IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12940 of 2022
and
W.M.P.No.12425 of 2022

Alpha Helical Pumps Pvt. Ltd,
Represented by its Director
Mr.Mohammed Saheer Sirajuddein
2/131, Venkitapuram Road, Venkitapuram Post,
Chinniampalayam,
Coimbatore – 641 062. ... Petitioner

Vs.

The Assistant Commissioner of Central GST
and Central Excise,
Office of the Assistant Commissioner of
Central GST and Central Excise,
Coimbatore – IV Division,
No.1441, Elgi Building, Trichy Road,
Coimbatore – 641 018. ... Respondent

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 Order in Original No.18/2022 (CE) dated 18.02.2022, passed by the respondent, and to quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned Order-in-Original No.18/2022 (CE) dated 18.02.2022. By the impugned order, the demand proposed in Show Cause Notice SI.No.01/2021-AC(CBE-IV) dated 19.02.2021 has been confirmed. Operative portion of the impugned order reads as under:-

> "*A.I demand an amount of Rs.36,40,941/- (Rupees Thirty Six Lakhs Forty Thousand Nine Hundred and Forty one only) from M/s.Alpha Helical Pumps Pvt Ltd being the Excise duty collected from their buyers for the period from 01.07.2015 to 30.06.2017 under Section 11D(2) of the Central Excise Act, 1944.*
>
> *B.I appropriate an amount of Rs.24,73,472/- paid by them under SVLDRS on 29.06.2020 towards the Excise duty liability for the period from 01.07.2015 to 30.06.2017.*
>
> *C.I order recovery of appropriate interest from M/s.Alpha Helical, under Section 11AA of the Central Excise Act, 1944.*
>
> *D.I impose a penalty of Rs.36,40,941/- on M/s.Alpha Helical Pumps Pvt Ltd under Section 11AC of the Central Excise, 1944.*
>
> *E.I impose a Late fee Rs.1,60,000/- under Rule 12(5) of the Central Excise Rules, 2002 for not filing ER-3 returns for the above said period.*"

2. The brief facts of the case are that the petitioner is engaged in manufacture of motor pumps falling under Heading 8413 of Central Excise Tariff Act, 1985. The petitioner appears to have filed the returns till June 2015 and thereafter appears to have failed to file returns. Although the petitioner continued to manufacture pumps and clear them to their customers. The petitioner appears to have also collected excise duty from the customers, but, failed to pay the same, as the petitioner failed to file returns in ER3, as is contemplated under the provisions of Central Excise Rules, 2002.

3. The parliament enacted Sabka Vishwas (Legacy and Dispute Resolution) Scheme, 2019 vide Finance (No.2) Act, 2019 giving amnesty to certain assessee who were in default of the tax liability under the provisions of the Central Excise Act and Finance Act, 1994. The petitioner opted to settle the dispute by filing a declaration in Form SVLDRS – 1 on 31.12.2019 declaring the tax liability of Rs.36,40,941/- under the voluntary disclosure. The declaration filed on 31.12.2019 in Form SVLDRS - 1 was also accepted and Form SVLDRS – 3 was issued

to the petitioner on 08.01.2020. The petitioner had paid a sum of Rs.24,73,472/- on 29.06.2020 for the period between 01.07.2015 to 30.06.2017 which has been now appropriated vide impugned order. For the balance amount of **Rs.11,67,469/-**, the petitioner had attempted to pay the duty by debiting the CENVAT credit that would have been available if the petitioner had filed the return in time.

4. The impugned order is challenged by the petitioner primarily on the ground that invocation of Section 11(D) of the Central Excise Act, 1944 was without jurisdiction. It is submitted that at best the Department could have issued a notice either under Section 11A(1) or Section 11A(4) of the Central Excise Act, 1944. It is submitted that unless there was excess collection of tax/duty assessed or determined under Section 11D (1) and 11(D)(1A) of the Central Excise Act, 1944 question of imposing Section 11D (2) of the Central Excise Act, 1944 does not arise.

5. That apart, it is submitted that the impugned order fails to consider the petitioner's reply dated 23.04.2021 to the aforesaid Show Cause Notice dated 19.02.2021.

