BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

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THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

**W.P.(MD) No.29269 of 2022**
**and**
**W.M.P.(MD) No.23231 of 2022**

M/S.N.S.Rathinam and Sons Pvt Ltd.,
represented by its Managing Director,
R.Chandrasekaran,
S.No.2613/2A2-NH-7,
Dindigul-Karur Road,
Agaram,
Dindigul 624 709. ... Petitioner

/vs./

1.The Assistant Commissioner of GST and Central Excise,
Dindigul I Division, 68,
Nehruji Nagar,
R.M.Colony Road,
Dindigul 624 001.

2.The Commissioner of GST and Central Excise,
Designated Committee-SVLDRS 2019 scheme,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai 625 002.

3.The Superintendent of GST and Central Excise,
Vedasandur II Range,
No.5/28, N.G.O.Colony,
Dindigul 624 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Proceedings in C.No.IV/16/16/2020 dated 30.11.2022 of the 1st respondent, and quash the same consequently direct the 2nd respondent to accept Application in SVLDRS 3 No L160120SV300425 dated 16.01.2020 by extending the time limit for making balance payment under SVLDRS 2019, and accept the payment already made in respect of tax dues quantified.

For Petitioner : S.M.S.Krishnakumar
For Respondents : Mr.N.Dilip Kumar
Senior Panel Counsel

**ORDER**

The above writ petition is filed for the issue of a Writ of Certiorarified Mandamus calling for the records in C.No.IV/16/16/2020 dated 30.11.2022 of the first respondent, quashing the same and directing the second respondent to accept the application in SVLDRS 3 No L160120SV300425 dated 16.01.2020 by extending the time limit for making balance payment under SVLDRS 2019 and accepting the payment already made in respect of tax dues quantified.

2.The facts in brief are as follows:-

3.The petitioner is engaged in providing storage and warehousing services. They had been registered earlier with the service tax regime under the head of 'Storage and Warehousing Services'. With the introduction of the GST, they had migrated to the new regime and has been allotted a new registration number. On 11.10.2019, they had been served with the order of the Joint Commissioner of GST and Central Excise, Madurai, directing the petitioner to pay a sum of Rs. 69,08,453/- towards wrongly taken ineligible Cenvat credit and a sum of Rs. 16,00,666/- towards suppression of taxable value. Penalty of Rs.85,09,119/- under Section 78 of the Finance Act r/w Rule 15 of the CENVAT Credit Rules, 2004, was also imposed apart from the interest on the service tax amount demanded. The petitioner would submit that although they had an appellate remedy, they were unable to avail the same on account of the COVID-19 lock down and by reason of the loss in business on account of demonetization etc.,

4.It is the further case of the petitioner that in the meantime, the Central

Government had come forward with the scheme, called Sabkha Vishwas (Legacy Dispute Resolution) Scheme, 2019 *(herein after referred to as scheme)* providing total waiver of interest, penalty and fine and also allowing reduction in the taxable amount. Under the scheme, for demands up to Rs.50,00,000/-, the tax relief was 70% and for amounts over Rs.50,00,000/-, it was 50% on the tax pending as on 30.06.2019. The petitioner availed the above scheme. On 24.12.2019, the petitioner had filed Form-SVLDRS-1 No.LD2412190000315 for Rs.51,05,471/-. Thereafter, on 16.01.2020, the petitioner was issued with the Form SVLDRS-3 No.L160120SV300425 by the then Designated Committee. The petitioner came to know about the issue of Form SVLDRS-3 subsequently, as it was uploaded much later.

5.The petitioner would submit that during the relevant period they have to enter the web-portal of the respondents to make the payment only through an authorized banker. Be that as it may, the petitioner was unable to adhere to the schedule given under the scheme, which envisaged that the payment had to be made within 30 days. This period was extended up to 30.06.2020 in the light of the COVID-19 lock down. The petitioner would submit that on 29.09.2020, the third respondent had issued a letter directing the petitioner to pay the arrears. The petitioner by letter dated 12.10.2020 requested time to remit the arrears. The petitioner had remitted a sum of Rs.15,00,000/- on 24.06.2022 and Rs.21,27,000/- on 03.10.2022, leaving the balance amount of Rs.14,78,471/- as per the amount due under the scheme.

6.It is the further case of the petitioner that since the time had lapsed, the third respondent had issued a letter dated 15.07.2022 directing the petitioner to remit a sum of Rs.1,70,18,238/- along with interest, whereas under the scheme, they were liable to pay only a sum of Rs.14,78,471/-. The petitioner had sent a representation dated 21.11.2022 requesting the respondents to receive the balance. However, by reply dated 30.11.2022, the respondents had expressed their inability to receive the same since the time given under the scheme had long expired. Therefore, left with no other alternative, the petitioner has come forward with the present writ petition.

7.The respondents have filed their counter affidavit *interalia* contending that the scheme was for a limited period and the petitioner, who had opted for the same, had not complied with the terms of the repayment provided under the scheme. Therefore, it is their case that the petitioner have violated the provisions of Section 127(5) of the Finance Act, 2019 and were not eligible to claim the benefits under the scheme. The respondents had relied upon the judgments of various Courts in this regard.

8.When the matter had come up on 24.04.2023, this Court had directed the petitioner to pay the balance amount of Rs.14,78,471/-. In compliance of the same, they have remitted the said amount by Challan dated 25.05.2023. By this payment, the principal amount payable under the scheme has been paid by the petitioner. The very nomenclature of the scheme would imply that the scheme has been introduced for the development of all. The petitioner has set out the reasons as to why he was unable to adhere to the schedule under the scheme. Therefore, taking into account the facts of this case and considering the fact that the amount due under the scheme has been paid, the interest of justice would be sub-served directing the petitioner to pay the interest at the rate of 15% from 01.10.2020 till the dates of respective payments. It is needless to state that the amounts paid prorata would be deducted for calculating the interest. The payment of the interest would also ensure that the revenue is not prejudiced. On such payment, the discharge certificate should be issued. The said exercise shall be completed within a period of 3 weeks from the date of receipt of a copy of this order. This order has been passed only taking into account the special facts of this case.

9.In the result, the Writ Petition is disposed of on the above lines. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**05.06.2023**

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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**P.T.ASHA, J.**

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