



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2025

Pronounced on: 20.08.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

WA.No.2388 of 2022 and
CMP.No.14442 of 2024 and
CMP.No.18244 of 2022 and
CMP.Nos.2733 & 4018 of 2023 and
WMP.Nos.11338, 11339 & 5149 of 2023 and
WP.No.11457 of 2023

WA.No.2388 of 2022:

S.Ravi Selvan

.. Appellant

VS

1. Central Board of Indirect Taxes & Customs
Represented by the Chairman
North Block
New Delhi – 110 001.

2. Internal Complaints Committee
Headed by Ms. Prachi Saroop, IRS
Principal Additional Director General
Directorate General of Vigilance
West Zonal Unit
New Custom House,
Annex Building, 7th Floor
Mumbai – 400 001.



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3.The Principal Chief Commissioner
Central Goods Services Tax & Central Excise
Tamil Nadu & Puducherry Zone
121, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

4.XYZ
(in accordance with para 1
of the impugned judgment)

5.The Chief Commissioner
Chennai Customs Zone
Custom House,
No.60, Rajaji Salai
Chennai – 600 001.

..Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent against order
dated 09.09.2022 made in W.P.No.17798 of 2022 on the file of this
Court.

AND

WP.No.11457 of 2023:

1.Union of India,
Represented by Deputy Secretary
To the Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Indirect Taxes and Customs,
2nd Floor, Hudco Vishala Building,
Bhikaji Cama Place,
New Delhi – 110066.



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2.Internal Complaints Committee,
Headed by Ms.Prachi Saroop IRS,
O/o Internal Complaints Committee of Chennai Customs,
Department of Revenue,
Custom House,
No.60 Rajaji Salai
Chennai – 1

3.The Chief Commissioner of Customs,
Chennai Custom Zone,
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

... Petitioner

Vs.

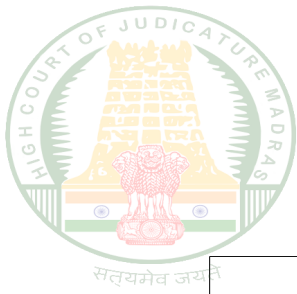
1.Mr.S.Ravi Selvan, IRS,
The Principal Commissioner of GST and
Central Excise,
(Under Orders of Suspension)
1071, TVS Colony, Anna Nagar
West Extension,
Chennai – 600 101.

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

Prayer in WP.No.11457 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records on the files of the 2nd Respondent in its impugned proceedings made in OA/310/00609/2022 dated 20.02.2023 quash the same.

Case Nos.	For	Appellants/	For Respondents
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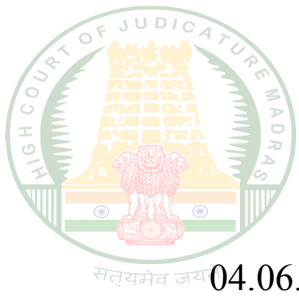
W.A.No.2388 of 2022 & W.P.No.11457 of 2023

	Petitioners	
WA.No.2388 of 2022	Mr.M.Ravi	Mr.AR.L.Sundaresan, Additional Solicitor General assisted by Mr.M.Santhanaraman, Senior Standing Counsel (For R1 to R3 & R5) Ms.R.Vaigai, Senior Counsel For Ms.Anna Mathew (For R4)
WP.No.11457 of 2023	Mr.AR.L.Sundaresan, Additional Solicitor General assisted by Mr.M.Santhanaraman, Senior Standing Counsel	Mr.M.Ravi (for R1) R2 – Tribunal

COMMON JUDGMENT
(Delivered by Dr.ANITA SUMANTH..J)

Part A : WA.No.2388 of 2022

W.P.No.17798 of 2022 had been filed by the unsuccessful writ petitioner before us, seeking a declaration that all action and proceedings on the file of the Central Board of Indirect Taxes and Customs (CBIC) and the Chief Commissioner, Chennai, Customs Zone, pursuant to a complaint filed on 24.05.2022 by XYZ/R4 ('complaint'/'sexual harassment complaint') and to investigate which, an Internal Complaints Committee (ICC) had been constituted and a notice issued by the ICC on



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04.06.2022, were illegal and ultra vires.

