IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.07.2023	Pronounced on: 18.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8655 of 2020
and
W.M.P.Nos.10480 & 10481 of 2020

M/s. Star Cafe,
Represented by its Proprietor Shri.Murugabharti,
No.39, Bazullah Road, T.Nagar,
Chennai – 600 017. .. Petitioner

Vs.

1.The Designated Committee (SabkaVishwas),
GST Bhavan, 5th Floor, JC Chamber,
Office of the Commissioner of GST & Central Excise,
692, MHU Complex, Anna Salai, Nandanam,
Chennai – 600 035.

2.The Additional Commissioner,
O/o. The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
692, MHU Complex, Nandanam,
Chennai – 600 035. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Form SVLDRS-3 No.L280420SV300028 dated 28.04.2020 issued by the 1st respondent and quash the same and further direct the 1st respondent to accept the application filed by the petitioner in Form SVLDRS-1 dated 25.12.2019 and issue fresh Form SVLDRS-3 by revising the estimated amount payable as zero.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned communication dated 28.04.2020 issued by the Designated Authority namely, the 1st respondent herein in Form SVLDRS-3, whereby the petitioner has been asked to pay a sum of Rs.13,73,036/- under the category viz., arrears.

2.By the impugned order dated 28.4.2020 in Form SVLDRS-3, the 1st respondent, the Designated Authority has called upon the petitioner to pay a sum of Rs.13,73,036/-.

3.The petitioner had filed Form SVLDRS-1 on 25.11.2019 under the provisions of Chapter V of the Finance Act, 2019. Chapter V of the Finance Act, 2019 contain the provisions for settling dispute under various Union Indirect Tax Laws under the Scheme called as Sabka

Viswas (Legacy Dispute Resolution) Scheme, 2019. Under Chapter V of the Finance Act, 2019, the Central Government has framed Sabka Viswas (Legacy Dispute Resolution) Scheme Rules, 2019.

4.In Form SVLDRS-1 filed on 25.11.2019, the petitioner admitted that an amount of Rs.88,04,491/- as tax due towards renting of immovable property service in terms of Order in Original No. 17/2018-ADC dated 22.03.2018 in respect of which an appeal is pending before the Customs and Excise, Service Tax Appellate Tribunal (CESTAT) vide ST/41498/2019-DB.

5.In Form SVLDRS-1 filed on 25.11.2019, by the petitioner the petitioner declared that the amount payable by the petitioner was nil after adjusting a sum of Rs.16,17,194/- being the amount deposited during the course of investigation prior to issuance of a Show Cause Notice No.6/2017 dated 17.01.2017 which eventually culminated in Order in Original No 17/2018-ADC dated 22.03.2018.

6.It is the case of the petitioner that the impugned communication of the 1st respondent dated 28.04.2020 in Form SVLDRS-3, demanding

Rs.13,73,036/- from the petitioner was unjustified and contrary to mandate of the aforesaid scheme in Chapter V of the Finance Act, 2019. That apart, it is submitted that the respondents have treated the case of the petitioner under the category of "arrears of tax" from the category of litigation.

7.I have heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have perused the provisions of the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 and Sabka Viswas (Legacy Dispute Resolution) Scheme Rules, 2019. The scheme was intended to put an end to the litigation by allowing an assessees to settle the dispute under various indirect tax specified enactments in the Act.

8.In terms of Order-in-Original No.17/2018-ADC dated 22.03.2018, the 2nd respondent has confirmed the amount of Rs.88,04,491/-. Order-in-Original No.17/2018-ADC dated 22.03.2018 also affirms that the petitioner has already paid a sum of Rs.16,17,194/-. Order-in-Original No.17/2018-ADC dated 22.03.2018 also affirms that a further sum of Rs.5,67,194/- was also paid by the petitioner. The amount of Rs.5,67,194/- has been appropriated towards the penalty.

9.The petitioner had partly succeeded before the Commissioner of Central Excise (Appeals) vide Order in Appeal No.198 of 2019 (CTA-II) dated 29.05.2019, there is no quantification of tax.

10.Thus in all, the petitioner has paid a sum of Rs.21,84,388/- [Rs.16,17,194/- + Rs.5,67,194/-]. Rs.21,84,388/- [Rs.16,17,194/- + Rs.5,67,194/-] pre-deposited by the petitioner ought to have been deducted in terms of Section 124(2) of the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 for arriving at the actual amount payable by the petitioner under the aforesaid scheme.

11.Against Order-In-Appeal No.198/2019(CTA-II) dated 25.09.2019 in Appeal No.361/2018(CTA-II)(CS), a further appeal is said to be pending before the the Customs and Excise, Service Tax Appellate Tribunal (CESTAT) vide ST/41498/2019-DB filed on 29.08.2019.

12.Form ST-5 filed before the Appellate Tribunal under Section 86(1) of the Finance Act, 1994 also confirms the same. It also importantly confirms the period in dispute as 2010-2011 to 2014-2015. Whereas, in Form No.SVLDRS-2A dated 07.03.2020, it has been stated that the period of dispute as 22.03.2018 regarding the renting of immovable property.

