BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: **23.09.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.15419 of 2021

M/s.Ganga Grandeur,
Represented by Shri Gangadharan,
Managing Partner. ...Petitioner

-Vs-

The Designated Committee,
Sabka Viswas (Legacy Disputes Resolution) Scheme, 2019,
O/o. The Commissioner of C.Excise & CGST,
Madurai. ...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records C.No.II/IV/16/15/2020-SVS dated 12.05.2020 and quash the same as arbitrary, illegal and against the principles of natural justice and consequently direct the respondent to consider the case under Section 125(1)(e) of the Finance (No.2) Act, 2019 of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of "enquiry or investigation or audit", after verification of records.

For Petitioner : Mr.Sudalaimuthu
For Respondent : Mrs.S.Ragaventhre
Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records C.No.II/IV/16/15/2020-SVS dated 12.05.2020 and quash the same as arbitrary, illegal and against the principles of natural justice and consequently direct the respondent to consider the case under Section 125(1)(e) of the Finance (No.2) Act, 2019 of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of "enquiry or investigation or audit", after verification of records.

2.It is the case of the petitioner that, the petitioner is running a Mandapam, providing Mandap keeper service, by renting out a marriage hall. The service tax audit of the accounts of the petitioner was conducted by the audit party attached to the Audit Commissionerate, Coimbatore during the month of May, 2019. Consequent to the audit of accounts, the Superintendent of GST, Team A, Audit Circle, Tirunelveli had issued a letter through e-mail on 07.06.2019, where it is stated as follows:

> *"Please refer to the service tax audit of accounts of M/s.Ganga Grandeur, Nagercoil. In this regard, the issues noticed were discussed and worksheet for the service tax/interest not paid was provided to you during your visit last week.*
> *The issues are hereby mentioned below in brief as reminded.*
> *1)Non payment of interest of Rs.68,134/- on delayed payment of service tax on advances collected.*
> *2)Non payment of service tax of Rs.29,500/- on amount collected as advance from customers towards providing Mandap Keeper Services.*
> *3.Short payment of service tax of Rs.22,15,000/- on Mandap Keeper Services noticed during reconciliation of Profit & Loss A/c with ST-3 return.*
> *The service tax and interest payable on the above mentioned issues may be paid immediately and payment challans may be forwarded to this office."*

3.In response to the said letter, the petitioner replied to the Department vide letter dated 11.06.2019 that, the petitioner is ready and willing to make the payment and accordingly, he would declare the same to avail the benefit of Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019 (hereinafter referred as "Scheme" in short). However, the said offer made by the petitioner to avail the benefit under the Scheme was rejected through the impugned order dated 12.05.2020 by the respondent stating the following reasons:

> *"Kind reference is invited to your SVLDRS-01 declaration with ARN No.LD2512190000168 filed by you on 25.12.2019.*
> *On scrutiny, it is found that you have filed the declaration under the category Ïnvestigation, Enquiry or Audit"and sub-category "Audit" and quantified an amount of Rs.22,15,000/- with a reference received from "Audit" on 06.06.2019. On verification from the case records, it is found that the case has been dealt by Audit Circle, Tirunelveli and they have communicated only the*

draft audit findings to you vide email on 06.06.2019 and the final audit para has been communicated to you on 13.12.2019.
As per Section125(1)(e) of the Finance (No.2) Act, 2019 those who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has been quantified on or before the 30th day of June, 2019 are eligible to file such declaration under the scheme.
In the instance case since no such final Audit Para has been issued on or before 30.06.2019 the aforesaid declaration is not eligible for the Sabka Vishwas Scheme 2019. Hence, it is informed that the designated committee has rejected the declaration with ARN.No.LD2512190000168 date 25.12.2019."

Aggrieved over the same, the present writ petition has been filed with the aforesaid prayer.

4.Heard, Mr.Sudalaimuthu, the learned counsel appearing for the petitioner, who would submit that, the very communication dated 07.06.2019 is in the manner of demand to demanding the petitioner to pay service tax, interest on the non-payment of service tax etc., of course arising out of audit. Merely because the said Audit Para issued on 07.06.2019 had subsequently been approved by the respondent and final order has been passed on 13.12.2019, it cannot be stated that the petitioner Audit Para Communication dated 07.06.2019 cannot be relied upon, as the final communication is dated 13.12.2019, which is beyond the last date of the Scheme ie., 30.06.2019 and therefore, on that ground, the rejection made by the petitioner cannot be sustained, he contended.

5.Per contra, Mrs.S.Ragaventhre, the learned Standing Counsel appearing for the respondents, in the counter affidavit, has relied upon the following averments:

"14.I submit that findings of the audit is communicated to the assessee in the form of final Audit Para. In this case, there is no such audit para issued on or before the relevant date, i.e., 30.06.2019. Draft audit para was submitted before Monetary Committee Meeting (MCM) on 13.06.2019 and the same was approved by MCM on 18.10.2019. After approval, the final audit para was communicated to the Petitioner on 13.12.2019. Hence, the stand taken by the Designated Committee is correct."

6.She would further submit that, only the Draft Audit Para was submitted before the Monetary Committee on 13.06.2019 and the same was approved by the Monetary Committee on 18.10.2019 and thereafter, final Audit Para was communicated to the petitioner only on 13.12.2019. Therefore, it is beyond the last date fixed under the Scheme, ie., 30.06.2019. Therefore, the petitioner is not entitled to avail the benefit under the Scheme.

7.I have considered the rival submissions of the learned counsel appearing for both the parties and have perused the materials placed before this Court.

8.The very language used in the Audit Para communication dated 07.06.2019, which has already been quoted hereinabove, has made it clear that, there has been a determination of service tax payable by the petitioner with interest also and in fact, an attempt has been made with the following languages that, "service tax interest payable on the above mentioned issues may be paid immediately and payment challans may be forwarded to this office". Therefore, it has been concluded on the part of the revenue that the said amount had been quantified and infact, was directed to be paid by way of making payment. Therefore, the said communication dated 07.06.2019 can be taken as a conclusive communication for the purpose of availing the benefit under the Scheme.

9.Merely because some procedural formalities had been taken place at Monetary Committee Meeting (MCM), where they took four months to approve it and two months to communicate the same, that would not stand in the way for the petitioner to avail the Scheme. These kind of Schemes are announced by the Government only in order to facilitate the tax payers, who are in default or in arrears, to genuinely come forward to pay the tax to the exchequer and therefore these kind of technical objections raised by the respondent would be detrimental to the very purpose of the Scheme. Therefore on that ground also, the stand taken by the respondent cannot be accepted.

10. In that view of the matter, this Court feels that the impugned order for the reasons stated therein cannot be said to be tenable one and therefore, this Court has no hesitation to hold that the impugned order is liable to be quashed. Accordingly, the impugned order is quashed and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the respondent shall process the application submitted by the petitioner for availing the benefit under the Scheme and accordingly, pass necessary orders allowing the petitioner to avail the benefit of the Scheme, within 30 days from the date of receipt of copy of this order.

11. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

pnm/sm

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.

The Designated Committee,
Sabka Viswas (Legacy Disputes Resolution) Scheme, 2019,
O/o. The Commissioner of C.Excise & CGST,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-30168[F] dated 24/09/2021)

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-30411[F] dated 27/09/2021)

W.P.(MD)No.15419 of 2021
Dated:
23.09.2021

RK/PM (09/11/2021) 5P 4C