IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.6368 of 2020 &
WMP.No.7514 of 2020

Malabar Hotels Pvt. Ltd.
Rep. by its GM Finance
1/238, Old Mahabalipuram Road
Semmancherry Sholinganallur,
Chennai-119. ...Petitioner

Vs.

Designated Committee
Rep. by the Commissioner of GST
and Central Excise,
Office of the Commissioner of GST
and Central Excise,
Chennai South Commissionerate
No.692 MHU Complex, 5th Floor,
Anna Salai, Nandanam,
Chennai-35 ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records in the proceeding in Statement in Form SVLDRS-3 Number L270220SV301748 dated 27.2.2020 issued by the respondent under Rule 6 of Sabka Vishwas (Legacy Dispute Resolution Scheme Rules 2019 read with Section 17 of the Finance (No.2) Act 2019 and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.K.Mohanamurali
Senior Panel Counsel

ORDER

The petitioner is a service provider, engaged in the business of operating hotels and was registered with the Service Tax Department under various categories. The petitioner was in receipt of show cause notice dated 17.05.2017 containing several proposals for the levy of service tax over and above the extent admitted by the petitioner. The petitioner responded and was also heard in detail.

2. Pending proceedings, the Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) come to be in force, which the petitioner took benefit of by way of SVLDRS-1 dated 03.12.2019. The petitioner has, inter alia, proceeded on the basis that the categorisation must be as '*litigation*' whereas the Authority proceeds on the basis that the application must be under the category of '*arrears*'.

3. The appropriate categorisation would determine the amount to be remitted by the petitioner, as I elaborate in the paragraphs to follow.

4. The application filed by the petitioner came to be processed and a query was raised under Forms SVLDRS-2 and 2A. After a personal hearing was conducted and the reply filed by the petitioner duly considered, Statement in Form SVLDRS-3 dated 17.02.2020 came to be issued by the

respondent.

5. Inter alia, though the category was reflected as 'litigation', the computation of the amount was, according to the petitioner, erroneous. To be noted that the computation, per the revenue is as follows:

Sl. No	Category	Issue involved	Time Period		Tax Dues		Tax Relief	Pre-deposit/any other deposit of duty	Estimated amount payable	
			From Period	To period	Name	Amount			Name	Amount
1.	Litigation		17/05/2017	17/05/2017	Accommodation in hotels, inn, guest, house, club or camp site etc. Service-00441070	4,00,25,574.00	51,69,166.00	2,71,02,660.00	Accommodation in hotels, inn, guest, house, club or camp site etc. Service-00441070	77,53,748.00
					Grand Total		51,69,166.00	2,71,02,660.00		77,53,748.00

6. In a case coming under 'litigation', that is, in regard to proceedings that are pending, the petitioner would be required to remit 50% of the dues after giving due credit to payments/deposits effected by the petitioner. Thus, the computation, as per the petitioner, must be as follows:

Tax Dues	*Rs.4,29,13,164.00*
Pre-deposit/Other Deposit	*Rs.2,17,07,207.00*
Tax dues less tax relief	*Rs.2,14,56,582.00 (50%)*
Pre-deposit/Other deposit	*Rs.2,14,56,582.00(50%)*
Tax dues under SVLDRS	*Rs.NIL*

7. If categorised as 'arrears', the computation would require the set off

of pre-deposits and other remittances from the tax dues and 60% of the balance outstanding dues. The tabulation of the same, as per the Department, is thus as follows:

Tax Dues	*Rs.4,00,25,574.00*
Pre-deposit/Other Deposit	*Rs.2,17,07,207.00*
Outstanding Dues	*Rs.1,29,22,914.00*
Tax dues less tax relief	*Rs.77,53,748.00 (60%)*
Tax Relief	*Rs.51,69,166.00 (60%)*
Tax dues under SVLDRS	*Rs.77,53,748.00*

8. It is thus necessary to decide on the categorisation of the application as a pre-condition in order that the proper methodology of computation may be applied.

9. In my considered view, the respondent, in taking the view that the application of the petitioner should be categorised as 'arrears' has lost sight of one critical and vital aspect, which is the effective date of the scheme, being 30.06.2019.

10. This is clear as per the date of scheme itself which is 30.06.2019, as well as from Section 123(b) which states that where a show cause notice under any applicable indirect tax enactment has been received by the declarant on or before 30.06.2019, then the amount of duty stated to be payable by the declarant in the said notice shall be construed to mean 'tax

dues for the purpose of scheme'.

11. Mr.Mohanamurali, learned Senior Panel Counsel does not question the position that 30.06.2019 would the effective date for applicability of the scheme.

12. A gray area that arose in this regard was in respect of an appeal that had been heard prior to 30.06.2019 but where orders have not been passed till 30.06.2019. This situation has been addressed in Circular No.1072/05/2019-CX dated 25.09.2019 wherein at para 2(7), the Board clarifies as follows:

> *Section 125(1)(a) excludes cases which are under appeal and where final hearing has taken place on or before 30th June, 2019 from the purview of the Scheme. Similar exclusion has been made applicable, mutatis mutandis, under Section 125(1)(c) to cases under adjudication. It is clarified that such cases, however, may still fall under arrears category once the appellate or adjudication order, as the case may be, is passed and has attained finality or appeal period is over, and other requirements under the Scheme are fulfilled.*

13. This is what is relied upon by the respondent in respect of the categorisation in the petitioner's case, as 'arrears'. To my mind the relevance of the above Board Circular has been clearly misapplied by the respondents. The Circular makes it clear that the clarification is only in respect of those cases that are '*under appeal and where final hearing has taken place on or*

before 30th June 2019'.

14. In the present case, the show cause notice dated 17.05.2017 has culminated in an order-in-original passed on 19.08.2019, which is beyond the effective date being 30.06.2019. Hence, order-in-original is irrelevant to decide the categorisation of the application filed by the petitioner insofar as there is a freeze of the proceedings on 30.06.2019, qua applicability of the Scheme.

15. In any event, matters stood at the stage of the order-in-original and there is no appeal that has been filed by the petitioner. Hence, reliance to Board Circular dated 25.09.2019 is of no advantage to the respondent.

16. In light of the detailed discussion as above, I am of the considered view that the application of the declarant, that is the petitioner, must fall under the category of pending proceedings/litigation and the view taken by the respondent in Form No.3 which is dated 17.02.2020, qua categorisation, needs reconsideration.

17. Let the application of the petitioner be reconsidered in light of the discussion as above, implementing the category as 'litigation' and consequential methodology of computation and an order be passed within a period of four weeks from the date of receipt of this order. The impugned

order is set aside and this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Ska

16.11.2022

Index : Yes

Speaking Order

To

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Dr.ANITA SUMANTH, J.,

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