BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.09.2021
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.17748 of 2021
and
W.M.P(MD).Nos.14639 of 2021

Tvl. JAI GURU CABLES,
Represented by its proprietor,
O.R.Mathiprakash. .. Petitioner

Vs.

1.The Principal Chief Commissioner of GST and Central Excise,
No.26/1, GST Bhavan,
Uthamar Gandhi Road,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner/Member of Designated Committee,
Sabka Vishwas Scheme,
O/o. The Deputy Commissioner of GST & Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002.

3.The Deputy Commissioner/Member of Designated Committee,
Member of Designated Committee,
Sabka Vishwas Scheme,
O/o. The Deputy Commissioner of GST & Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002.

4.The Assistant Commissioner,
Madurai-I Division,
Sabka Vishwas Scheme,
O/o. The Deputy Commissioner of GST & Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002.

5.The Superintendant,
Thirumangalam Range, 3rd Floor,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002. .. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records and directing the respondents to quash the impugned order, dated 28.06.2021 passed by the Respondent No.2 and to accept the payment of Rs.1,51,797.20/- by the Respondent Nos.1 to 3 under the sabka vishwas (Legacy Dispute Resolution) Scheme, 2019 and to issue discharge certificate in form SVLDRS-4 in respect of the arrears payable by the petitioner within a specified time frame that may fixed by this Court.

For Petitioner : Ms.T.Tamil Yazhini
For Respondents : Mrs.S.Ragaventhre
Standing counsel

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records and directing the respondents to quash the impugned order, dated 28.06.2021 passed by the respondent No.2 and to accept the payment of Rs.1,51,797.20/- by the respondent Nos.1 to 3 under the(Legacy Dispute Resolution) Scheme, 2019 and to issue discharge certificate in form SVLDRS-4 in respect of the arrears payable by the petitioner within a specified time frame that may fixed by this Court.

2.With the consent of the learned counsel appearing for both side, this writ petition is disposed of at the admissions stage.

3.The petitioner is a business concern in the name and style of "Jai Guru Cables" functioning at Usilampatti, Madurai District, doing Cable TV Network telecasting business. It is registered on the file of the 4th respondent with GST Registration No.33AXJPM3135C2ZV. The petitioner was suffered with an order-in-original at the hands of the respondents/revenue, dated 26.12.2011, under which, GST Tax was levied to the extent of Rs.9,13,730/- with penalty of Rs.5,70,274/- by the adjudication authority.

4.The subsequent appeal filed by the petitioner before the Appellate Authority was rejected upholding the order in original.

5. In the meanwhile, the respondent has introduced the scheme called "Sabka Vishwas" (Legacy Dispute Resolution Scheme) 2019, in short "the scheme".

6.Under the said scheme, if the petitioner come forward to settle the entire arrears by paying only a sum of Rs.1,51,797.20/-, the entire liability of arrears payable to the extent of Rs.9,13,730/- would be discharged.

7.As per the said scheme, the last date for making the said payment of Rs.1,51,797.20/- was 30.06.2020 and on the last date, that is, on 30.06.2020, it seems that the petitioner had made the said payment by bank transaction through his account. Accordingly, the petitioner was in the impression that the petitioner paid the said amount under the scheme on or before the last date given in this regard.

8.However, the said amount paid by the petitioner has been re-credited in the account of the petitioner or the amount has been reverted back to the account of the petitioner on the same day, that is, on 30.06.2020. Probably, due to technical reasons or technical glitches, the transaction though had been attempted sincerely by the petitioner has been affected, therefore, the amount debited in the petitioner's account has been re-credited in the same account.

9.On coming to know about the said re-credit of the amount in the account of the petitioner, the petitioner, in order to show his bonafide, again made an attempt on the next date, that is, on 01.07.2020, where also the amount has been initially debited from the account by way of NEFT transaction. However, on the next date, that is, on 02.07.2020, again the amount has been re-credited, probably, this time the respondents might have closed the receipt of amount through bank transaction by 30.06.2020.

10. Even thereafter, when attempts were made by the petitioner to make payment manually, for which, some instructions had been given by the respondents on 17.03.2021 in F.No.267/41/2021-CX-8, all those attempts had not given any desired result, therefore, the petitioner had approached this Court by filing the writ petition W.P.(MD)No.1803 of 2021, where, a learned Judge of this Court passed the following order:

> *"4. The learned counsel for the petitioner contends that Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, was amended and as per Rule 7, every declarant can pay electronically the amount as indicated in Form SVLDRS-4 issued by the designated committed on or before 30.06.2020. it is not quite clear as to whether, the parent provisions have been correspondingly amended or not.*
>
> *5.I must also note that after making the attempt on 30.06.202, the petitioner appears to have gone into slumber and not even a representation is enclosed in the typed set of papers. Therefore, I am not in a position to grant any relief as sought for in the writ petition. I can only permit the petitioner to once again move the jurisdictional designated committee. It is for the jurisdictional*

designated committee to take call in the matter.
6.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed."

11. Pursuant to the said order, the request of the petitioner has been considered by the respondents and the joint Commissioner concerned on behalf of the committee stated that, having reconsidered the issue on 28.06.2021 in the Committee meeting, it was decided that since the petitioner did not make the payment on or before the last date, that is, on 30.06.2020, he would not be entitled to get the benefit under the scheme. Accordingly, they rejected the plea of the petitioner to declare the petitioner under the scheme. The said order has been passed on 28.06.2021. Aggrieved over the same, the petitioner has moved this writ petition with the aforesaid prayer.