2. The Writ Petition had been dismissed on 09.09.2022 as not maintainable. The learned Judge has, in the order impugned in this Writ Appeal, opined that there are disputed questions of fact in regard to various contentions raised by the appellant and by XYZ, including whether the lodging of the complaint is within the time stipulated under Section 9 of the Prevention of Sexual Harassment of Women at Workplace (Protection, Prohibition and Redressal) Act, 2013 (in short 'Act'/'POSH Act') and that in any event proceedings were very nascent.

3. The appellant had only been issued a notice calling for his explanation and had replied to the same. Not even an inquiry report had been given, learned Judge states at paragraph 48 of his order and hence the Writ Petition, apart from being non-maintainable was also pre-mature. It is as against that order that the present Writ Appeal has been filed.

4. Detailed submissions of Mr.M.Ravi, learned counsel for the appellant, Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Mr.M.Santhanaraman, learned Senior Standing Counsel for R1 to R3 and R5 and Ms.R.Vaigai, learned Senior Counsel for Ms.Anna Mathew, learned counsel for XYZ/R4 have been heard.

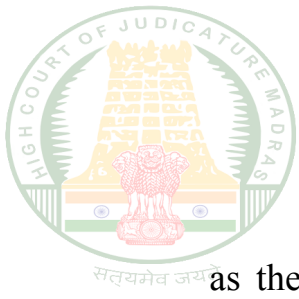


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5. Even at the commencement of the hearing, R4 has gone out of the way to reiterate that there is no error in the order of the learned Judge in dismissing the Writ Petition on the ground of maintainability. Their detailed submissions made thereafter on the various aspects that arise for resolution, are without prejudice to the maintainability of the writ petition/appeal, and in the interests of obtaining a decision on certain vital aspects of the litigation and should not be taken to be acquiescence on the question of maintainability.

6. The submission is well taken. The mere fact that the respondents have argued the matter on merits does not whittle down the position that the Writ Petition was, in fact, not maintainable with which conclusion of the learned Judge we agree fully. The purpose of this order is to set at rest certain legal issues that have been raised which we address hereinafter in seriatim.

7. The attempt of the appellant has been to quash the complaint even at the preliminary stage of inquiry by the ICC. To this effect, great pains have been taken by the learned counsel appearing on his behalf to take us through the relevant enactments and Rules, illustrate the lack of any truth in the sexual harassment complaint, the aspect of bias, as well



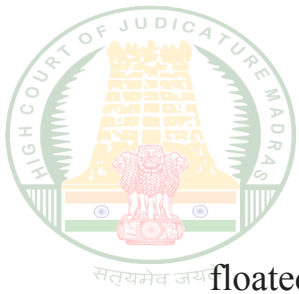
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as the alleged lapses by R4 in the processing of the Declaration of an assessee, one M/s.Heaven Engineering, under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short 'SVLDRS Scheme') for settlement of arrears of Service tax.

8. Per contra, equally strenuous if not greater efforts have been taken by learned Senior Counsel appearing for the learned counsel for the official Respondents as well as R4, who reiterate the contents of the complaint, and takes us minutely through various provisions of the POSH Act, relevant Regulations, the Service Rules, the SVLDRS Scheme and the technological processes involved in the processing of Declarations under that Scheme, to illustrate that no fault can be attributed to XYZ in the matter.

9. XYZ had filed the complaint on 24.05.2022 before R1 alleging sexual harassment at work place by the appellant. That complaint, the appellant points out, has been given on the heels of a memorandum issued to R4/XYZ by the Additional Commissioner (P&V) on 28.02.2022 calling for an explanation for certain lapses in processing the Declaration filed by one Sundaram Sathishkumar, Proprietor of Heaven Engineering, Chennai (in short 'assessee'), under the SVLDRS scheme that had been



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floated by the Customs Department for settlement of tax arrears.

10. Hence it is the case of the appellant that the sexual harassment complaint is nothing but a counter blast by R4 to the investigation that has been launched against her, and has absolutely no substance otherwise.

11. XYZ for her part, has made allegations under the complaint to the effect that the harassment had commenced in 2020 when she had been posted as Assistant Commissioner, Chennai Outer GST Commissionerate and the appellant was holding the position of Commissioner (Appeals), Chennai Customs.

