.1, Foulke's Compound,
   Anaimedu, Salem.

5. The Commissioner,
   Office of the Commissioner of GST and
   Central Excise (Appeals), Coimbatore
   Circuit Office @ Salem Commissionerate,
   No.1, Foulke's Compound, Anai Road,
   Salem. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the 1st Respondent to accept the payment of Rs.5,04,873/- in terms of Form 3 in compliance under Section 127 of the Finance (No.2) Act, 2019 towards full and final settlement of tax dues and to issue a Certificate of Settlement in Form 4.

For Petitioner : Mr.Mohd. Shaffiq
for Mr.P.Purushotham

For Respondents : Mr.H.Siddarth
Junior Standing Counsel

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ORDER

Pursuant to the liberty granted to the petitioner, a memo dated 27.06.2021 has filed confirming the position that the amount quantified in Form 3 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has been remitted along with interest at the rate of 15%. Demand Draft bearing No.032433 dated 18.06.2021 has been sent to the Deputy Commissioner, Member Designated Committee through registered post.

2. On 15.06.2021, I had passed the following order in this case:

> The petitioner has sought a mandamus directing the first respondent, the Union of India, represented by Secretary to Department of Revenue to accept payment of Rs.5,04,873/- pursuant to issuance of Form 3 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short 'Scheme') in terms of Section 127 of the Finance (No.2) Act, 2019 towards full and final settlement of tax dues and to issue a certificate of Settlement in Form 4.
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> 2. The relevant dates and events in this matter are as follows:
>
> i) The petitioner was in receipt of Order-in-Original dated 21.05.2019 raising a demand of Rs.13,64,516/-.
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> ii) An appeal was filed before the 5th respondent, who is the Commissioner of GST and Central Excise (Appeals), Coimbatore.

iii) An application was filed on 15.12.2019 opting for the Scheme and Form 1, being the acknowledgement for receipt of application by the Department, was issued.

iv) Form 2 was issued to the petitioner on 13.01.2020 post scrutiny of the application.

v) Since there was difference in the tax computed by the petitioner and that computed by the respondent, the petitioner raised a query in Form 2A seeking a personal hearing to explaining its position, on 18.01.2020.

vi) A personal hearing was afforded on 26.02.2020.

vii) On 06.03.2020, Form 3 was issued by the Department quantifying the demand at a sum of Rs.5,04,873/-.

viii) The quantification of demand has attained finality and there is no dispute on this score raised by the petitioner.

ix) The admitted position is the petitioner was required to pay the aforesaid amount within a peirod of of 30 days in terms of the Scheme, failing which the application lapses.

x) The period of 30 days expired on 05.04.2020.

xi) In the interim, the Country was locked down on account of the COVID-19 pandemic invoking the provisions of the Disaster Management Act,2005. This lock down continued intermittently from 25.03.2020.

3. One cannot argue or quarrel with the difficulties that the citizens were facing on account of the pandemic, which is yet on-going. In recognition of these difficulties, the Scheme was itself amended to state that the period for payment would stand extended unilaterally till 30.06.2020. Thus the original time of 30 days from issuance of Form 3 has been overridden by the Department itself in recognition of the present difficulties.

4. The petitioner did not remit the amount before 30.06.2020, instead chosing to file the

present Writ Petition expressing its readiness and undertaking in ground (D) of the Writ Petition that it would pay the amount quantified within any time that may be granted by this Court. It is thus clear that as on the date of execution of the affidavit filed in support of the Writ Petition, which is 09.07.2020, the petitioner has been prepared to pay the amount of duty. Be it noted that it was unable to proceed to remit the amount, since the portal did not facilitate receipt of any amount under the Scheme after 30.06.2020. The delay in effecting remittance is a period of 9 days, at the maximum.

5. The Gujarat High Court in Messrs.Falcon Fighter Force Services Pvt. Limited V. Union of India (R/Special Civil Application No.15950 of 2020, order dated 23.12.2020), in a similar situation as before me now, directed the petitioner to deposit the amount of duty within a fixed time frame and to thereafter approach the Chairman, Central Board of Indirect Taxes, with a request to accept the payment as made under the Scheme.

6. At paragraph 11, the Bench has expressed its view that some viable solution in such cases be found by the Board. No solution has been found and or placed before this Court till date, despite a period of six months having elapsed from the date of that decision.

