IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.7946 of 2021
and
W.M.P.No.8498 of 2021

M/s.Aro Granite Industries Limited,
Represented by its Chief Financial Officer,
Koneripalli Village, Shoolagiri (Via.),
Hosur Taluk, Krishnagiri District – 635 117.
Tamil Nadu. ... Petitioner

Vs.

1.The Secretary,
Union of India,
Ministry of Finance,
North Block, New Delhi.

2.The Commissioner of GST & Central Excise,
GST Bhavan,
No.1, Foulks Compound,
Anaimedu, Salem – 636 001.

3.The Deputy Commissioner of GST & Central Excise,
GST Bhavan,
No.1, Foulks Compound,
Anaimedu, Salem – 636 001.

4.The Superintendent of Central Excise,
Hosur II Range,
SIPCOT, Hosur – 635 126. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent in the impugned proceedings C.No.IV/16/110/2019-GST CELL dated 22.09.2020, quash the same as it rejects the declaration filed by the petitioner under Sabka Vishwas Legacy Disputes Resolution Scheme, 2019 alleging non-payment of amount determined by the Designated Committee within the due date of 30.06.2020 for the reasons beyond the control of the petitioner and to direct the second respondent to facilitate the payment of amount calculated by the Designated Committee with reference to declaration filed by the petitioner under Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019 and to accept the declaration filed by the petitioner.

For Petitioner : Mr.C.J.Jeswanthiam
for Mr.K.Vaitheeswaran

For Respondents : Mr.Rajnish Pathiyil
Senior Standing Counsel

ORDER

The petitioner, a service tax assessee, had suffered adverse orders in the hands of the original authority vide Order-in-Original Sl.No.21/2018-

ST(ADC) dated 09.11.2018. Therefore, the petitioner filed an appeal before the Appellate Commissioner, who by Order-in-Appeal No.192/2019-ST dated 19.06.2019, dismissed the petitioner's appeal, thereby, confirming the tax liability on the petitioner for a sum of Rs.38,21,961/- and penalty of Rs.56,82,724/-.

2. The petitioner opted to settle the dispute under the Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019 by filing Form SVLDRS-1 on 14.11.2019, as announced by the Finance(No.2) Act, 2019 with effect from 01.09.2019.

3. Form SVLDRS-1, was accepted by the Department. Thereafter, the petitioner was issued with Form SVLDRS-3 on 10.01.2020. As per Form SVLDRS-3 dated 10.01.2020, the petitioner was required to pay a sum of Rs.15,28,784.40/- as the amounts due. The petitioner was given a tax relief of Rs.22,93,176.60/-. The petitioner was required to pay the aforesaid amount within thirty days from the date of receipt of Form SVLDRS-3 dated 10.01.2020.

4. Thus, the petitioner was required to pay the amount as per the Scheme as it stood then by 09.02.2020. Meanwhile, on account of disruption caused due to Covid-19 and the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) (TOLA) Act, 2020, the time was extended for paying the amounts to 30.06.2020.

5. The petitioner made an attempt to pay the amount by issuing cheque in favour of RBI Account No.002000STXP0601121202003564497 9 for a sum of Rs.15,28,784/-. On 29.06.2020, the amount was debited from the petitioner's Account bearing Account No.25720200001217 with Bank of Baroda, SSI Branch, Hosur, Tamil Nadu. However, immediately after the amount was debited, the amount was re-credited. The Bank attempted to pay the amount once again on the same day, which was again re-credited back into the petitioner's account. On the following day i.e., on 30.06.2020, an attempt was made and the amount was re-credited back into the petitioner's account. Later, another attempt was also made on the same day i.e., on 30.06.2020, the amount was again re-credited back into the petitioner's account.

6. The Bank Statement that has been filed by the petitioner for Account No.25720200001217 maintained at Bank of Baroda, SSI Branch, Hosur, Tamil Nadu, indicates that the petitioner had sufficient balance on both the dates i.e., on 29.06.2020 and 30.06.2020.

