IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.5156 of 2020
and
W.M.P.Nos.6088 & 6090 of 2020

M/s.TPV Technology India Private Limited
(Formerly Top Victory Investments Pvt. Ltd.)
Represented by its Director,
Mr.Hemraj Sethia ... Petitioner

Vs

1.The Designated Committee,
Office of the Commissioner of GST &
Central Excise, Puducherry,
1, Goubert Avenue(Beach Road),
Puducherry 605 001.

2.The Deputy Commissioner, Tax Recovery Cell,
O/o.The Commissioner of GST & Central Excise,
Puducherry, 1, Goubert Avenue(Beach Road),
Puducherry 605 001.

3. The Commissioner of GST & Central Excise,
Gurugram East – II Division,
1st Floor, Mudit Square, Plot-24
Sector-32, Gurugram-122 001.

4. Union of India,

Rep.by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi 110 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Form SVLDRS-3 bearing Reference L170220SV301238 dated 17.02.2020 issued by the 1st Respondent, quash the same and direct the 1st respondent to consider the entire pre-deposit amount paid by the petitioner vide Challan No.10743 dated 05.04.2016 and Challan No.50259 dated 30.11.2017 while issuing Form SVLDRS-3.

For Petitioner : Mr.Sai Prasanth

For Respondents : M/s.Umesh Rao.K
Senior Standing Counsel.

<u>O R D E R</u>

The petitioner has challenged the impugned communication dated 17.02.2020 of the first respondent as the Designated Committee under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

2. The petitioner is a service tax assessee who had suffered an adverse order in the hands of the Joint Commissioner of Central Excise

dated 28.02.2017 vide Order in Original No.11/2016-S.T.dated 26.02.2016. The petitioner had therefore filed on 11.04.2016 before the Appellate Commissioner. The petitioner pre-deposited a sum of Rs.2,37,402/- being 7.5% of the disputed tax amount confirmed vide order in Original No.11/2016-S.T. Dated 26.02.2016 by the Joint Commissioner of Central Excise dated 28.02.2017 under Section 35 F of the Central Excise Act, 1944 as made applicable to appeal filed the Finance Act, 1994.

3. The petitioner's appeal was however dismissed by the Appellate Commissioner vide Order in Appeal No.117/2017 (CXA II) dated 28.02.2017.

4. Aggrieved by the same, the petitioner filed Service Tax Appeal No.ST/41111/2017-DB before the Customs Excise and Service Tax Appellate Tribunal, Chennai (CESTAT) with delay of 189 days. The petitioner pre-deposited a further sum of Rs.3,16,535/- being 10% of the disputed tax by mistake although the petitioner was required to pre-deposit only 2.5%.

5. Thus, the petitioner pre-deposited a sum of Rs.5,53,937/-

[Rs.2,37,402/- +Rs.3,16,535/-] being being 17.5% of the disputed tax. The petitioner has pre-deposited 7.5% of the disputed tax in excess.

6. The payment of 17.5% of the disputed tax as pre-deposit by the petitioner stands confirmed before CESTAT vide order dated 12.03.2018 in filing the appeal Misc.Order No.40276 of 2018 in A.No.ST/COD/41893/2017 while condoning the delay of 189 days.

7. Meanwhile, the petitioner opted to settle the dispute with the department under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (hereinafter referred to as Scheme) announced under Finance Act, 2019 with effect on 01.09.2019.

8. The petitioner filed a declaration in Form SVLDRS-1 dated 17.12.2019 in terms of Section 124(2) of the aforesaid Scheme. A sum of Rs.5,53,937/- [Rs.2,37,403 + Rs.3,16,535/-] pre-deposited by the petitioner was adjusted against the amount payable by the petitioner under the SVLDRS Scheme.

9. The petitioner thus agreed to pay only a sum of Rs.3,95,668/-

after adjusting Rs.5,53,937/- already pre-deposited. The first respondent Designated Committee has however recognized only Rs.2,37,402/- in Form SVLDRS-2 on the ground that only the aforesaid amount was paid within the jurisdiction where the petitioner was registered at Pondicherry. The balance amount of R.3,16,535/- was paid before Gurugram Commissionerate Code .

10. On behalf of the petitioner, the learned counsel for the petitioner submits that the amount that has been paid in excess of pre-deposit in Appeal ST/41111/2017-DB is not in dispute as is evident from Misc.Order No.40276/2018 dated 12.03.2018 of Customs, Excise and Service Tax Appellate Tribunal (CESTAT)

11. It is submitted that although there is a mistake in remitting the amount before the Deputy Commissioner Gurugram which amount has been already paid as pre-deposit in excess and therefore the amount has to be adjusted under the provisions of the Scheme.

12. The learned counsel for the respondents on the other hand

submits that there is no scope of adjustment the amount that was paid before the Gurugram Commissionerate in Uttar Pradesh for the tax liability at Puducherry and therefore the writ petition is liable to be dismissed.

13. It is submitted that the scheme under the SVLDRS is clear. It is submitted that the petitioner is not entitled to adjust the amounts paid elsewhere under the aforesaid scheme.

14. That apart, it is submitted that it is open to the petitioner to pay the balance amount that was determined vide impugned order dated 17.02.2020 in Form SVLDRS-3 and seek for refund of the amount paid in excess towards pre-deposit before Gurugram Commissionerate in Uttar Pradesh.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents 1 to 4.

16. There is no dispute that the amount that the amount that was

confirmed vide Order in Original No.11/2016-ST dated 26.02.2016 by the Joint Commissioner of Central Excise was Rs.31,65,352/-. There is also no dispute the petitioner had initially pre-deposited a sum of Rs.2,37,402/- being 7.5% of Rs.31,65,352/- at the time of filing the first appeal before the Appellate Commissioner.

17. The petitioner has subsequently pre-deposited a further a sum of Rs.3,16,535/- on 30.11.2017 vide challan No.50259. It is equal to 10% of the amount that was confirmed by the Joint Commissioner of Central Excise vide Order in Original No.11/2016-ST dated 26.02.2016. Thus, there is no dispute the amount that 17.5% of (disputed tax) amounting to Rs.5,53,937/- [Rs.2,37,403 + Rs.3,16,535/-] was pre-deposited by the petitioner as mentioned the above.

18. Under Section 124(2) of the SVLDRS, 2019 makes it clear 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 deducted when issuing the statement indicating the amount payable by the declarant. Thus, the petitioner is entitled for

adjustment of the entire amount of Rs.5,53,937/- [Rs.2,37,403 + Rs.3,16,535/-] that was pre-deposited at the time of filing of appeal before Customs, Excise and Service Tax Appellate Tribunal (CESTAT). Therefore, this writ petition deserves to be allowed. It is accordingly allowed.

19. This writ petition is allowed by directing the respondents to adjust the entire pre-deposit amount paid by the petitioner vide Challan No.10743 dated 05.04.2016 and Challan No.50259 dated 30.11.2017 . No costs. Consequently, connected miscellaneous petition is closed.

14.07.2023

Index : Yes/No
Internet : Yes/No
kkd

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C.SARAVANAN,J.

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