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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P. [MD]No.21092 of 2021

and

W.M.P (MD) .No.17687 of 2021

M/s.S.D.Arun Associates
Rep. by Proprietor
Shri D.Arul Pandi

: Petitioner

Vs.

1. Designated Committee,
Sabka Vishwas Legacy Disputes
Resolution Scheme (SVLDRS)
Office of the Commissioner of CGST &
Central Excise,
Central Revenue Building,
Tractor Road,
NGO 'A' Colony,
Tirunelveli - 627 007.

2. Assistant Commissioner of Central
Taxes and Central Excise,
Tuticorin Division,
C-50 SIPCOT Industrial Complex,
Tuticorin.

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the issuance of the impugned form SVLDRS-3 dated 22.05.2020 and quash the same and direct the 1st respondent to issue form SVLDR-3 afresh after considering the payments already made by the petitioner and issue a Discharge Certificate in form SVLDRS-4 in accordance with SVLDR Scheme 2019 within a time frame as may be fixed by this Court.



petitioner's appeal was disposed of and the matter is now remanded to the second respondent who is in seizin of the issue.

4. Learned counsel submits that the figure of INR 19,19,911/- being the tax paid by the writ petitioner has not been disputed and this is also reflected in SVLDRS-3 form. Only with regard to actual tax relief, an error appears to have crept in. Learned counsel submits that this is more in the nature of an inadvertent technical/technological/secretarial error. Notwithstanding this SVLDRS-3 form has been erroneously issued saying there is 30% tax balance.

5. It is further say of learned counsel that if the above error is recitified, the writ petitoiner will be entitled to a discharge certificate which this Court is informed is SVLDRS-4.

6. Ms.Ragaventhre, learned Junior standing Counsel for Customs and Central Excise who accepts notice on behalf of both the respondents requests for two weeks time to get instructions and revert to this Court.

7. This Court finds that there is a prima facie case to issue notice regarding admission. However as the Revenue counsel who has accepted notice on behalf of respondents has sought time to get instructions, if the second respondent concludes the remanded proceedings in the interregnum, it can lead to an irreversible situation and therefore, the proceedings before the second respondent vide C.No.V/ST/15/63/2015-Adjn dated 12.11.2021 (De novo adjudication) shall be kept in abeyance and remain stayed till next listing.

8. List under the caption 'NOTICE REGARDING ADMISSION' in the next listing. Registry to show the name of Revenue counsel in the cause list.

9.List on 10.02.2022.'

3. In continuation of the aforementioned proceedings, learned Revenue counsel has today filed a counter-affidavit dated 08.12.2021, sworn by incumbent Deputy Commissioner of GST and Central Excise, Tirunelveli Sub-Commissionerate. Though styled and captioned counter-affidavit, it is in effect an affidavit as the respondents' stated position (in response to paragraph 10 of the writ affidavit) reads as follows:

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Para-10:

It is submitted that the submissions made by the petitioner appears to be correct. The case of the petitioner, as per Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, comes under the category of 'Litigation' and Sub Category of 'Appeal pending'. At the time of filing of application under this scheme, the petitioner's case was pending before Commissioner Appeal (A.No.66/2019 26/04/2019). Under this category, as the amount was below Rs.50, 00,000/-, the petitioner is eligible for a tax relief of 70% and to pay a tax due of 30%.

Further, it is submitted that, while deciding the application filed under the SVLDR Scheme, any tax paid in cash or tax paid by utilizing the input credit, as pre-deposit or any other deposit during appellate proceedings, inquiry, investigation or audit may be taken as the amount already paid. In this connection, a clear explanation is available in Circular No. 1071/4/2019-CX.8 dated 27th August 2019 (Para 10(c)). The questionnaire, under 'SVLDR Scheme (Q.No.46) also clarifies that tax already paid through input credit may also be adjusted at the time of determination of final amount payable under the scheme. In fine, a combined reading of the Circular and the questionnaire shows that, while coming to the aspect of tax already paid, the amount of tax paid by cash and the tax paid by way of adjustment through input tax credit has to be taken into consideration. If the said analogy is applied to the petitioner's case, the petitioner has to pay no tax.

Calculation:-

(i) Tax Payable as per Order in Original No.AC/ST/01/ 2019 dated 18/01/2019 is Rs. 29, 94, 239 (after adjusting the amount of tax Rs. 2, 24, 554/- paid)

(ii) After giving a 70% tax relief as per SVLDR Scheme, the tax payable works out to Rs.8, 98, 272/-

(iii) Tax paid by cash and tax paid by input tax credit available for adjustment = Rs. 19,04,955/- (Paid by cash Rs.4,29,735/- (Rs.6,54,289-Rs.2,24,554/-) and tax paid by input tax credit Rs.14,75,220/-).

(iv) In this case tax relief = Rs. 20, 95, 967/- ; Tax payable = Rs.8, 98, 272/-

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No. of Commissioners: 02

Attended
[Signature]
OFFICIAL SEAL
DIRECTOR, OFFICE OF THE DIRECTOR GENERAL OF CUSTOMS AND EXCISE

[Signature]
OFFICIAL SEAL
DIRECTOR, OFFICE OF THE DIRECTOR GENERAL OF CUSTOMS AND EXCISE

(v) As the petitioner has already paid Rs.19, 04,955, as per the scheme the petitioner has to pay no amount (Rs.8, 98, 272/-Rs.20,95,967/- = 0)

4. The above stated position of respondents draws the curtains i.e., drops the curtains on the captioned main writ petition as the respondents have made it clear that writ petitioner's case is correct and the petitioner need not have to pay tax which triggered



captioned matter. There is no dispute or disagreement between both sides on this.

5. Before I pronounce the operative portion of this order, I deem it appropriate to place on record appreciation of this Court for the fair approach taken by the learned Revenue counsel and the respondents.

6. Owing to the aforementioned stated position of the respondents, the articulation of which has been extracted and reproduced supra, the sequitur is captioned writ petition is allowed and the first respondent shall issue a discharge certificate as sought for in the prayer in the writ petition either manually or electronically within eight weeks from today i.e., on or before 21.01.2022. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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To

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Tuticorin Division,
C-50 SIPCOT Industrial Complex,
Tuticorin.

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-38566[F] dated
14/12/2021)

W.P.[MD]No.21092 of 2021

10.12.2021