IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2021

CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.17388 of 2020
WMP.No.21556 of 2020

Shri Prabhu Dhananjayan
No- 91 P.H.Road,
Manavalan Nagar
Tiruvallur- 602202

...Petitioner

Vs.

1. The Designated Commitee
   SVLDRS Scheme GST and Central Excise
   Chennai Outer Commissionerate
   No.2052 2nd Avenue, 12th Main Road,
   Newri Towers, Anna Nagar, Chennai-40

2. The Commissioner,
   GST AND Central Excise,
   Chennai Outer Commissionerate
   No.2052, 2nd Avenue,
   12th Main Road Newri Towers,
   Anna Nagar, Chennai-40

3. The Asst./Deputy Commissioner
   GST AND Central Excise,
   Chennai Outer, Commissionerate
   No.2052, 2nd Avenue,12th Main Road
   Newri Towers, Anna Nagar, Chennai-40

4. The Superintendent
   CGST AND Central Excise,
   Thiruvallur- I Range
   No. 46, Vallalar Street, Periakuppam
   Tiruvallur 602 001

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorarified mandamus calling for the records relating to the shouw cause notice issued under C. N IV/09/03/2020-ADJ dated 15.5.2020 issued by the 3rd Respondent and quash the same and direct the 1st Respondent with regard to the rejection of SVLDRS-1 Bearing ARN LD21121900002063 dated 21.12.2019 to pass fresh roder in respect of SVLDRS-1 Declaration dated 21.12.2019 after considering the

Letter O.C.NO 438/2017 dated 29.12.2017 issued by the 4th Respondent which dtermined the tax liability before 30.6.2019.

For Petitioner : Dr.M.Manimaran
For Respondents : Mrs.M.Sheela
Senior Standing Counsel

ORDER

The petitioner has filed an application under the Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019 for the settlement of service tax arrears relating to the period April 2012 to June 2017. The amount of liability that forms the basis of the application is a sum of Rs.14,35,147/-. According to the petitioner, this amount has been unilaterally quantified by the Central Excise Department under its communication dated 29.12.2017, reading as follows:

OC.No.1/38/2017
Date:29.12.2017
To
M/s.D Prabhu (HUF)
No.91, Poonamallee, High Road,
Manavel Nagar, Tiruvallur-602 002
Gentlemen,

Sub: Non payment of Service Tax on Renting of Immovable Property for the period from April, 2012 to till date-Request to pay the dues-Reg.

Your kind attention is invited to periodical telephonic reminders for making payment of dues to the government.

(i) As per the Ledger details furnished by M/s.KK.Nag, it is informed that the service tax liability is arrived at Rs.14,35,471/- being the rent received by you for the period from Apr, 2012 to Jun,2017. You are requested to pay and clear the dues immediately along with interest.

(ii) The details of proof of payment of service tax and interest made may be furnished to this office after making the payment.

Treat this as most urgent and furnish the details.

Yours faithfully
Sd/-.....
(D.Imayavarmban)
Superintendent, T-1 Range

2. Learned counsel for the petitioner would point out that this communication has been received in 2017 itself and thus there is no infirmity in the same being taken to be the basis of the application. He would also, in this connection, refer to a show cause notice dated 15.05.2020, which is for the period October, 2014 to June 2017, where the service tax amount is only a sum of Rs.12,43,027/-. Per contra, Mrs.M.Sheela, learned Senior Standing Counsel appearing for the respondents would state that in fact the service tax demand was higher as per the quantification circulated by her of an amount of Rs.19,60,721/-.

3. The application has, at any rate, come to be rejected by way of the impugned order issued in Form 3 without affording any opportunity to the petitioner to support its case. No alternate demand or reasoning is set out to justify the rejection of the declaration or attributing any lapse to the declaration filed.