12. XYZ alleges that thereafter, the appellant started calling XYZ on her mobile phone and sending whatsapp messages. His calls were at odd hours and the content was inappropriate. Since he was a superior authority, she was uncomfortable about ignoring calls which she was inclined to doing on account of the discomfort that she felt with his constant harassment and pressure. She specifically alleges that around 20th of April, 2020, during covid lockdown, he had asked her to accompany him to a bar. She declined and blocked his number, despite which he had continued pestering her.

13. In December, 2021, XYZ was posted at Import



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Commissionerate and the appellant was holding charge of the post of Commissioner (Appeals). Both Commissionerates were functioning in the same building. On one occasion, when they had bumped into each other in the building, he had asked her to come into his room and she had no choice but to comply along with a colleague who was with her. When they left, the discomfort felt by XYZ and the intimidating behavior of the appellant had been noticed by her colleague.

14. She alleges that the appellant had used every opportunity to speak disparagingly about her to all colleagues and did not lose any opportunity to make sarcastic comments about her and in her presence. According to XYZ, the memo issued to her in February, 2022 calling for an explanation, was at his instance. XYZ attacked the memo, stating that it had been issued directly by the Additional Commissioner, GST Commissionerate without any approval by, or intimation to the Chief Commissioner or Customs Commissioner, which is the proper procedure to be followed.

15. According to her, this was done only at the instance of the appellant, who bypassed all the proper procedures merely to intimidate her. It had been issued one and a half years after she moved out of the



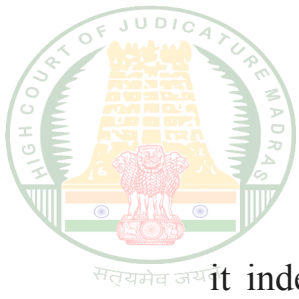
Commissionerate.

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16. The appellant would argue that the sexual harassment complaint contains a detailed explanation in regard to the specifics under the SVLDRS Scheme, which strikes a discordant note as far as the allegations of sexual harassment, are concerned. XYZ has, in complaint dated 24.05.2022 belaboured on the provisions of the SVLDRS Scheme under the SVLDRS Act, 2019 and outlined the procedures followed to process the application of the assessee under the SVLDRS Scheme.

17. According to her, her actions were correct and any inquiry would vindicate those actions in full. She reiterates that it is only on account of her rebuffing the appellant, that the memo was issued to her in the first place. On the other hand, the appellant would submit that the complaint has itself been filed only to divert attention from the memo issue to R4 for her lapses in duty.

18. R4 has put forth three requests in complaint dated 24.05.2022. Firstly, that immediate action be taken under her complaint dated 24.05.2022 for sexual harassment by the appellant, secondly, remove the file relating to the memorandum issued to her in regard to the SVLDRS application and assign the same to a senior officer who may enquire into



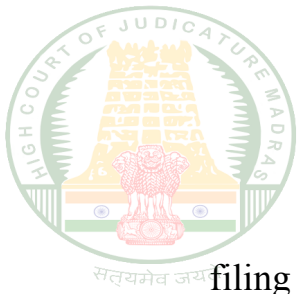
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it independently and without bias, and thirdly to look into the reasons why the appellant had not adjudicated the show cause notice issued to the assessee in February, 2020, despite the SVLDRS being clear that action ought to be taken for false declarations.

19. A copy of the complaint has been forwarded to the Member (Administration and Vigilance), CBIC, the Principal Chief Commissioner, Tamil Nadu and Puducherry GST Zone, Chief Commissioner, Chennai Customs Zone (R5) and Principal Commissioner, Chennai – 1 Commissionerate (Airport).

20. The first issue raised by the Appellant relates to the question of limitation. The complaint has been filed on 24.05.2022 in relation to alleged events that had transpired in 2020 and 2021. Section 9 of the POSH Act prescribes a limitation of 3 months within which a complaint of sexual harassment should be made. Since the complaint is filed beyond that period, the same should not be entertained, it is argued.

21. Per contra, R4 would urge that there has been no delay in the making of the complaint and, in fact, the harassment continued as the very issuance of the charge memo was an act of harassment by the Appellant and a result of her spurning his advances. The limitation for



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filing of a complaint is set out under Section 9(1) of the POSH Act, which says that any aggrieved person may make a complaint in writing of sexual harassment at the work place within three months from the date of incident and in case of a series of incidents, within three months from the date of last incident.

