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W.P.No.3853 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.3853 of 2022

and

W.M.P.No.3992 of 2022

M/s.Chennai Citi Centre Holdings Pvt. Ltd.,
No.10-11, Dr.Radha Krishnan Salai,
Mylapore,
Chennai – 600 004.

... Petitioner

Vs.

1. The Principal Commissioner of GST Central Excise,
Member of the Designated Committee, SVLDRS,
Chennai-North Commissionerate,
26/1, Mahatma Gandhi Road,
Chennai – 600 034.

2. The Central Board of Indirect Taxation and Customs,
Government of India,
North Block,
New Delhi – 100 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to (C.No.IV/11/2560/2019-TRC-SVS) dated 17.09.2021 passed by the First Respondent and quash the same and consequently direct the Second Respondent to clarify the issues raised by the Petitioner in their representation



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dated 23.08.2021.

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For Petitioner : Mr.G.Natarajan

For Respondents : Mr.Rajnish Pathiyil
Senior Standing Counsel

ORDER

The Petitioner is before this Court for the second time. Earlier the Petitioner had approached this Court in W.P.No.3799 of 2021 for the following relief:-

“to quash FORM SVLDRS-3 No.L040320SV300070 (Declaration ARN No.LD0401200000237) dated 04.03.2020 and to further direct the respondent to issue a Discharge Certificate under FORM SVLDRS – 4 by considering the payments made by the lessees against the petitioner's liability and as declared in FORM SVLDRS 1 vide Declaration No.ARN No.LD0401200000237.”

2. The said Writ Petition was disposed of on 11.08.2021 with the following observations:-

14. In my considered view, the order of rejection suffers from a lack of reasoning as it ought to have set out the reasons cogently for the variation in estimate arrived at between the Declarant/Petitioner and the Designated Authority. The Supreme Court, in the celebrated case of [Mohinder Singh Gill V. The Chief Election Commissioner and others](#) (1978 AIR 851) has stated that orders are not like old wine becoming better over time. Thus, an order, to be valid, must speak for itself and contain reasoning for the



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conclusions arrived at. Seen in this light, the impugned order is clearly deficient.

15. Circular No.1073/06/2019.CX in F.No.276/78/2019/CX-8.Pt.III dated 29.10.2019, issued by the Central Board of Indirect Taxes and Customs provides clarifications for several issues arising from the application of the Scheme. One of the points raised is in regard to demands arising from Service Tax on rentals on immovable properties. At paragraph 2 (v), the Board states as follows:

'2.

(v)

M/s. Retailers Association of India have represented that in many cases, department has initiated proceedings against lessors from non-payment of service tax on rent on immovable property rented by their members. Hon'ble Supreme Court has allowed the lessees to file a Civil Appeal challenging the applicability of service tax in such matters, subject to the condition that they deposit appropriate pre-deposit as well as the remaining dues, if the case is decided against them eventually. It is clarified that such persons are allowed to file a declaration under the Scheme and avail the benefits. The remaining conditions of the Scheme such as withdrawal of pending cases etc. apart from payment of dues as determined by the designated committee will still need to be complied by them.'

16. According to Mr.Natarajan, there is no clarity on the use of the phrase 'such person' and thus, a lacunae in the Circular. As explained in paragraph 5 of the order, lessees have also been permitted by the Supreme Court to challenge the demand of service tax on services of 'renting of immovable property'.

17. The Circular refers to the Supreme Court having permitted the lessees to agitate the service tax demands made upon the landlord and the question that then arises is as to whether the reference to 'such persons' in the seventh



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line of the paragraph extracted above, is to the lessee mentioned in the previous sentence or the lessor mentioned earlier. This aspect may not be very material in this case as it is the lessor/landlord who has filed the application and it is hence for it to satisfy all applicable parameters under the Scheme.

18. In view of the discussion in the previous paragraphs to the effect that the impugned order suffers from lack of reasoning, and to set right this flaw, the petitioner will appear before the respondent on Thursday, the 19th of August, 2021 to put forth its case and also to provide proof of payment of tax by the lessees. It is made clear that the respondent is fully at liberty to take a view in accordance with law as to the veracity or otherwise of the petitioner's declaration and whether credit may be taken by the petitioner, of payments effected by lessees (third parties) in regard to the declaration filed by the landlord. The Circular issued by the Board will be taken note of and discussed in coming to a conclusion in the matter. If the respondent is so inclined to accept the petitioner's contention qua adjustments of the remittances effected by the lessees, then the process of verification of the payments may follow. Let orders be passed within a period of four (4) weeks from 19.08.2021 i.e. on or before 20.09.2021.

