IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.10230, 10359, 10231, 10246, 10259, 10265, 10267, 10268, 10269, 10271, 10275, 10360, 10363, 10364, 10366, 10371 & 10372 of 2020
and
WMP. Nos.12476, 12439, 12458, 12482, 12484, 12485, 12491, 12436, 12438, 12477, 12435, 12478, 12480, 12481, 12492, 12591 12592, 12594, 12595, 12598, 12599, 12600, 12601, 12604, 12605, 12611, 12612, 12613, 12614, 12475, 12459, 12470, 12479 & 12469 of 2020

M/s PSTS Logistics Pvt Ltd,
2nd Floor,Wavoo Mansion,
No.48, Rajaji Salai,
Chennai - 600 001.
Represented by its Director, J.Giriram.
...Petitioner in all W.Ps

Vs.

The Designated Committee,
Sabka Vishwas Scheme,
Office of the Commissioner of GST & CE,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...Respondent in all W.Ps

These Writ Petitions are filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to

WP No.10230 of 2020
Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300592 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300131 dated 16.01.2020.

WP No.10359 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300595 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L140120SV300824 dated 14.01.2020.

WP No.10231 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300588 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No.L140120SV300805 dated 14.01.2020.

WP No.10246 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300575 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No.L160120SV300129 dated 16.01.2020.

WP No.10259 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300583 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300125 dated 16.01.2020.

WP No.10265 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300545 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L140120SV300787 dated 14.01.2020.

WP No.10267 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300567 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300157 dated 16.01.2020.

WP No.10268 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300558 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L200120SV300558 dated 20.01.2020.

WP No.10269 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300548 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300138 dated 16.01.2020.

WP No.10271 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300571 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L200120SV300557 dated 20.01.2020.

WP No.10275 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300586 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300148 dated 16.01.2020.

WP No.10360 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300603 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L140120SV300827 dated 14.01.2020.

WP No.10363 of 2020

Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300562 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300151 dated 16.01.2020.

WP No.10364 of 2020
Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300580 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV300143 dated 16.01.2020.

WP No.10366 of 2020
Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300554 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L160120SV301506 dated 16.01.2020.

WP No.10371 of 2020
Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300608 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L140120SV300832 dated 14.01.2020.

WP No.10372 of 2020
Calling for the records of the respondent in the impugned rectified SVLDRS-3 No.L070220SV300600 dated 07.02.2020 and quashing the same, and consequently, direct the respondents to accept payment of dues in terms of original SVLDRS-3 No. L16120SV300820 dated 16.01.2020.

For Petitioner: Ms.Naveena D. in all W.Ps

For Respondent: Mr.Pramod Kumar Chopda
Senior Standing Counsel in all W.Ps

C O M M O N O R D E R

The petitioner is a steamer agency providing customs house agency services. It is a registered service provider under the erstwhile Finance Act, 1994. The petitioner claims that it has been diligent in the filing of returns. However, the returns filed for the period December, 2015 to June, 2017 contained a short fall in remittance of tax, as a result that the petitioner decided to take advantage of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (Scheme), which extended benefits to an errant tax payer, in the settlement of tax, interest and penalty dues under various indirect tax enactments.

2. This matter has been heard on several dates and pleadings are complete. Two issues arise for determination.The first is whether the Writ Petitions are maintainable, seeing as they have been filed on 03.08.2020 when the Scheme had originally come to an end on 30.06.2020, During the pendency of these Writ Petitions and on account of the on-going COVID-19 pandemic, while the last date for submission of applications was extended to 31.12.2019, the date for payment was extended to 30.09.2020.

3. In this case, the Declarations have been filed in time and in proper form, in SVLDRS - 1. The procedure under the Scheme is that a statement in SVLDRS - 3 would be issued accepting the application. In the alternative, a notice in SVLDRS - 2 would be issued granting a personal hearing, for which a reply could be filed in SVLDRS - 2A. If accepted, a certificate of acceptance would be issued in SVLDRS - 4. In this case, SVLDRS - 3 had been issued on various dates, i.e., on 14.01.2020, 16.01.2020 and 20.01.2020. Rectified SVLDRS had been issued on 07.02.2020, impugned in these Writ Petitions.

