BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.3115 of 2020
and
W.M.P(MD).Nos.2656 & 2657 of 2020

K.Gauthaman ... Petitioner

Vs.

1.The Designated Committee under the
Sabka Vishwas (Legacy Dispute Resolution)
Scheme, 2019,
Rep by Additional Commissioner,
Tiruchirapalli Commissionerate,
Trichy.

2.The Assistant Commissioner,
Member,
Designated Committee under the
Sabka Vishwas (Legacy Dispute Resolution)
Scheme, 2019,
Trichirapalli Commissionerate,
Trichy.

3.The Commissioner,
Office of the Commissioner of Central Excise
(Appeals),
No.1, William's Road, Cantonment,
Trichirappalli ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to the statement issued in SVLDRS-3 No:L170120SV300769 in Declaration No.LD2111190000416 dated 17.01.2020 on the file of the first respondent and quash the same as arbitrary and illegal and consequently direct the first respondent to consider the declaration filed by the petitioner taking into account the entire deposits made by the petitioner amounting to the sum of Rs.18,40,115/- in the Order-in-Appeal No.161/2014 dated 14.10.2014 on the file of the third respondent, including the sum of Rs.9,32,885/- which was made as pre-deposit allegedly towards interest and penalty dues as per the provisions of the Act and the Circulars issued by the department under the Scheme.

For Petitioner :Mr.S.P.Maharajan

For Respondents :Mr.R.Nandakumar,
Senior Standing Counsel
Assisted by Ms.S.Ragaventree
Junior Standing Counsel

ORDER

This Writ Petition is filed to call for the records pertaining to the statement issued in SVLDRS-3 No:L170120SV300769 in Declaration No.LD2111190000416 dated 17.01.2020, on the file of the first respondent and consequently, direct the first respondent to consider the declaration filed by the petitioner taking into account the entire deposits made by the petitioner amounting to the sum of Rs.18,40,115/- in the Order-in-Appeal No.161/2014 dated 14.10.2014 on the file of the third respondent, including the sum of Rs.9,32,885/- which was made as pre-deposit allegedly towards interest and penalty dues as per the provisions of the Act and the Circulars issued by the Department under the Scheme.

2. It is submitted that a sum of Rs.9,32,885/- represents pre-deposit, which ought to have been taken into account while disposing of the Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS). However, the same has not been taken into account. It is submitted by the learned counsel for the petitioner that it is contrary to the position taken by the Department as would be evident from the Frequently Asked Questions (FAQs), which reads as follows:

> *Q26.Shall the pre-deposit paid at any stage of appellate proceedings and deposit paid during enquiry, investigation or adult by taken into account for calculating relief under the Scheme?*
> *Ans. Yes, any amount paid as pre-deposit at any stage of*

> *appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be adjusted while issuing the statement indicating the amount payable by the declarant. However, an amount paid after issuance of show cause notice but before adjudication are not mentioned therein. Further, these amounts usually gets appropriated/adjusted at the time of adjudication. There may be situations where such deposits may have been made but could not be appropriated due to pendency of adjudication proceedings. Such deposits can also be deducted/adjusted when issuing the statement indicating the amount payable by the declarant.*

A reading of FAQs issued by Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in question No.26, would suggest that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be adjusted while issuing the statement indicating the amount payable by the declarant subject to the exception/conditions set out therein. It was thus submitted that this matter can be remanded back to decide the eligibility of pre-deposit taking into account the clarification in the form of Frequently Asking Questions issued by the Department.

3. In view of the same, the 1st Respondent herein is directed to consider the declaration and also the claim of adjustment of the pre-deposit to the extent of Rs.9,32,885/- (Rupees Nine Lakhs Thirty Two Thousand Eight Hundred and Eighty Five only), for calculating relief under the Scheme, taking into account the Frequently Asked Questions. The above exercise shall be carried out within a period of twelve weeks from the date of receipt of a copy of this order.

4. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2022

Index : Yes / No
Speaking Order : Yes / No
sbn

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MOHAMMED SHAFFIQ, J.

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