IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18283 of 2021
and
W.M.P.No.19523 of 2021

Mahasakthi Bio Enercon Private Limited,
(Formerly known as Imperial Spirits and
Wine Private Limited),
Represented by its Director Mr.V.Sathish,
Registered Office at 64, Dr.Nanjappa Road,
Coimbatore – 641 018, Tamil Nadu. ... Petitioner

Vs.

1.The Designated Committee,
Coimbatore-III Division,
Under the Sabka Vishwas
(Legacy Disputes Resolution) Scheme, 2019,
Office of the GST and Central Excise,
6/7, ATD Street, Race Course Road,
Coimbatore – 641 018, Tamil Nadu.

2.The Deputy Commissioner of Central GST
and GST Excise,
Coimbatore III Division,
1441, Elgi Building, Trichy Road,
Coimbatore – 641 018. ... Respondents

<u>Prayer:</u> Writ Petition filed under Article 226 of the Constitution for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent Deputy Commissioner of Central GST and Central Excise, Coimbatore III Division in the impugned order bearing Sl.No.18/2021-ST Adj (DC) dated 22.06.2021 and quash the same and consequently directing the first respondent to manually process the petitioner application bearing Ref.No.LD 3112190006498 dated 31.12.2019 so as to enable generation of challan, payment and claim benefits under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

For Petitioner : Mr.R.Vidhya Shankar

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

<u>ORDER</u>

The writ petition is of the year 2021.

2. The petitioner is before this Court against the impugned Order-in-Original No.18/2021-ST Adj (DC) dated 22.06.2021 of the second respondent, directing the petitioner to pay a sum of Rs.38,57,329/- together with interest and penalty.

3. Operative portion of the impugned Order reads as under:-

i. I uphold invocation of extended period of time under Section 73(1) of Finance Act, 1994 to demand Service Tax in this case;

ii. I confirm the demand of Rs.38,57,329/- (Rupees Thirty Eight Lakhs Fifty Seven Thousand Three Hundred and Twenty Nine only) (ST: Rs.36,00,173/-, SBC: Rs.1,28,578/- and KKC: Rs.1,28,578/-) on the services rendered by M/s.Imperial Spirits and Wines Private Limited during the period from June 2015 to June 2017;

iii. I order recovery of appropriate interest on the amount of Service Tax indicated in sl.no. (ii) above under Section 75 of the Finance Act, 1994;

iv. I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77(2) of the Finance Act, 1994 for non-filing of periodical returns;

v. I impose an equal penalty of Rs.38,57,329/- (Rupees Thirty Eight Lakhs Fifty Seven Thousand Three Hundred and Twenty Nine only) on the Service Tax indicated in sl.no. (ii) above and as discussed in para 10.9 under Section 78(1) of the Finance Act, 1994 for the contravention of relevant provisions of law and for suppression of the relevant facts from the knowledge of the Department with intent to evade payment of Service Tax.

vi. I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) each on directors, etc., on under Section 78A of the Finance Act, 1994.

vii. I impose Late Fee of Rs.60,200/- for delayed filing of ST-3 Returns on them under Rule 7(c) of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994.

The orders passed above are in terms of the saving clause under Section 174 of the CGST Act, 2017.

4. By the impugned Order, the proposals made in the Show Cause Notice dated 02.12.2020 has been confirmed.

5. The specific case of the petitioner is that the petitioner opted to settle the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, and filed proper declaration in Form No.SVLDRS-1 as early as 31.12.2019.

6. It is submitted that in Form No.SVLDRS-1, the petitioner had declared the tax payable as Rs.15,42,931.60/-. On the other hand, in response to Form No.SVLDRS-1, the respondents by Form No.SVLDRS-2, determined the amount payable by the petitioner as Rs.38,57,329.00/-, which the petitioner also agreed to pay as was required to be paid within a period of thirty days from the

date of generation of Form No.SVLDRS-3 by the respondent Designated Committee. It is further submitted that however on 24.03.2020, lockdown was imposed as a result of which, the petitioner was unable to pay the amount in time. Immediately, the respondents have issued the Show Cause Notice dated 02.12.2020, and have confirmed the demand vide impugned Order-in-Original dated 22.06.2021. It is submitted that there are several decisions of this Court wherein, this Court has come to rescue the persons like the petitioner who were unable to pay the amount during the period in dispute due to outbreak of Covid-19 pandemic. It is further submitted that there were several technical glitches in the portal, due to which also, the amount could not be paid by the petitioner in time.

7. In this connection, the learned counsel for the petitioner has placed reliance on the following decisions of this Court:

i. **N.Sundararajan (Former Partner), M/s.Genupro Yarn Agencies** Vs. **Union of India and others** in W.P.No.14454 of 2020 dated 29.06.2021.

ii. **M/s.Subramaniya Siva Co.Operative Sugar Mills Limited** Vs. **Union of India and others** in W.P.Nos.1074 and 1077 of 2021 dated 16.06.2022.

iii. **RR Housing (India) Private Limited** Vs. **Designated Committee (SVLDRS), Coimbatore and another** in W.P.No.11601 of 2021 dated 30.10.2023, 2023 SCC Online Mad 8040.

8. It is therefore submitted that the petitioner's case may be considered considered sympathetically by quashing the impugned order with liberty to the petitioner to pay the amount determined Form No.SVLDRS-3 dated 05.03.2020.

9. On the other hand, the learned Senior Standing Counsel for the respondents would submit that amnesty under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was for a limited period and it come to an end on 30.06.2020.

10. It is submitted that though lockdown was imposed on 24.03.2020, nothing precluded the petitioner from depositing the amount and the petitioner thus, is deemed to have abandoned the option to settle the dispute under the aforesaid Scheme and therefore, the Show Cause Notice dated 02.12.2020 was

issued, which has culminated in the impugned order. It is further submitted that the petitioner has an alternate remedy and therefore, the writ petition is liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

12. The attempt of the parliament to recover the arrears of tax under the aforesaid Scheme in Finance Act No.2/2019 vide Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was partly frustrated and derailed due to outbreak of Covid-19 pandemic. Pursuant to which, lockdown was imposed with effect from 15.03.2020 which continued up to 28.02.2022.

13. The Hon'ble Supreme Court has passed several orders whereby, limitations were extended wherever deadlines had expired. In fact, the Central Government had also issued ordinance called the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 which was later replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the limitation for passing the order would

have stood extended from time to time that is up to September 2022. In the case on hand, the Show Cause Notice was issued on 02.12.2020 when the Country was still under intermittent lockdown. The demand was confirmed vide impugned Order-in-Original No.18/2021-ST Adj (DC) dated 22.06.2021 passed by the second respondent when also the Country was still under intermittent lockdown.

14. Having considered the submission made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and having considered the decisions of this Court rendered above, I am inclined to allow this writ petition by quashing the impugned order subject to the condition that the petitioner deposits a sum of Rs.38,57,329/- to the credit of the Central Government, within a period of thirty days from the date of receipt of a copy of this order together with interest at 15% from 01.07.2020 till such date. Subject to the petitioner complying with the other requirements, the impugned order shall stands quashed.

15. In case the petitioner complies with this order, the case of the petitioner shall be treated as having settled under the Sabka Vishwas (Legacy

Dispute Resolution) Scheme, 2019. In case the petitioner fails to comply with this order, it shall be deemed that this writ petition was dismissed with liberty to the respondents to proceed against the petitioner pursuant to the impugned order.

16. This Writ Petition stands allowed with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

09.08.2024

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

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C.SARAVANAN, J.

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To

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