IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.1897 of 2022
and
W.M.P.No.2046 of 2022

M/s.Him Industrial Engineering Pvt. Ltd.,
Represented by its Director: Kumar Narayanan,
No.19, GST Road, Pukkathurai,
Marthuranthagam Taluk,
Chengalpattu - 603 308. ... Petitioner

Vs.

Designated Committee,
Subka Vishwas (Legacy Dispute Resolution)
Scheme 2019,
GST Bhawan, Nungambakkam,
Chennai - 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent culminating communication Form No.SVLDRS-3 dated 19.03.2020 confirming the amount payable as Rs.2,90,314/- and quashing the same and to give direction to the respondent to issue Form No. SVLDRS-4 to the petitioner.

For Petitioner : Ms. Madhunika for
Ms.S.Gayathri.

For Respondent : Mr.K.S.Ramasamy
Junior Standing Counsel and
Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and perused the impugned order seeking to demand a sum of Rs.2,90,314/- as the balance due from the petitioner under the SVLDRS, Scheme 2019.

2. The petitioner has challenged the impugned communication dated 19.03.2020 in SVLDRS-3 calling upon the petitioner to pay a sum of Rs.2,90,314/- as the amount due and payable by the petitioner. The case of the petitioner is that the petitioner opted to settle the tax dispute with the department by filing SVLDRS-1 on 23.12.2019 under the Sabka Vishwas (Legacy and Dispute Resolution) Scheme 2019.

3. The Designated Authority under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 issued SVLDRS- 2 on 20.2.2020 and

estimated an amount Rs.2,90,314/- as due and payable by the petitioner under the aforesaid Scheme.

4. The specific case of the petitioner is that while arriving at the aforesaid amount, the Designated Authority, the respondent herein has not factored the amount paid by the petitioner towards interest prior to the issuance of the aforesaid Show Cause Notice No.19/2019 dated 02.12.2019.

5. It is the specific case of the petitioner that the aforesaid amount of Rs.2,90,314/- ought to have been adjusted in terms of Section 124 of the aforesaid Scheme as there is no dispute regarding the payment of the same. In this connection, a reference is made to paragraph 8 of the Show Cause Notice No.93/ 2019 dated 02.12.2019. Paragraph 8 of the said Show Cause Notice reads as under:-

> "8.Therefore, M/s.HIM Industrial Engineering Pvt Ltd No.19 GST Road, Pukkathurai, Maduranthakam Taluk, Kancheepuram Dist., registered vide Registration No.AADCH2509PEM001 are required to show cause to the Assistant/Deputy Commissioner of Central Excise, Villupuram Division, Chennai Outer Commissionerate, Tamil Nadu within 30 days of the receipt of this notices as to why:
>
> a)An amount of Rs.16,52,721/- (Rupees Sixteen Lakh Fifty two thousand seven Hundred and twenty one

only) being the excise duty not paid on the taxable value declared in the ER1 returns as show in Annexure A (enclosed herewith), should not be recovered from them under Section 11A(4) of the Central Excise Act, 1944;

b)Interest at appropriate rate on the amount mentioned in (a) above should not be charged on them under Section 11AA of the Central Excise Act, 1944;

c)Penalty under Section 11AC of the Central Excise Act, 1944 should not be imposed on them on the amount mentioned in respect of (a) above;

d) the amount of Rs.4,37,933/- (Rupees Four Lakhs Thirty Thousand Nine Hundred and thirty three) paid vide Challan No.00046 dated 12.04.2019 by the assessee towards excise duty should not be appropriated against the excise duty payable as mentioned in (a) above;

e)the amount of Rs.2,90,314/- (Rupees Two Lakh Ninety thousand three hundred and fourteen) paid by the assessee vide challan No.00036 dated 09.04.2019, towards interest should not be appropriated against the interest payable in (b) above."

6**.** The learned counsel for the petitioner has placed reliance on the decision of this Court rendered in W.P.No.7388 of 2020 dated 03.02.2021 in the case of **M/s.Vamsee Overseas Maritime Private Limited Vs. The Commissioner of Service Tax and the Designated Authority**.

7. Defending the impugned order and the stand of the respondent, the respondent has placed reliance on the decision of Madurai Bench of this Court rendered on 14.9.2020 in W.P.(MD).No.8227 of 2020 in the case of

M/s.Solamalai Automobile Private Limited Vs. The Designated Authority.

8. The provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 in terms of Finance Act, 2019 is clear under Section 124(2). The relief calculated under Sub-Section (1) shall be subject to the condition that the 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 deducted when issuing the statement indicating the amount payable by the declarant.

9. The proviso merely states that if any amount in excess has been paid as pre-deposit before filing an application, a declaration will not be entitled to refund. There is no scope for any confusion. The provisions of the Sub-Section (2) makes it clear that any amount that is paid as pre-deposit at any stage of appellate proceedings under an indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the final settlement.

10. In this case admittedly, the tax that was proposed to be demanded from the petitioner was Rs.16,52,721/- in Show Cause Notice No.93/2019 dated 02.12.2019. Prior to issuance of Show Cause Notice No.93/2019 dated 02.12.2019, the petitioner has already deposited a sum of Rs.7,28,247/- on 12.04.2019 towards duty of Rs.4,37,933/- and Rs.2,90,314/- towards interest on 09.04.2019. Thus, the amount of Rs.7,28,247/- paid by the petitioner has to be adjusted the amount due under the Scheme from the petitioner. The concession that has been given to the petitioner under the Scheme is Rs.9,24,474/- from the amount proposed in the aforesaid Show Cause Notice No.93/2019 dated 02.12.2019 from Rs.1652721/- proposed in the Show Cause Notice dated 02.12.2019.

11. The amount that was pre-deposited by the petitioner is equivalent to the amount that was payable by the petitioner. Therefore, the amount ought to have been adjusted towards the amount payable by the petitioner under the SVLDRS Scheme, 2019.

12. I do not find any merits in the stand of the Department that the amount was not been paid under protest and was not a pre-deposit. The

provisions is clear. The provision clearly allows the amount paid as pre-deposit to be adjusted. There is no merits in contention of Department. The amount paid towards duty and the interest that was proposed to be adjusted in the Show Cause Notice No.93/2019 dated 02.12.2019 has to treated as amount pre-deposited. Therefore, it has to be allowed to adjusted.

13. In the light of the above discussion, the petitioner is entitled to succeed.

14. This writ petition is allowed. The respondents are directed to adjust the amount pre-deposited by the petitioner for a sum of Rs.7,28,247/- (Rs.4,37,433 + Rs.2,90,814/-) on the two days mentioned above 12.04.2019 and 09.04.2019 and issue Form SVLDR-4 to the petitioner under the SVLDRS Scheme, 2019 as prayed within a period of 45 days from the date of receipt of a copy of this order.

15. This writ petition stands allowed with the above observation. No costs. Consequently, connected writ miscellaneous petition is closed.

21.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No
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To

Designated Committee,
Subka Vishwas (Legacy Dispute Resolution) Scheme 2019,
GST Bhawan, Nungambakkam,
Chennai - 600 034.

C.SARAVANAN, J.

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