22. The appellant has submitted that the complaint in the present case has been made far beyond the statutory limitation and hence is barred by the provisions of the POSH Act. Several decisions are cited, and our attention is specifically drawn to the decisions of this Court in *Dr.P.Govindaraju*¹ and of the Punjab and Haryana High Court in *Vivek Tyagi and Ors*² where the Courts have held that the provision relating to limitation is mandatory.

23. In the present case, the complaint refers to a series of allegedly offensive incidents when, according to R4, the harassment had taken place, adumbrated as follows:

- a) The first meeting of R4 with the appellant was in 2020. Thereafter, she alleges that he pestered her through calls and whats-

¹ Foot Note Infra (8)

²Foot Note Infra (19)



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app messages at uncivil hours speaking about unnecessary things.

- b) In the course of those conversations, he asked her personal questions which made her feel unsafe. Though she avoided his calls, the mental pressure of ignoring calls of a senior officer weighed heavily on her.
- c) He also spoke inappropriately about the physical needs of human beings, knowing that she was living alone at that time. His statements relating to the need of humans for physical closeness seemed very much like advances made to her.
- d) In April, 2020, during the Covid lockdown he asked her to accompany him to a Bar in Crown Plaza adding that he knew the owner of the hotel and hence it would be specially opened just for the two of them.
- e) Since she had blocked his mobile number after this conversation where she had not accepted his invitation, the next day, he called her on the landline.
- f) Then, in December, 2021, she ran into him outside the lift and along with her batchmate, who was with her, she was asked to



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come to his room where he made series of sarcastic comments.

According to her, even her colleague noted both her discomfiture and his sarcastic attitude.

- g) The appellant was stated to have been speaking to various persons about R4 disparagingly, also stating that he wanted to find some material that he could use against her in a professional capacity.
- h) Her complaint was filed on 24.05.2022. Though the last personal interaction with R4 is mentioned as December, 2021, she does state that there were occasions even thereafter when his harassment of her continued by way of speaking insultingly about her to colleagues about which she specifically mentions in paragraphs 8 and 9 of her complaint.
- i) In February, 2022, a memo had been issued to her for alleged lapses in processing a Declaration made by a third party in regard to the SVLDRS Scheme.

24. Thus, though the last personal interaction may have been six months prior to the date of her complaint, the narration in her complaint in regard to alleged instances of harassment even thereafter, allege that



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the harassment continued behind her back with disparaging comments to colleagues about her both personally and professionally.

25. The tenor of the allegations summarised above, prima facie, indicate that the allegations commence from December 2020 and continued even thereafter till february 2022. In light of the aforesaid, we are of the considered view that the defence of limitation is not liable to be accepted and the complaint must be inquired on the merits thereof. To be noted, that both in the cases of *Dr.P.Govindaraju* and *Vivek Tyaji*, the last of the incidents had been identified by date, whereas in the present case, R4 has alleged that the incidents were periodically recurring and continuing. This issue is decided accordingly.

26. The second issue raised by the Appellant relates to the selection of officers to constitute the ICC. Any one of the officers to whom the complaint had been marked could well have referred the matter for further action as per the Act and Rules. In this case, R3, the Principal Commissioner, had constituted an ICC with the following five persons under Standing Order No.3/2022 dated 27.05.2022. The ICC was to be headed by Ms.Prachi Saroop, Member, Principal Additional Director General, Directorate General of Vigilance, West Zonal Unit, Mumbai.



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Sl.No.	Name and Designation	ICC Role
1.	Ms. Manasa Gangotri Kata, Additional Commissioner	Member
2.	Ms.D.Ramyaa, Deputy Commissioner	Member
3.	Ms.S.Vadiukarasi, Deputy Commissioner	Member
4.	Ms.Anandalakshmi Ganeshram, Superintendent	Member
5.	Ms.M.Sheela, Advocate	Member

27. A copy of the complaint and intimation of the Constitution of the Committee was issued to the appellant on 04.06.2022, upon receipt of which, on 07.06.2022, he denies all the allegations. He also objects to the inclusion of the member at serial number 1 as part of the Committee, since both that member and Mr.Ganta Ravindranath, Principal Commissioner were part of the Designated Committee, involved in the processing of SVLDRS applications in that Commissionerate including the application of the assessee, Heaven Engineering.

