BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.144 of 2021 and
WMP(MD) Nos.126 & 127 of 2021

M/s.Balaji Steel Industry,
Represented by its Partner S.N.Subramanian,
111/13 to 9, Melanagamangalam,
Edamalaipudur,
Tiruchirappalli - 620 012 .... Petitioner

Vs.

1.Designated Committee,
Sabka Viswas (Legacy Disputes Resolution) Scheme, 2019,
O/o the Commissioner of GST & Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirapalli.

2.The Commissioner (Adjudication),
Office of the Commissioner of Central Excise and Service Tax,
No.1, Foulks Compound, Anai Road,
Salem-636 001. .... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in SVLDRS 1 dated 13.11.2019 and consequential proceedings in C.No.IV/16/1383/2019-SVLDRS(DIN-20200859XN00003N38F1) dated 04.08.2020 issued by the 1st respondent and quash the same as arbitrary, illegal and against the principles of natural justice and consequently direct the 1st respondent to consider the petitioner's Form SVLDRS-1 dated 13.11.2019 afresh and determine the amount payable afresh under Section 124(1)(a) of the Finance (No.2) Act, 2019 under SABKA VISHWAS (Legacy Dispute Resolution) Scheme 2019 as pending litigation category after verification of the records.

For Petitioner : Mr.N.Sudalaimuthu
For Respondent : Ms.S.Ragaventhre
Junior Standing Counsel For CGSC

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

2.The petitioner suffered an adverse order of assessment and he had been directed to pay duty, penalty as well as interest vide order dated 29.12.2014. Aggrieved by the same, the petitioner filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (South Zonal Bench) (CESTAT) Chennai on 24.03.2015. In the meanwhile, SABKA VISHWAS (Legacy Disptue Resolution) Scheme 2019 has been introduced by the Government of India. The petitioner filed an application under the said Scheme. The said application was filed through online. The application was rejected. The petitioner submitted representation through email on 05.03.2020. The said request was also rejected by the first respondent on 04.08.2020 on the ground that the petitioner did not suffer any order of assessment and that he did not file any appeal. Aggrieved by the same, the present Writ Petition has been filed.

3.A Counter affidavit has been filed by the respondent. In the counter affidavit, the stand set out in the impugned order has been reiterated.

4.The specific stand of the petitioner is that vide order dated 29.12.2014, the Commissioner of Central Excise and Service Tax, Salem had passed an order levying duty, penalty and interest on number of assessees including the petitioner also. The findings set out in the order passed by the authority are extracted hereunder:-

> *vii.I confirm the demand of an amount of Rs.2,14,885/- (Rupees Two Lakh Fourteen Thousand Eight Hundred and Eighty Five Only) (Cenvat: Rs.2.08,626/- Education Cess: Rs.4,173/- Secondary and Higher Education Cess:Rs.2086/- on Balaji Steel Industry, Trichy towards the duty payable by them on the clearances of 47.87MT of TMT Rods without payment of duty made out of MS Ingots procured from M/s.GSPL without payment of duty and determine the same udner Section 11A(10) of the Central Excise Act, 1944.*
>
> *viii.I appropriate the amount of Rs.2,14,885/- debited by Balaji Steel Industry, Trichy in their RG-23-A Part II on 07.03.2012 towards the duty amount confirmed as in Sl.No.(vii) above.*
>
> *ix.I order that Balaji Steel Industry, Trichy shall pay interest at appropriate rates on the duty amount confirmed as in Sl.No. (vii) above, under Section 11AA of the Central Excise Act, 1944.*
>
> *x. I impose a penalty of Rs.2,14,885/- (Rupees Two Lakhs fourteen Thousand Eight Hundred and Eighty Five only) on Balaji Steel Industry, Trichy under Section 11AC of the Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002.*

5.Aggrieved by the same, the petitioner filed Excise/40590/2015 before the Tribunal. The impugned communication clearly runs to contrary to record. Even though the facts are so glaring, I find it shocking that the respondent filed counter affidavit without considering the same. In the final portion of the counter affidavit, the respondents have characterized the Writ Petition as devoid of merits. I expressed my serious concern and I wanted the concerned official to be present before this Court through video conference. Shri.Arokiaraj, Additional Commissioner, GST, Trichy appeared before this Court through video conference and was gracious and fair enough to state that the counter ought to have been drafted on different lines and he expressed his regret. I am satisfied with the explanation offered by the said official. Though Shri.Arokiaraj is not the deponent of the counter affidavit, yet he had the courage to own up his responsibilities. The impugned order in the Writ Petition is set aside. The Writ Petition is allowed. No costs. The first respondent is directed to accept the Form SVLDRS filed by the petitioner on 13.11.2019 and deal with the same in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

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

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+1 CC to M/s.S.KARUNAKAR, Advocate (SR-13800[F] dated 26/03/2021

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RK(10.05.2021) 3P 4C