IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15519-2020 (O&M)
Date of decision: 07.08.2023

IL&FS Engineering and Construction Company Limited and others

...Petitioners

Vs.

The Commissioner of Central Goods and Service Tax, Gurgaon-1 and others

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Jitin Singhal, Advocate,
and Mr. Sandeep Saini, Advocate,
for the petitioners.

Mr. T.K. Joshi, Senior Standing Counsel,
for the respondents.

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Ritu Bahri, J.

1. Petitioners are seeking quashing of SVLDRS-2 (Annexure P-12) and SVLDRS-3 (Annexure P-16) issued by respondent No.2 and letter dated 23.06.2017 (Annexure P-2) issued by the Assistant Commissioner, Central Excise, Gurgaon-respondent No.3, to the extent of denial of Cenvat Credit on the ground of time limit. Further prayer is being made to adjust/deduct the excise duty paid by the petitioners through utilizing Cenvat Credit at the time of investigation, while calculating the relief, in order ot make final amount payable by the petitioners under Section 124 of the Finanace Act, 2019.

2. Petitioner No.1 is a company incorporated under the provisions

of the Companies Act, 2013, having its present office at Gurugram. Petitioner No.2 is head of indirect tax in the petitioner company and petitioner No.3 is ex-CFO of the company. The petitioner-company is engaged in the production of "Ready Mix concrete" (RMC). It has seven construction sites falling under the jurisdiction of the Commissionerate of Central Excise, Gurgaon-1.

3. On 25.02.2016, a search took place at various plants of the petitioner by the officers of the Central Excise, Gurgaon-1, acting on the information that the petitioner has not paid the Central Excise Duty on the manufacture and sale of RMC from their various plants located in Gurgaon. During search, the petitioner, under protest, deposited an amount of Rs.51,15,484/- from Personal Ledger Account (PLA) i.e. in cash and Rs.4,20,69,303/- from Cenvat Credit Account (by utilizing Cenvat Credit) towards payment for central excise duty vide letter dated 03.05.2016.

4. After completition of investigation, a show cause notice dated 09.03.2017 (Annexure P-1) was issued by the Commissioner, Central Excise, Gurgaon-1 to the petitioner, asking as to why:-

> "(i) Central Excise Duty, collectively amounting to Rs.12,03,92,389/- (Rs.11,81,25,746/- (BED) + Rs.15,11,095/- (Ed. Cess) + Rs.7,55,548/- (S&HE Cess) (Twelve Crores Three Lacs Ninety Two Thousand Three Hundred and Eignty Nine only) (detailed calculation chart is enclosed as Annexure-A) evaded by them during the period Feb, 2012 to Feb, 2016, should not be demanded from them under Section 11A(4) of the Act ibid along with interest under Section 11AA at the applicable rate.
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> (ii) Penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944 should not be imposed upon them.
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> (iii) The amount of Rs.4,71,84, 787/- (Rs.51,15,484/- paid from PLA & Rs.4,20,69,303/-) already paid by M/s IECCL, towards voluntary payment of the Central Excise duty evaded by them should not be appropriated and adjusted against the aforesaid demand of Central Excise duty, subject to

verification of the Cenvat Credit records."

5. Petitioners, vide letters dated 27.03.2017, 29.05.2017 and 21.06.2017 had submitted the Cenvatable invoices of Rs.3,13,09,798/- to the Assistant Commissioner, Central Excise, Gurgaon-1 for verification. Thereafter, the Assistant Commissioner, Central Excise, Gurgaon-1, vide letter dated 23.06.2017 (Annexure P-2), allowed the Cenvat Credit of Rs.2,72,01,675/-, out of Rs.3,13,09,798/- and disallowed the remaining credit of Rs.41,08,123/- on the technical ground that Cenvat Credit taken by the petitioners is beyond one year from registration and hence, not admissible.

6. During the pendency of adjudication proceedings, the Government of India brought a Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (Annexure P-3). After this scheme, two notifications i.e. notification No. 04/2019 Central Excise-NT dated 21.08.2019 (Annexure P-4) and notification No.05/2019 Central Excise-NT dated 21.08.2019 (Annexure P-5) were issued by the Central Government. Subsequently, circulars dated 27.08.2019, 12.12.2019 (Annexures P-6, P-7 and P-8) were issued clarifying the doubts, to the taxpayers and officers of the Central Excise. Pursuant to the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (annexure P-3), petitioner No.1 made an application in Form No.SVLDRS-1 on 23.12.2019 (Annexure P-9). Petitioner Nos.2 and 3 also filed Form No. SVLDRS-1 (Annexures P-10 and P-11) under the provisions of the said Scheme in order to get complete immunity from penalty.