28. The appellant had also requested that any other member recommended by Mr.Ganta Ravindranath may be excluded from the purview of the ICC. That being an interim reply, the appellant has sought time to file a detailed reply. Ultimately, a detailed reply had been filed by the appellant, changes had been made to the constitution of the Committee by excluding the member at serial number 1 and proceedings



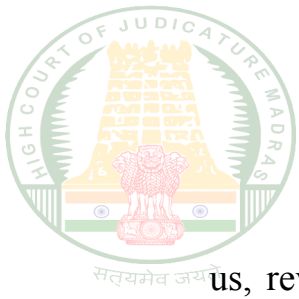
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had been commenced by the ICC.

29. The constitution of the ICC does not inspire confidence. Learned Additional Solicitor General accedes to the position that Ms. Manasa Gangotri Kata ought not to have featured in the ICC as a member. That apart, Ms.M.Sheela, who was appointed as an external member of the ICC was, admittedly, and as confirmed by Union, a panel counsel at the time of her inclusion in the ICC. Her inclusion in the panel is also therefore inappropriate.

30. That apart, there is a larger reason why we believe that the constitution of the ICC is tainted. In the course of the hearing, we were given to understand that the inquiry of the ICC had been completed even prior to the disposal of the Writ Petition by the learned single Judge.

31. The appellant had challenged the notice of hearing dated 04.06.2022 issued by the ICC. Between the period when the Writ Petition was instituted on 08.07.2022 and ultimately dismissed on 09.09.2022, it transpires that an inquiry had been completed by the ICC and a report also issued by them. The report had been issued prior to the date of disposal of the Writ Petition, which fact was not brought to the notice of the Writ Court. A copy of the Report dated 30.07.2022 produced before



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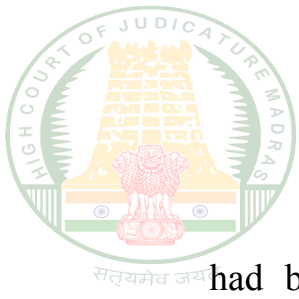
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us, reveals that R4/complainant and witnesses have been examined and conclusions arrived at, which fact had been totally suppressed thus far by the official respondents.

32. The Writ Court, has been led to believe that the complaint was still pending investigation. Ms.Manasa Gangotri Kata and Ms.M.Sheela are part of the ICC that disposes the matter in such haste. The insistence on the same constitution of the ICC, despite requests of the appellant for re-constitution citing certain compelling reasons, is, in our considered view, inappropriate.

33. The procedure followed only serves to establish the unseemly haste with which the proceedings had been conducted. We are given to understand that in one of the hearings before the writ Court, the official Respondents had undertaken not to proceed further in the matter despite which the ICC has gone ahead to conclude the hearing and issue a Report. This fact was not disclosed even when the matter had come up before the Division Bench and stay granted.

34. We seriously deprecate the conduct of the official Respondents in the Appeal as being contumacious, to say the least. It was incumbent upon the Officials Respondents to have reported the fact that the inquiry



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had been completed and Report dated 30.07.2022 issued, in a way frustrating the very filing of the writ petition and now, the Appeal.

35. At the least, it has served to demonstrate to us that the Official Respondents cannot be expected to follow proper procedure unless compelled to do so, for the purpose of which we issue the following directions:

- (i) The ICC that has issued Report dated 30.07.2022 stands disbanded and that Inquiry report shall be eschewed.
- (ii) Complaint of R4 dated 22.05.2022 stands restored to the file of the Principal Commissioner for disposal afresh.
- (iii) An Internal Complaints Committee be set up de novo, wherein none of the earlier committee members shall be included. It is to be ensured that the members of the Committee are selected in line with the provisions of the Act and Rules as prescribed in this regard.
- (iv) The Committee shall be constituted within a period of one week from date of uploading of the order, and the first hearing before the Committee shall be scheduled with a week from its constitution.



