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W.P.No.8766 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8766 of 2020

M/s.Indian Furniture Products Ltd.,
Rep. by its Manager - Finance Mr.N.Krishnan,
G-106, SIDCO Industrial Estate,
Kakkalur, Thiruvallur - 602 001.

... Petitioner

-VS-

The Designated Committee,
SVLDRS, Chennai Outer Commissionerate,
Newry Towers, Anna Nagar, Chennai - 600 040.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records of the impugned estimation in Form SVLDRS-3 No. L290220SV301607 dated 29.02.2020 issued by the respondent for an amount of Rs.7,97,858/- and quash the same and consequently direct the respondent to issue modified Form SVLDRS-3 for an amount of Rs.95,988.40/- in favour of petitioner.



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W.P.No.8766 of 2020

For Petitioner : Mr.R.Anishkumar

For Respondent : Mr.K.Mohana Murali, SPC

ORDER

The petitioner challenges an order dated 29.02.2020 in respect of an application submitted by the petitioner under the Sabka Vishwas Legacy Dispute Resolution Scheme 2019 (the Scheme). The petitioner carries on the business of manufacturing and trading in furniture. In relation thereto, the petitioner had availed of Cenvat credit in respect of input services. A show cause notice was issued on 19.11.2008 demanding a sum of Rs.29,10,640/- by way of reversal of Cenvat credit. The assessment order issued on 31.12.2009 was carried in appeal up to the CESTAT, which, by order dated 11.03.2015, remanded the matter to the adjudicating authority. Pursuant thereto, the order in original dated 27.08.2015 was issued. This order was challenged in W.P.No.19462 of 2016. As per the order



W.P.No.8766 of 2020

in original, the petitioner was held to be ineligible for Cenvat credit of Rs.4,86,628/- and the petitioner was further held liable to pay interest and nominal penalty in respect thereof. By order dated 01.08.2018, the writ petition was disposed of by permitting the petitioner to present an appeal before the appellate authority and further directing the appellate authority to consider and dispose of the appeal. Pursuant thereto, by order dated 29.10.2018, the appeal was disposed of by partly accepting the assessee's claim of Cenvat credit under three heads and remanding the matter as regards the claim of Cenvat Credit on rent and telephone services.

2. In the above facts and circumstances, the petitioner applied under the above mentioned Scheme. In the application, the petitioner indicated the category as "litigation" and the sub category as "SCN involving duty pending". The petitioner computed the concession under the Scheme by taking the amount of Rs.4,86,628/-, which was determined in order in original dated 27.08.2015, as the amount payable. After reckoning 70% as the relief thereon, the petitioner had



W.P.No.8766 of 2020

offered to pay a sum of Rs.95,988.40/-. In response thereto, by the impugned order, the respondent adopted the sum of Rs.28,26,192/- mentioned in the show cause notice dated 19.11.2008 as the amount due and worked out the 70% deduction thereon. The present writ petition challenges the said order.

3. Learned counsel for the petitioner invited my attention to the Scheme and pointed out that the amount due would be the amount payable as per the order in original and not as per the amount specified in the show cause notice. Since the appellate authority had remanded the matter in respect of the claim for Cenvat credit under one of the heads, he submitted that the matter was treated as a matter under litigation. Consequently, he submitted that clause 124 of the Scheme becomes applicable and, therefore, the petitioner is entitled to 70% deduction because the amount payable is less than Rs.50,00,000/-.

4. In support of the contention that the amounts mentioned in



W.P.No.8766 of 2020

the show cause notice cannot be taken into consideration, learned counsel for the petitioner referred to and relied upon the judgment of the Bombay High Court in *Jyoti Plastic Works Pvt Limited v. Union of India and others* in W.P.No.818 of 2020, judgment dated 05.11.2020. He also relied upon the Judgment of the Delhi High Court in *Mukesh Jain v. Union of India and others* in W.P.No.1774 of 2020, judgment dated 22.11.2022. He concluded his submissions by relying upon a clarification dated 27.08.2019, whereby the department clarified that the relief would be to the extent of 70% of the duty involved in all cases pending in adjudication or appeal.

5. In response to these contentions, Mr.K.Mohana Murali, learned SPC, referred to the brief note submitted by the respondent and pointed out that the problem arose because the petitioner mentioned that the application relates to the show cause notice. Consequently, he submits that the application under the Scheme was disposed of by reckoning the amount demanded under the show cause notice, i.e. the sum of Rs.26,28,192/-, and applying the relief



W.P.No.8766 of 2020

thereon. He also points out that the Scheme is no longer in operation and that, therefore, the petitioner should accept the impugned order or proceed with the pending proceedings on merits.

6. After the show cause notice was issued demanding a sum in excess of Rs.26,00,000/-, the matter was carried through multiple tiers of the adjudicatory process. Eventually, after remand by the CESTAT, the order in original dated 27.08.2015 was issued. By this order, the recovery was confirmed only to the extent of Rs.4,86,628/- as against the amount claimed under the show cause notice. This order was admittedly not challenged by the Tax Department. The assessee, however, challenged the order and the appellate order partly accepted the Cenvat credit claims of the petitioner. In these circumstances, while applying for relief under the Scheme, the petitioner adopted the sum specified in the order in original dated 27.08.2015 as the amount on which the relief was calculated.

7. By the appellate order, the appellate authority concluded that



W.P.No.8766 of 2020

the petitioner is entitled to Cenvat credit under three heads and, as regards the fourth head, a remand was made. In those circumstances, the petitioner was justified in classifying the matter as a matter in which litigation is pending. The petitioner also proceeded to adopt the amount specified in the order in original as the amount on which the relief is to be calculated. The petitioner cannot be faulted on this ground because this amount is higher than the amount held to be payable by the petitioner by the appellate authority.

8. Clause 124 of the Scheme, in relevant part, provides 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 if the amount of duty is,-



W.P.No.8766 of 2020

- (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;"

9. The above clause indicates clearly that the applicant under the Scheme would be entitled to waiver of 70% of the tax dues if the tax dues relate to a show cause notice or an appeal and the amount of duty is Rs.50,00,000/- or less. In this case, the amount is undoubtedly below Rs.50,00,000/-. Therefore, the petitioner has correctly computed the amount due and payable after also reckoning the sum of Rs.50,000/- which was deposited by the petitioner pursuant to the order dated 01.08.2018 in W.P.No.19462 of 2016. Since the impugned order was issued by disregarding the above material facts and the provisions of the Scheme, the impugned order is unsustainable.

10. Consequently, the impugned order dated 29.02.2020 is



W.P.No.8766 of 2020

quashed. As a corollary, the respondent is directed to issue a modified order in Form SVLDRS-3 specifying the sum payable by the petitioner as Rs.95,988.40/-. W.P.No.8766 of 2020 is allowed on the above terms. No costs.

09.01.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

The Designated Committee,
SVLDRS, Chennai Outer Commissionerate,
Newry Towers, Anna Nagar, Chennai - 600 040.

SENTHILKUMAR RAMAMOORTHY,J

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W.P.No.8766 of 2020

W.P.No.8766 of 2020

09.01.2024