13.Amount deducted in Form SVLDRS-1 dated 25.12.2019 corresponds to the amount that was confirmed by the 2nd respondent vide Order in Original No.17/2018-ADC dated 22.03.2018, which was partly modified by the Commissioner of Central Tax (Appeals-II) vide Order-In-Appeal No.198/2019(CTA-II) dated 25.09.2019 in Appeal No.361/2018(CTA-II)(CS).

14.It is not clear how in the impugned Form SVLDRS-3 dated 28.04.2020, that a sum of Rs.34,32,590/- has been arrived as the tax dues from the petitioner. On the same amount, the petitioner has been given a tax relief of Rs.20,59,554/- and the amount payable by the petitioner has been arrived as Rs.1,37,50,536/-.

15.Question of treating the case of the petitioner as the case falling under “arrears of tax” within the meaning of section 121(c)(i) is not correct as the petitioner had admittedly filed a statutory appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) on 29.08.2019 before the expiry of limitation against Order-in-Appeal No.198 of 2019 (CTA-II) dated 29.05.2019 passed by the Commissioner of Central Excise (Appeals) upholding the demand in Order-in-Original No.17/2018-ADC dated 22.03.2018 of the 2nd respondent.

16.The change of the category of the petitioner for the purpose of granting relief under section 124(1) of the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 read with Sabka Viswas (Legacy Dispute Resolution) Scheme Rules, 2019 in the impugned communication in Form SVLDRS-3 dated 28.4.2020 is not correct.

17.The case of the petitioner ought to have been considered from the point of view of Section 124(1)(a)(ii) of the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 read with Sabka Viswas (Legacy Dispute Resolution) Scheme Rules, 2019, since the time to file appeal against Order-In-Appeal No.198/2019(CTA-II) dated 25.09.2019 in Appeal No.361/2018(CTA-II)(CS) had not expired on 30.09.2019. The change in the category of case from "Litigation" in Form SVLDRS-1 to

"Arrears" in Form SVLDRS-3 is impermissible as admittedly appeal before Customs and Excise, Service Tax Appellate Tribunal (CESTAT) in ST/41498/2019-DB filed on 29.08.2019.

18.As per Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 read with Sabka Viswas (Legacy Dispute Resolution) Scheme Rules, 2019, if the amount of duty is more than Rs. Fifty Lakhs where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June 2019, the relief available to a declarant under the Scheme shall be calculated at fifty percent of the tax dues. Section 124(1)(a)(ii) of the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 reads as under:-

> *"124.(1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:-*
>
> *(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June 2019, and ifthe amount of duty is. -*

(i) rupees fifty lakhs or less, then, seventy per cent of the tax dues;
(ii) more than rupees fifty lakhs, then, fifty per cent of the tax dues;"

19.A reading of SVLDRS-3 indicates that the petitioner has been given 40% relief on Rs.88,04,491/- to arrive at the tax due of Rs.34,32,590/- and on the same, a further relief of 60% has been given to arrive at Rs.20,59,554/- and the amount payable by the petitioner has been estimated as Rs.13,73,036/-.

20.A calculation in Form SVLDRS-3 by the 1st respondent Designated Committee clearly shows negligence while arriving at the tax amount payable by the petitioner as Rs.13,73,036/-.

21.While arriving at the tax due, the Designated Committee has also not extended the benefit of Section 124(2) of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

22.Neither the petitioner not the 1st respondent have arrived at the correct amount for the purpose of setting the dispute under the aforesaid

Scheme. The amount payable by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 is as follows:-

Sl. No.	Description	Amount (in Rs.)
1.	Tax Dues	88,04,491/-
2.	Amount payable in terms of Section 124(1)(a)(ii) of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 being 50% of tax dues	44,02,245/-
3.	Less amount paid : Rs.21,84,388/- [Rs.16,17,194/- + Rs.5,67,194/-]	21,84,388/- [16,17,194/- + 5,67,194/-]
4.	Amount to be paid: Rs.22,17,857/- [44,02,245/- - 21,84,388/-]	22,17,857/-

23.In view of the above, the impugned communication in SVLDRS-3 dated 28.04.2020 is set aside with the direction to the respondents to issue Form SVLDRS-3 quantifying the above amount of Rs.22,17,857/- as payable by the petitioner.

24.The petitioner shall pay the aforesaid amount of **Rs.22,17,857/-** together with interest at the rate of 12% per annum from 28.05.2020 within a period of thirty (30) days from the date of receipt of a copy of this order.

25.Subject to such compliance, the declaration filed by the petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 on 25.12.2019 in Form SVLDRS-1 shall be accepted and the case of the petitioner be settled. The 1st respondent (or any other authority in its place) is directed to settled the case of the petitioner subject to the petitioner complying with the above direction.

26.Writ Petition stands disposed of with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

18.01.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.

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18.01.2024