4. The Government announced the outbreak of Corona Virus on 15.03.2020 and a lockdown of one day was imposed on 22.03.2020, with a full lockdown announced on 24.03.2020 for a period of one week. The original date by which the arrears would have had to be settled is 31.03.2020, extended till 30.06.2020. Between 01.04.2020 and 31.05.2020, a total lockdown had been imposed that had been relaxed in some measure till 18.06.2020. Between 19.06.2020 and 05.07.2020, a lockdown was again imposed, relaxed only after 05.07.2020 in some measure. On 30.07.2020, the present Writ Petitions have come to be filed.

5. Bearing in mind the above circumstances, I find enough justification to hold these Writ Petitions maintainable.

6. The issue raised on merits is that no opportunity of hearing has been granted to the petitioner prior to the impugned rectification. The relevant dates have been set out by me at paragraph-3 of this order.

7. The defence of Mr.Pramod Kumar Chopda, learned Senior Standing Counsel is that a reading of Section 127(2) with Section 128 reveals that a notice is called for only in those cases where the estimate arrived at by the Designated Committee exceeds the estimate arrived at by the declarant and in the present case, the impugned notices only constitute rectification of apparent errors for which no notices is required.

8. The SVLDRS-3 declarations filed by the petitioner had been originally accepted, and any enhancement proposed would have to be made only after issue of notice to the assessee. In the present case, there is a difference in tax dues that arises from the applicable slab rates prescribed under Section 124(1)(c) of the scheme, reading as follows:

> '124. Relief available under Scheme. - (1) ......
>
> ....
>
> (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;'

9. According to the petitioner, the application would have to quantify the tax payable month wise, since the half yearly returns filed take into account the tax payable, per month. This argument has however to be rejected in the light of Section124 (1)(c)(iii) as per which computation of 'tax due' is based upon the return filed under the respective indirect tax enactment. The Finance Act, 1994, in terms of which service tax is levied, provides for a half yearly return. The tax dues would thus be as per Section 124(1)(c)(A) and not 124(1)(c)(B) as computed by the petitioner.

10. Section 128 grants power to the Designated Committee to correct an arithmetical or clerical error apparent on the face of record, either suo moto or upon such error being pointed out by the declarant. The impugned rectifications do not fall within the ambit of an arithmetic or clerical error and enhance the quantification of tax dues under Section 127. Hence, a notice ought to have been issued to the petitioner in this matter,

prior to revising the SVLDRS. The legal argument of the petitioner is accepted. I am conscious of the position that a rectification can be effected only by the Designated Committee and would normally not have undertaken this exercise.

11. However, detailed submissions have been heard by me on the nature of the dispute and the difference in computation and I believe that it would not be appropriate that I remand these matters on the technical issue of lack of opportunity.

12. The stand of the petitioner has, as noticed by me at paragraph 9 above, no legal sanction and the interpretation put forth does not merit acceptance. I thus see no justification to relegate the petitioner to the authority, particularly seeing as this litigation pertains to an amnesty scheme where proceedings should, as far as possible, be fast tracked and not delayed.

13. These writ petitions are dismissed. Liberty is granted to the petitioner to approach the authorities seeking some more time to remit the dues contemplated under the revised SVLDRS. Such representation, if made, within a period of two (2) weeks from date of receipt of order, shall be disposed after hearing the petitioner, within a period of four (4) weeks from date of receipt of the application. This permission is granted bearing in mind the sequence of events as recorded by me in the previous paragraphs of this order and shall not be available as a matter of rote in other matters. Connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vs/rkp/sl

To

The Designated Committee,
Sabka Vishwas Scheme,
Office of the Commissioner of GST & CE,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+2 Ccs to Mr.S. Durai Raj, Advocate sr 12330.
+1 CC to Mr.T. Pramod Kumar Chopda, Advocate sr 12580.

W.P. Nos.10230, 10359, 10231, 10246, 10259, 10265, 10267, 10268, 10269, 10271, 10275, 10360, 10363, 10364, 10366, 10371 & 10372 of 2020
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SKY(CO)
SP(28/04/2021)