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- (v) Notices of hearing shall be issued well in advance to the parties, including R4, witnesses, as well as any others that the Committee deems necessary including the Appellant at their discretion, calling upon them to appear for the hearings before the Committee.
- (vi) The ICC shall be provided with due assistance by the authorities, including specifically the DOT, in regard to verification of call records as this is a critical feature of the complaint and it is imperative that the allegations relating to phone calls having been made at uncivil hours be inquired into and findings rendered.
- (vii) After due hearing, an inquiry report shall be issued within two weeks from the last date of hearing of the matter by the Committee.
- (viii) The entire exercise shall be completed within a period of three months from the date of first hearing.

36. The fourth, and last issue as far as the complaint under POSH is concerned, is the procedure to be followed. Our attention has been taken in detail through the following:



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- (i) *Central Civil Services (Classification, Control and Appeal) Rules 1965* (in short CCS(CCA) Rules)
- (ii) *Guidelines issued under the POSH Act*
- (iii) *Office Memoranda issued by the Ministry of Personnel, Public Grievances and Pensions, dated 16.07.2015*
- (iv) *Handbook on Sexual Harassment of Women at Workplace issued by the Ministry of Women and Child Development in 2015*
- (v) *Office Memorandum on Central Civil Services (Classification, Control and Appeal) Rules 1965*
- (vi) *Guidelines regarding prevention of sexual harassment at work place dated 02.08.2016*
- (vii) *Office Memorandum on prevention of sexual harassment of working woman at work place dated 04.11.2022*

37. Though all aspects of sexual harassment at workplace have been comprehensively taken note of in these guidelines, the dictates in those guidelines would remain merely academic, unless such matters are addressed sensitively and purposively to give effect to the provisions of the Act and the Rules.

38. In *Medha Kotwal Lele*³, the Court reiterated under the caption, ‘Preventive steps’, that the Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should specifically include Rules/Regulations prohibiting sexual harassment and providing for appropriate penalties against the offender.

39. As regards private employers, steps should be taken to include such prohibitions and mechanisms to redress the same in the Standing

³ Foot Note Infra (62)



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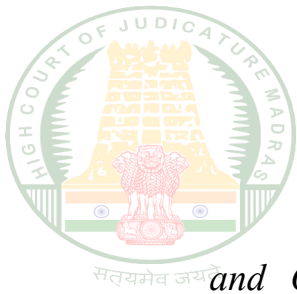
Orders under the Industrial Employment (Standing Orders) Act, 1946.

Disciplinary action, once misconduct was proved as defined under the relevant service Rules, should be initiated by the employer in accordance with the Rules.

40. Coming to the question of complaint mechanism, the Court clarified that whether or not the conduct complained of constituted an offence under law or a breach of service rules, an appropriate complaint mechanism should be created within the organization for redressal of complaints by a victim providing specifically for time bound disposals.

41. In the record of proceedings dated 26.04.2004, the Court directed as follows: '2....*Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka V. State of Rajasthan ((1997) 6 SCC 241) at p.253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called "the CCS Rules") and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.*'

42. In the final judgment of *Medha Kotwal Lele V Union of India*



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and Others⁴, where the compliance report of various States/Union Territories have been recorded, the Court records that the State of Tamil Nadu has carried out amendments in the Civil Services Conduct Rules. However, no amendments have been made in the Standing Orders so far.

43. As far as the CCC(CCA) Rules are concerned, Rule 14 under Part VI deals with the procedure for imposing major penalties, and the Rule, to the extent to which it is relevant, reads as follows:

14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the

⁴ (2013) 1 SCC 297



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inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

.....

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-
(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;
(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) (a) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained.

(b) On receipt of the articles of charge, the Government servant shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period of fifteen days, which may be further extended for a period not exceeding fifteen days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorised by the Disciplinary Authority on his behalf: Provided that under no circumstances, the extension of time for filing written statement of defence shall exceed forty-five days from the date of receipt of articles of charge.