6. On the other hand, the learned Senior Standing Counsel for the respondent would submit that Section 11D(1) itself makes it clear that every person who is liable to pay duty under the Act or the rules made thereunder and has collected any amount in excess of the duty assessed or determined and payable under the Act or rules made thereunder from the buyer shall forthwith pay the amount so collected to the credit of the Central Government.

7. It is therefore submitted that the conditions stipulated in Section 11D(1) of the Central Excise Act, 1944 stands satisfied and therefore the machinery under Section 11D(2) of the central Excise Act, is available and therefore not fault can be attributed to the respondent in the impugned order.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and also perused the Show Cause Notice No.01/2021-AC(CBE-IV) dated 19.02.2021 and the impugned Order-in-Original No.18/2022-CE dated 18.02.2022. The petitioner should have escalated

the issue before the Appellate Commissioner in terms of Section 35 of the Central Excise Act, 1944 along with pre-deposit under Section 35F of the Central Excise, 1944.

9. However, the petitioner has chosen to approach this Court under Article 226 of the Constitution of India on the ground that there was no jurisdiction to issue of notice under Section 11D of the Central Excise Act, 1944.

10. This is a peculiar case where the petitioner has admitted to the tax liability by filing a declaration in SVLDRS – 1 on 31.12.2019. The declaration filed on 31.12.2019 in SVLDRS – 1 was also accepted by the respondent on 08.01.2020 by issuance of Form SVLDRS – 3. The petitioner opted to pay the amount in cash as the scheme does not contemplate discharge of liability from the input tax credit (CENVAT) under Rule 3 of the CENVAT Credit Rules, 2004. Since the petitioner failed to pay the differential amount of Rs.11,67,469/-, the demand proposed in the Show Cause Notice has now culminated in the impugned order.

11. Section 11D(1) makes it clear that every person who is liable to pay tax under the Act or rules made thereunder and has collected the amount in excess of the duty assessed or determined and paid on any excisable goods under the Act or the rules made thereunder from the buyer of such goods shall forthwith pay the amount so collected to the credit of the Central Government.

12. Section 11D(1) contemplates collection of duty and corresponding failure to pay the duty to the credit of the Central Government. Therefore, it cannot be said that the petitioner has not collected the tax as the petitioner has admitted to the tax liability by filing Form SVLDRS - 1 on 31.12.2019. Therefore, invocation of machinery under Section 11D(1) or 11D(1A), as the case cannot be questioned. The Show Cause Notice has rightly invoked Section 11D(2) which has now culminated in the impugned order.

13. Therefore, the challenge to the impugned order on the ground that the Show Cause Notice was without jurisdiction is liable to be

rejected. The petitioner has to pay the duty that has been self assessed by the petitioner. The petitioner has paid a part of duty liability in cash to an extent of **Rs.24,73,472/-** leaving the balance of **Rs.11,67,469/-**.

14. Therefore, the amount has been paid an appropriation cannot be questioned. The petitioner would be entitled to reduce the tax liability by way of set off in the Form of Rule 3(1) of the CENVAT Credit Rules, 2004 provided petitioner has document to establish that petitioner had indeed purchase inputs/services on payment of tax duty. This would require a determination by the respondent. The benefit of input tax credit in the Form of CENVAT Credit under Rule 3(1) of the CENVAT Credit Rules, 2004 cannot be denied in the light of the decision of the Hon'ble Supreme Court in ***Formica India Division, Pune*** Vs. ***Collector of Central Excise, Bombay*** reported in 1984 17 ELT 590.

15. As far as imposition of penalty is concerned, same can be re-visited by the respondent as to whether the petitioner is to be imposed with penalty for the failure to pay the tax in time.

16. This Writ Petition stands disposed of with a direction to the respondents to pass a fresh order within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

05.12.2024

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

The Assistant Commissioner of Central GST
and Central Excise,
Office of the Assistant Commissioner of
Central GST and Central Excise,
Coimbatore – IV Division,
No.1441, Elgi Building, Trichy Road,
Coimbatore – 641 018.

C.SARAVANAN, J.

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