IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11098 of 2022
and
W.M.P.Nos.10689 and 10691 of 2022

M/s.Heaven Engineering,
Rep by its Prop: S.Satish Kumar
No.1/233, Perumal Koil Street,
Iyyappanthangal,
Chennai – 600 056. ... Petitioner

Vs.

1.The Designated Committee
(Under Sabka Viswas (Legacy Disputes Resolution) Scheme, 2019)
Consisting of Commissioner of Central Excise & Additional Commissioner of Central Excise,
Chennai Outer Commissionerate, Anna Nagar,
Chennai – 600 040.

2.The Commissioner of Central Excise,
Chennai Outer Commissionerate,
Newry Towers,
No.2054-I: II Avenue,
Anna Nagar, Chennai – 600 040. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Show Cause Notice No.01/2020 dated 06.02.2020 issued by the 2nd respondent and to quash the same as the 1st respondent-Designated Committee had issued Discharge Certificate in Form SVLDRS – 4 dated 23.07.2020 under the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 and nothing survives for adjudication and became infructuous and also arbitrary and unsustainable in law.

For Petitioner : Mr.M.A.Mudimannan

For Respondents : Mr.Rajnish Pathiyil
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Show Cause Notice No.01/2020 dated 06.02.2020. In the Show Cause Notice, the petitioner has called upon show cause as to why:-

> *"(i)the ineligible CENVAT credit of Rs.34,19,704/- (ST Rs.33,20,102/- + EC Rs.66,401/- + SHEC Rs.33,201/-) [Rupees Thirty Four Lakhs Nineteen Thousand Seven Hundred Four Only] should not be disallowed and recovered under Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 73(1) of the Finance Act, 1994.*

(ii) Interest at the appropriate rate should not be demanded from them under Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.

(iii) a penalty equivalent to ineligible CENVAT credit availed should not be imposed under Rule 15(3) of CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

(iv) an amount of Rs. 8,62,65,822/ [Service Tax: Rs. 8,30,50,611/- + EC Rs.11,09,096/- + SHEC Rs.5,54,534/- + SB Cess. Rs.8,70,523/- + KK Cess: 6,81,057/- (Rupees Eight Crore Sixty Two Lakhs Sixty Five Thousand Eight Hundred Twenty Two Only] as detailed above, should not be demanded from them towards Service Tax payable on taxable services provided by them under proviso to Section 73(1) of the Finance Act, 1994 [as amended];

(v) Interest at the appropriate rate should not be demanded from under Section 75 of the Finance Act, 1994 [as amended), on the amount as mentioned in Sl. No.(iv) above.

(vi) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994 [as amended];

(vii) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 [as amended);

(viii) an amount of Rs.10,67,654/- [Service Tax: Rs. 10,30,841/- + EC Rs.15,688/- + SHEC Rs.7,844/- + SB Cess. Rs.7,572/- + KK Cess: 5,709/- [Rupees Ten Lakhs Sixty Seven Thousand Six Hundred Fifty Four) as detailed above, should not be demanded from them towards Service Tax payable on Reverse Charge Mechanism for services received by them under proviso to Section 73(1) of the Finance Act, 1994 [as amended).

(ix) Interest at the appropriate rate should not be demanded from them under Section 75 of the Finance Act, 1994 (as amended), on the amount as mentioned in Sl. No.(viii) above.

(x) Penalty should not be imposed on them under Section 77 of the Finance994 [as amended);

(xi) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 [as amended];
(xii) an amount of Rs. 8,00,000/- [Rupees Eight Lakhs Only] paid vide challan no 50147 dt 28.6.2018, should not be appropriated against Service Tax on the amounts mentioned in Sl. No.(iv) above;"

2. The petitioner was also required to produce all the evidence upon which they intend to rely in support of their defense in their written reply to the show cause notice and also required to state in their written explanation, whether they wish to be heard in person before the case is adjudicated. If the petitioner did not reply to the show cause notice within the stipulated period or fails appear for personal hearing when the case is posted for personal hearing, it was be presumed that the petitioner did not prefer personal hearing and the case will be decided on the merits based on the available evidence on record.

3. It appears that petitioner had attempted to settle the dispute and had filed a declaration in Form SVLDRS – 1 stating that the petitioner was in arrears of tax for a sum of Rs.64,32,402/-. The declaration filed by the petitioner in SVLDRS – 1 was also acknowledged. Later the

respondent issued Form SVLDRS – 3 dated 28.02.2020. It appears that after the receipt of the SVLDRS – 3 dated 28.02.2020, the petitioner has also paid the tax amount pursuant to which SVLDRS – 4 has been issued to the petitioner which is a final Discharge Certificate as is contemplated under Section 127 of the Finance Act No.2 Act, 2019 read with Rule 9 of the Saba Viswas (Legacy Dispute Resolution) Scheme, 2019.

4. After the Discharge Certificate was issued, the Department had issued a Notice dated 07.02.2022 bearing Reference C.No.V/15/05/2020 – Adj.Ch.Outer, wherein, a reference is made to the impugned Show Cause Notice dated 06.02.2020. Therefore, issuance of Form SVLDRS – 3 and the question of unsettling the case settled under the provisions of the Chapter V of the Finance Act 2 of 2019, the contentions that Sabka Viswas (Legacy and Dispute Resolution) Scheme, 2019 cannot be countenanced.

5. Therefore, this Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

13.12.2024

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