5 (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge



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have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under subrule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

.....
(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defence, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(8) (a) The Government servant may take the assistance of any other Government servant posted in any office either at



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his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

Note : The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

44. Office Memoranda and Instructions have also been issued setting out Guidelines for the procedure to be followed in the processing of sexual harassment complaints. Under the following Instruction, the Chairpersons of Internal Complaint Committees have been asked to ensure their familiarity with the CCS (CCA) Rules as well as the Guide prepared for that purpose by the DoPT:

F.No.11013/2/2014-Estt (A-III)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

North Block, New Delhi



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

Dated July 16th, 2015

OFFICE MEMORANDUM

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Subject: Steps for conducting inquiry in case of allegation of Sexual Harassment

Undersigned is directed to say that during the meeting of the Chairpersons of Complaints Committees with Secretary (Personnel) on the 16th April, 2015 it was suggested that the Department of Personnel and Training may prepare a step guide for conduct of inquiry in complaint cases of sexual harassment. Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 lays down that the Complaints Committee established in each Ministry or Department for inquiring into complains of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in these Rules.

2. The annexed guide on “Steps for Conduct of Inquiry in complaints of Sexual Harassment” is intended to give the procedure as prescribed in the rules/instructions. This is, however, not intended as a substitute for reference to the Rules and instructions. Members of the Complaints Committees and others who are required to deal with such inquiries should acquaint themselves with Central Civil Services (Classification, Control and Appeal) Rules, 1965, and instructions issued thereunder.

*(Mukesh Chaturvedi)
Director (E)'*

45. Hence, there is a need to integrate the procedure set out under the POSH Act and Rules with that stipulated under the CCA(CCA) Rules as both are equally applicable and relevant in addressing the question of disciplinary proceedings as against an Central Government employee. In addition, the former, that is, the POSH Act and Rules, constitute a special



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enactment that takes note of a very unique set of circumstances that compels a different approach, one that has to integrate a sense of urgency, sensitivity and natural justice with the procedure already set out under the CCA(CCS) Rules.

46. Office Memorandum bearing No.DOPT-1667566576557 dated 04.11.2022 sets out the detailed procedure to be followed in cases of allegations of sexual harassment, integrating the relevant provisions of the CCA(CCS) Rules as well, and splitting the inquiry into two stages.

The relevant parts are extracted below:

(C) INQUIRY INTO COMPLAINT [FIRST STAGE] *The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9 (1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.*

As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary inquiry/fact finding inquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as



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well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

(D) INQUIRY UNDER CCS (CCA) RULES, 1965
[SECOND STAGE]

Dual Role

In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should



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avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

47. The decision to charge sheet and conduct of inquiry by the Disciplinary Authority is as per the procedure in the OM extracted below:

Decision to issue Charge sheet. and conducting Inquiry

On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14 (5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer. If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS (CCA) Rules.

48. The Supreme Court in the case of *Nisha Priya Bhatia*⁵ has taken note of the position that a co-ordinated approach is the order of the day when dealing with sexual harassment complaints as against a Central Government employee stating so, at paragraph 97 thereof, extracted below:

97. Be that as it may, in our opinion, the petitioner seems to have confused two separate inquiries conducted under two separate dispensations as one cohesive process. The legal machinery to deal with the complaints of sexual

⁵Foot Note Infra (70)



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harasment at workplace is well delineated by the enactment of the Sexual Harassment of Women at Workplace Act, 2013 (hereinafter "the 2013 Act") and the Rules framed thereunder. There can be no departure whatsoever from the procedure prescribed under the 2013 Act and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (for short "the 2013 Rules"), either in matters of complaint or of inquiry thereunder. The sanctity of such procedure stands undisputed. The inquiry under the 2013 Act is a separate inquiry of a fact-finding nature. Post the conduct of a fact-finding inquiry under the 2013 Act, the matter goes before the department for a departmental inquiry under the relevant departmental rules [the CCS (CCA) Rules in the present case] and accordingly, action follows. The said departmental inquiry is in the nature of an in-house mechanism wherein the participants are restricted and concerns of locus are strict and precise. The ambit of such inquiry is strictly confined between the delinquent employee and the department concerned having due regard to confidentiality of the procedure. The two inquiries cannot be mixed up with each other and similar procedural standards cannot be prescribed for both. In matters of departmental enquiries, prosecution, penalties, proceedings, action on inquiry report, appeals, etc. in connection with the conduct of the government servants, the CCS (CCA) Rules operate as a self-contained code for any departmental action and unless an existing rule is challenged before this Court on permissible grounds, we think, it is unnecessary for this Court to dilate any further.

