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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7311/2023

SCHNEIDER ELECTRIC INDIA PVT. LTD. .....Petitioner

Through: Mr. Deepak Chopra, Mr. Rohan Khare and Mr. Adwiteya Grover, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar and Mr. Rishabh Nangia, SCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **15.07.2024**

1. This writ petition has been preferred seeking the following reliefs:-

> "a) Issue a writ of certiorari, mandamus or any other appropriate writ quashing the order dated 24.03.2023 issued under section 148A(d) of the Income Tax Act, 1961 for assessment year 2020-21 by the First Respondent;
>
> b) Issue a writ of certiorari, mandamus or any other appropriate writ quashing the notice dated 24.03.2023 issued under section 148 of the Act by the First Respondent for assessment year 2020-21;
>
> c) Pass such other orders which this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case."

2. The petitioner impugns the initiation of a reassessment action under Section 148 of the Income Tax Act, 1961 ['**Act**'] and which pertains to Assessment Year ['**AY**'] 2020-21.

3. As is evident from a reading of the order passed and is referable to Section 148A(d), the respondents have proceeded on the premise that the petitioner, in the AY in question, had wrongly availed of Integrated Goods and Service Tax [‘**IGST**’] refunds. This also comes to the fore when one views the material constituting the information which was provided to the writ petitioner along with the original notice under Section 148A(b) of the Act.

4. For purposes of clarity, we deem it apposite to extract the following from the said notice:-

> “1. Whereas I have information which suggests that income chargeable to tax for the A.Y. 2019-20 has escaped assessment within the meaning of sec. 147 of the Income-tax Act, 1961. As per information the assessee company M/s Schneider Electric India Pvt. Ltd. has received illegitimate refunds of IGST during the F.Y. 2019-20 relevant to the A.Y. 2020-21. The information has been received as a result of investigation in the case of the assessee itself by the GST Department. The details of the information / enquiry conducted on which reliance is being placed, alongwith supporting documents, are enclosed with this notice.”

5. As is manifest from the above, the allegation which stood laid related to the receipt of illegitimate refunds of IGST pertaining to AY 2020-21. However, on an *ex facie* examination of the information which appears at page no. 113 of our record, the disallowable expenditure was concerned only with Financial Years [‘**FYs**’] 2017-18 and 2018-19 and thus corresponding to AYs 2018-19 and 2019-20. There was thus a complete absence of any material which could be said to have any bearing insofar as AY 2020-21 is concerned.

6. We additionally take note of the detailed reply which was submitted by the writ petitioner in response to the original notice and which is dated 10 March 2023. As is manifest from a reading of the following extracts forming part of that reply the aspect of refund was

ultimately brought to a close and concluded in favour of the writ petitioner. This becomes evident from a reading of the following paragraphs forming part of that reply: -

> "**B.7** At the outset the Assessee would like to highlight that the amount of Rs. 85. 37 Crores referred to in the notice issued under 148A(a) is incorrect. In this respect, the Company would like to bring your office's attention to the below bifurcation of IGST refund claimed by the Company during the specified period and its contention to substantiate its legality.

Table l: Bifurcation of Refund claimed ***(Amount in INR crores)***

Particulars	**Period**	**IGST paid on export**	**Re-fund received**	**Remarks**
Export against Duty Drawback (without AA)	December 2017 till July 2019	49.50	47.94	The issue raised by your office is with respect to procurements under AA issued by Director General of Foreign Trade as noted in letter dated February 25 2020, titled Incident Report no. 145/ 2019-20 by Directorate General of GST Intelligence, Bengaluru, as annexed with Notice under section 148A(b) of the Act issued for AY 2019-20. In this background, as this amount relates to exports against duty draw-back, without AA, the allegations raised by your office are not applicable.
Total (I)		49.50	47.94	
Export against AA	December 2017 till	1.21	1.11	Not relevant for captioned year

	March 2018			
	April 2018 till October 08, 2018	14.75	14.75	Not relevant for captioned year
	October 09, 2018 till March 31, 2019	11.06	10.95	Not relevant for captioned year
	April 2019 till July 2019	8.71	8.37	As on date the dispute related to refund with the GST department has already been settled. For detail refer Para B.8 to B.12 below.
Total (II)		35.75	35.18	
Total Refund claimed during December 2017 till July 2019 (I+II)		85.25	83.13	

xxxx **xxxx** **xxxx**

B.11 In view of the clarificatory amendment, the Company to avoid any further litigation decided to surrender the IGST exemption availed at the time of imports against AA License during the period April 2019 till July 2019 along with applicable interest.

B.12 By virtue of surrendering the IGST exemption on the imports made against AA License, the embargo under Rule 96(10) was not attracted and the Company's claim of IGST rebate, which was sanctioned by the GST Department for the period April 2019 till July 2019 became rightful. <u>Thereafter, the Company filed for fresh refund applications and the IGST rebate paid back in protest for this period has already been refunded to the Company</u>.

Basis the above discussion, it clearly appears that your office without considering the facts of the case has alleged that the Company has claimed an illegitimate IGST refund. For avoidance of any doubt, it is clarified that the restriction to claim refund as stated in the 148A(b) Notice does not have any relevance for the aforesaid period as the IGST refund issue has already been settled between the Company and the GST Department."

7. In view of the aforesaid, we find ourselves unable to sustain the

impugned action of reassessment.

8. The writ petition is accordingly allowed, and the impugned notice dated 24 March 2023 is hereby quashed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 15, 2024/RW