4. Straightaway, the quantification put forth by the revenue is liable to be rejected since it is not supported by any demand of equal amount upon the petitioner and is wholly adhoc. A unilateral quantification is circulated by way of a computation sheet dated nil filed in the compilation of documents dated 12.08.2021. The periods for which the demands are raised are 2012-13 to June 2017-18. Mrs.Sheela would fairly admit that no such demand has been raised and justifies this saying that the periods in question were beyond limitation and hence the Department was constrained to drop the proceedings. Such a demand cannot be enforced and at any rate, cannot form the basis of quantification of tax arrears for the purposes of arrears of the scheme.

5. Reference is made by the revenue to the decision of the Delhi High Court in Chaque Jour HR Services Pvt. Ltd. Vs. Union of India and Others [2020 (42) GSTL 24], wherein the facts are distinguishable. In that case, there is a clear finding to the effect that the declarant had not come with clean hands in order to avail benefit of the scheme. The petitioner therein had admitted only service tax liability without making any disclosure with regard to other tax dues and hence after investigation, a demand-cum-show cause notice had been issued. It was in those circumstances that, that assessees' application had come to be rejected, holding that the quantification of dues of the petitioner therein was incorrect. Special leave petition filed by the assessee in Chaque Jour HR Services Pvt. Ltd. Vs. Union of India and Others (MANU/SCOR/07588/2021) also came to be dismissed by the Hon'ble Supreme Court on 22.02.2021.

6. In the present case, the declaration of the petitioner is based entirely upon the respondent's communication dated

29.12.2017, wherein the quantification admittedly is in excess for the period covered under the relevant show cause notice. The show cause notice had been limited to the period 2014 to 2017 and the Department had not chosen to raise a demand for the prior periods on the ground of bar of limitation. Thus, the declaration offers an amount in excess of what it needed to, and the petitioner has been more generous than needed.

7. The second case relied on by the revenue is Thought Blurb Vs. Union of India and Others (2020 SCC Online Bom 1909), wherein a request for opportunity to be given to the petitioner prior to rejection of declaration was negated by the Bombay High Court on the ground that such opportunity was required to be given only if the estimate of the amount, payable under the declaration as computed by the Department, exceeded that made by the petitioner in the declaration. At para 38, the Bench says that where the estimates of the Department and of the applicant are one and the same, then there is no necessity for such opportunity.

8. Again the material fact is different in the present case, insofar as there is a difference in the quantification qua that of the petitioner and the Revenue as may be seen from a comparison of the petitioner's declaration of Rs.14,37,471/- as quantified by the revenue in its communication dated 29.12.2017 and Rs.19,60,721/- as set out by the revenue in its computation dated nil filed in the compilation of documents dated 12.08.2021.

9. The quantification of the demand under cover of its compilation of documents dated 12.08.2021 is not valid because, even according to the Department, a substantial portion of that demand was barred by limitation. That apart, the impugned order is clearly non-speaking and does not set out any alternate demand. This cannot be set right by way of counter or additional note. To quote the Hon'ble Supreme Court in the celebrated case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner and Others (1978 AIR 851), orders are not like old wine becoming better as they grow older. The petitioner, in my view, ought to have been granted opportunity to put forth its case and to understand why its application was proposed to be rejected.

10. Moreover, the scheme itself provides, at Section 127 thereof that once there is a variation between the amount stated in the declaration and the estimate arrived at by the Department, Form-2 shall be issued accompanied by personal hearing notice. This has not been done in the present case.

11. The scheme sets out the manner of computation of 'tax due' in Section 123 thereof and in Section 123 (c) states that 'tax dues', where an enquiry or investigation or audit is pending as against the declarant would relate to the amount of duty payable under any indirect tax enactment as 'quantified' on or before 30.04.2019. The term 'quantified' has been defined under Section 121 (r) to state that 'quantified', with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment. In the present case, communication dated 29.12.2017 would satisfy the requirement of Section 121(r) read with Section 123 (c) on all fours.

12. In the light of the discussion as aforesaid, Form 3 is quashed and the respondent is directed to issue Form 3 afresh accepting the declaration of the petitioner, within a period of four weeks from date of uploading of this order on the official website of the Court.

13. This writ petition is allowed in the above terms. Connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

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+2 Ccs to M/s.M. Sheela, SSC Advocate sr 40895

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GP(CO)
SP(20/10/2021)