7. The petitioner has also escalated the issue with the Commissioner of GST and Central Excise and Service Tax, Central Board of Indirect Taxes and Customs, Ministry of Finance-Department of Revenue, Sales Commissionerate, Salem. Despite the same, the respondents have informed the petitioner vide impugned communication dated 22.09.2020 that since the petitioner had failed to pay the amounts before 30th June 2020, the payment of the aforesaid amount cannot be accepted under the aforesaid Scheme.

8. The petitioner has also enclosed a copy of the statement given by the said Bank (Bank of Baroda) addressed to the petitioner in the form of Certificate wherein, it has been stated as follows:-

> "We hereby certify that M/s.Aro granite industries limited, having account in our Bank of Baroda, SSI Branch, Hosur bearing Current Account No - 25720200001217, issued

Cheque No.528425/23.06.2020 for Rs.15,28,784/- for effecting RTGS fund transfer in favour of RBI Account No.002000STXP06011212020035644979 IFSC CODE - RBISOCBICER on 29.06.20.

The RTGS transfer was processed by our bank on 29.06.20, the aforesaid amount of Rs.15,28,784/- got debited in the account and after 30 minutes was credited back in the same account.

Despite several attempts to effect the transfer on 29.06.20 and later on 30.06.20 and once again on 14.08.20, Rs.15,28,784/- the transfer could not be effected. The amount first got debited and after some time, got returned back to the account due to the issue with RBI Account despite the account being sufficiently funded."

9. The petitioner has also enclosed a copy of the same to the Superintendent of Central Excise, Hosur II Division, Hosur, which has been acknowledged on 15.12.2020 by the concerned Officer.

10. The learned counsel for the petitioner has placed reliance on the following decisions:-

(i) **Sikka Motors Private Limited** Vs. **Commissioner, Central Goods and Services Tax and others**, [2019] 70 GSTR 273 (Del).

(ii) **M/s.Checkpoint Apparel Labeling Solutions India Private Limited** Vs. **The Commissioner of GST & Central Excise, Chennai and others** in W.P.No.3328 of 2020 dated 14.02.2020.

(iii) **Commissioner of Customs, ICD, TKD, New Delhi** Vs. **J.S.Gujral**, 2009 (235) E.L.T. 414 (Del.)

(iv) **Jagat Malkani** Vs. **Union of India**, 2010 (253) E.L.T. 718 (Bom.)

11. The respondents in their counter affidavit have reiterated the position that the amount that was not paid in time and therefore, the petitioner's declaration in Form SVLDRS-1 and SVLDRS-3 cannot be accepted, in view of the Circular dated 27.08.2019 bearing Circular No.1071/4/2019-CX.8 with respect to Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the affidavit and the documents filed by the

petitioner, the content of which has already been narrated above and the stand of the respondents Department.

13. The respondents have enabled the payment of the amount through internet facility. Therefore, the denial of the benefits under the Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019, to the petitioner on account of technical glitches cannot be the basis, particularly, when the petitioner had sufficient bank balance.

14. It cannot be said that the petitioner was guilty of any delay in making payments. The amount that was credited has been re-credited back into the petitioner's account on account of technical problem either at the Banks or at the server maintained by the respondent Department for crediting the amount.

15. Therefore, there is no justification in the stand of the respondents Department. Consequently, this Writ Petition has to be allowed and is according allowed.

16. The petitioner shall however pay interest at 13% per annum on Rs.15,28,784/- from 29.06.2020 till the date of payment within a period of one week from the date of receipt of a copy of this order. This amount shall be tendered manually by taking a Demand Draft and depositing with the Department.

17. On such payment, the case of the petitioner shall stand settled under the provisions of the Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2021. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

21.07.2023

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

arb

To

1.The Secretary,
Union of India,
Ministry of Finance,
North Block, New Delhi.

2.The Commissioner of GST & Central Excise,
GST Bhavan,
No.1, Foulks Compound,
Anaimedu, Salem – 636 001.

3.The Deputy Commissioner of GST & Central Excise,
GST Bhavan,
No.1, Foulks Compound,
Anaimedu, Salem – 636 001.

4.The Superintendent of Central Excise,
Hosur II Range,
SIPCOT, Hosur – 635 126.

C.SARAVANAN, J.

arb

W.P.No.7946 of 2021
and
W.M.P.No.8498 of 2021

21.07.2023