19. This writ petition is disposed in the aforesaid terms. Connected Miscellaneous Petitions are closed. No costs."

3. Pursuant to the aforesaid order, the Impugned Order has been passed by the Designated Committee. This Writ Petition is against the Impugned Order bearing reference No.C.No.IV/11/2560/2019-TRC-SVS dated 17.09.2021 passed by the Designated Authority. The case of the Petitioner is



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that the Petitioner was heard on 19.08.2021 by Mr.M.Ravindranath who was the Principal Commissioner and Mr.B.Jayabalasundari, Additional Commissioner Member-Designated Committee – I. However, Impugned Order has been passed by Mr.M.M.Parthiban, Principal Commissioner Member-Designated Committee – I.

4. It is submitted that the Petitioner is the owner of shopping mall in Chennai and has rented out the shops in the shopping mall to various retailers. Many of the retailers have challenged the service tax liability before this Court and also the other High Courts but were unsuccessful. The Appeal is pending before the Hon'ble Supreme Court in Civil Appeal No.8390 of 2011 etc., as is evident from Order dated 14.10.2011 of the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court has allowed the Petitioner therein to proceed with the SLP subject to their depositing 50% of the arrears of the tax to the credit of the Government.

5. The learned counsel for the Petitioner would submit that the demand that was confirmed vide Order-in-Original No.14-16 dated 10.02.2017 by the Original Authority. It is submitted that 50% of the demand confirmed vide Order-in-Original No.14-15 dated 10.02.2017 has now been paid by the



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lessee and therefore the Petitioner was entitled to set off the aforesaid amount paid by the lessee under the declarations filed by the Petitioner under Chapter 6 of Finance Act No.2 of 2019 incorporating the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

6. The learned counsel for the Petitioner also drawn attention to Circular No.1073/06/2019.CX dated 29.10.2019 bearing reference No.F.No.267/78/2019/CX-8-Pt.III.

7. The learned Senior Standing Counsel for the Respondents on the other hand would submit that the Petitioner was called upon to furnish documents pursuant to Order dated 11.08.2021 in W.P.No.3799 of 2021. However, the Petitioner has failed to furnish the details and therefore, the Impugned Order has been passed.

8. That apart, it is submitted that the Petitioner has to pay the amount to buy peace under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and therefore, submits that the Writ Petition is liable to be dismissed.

9. I have considered the arguments advanced by the learned counsel for



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the Petitioner and the learned Senior Standing Counsel for the Respondents.

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10. The liability to pay service tax under the provisions of Finance Act, 1994 from 2007 for renting of immovable property was on the Petitioner. However, the lessee who have leased out properties from various persons like the petitioner have challenged the levy of service tax on renting of immovable property unsuccessfully before various High Courts and have approached the Hon'ble Supreme Court.

11. The Hon'ble Supreme Court by its Order dated 14.10.2011 in Civil Appeal No.8390 of 2011 has ordered payment of 50% of the property tax by the lessees although they are themselves not liable to pay service tax under the provisions of the Finance Act, 1994 read with Service Tax Rules, 1994. They have to bear the incidence of tax as service tax is an indirect tax.

12. It is also noticed that the Impugned Order has been passed by two officer and one of the officers was not the person who heard the Petitioner. Hence, there is a violation of Principles of Natural Justice.

13. It is noticed that the Circular issued by the Board in Circular



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No.1073/06/2019.CX dated 29.10.2019 in F.No.267/78/2019/CX-8-Pt.III has been issued in the context of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The said Circular is not free from doubt and is fraught with confusion although it states that it is clarified that such persons are liable to file declaration under the Scheme to avail the benefit. It has given an impression as if the amount deposited by the lessee can be appropriated towards the tax liability of the declarant under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

14. If the challenge to levy is answered in favour of the lessee, the amounts deposited by them pursuant to the directions of the Hon'ble Supreme Court referred to *supra* will have to be refunded back. If on the other hand the amount deposited is allowed to be appropriated even if the petitioner is able to give a break up and due certificate from the respective lessees, mechanism for refund of the amount to be appropriated under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has been left unanswered.

15. There is some element of doubt. Under these circumstances, I am inclined to quash the Impugned Order dated 17.09.2021 and remit the case



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back to the Respondent to pass a fresh orders on merits and after getting suitable clarification from the 2nd Respondent as to how the amounts will be refunded to the lessees if the payments made by them is to be allowed to be appropriated under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, in case the issue is pending before the Hon'ble Supreme Court is eventually answered in their favour.

16. The Writ Petition stands disposed of with the above observations and directions. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
jas/rgm



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C.SARAVANAN, J.

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