12. Reiterating the afore-stated facts, Ms.T.Tamil Yazhini, learned counsel for the petitioner would contend that, since the petitioner was considered to be eligible for get a declaration under the scheme, for which, the form had been issued, pursuant to which, the petitioner also made the payment on 30.06.2020 being the last date for making such payment, therefore, the said genuine attempt made by the petitioner in making the payment to avail the benefit under the scheme should have been considered in proper prospective.

13. Without considering the same, since the respondents, despite the earlier order passed by this Court, dated 29.03.2021, again reiterated their stand that the petitioner would not be entitled to avail the benefit for the said reason of non-payment on or before 30.06.2020, which is a mere replica of the earlier reason given, therefore, the impugned order, dated 28.06.2021 may not stand in the legal scrutiny and hence, the learned counsel seeks indulgence of this Court against the impugned order.

14. Heard Ms.S.Ragaventhre, learned Standing counsel appearing for the respondents, who would submit that a larger amount has to be paid by way of tax due with interest or penalty. The very minimum amount has been quantified to the petitioner to avail the benefit under the scheme. Longer time had already been given upto 30.06.2020, eventhough the scheme was introduced in 2019 itself, therefore, the petitioner was having enough time for making the payment to avail the scheme, however, till last date, that is, up to 30.06.2020, admittedly, the petitioner has not come forward to make the payment, therefore, at the last minute, if any attempt is made as claimed by the petitioner, that cannot be construed as a genuine attempt made by the petitioner for making the payment. Therefore, under the provisions of the scheme, especially, under Section 127 of the scheme as well as the Circular dated 29.05.2020, the petitioner, since is not entitled to get any declaration, the designated committee, having reconsidered the issue, pursuant to the direction issued by this Court, decided to reject the same, and accordingly, the impugned order has been passed.

15. Therefore, the learned Standing counsel appearing for the respondents wants to sustain the order, and hence she seeks dismissal of the writ petition.

16.I have considered the said rival submissions made by the learned counsel appearing for both the parties and perused the material placed before this Court.

17. The very scheme itself was introduced only to give solace to the taxpayers, who are in due, to pay a particular percentage of amount of the due on or before a particular cut off date and within which time, if they come forward to make the payment indicated or declared in this regard, they would be entitled to discharge of the entire arrears of tax due.

18. Under the scheme, as rightly pointed out, the learned Standing counsel for the respondents, enough time was given to the taxpayer, who wants to avail the benefit of the scheme up to 30.06.2020. However, in the case in hand, the petitioner had made an attempt to make the payment on 30.06.2020 being the last date of making the payment.

19. In this regard, the Bank statement of the petitioner's account has been filed before this Court. Perusal of the same discloses that, on 30.06.2020, an amount of Rs.1,51,797.20/-, though had been attempted to be paid by way of NEFT transaction, the same had been reverted and re-credited in the account of the petitioner on the same day. Probably, this would have happened due to the last minute rush as many number of people, like the petitioner would have made an attempt to make payment through NEFT and other electronic mode transaction, and due to the same technical glitches, the attempt made by the petitioner has been reverted back.

20. But it is to be noted that, in order to establish the bonafide on the part of the petitioner, on the next day, that is, on 01.07.2020, the petitioner made further attempt to make the payment of Rs.1,51,797.20/-and this amount, infact has been debited from the account of the petitioner, however, on the next day, that is, on 02.06.2020, it has been again re-credited in the account of the petitioner. Therefore, these consistent efforts taken by the petitioner, ofcourse, during the last minute, cannot be disputed.

21. In this regard, it is further to be noted that, the very scheme itself is only to give solace to those, who are in default of tax arrears, and in order to make the One Time Settlement, these type of schemes are being introduced and implemented by the Central Government/Revenue to collect more tax and revenue within a particular time. Therefore, under the scheme, both the revenue as well as the assesses are benefited. But, at the same time, when the scheme is introduced, where certain procedures have been contemplated; where certain schedule has been given, that has to be strictly followed.

22. Here in the case in hand, if the attempt made by the petitioner to make the payment on 30.06.2020, being the last date of making the payment has become successful, certainly, the petitioner would have been in a position to get the declaration under the scheme, but in that attempt, the petitioner has failed, eventhough genuinely that attempt was made by the petitioner. In order to show the bonafide, the next day also, such attempt had been made to make the payment and in fact, the payment has been debited from the account, only after 24 hours, that is, on 02.07.2021, it has been re-credited in the account of the petitioner.

23. All these transactions, which are reflected in the statement of account of the petitioner show that,. the petitioner did make attempt to make the payment as per the scheme, and because of the technical glitches, if the said payment made by the petitioner has not been accepted by the account/website or whatever the E-Governance platform or web portal of the revenue, the blame cannot be put against the petitioner. Therefore, this Court feel that, the request of the petitioner can be reconsidered and hence, the present impugned order, reiterating the earlier reasons stated in this regard once again, despite the direction given by this Court in the earlier round of litigation, cannot be justifiable.

24. In view of the above, this Court to inclined to dispose of this writ petition with the following orders:

> "that the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the afore-stated factual matrix shall be borne in mind by the empowered Committee and accordingly, the pragmatic decision shall be taken by taking into account the very purpose of the scheme being introduced and implemented and accordingly, orders to that effect shall be passed."

25.With these directions this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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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Nungambakkam,
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Madurai-625 002.

+1 CC to M/s.T.TAMIYAZHINI, Advocate (SR-31095[F] dated 04/10/2021)

W.P.(MD) No.17748 of 2021
30.09.2021

TP(CO)
GC(27.12.2021) 8P 7C