7. The Board has also issued an Instruction in F.No.267/65/2020-CX-8 dated 14.07.2020 recognising the position that there were several declarants who were unable to remit the quantified amounts of duty under the Scheme before 30.06.2020 on account of the difficulties they were facing and who were likely to pay in the near future. The very fact that the Board states that the declarants were 'likely to pay in the near future' indicates a possibility that the the Board might be inclined to accept the amounts even after 30.06.2021, of course conditional upon any stipulations that it may have in this regard, including the levy of interest. The Zonal Officers has been requested to conduct a survey of the estimated amounts still recoverable and report the same to the Board.

8. The Hon'ble Supreme Court in the case of Satyakam Arya V. Union of India and another (W.P.(c) No.178 of 2021 dated 04.03.2021 considered the

following prayers in a Writ Petition filed under Article 32 of the Constitution of India:

a. Issue a Writ, Order or Direction in the nature of Mandamus to extend the GST Amnesty Scheme effected through its Notification bearing No. 52/2020 dated 24.05.2020 for two months. WP(C) 178/2021 2

b. Issue a Writ, Order or Direction in the nature of Mandamus to refund the exhibiting amount collected under the garb of late fee towards late filing of GST return for the period of lockdown to all Assessee who have paid the late fee.

c. Issue a Writ, Order or Direction in the nature of Mandamus to the Respondent to put the upper cap on Late Fees to an extent of Rs. 500/- per return.

d. Issue a Writ, Order or Direction in the nature of Mandamus to exempt the late fee that is being charged for the lockdown period starting from 25.03.2020 till 30.06.2020 by the Respondent on account of delayed filing of GST return by the Assesses.

9. The Bench held that the reliefs sought touch upon the realm of policy and they were thus not inclined to entertain the Writ Petition. The prayer therein seeks an extension of the Amnesty Scheme, a cap on the late fees to be collected, exemption from collecting late fee and refund of amounts calculated, all in all, a re-writing of the Scheme itself.

10. In the present case, the facts as noticed above would indicate that the petitioner has complied with the Scheme requirements substantially in time, except for last stage of remittance of the quantified amount, where there was a delay of 9 days.

11. This is an issue which several assessees all over the Country are facing and it is time that the Board apply its mind to the same and came out with a viable solution.

12. In the light of the discussion as aforesaid, I am inclined to pass the following order:

i) The petitioner is permitted to remit the amount quantified in Form 3 along with interest at the rate of 15%, in terms of Notification No.13 of

2016 dated 01.03.2016 and Section 75 of the Finance Act, 1994 under which service tax is levied, from 01.07.2020 till date of remittance before the third respondent, within a period of one (1) week from today.

ii) The above permission does not, by any stretch, indicate that the prayer of the petitioner has been accepted and the relief sought, granted. It is only a measure to enable the petitioner to prove its bona fides.

iii) The counter filed by the respondents does not anywhere indicate the stand of the first respondent as to what their decision is in such matters. A decision may be taken by the Board and circulated after serving a copy upon the petitioner, prior to the next date of hearing.

13. List on 29.06.2021.'

3. Though the decision of the Board was sought for specifically, an affidavit has been filed by the Commissioner/R5 stating that since the petitioner has not made the remittance within the due date of 30.06.2020, the application ought to be treated as lapsed.

4. I see no reason to keep this writ petition pending any more. The petitioner is permitted to make a representation within a period of one week from today, accompanied by a copy of this order to the Board and the Board is directed to consider the same and pass appropriate orders within a period of four (4) weeks from receipt thereafter.

5. This writ petition is disposed. Connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary, Dept. of Revenue,
   Union of India,
   Ministry of Finance, North Block,
   New Delhi - 110 001.

2. The Central Board of Indirect Taxes and Customs,
   Department of Revenue,
   Represented by its Chairman,
   Ministry of Finance, Government of India,
   North Block, New Delhi.

3. The Deputy Commissioner,
   Member, Designated Committee
   Under Sabka Vishwas (Legacy Dispute Resolution) Scheme
   GST Bhawan, No.1, Foulke's Compound,
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   Salem II Division,
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5. The Commissioner,
   Office of the Commissioner of GST and
   Central Excise (Appeals), Coimbatore
   Circuit Office @ Salem Commissionerate,
   No.1, Foulke's Compound, Anai Road,
   Salem.

+1CC to Mr.P.Purushotham, Advocate, Sr.No.30195

W.P. No.9769 of 2020
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PMK (CO)
K.RK. (23.07.2021)