7. The Designated Committee issued Form No.SVLDRS-2 dated 22.01.2020 (Annexure P-12) to the petitioners, observing that the petitioner cannot deduct the duty paid through Cenvat Credit, as the said benefit was

not available to the petitioner under the aforesaid Scheme. Thereafter, the petitioner filed Form No. SVLDRS-2A dated 25.01.2020 (Annexure P-13). The Designated Committee fixed the date of personal hearing on 10.02.2020 by issuing Form No. SVLDRS-2B (Annexure P-14) to the petitioner. On the date of hearing, the petitioner gave written submissions dated 10.02.2020 (Annexure P-12). However, the Designated Committee rejected the submissions made by the petitioner by issuing Form No. SVLDRS-3 dated 21.02.2020 (Annexure P-16). Thereafter, during the prevailing COVID-19 situation, vide Taxation and other Laws (Relaxation of Certain Provisions, Ordinance, 2020 (Annexure P-17), the time limit for making payment after issuance of Form No.SVLDRS-3 under Sabka Vishwas Scheme, was extended till 30.06.2020.

8. In the present case, short prayer of the petitioner is that the benefit of Cenvat Credit should be extended to the petitioners-assessees under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (annexure P-3).

9. Upon notice, reply dated 08.02.2021 on behalf of the respondents, has been filed, wherein it has been stated that as per notification dated 14.05.2020, the period for submitting payment after issuance of SVLDRS-3, was extended on or before 30.06.2020. In case, the payment is/was not made till 30.06.2020, then the issue was to be decided on merits in adjudication proceedings. Since the last date for payment had already been elapsed and the petitioners had not contested the notification, therefore, the said notification is equally binding on the them (petitioners). The Designated Committee cannot assume adjudication powers and decide on merits of the admissibility of Cenvat Credit of the declarant. The only

task of the Committee was to ascertain, whether any deposit should qualify in the nature of pre-deposit for the Scheme. In this regard, Circular No.1071/4/2019-CX.8 dated 27.08.2019 has confirmed that as per aforesaid Scheme, the amount deposited during enquiry, investigation or audit, can be adjusted towards payment of tax. It is further stated that the deposit made through Cenvat Credit does not qualify for adjustment and has been rightly disallowed by the Committee.

10. Another ground taken by the respondents is that the Cenvat Credit has been rightly disallowed by the department in terms of 3rd proviso to Rule 4 of the Cenvat Credit Rules, 2004, as per which, Cenvat Credit cannot be taken after one year of the date of issue of the Cenvatable invoice. The respondents have referred to notification No.21/2014-CE (NT) dated 11.07.2014, whereby the following proviso has been inserted to fix time limit to avail Cenvat Credit:-

> "Provided also that the manufacturer or the provider of output service shall not take Cenvat Credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9."

11. It is submitted that this proviso was effective from 01.09.2014. Further, vide notification No.6/2015-CE(NT) dated 01.03.2015, the time limit of "six months" had been substituted by words "one year" in third proviso of Rule 4 (1) of Cenvat Credit Rules, 2004. The respondents, therefore, claimed that the Cenvat Credit amounting to Rs.41,08,123/- had been rightly denied by the department on the basis of one year limitation and urged that the petition was liable to be dismissed.

12. Learned counsel for the petitioners has referred to the judgments passed by this Court in ***M/s Hilton Hotel Management Services Pvt. Ltd. vs. Union of India and others,*** 2023 (2) TMI 947 and

Schlumberger Solutions Private Limited vs. Commissioner, Central GST and others, 2021 (12) TMI 184 and another judgment passed by the Bombay High Court in ***Quant Broking Pvt, Ltd. vs. Union of India,*** 2022 (6) TMI 479, whereby consistent view has been taken that as per Section 124 (2) of the Finance (No.2) Act, 2019, any amount paid by the assessee during enquiry/investigation or the audit has to be deducted while issuing the statement indicating the amount payable by the declarant. This amount cannot be restricted to pre-deposit made at any stage of the appellate proceedings, but also includes any deposit made during enquiry/investigation or audit. The amount deposited by the petitioner during search falls in the second category and in this backdrop, the view taken by the Designated Committee in not giving the benefit of Cenvat Credit, was rejected and the writ petition was allowed.

13. The decision given by this Court in ***M/s Hilton Hotel Management Services Pvt. Ltd.'s*** case (supra) has attained finality, as the department has not filed any appeal against the said judgment.

14. Learned counsel for the respondents has not been able to cite any judgment contrary to the aforesaid judgments, as referred by learned counsel for the petitioners. The only ground taken by the respondents in the written statment that the benefit of Cenvat Credit cannot be given for adjustment as per Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (annexure P-3) on the ground that this issue has to be decided by the adjudicating authority, is not correct and the same is rejected. As per above said judgments, this benefit cannot be denied on the ground that the period of limitation of one year has gone by, as under the benefit under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (annexure P-3), any

amount deposited during enquiry has to be adjusted. Hence, the petition filed by the present petitioners deserves to be allowed.

15. In view of the above discussion, impugned SVLDRS-2 (Annexure P-12), SVLDRS-3 (Annexure P-16) issued by respondent No.2 and letter dated 23.06.2017 (Annexure P-2) are set aside. Respondent No.2 is directed to consider all the documents/records submitted by the petitioners, including the proof of payment of Cenvat Credit and thereafter, pass a fresh order in accordance with law. Before passing of such order, opportunity of hearing has to be provided to the petitioners by giving a prior notice of seven days.

16. Allowed accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

07.08.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No