98. The notifications issued by the respondent in the form of OM's are in the nature of departmental instructions and are intended to supplement the 2013 Act and Rules framed thereunder. Such notifications do not operate in derogation of the 2013 Act, rather, they act in furtherance of the same. The OM dated 2-8-2016, for instance, reads thus:



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"3. In accordance with Section 18(1) of the SHWW (PPR) Act, 2013, it has been decided that in all cases of allegation of sexual harassment, the following procedure may be adopted...."

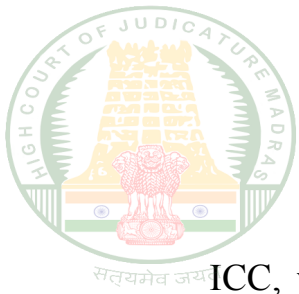
99. A bare perusal of the aforequoted OM makes it amply clear that the said notification furthers the procedure predicated under the 2013 Act and do not, in any manner, reduce the vigour thereof.

49. Read together and in harmony, the procedure under the POSH

Act as well as the CCA(CCS) Rules contemplate a three-pronged procedure for dealing with, sexual harassment complaints.

50. Firstly, the first proviso under Rule 14(2) has been inserted vide Government Instructions of the Department of Personnel and Training dated 01.07.2004, gazetted on 10.07.2004. It states that where there is a complaint of sexual harassment within the meaning of Rule 3(c) of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry, Department or office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of the Rules. The procedure followed by the Complaints Committee shall, as far as practical be in accordance with the procedure set out under these Rules.

51. Upon receipt of a complaint, the Complaints Committee or



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ICC, would conduct a broad, fact-finding investigation, the purpose of which is to ascertain prima facie, if the allegations of sexual harassment are plausible. As the memorandum states, documentary evidence may be collected, statements may be recorded, including those of the complaint and prima facie conclusions be drawn in regard to the veracity or otherwise of the allegations made in the complaint.

52. The rival contentions advanced are, while the appellant would insist on a full hearing before the ICC, and being furnished with all materials collected by the Complaints Committee even at this stage, R4 would object to the necessity for such a full-fledged inquiry, pointing that it is only a preliminary investigation, one of marshalling of facts, at this stage.

53. The appellant would specifically rely on the narration in Office Memorandum (OM) dated 04.11.2022 to the effect that '*If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.*'

54. The OM then contemplates that this preliminary report



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containing prima facie conclusions is forwarded to the disciplinary authority, who would examine the same with a view to ascertaining whether a formal charge sheet needs to be issued to the charged officer, i.e., the appellant in this case.

55. If the disciplinary authority decides that that would be the right course of action, the officer is to be given the liberty of replying to the charge sheet and thereafter, in line with Rule 14(5), a decision on proceeding with the inquiry will be taken after considering the response of the charged officer.

56. Thus, at the stage of Rule 14(3), the entirety of the documents on the basis of which the primary findings of the investigation report would have been made by the Complaints Committee, would be forwarded to the charged officer along with the articles of charge, a statement of the imputations of misconduct or misbehavior and a list of documents and witnesses, by which each article or charge is proposed to be sustained.

57. A written defence of the charged officer would be sought and matters would proceed thereafter in terms of Rule 14(5). An inquiry will be conducted by the disciplinary authority and where the disciplinary



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authority is not itself the enquiring authority, an inquiring authority shall be named. The composition of this Committee, as per the first proviso to Sub-Rule (2) of Rule 14, shall be that of the Complaints Committee established in that Department.

58. It is for this reason that, in OM dated 04.11.2022, it has been cautioned that the Complaints Committee which embarked on the primary fact finding exercise and the inquiry committee constituted under Rule 14(5)(a) understand the dual nature of the roles that the Committee would play, and the need to be conscious to eliminate bias.

59. To summarize, the Complaints Committee which we have now directed to be constituted at paragraph 38 of the Order, will first wear the hat of a Complaints Committee/ICC under the POSH Act and carry out a primary fact finding inquiry, gathering materials, documentary evidence and record statements of witnesses including the complainant.

60. The OM does not specifically refer to the recording of statement of the officer as against whom complaint has been made but we leave it to the discretion of the Committee to be formed, as to whether they would prefer to record his statement as well. We hasten to add that no direction has been given in this regard and it is for the ICC to decide



on this aspect.

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61. As far as the apprehensions expressed by the appellant in regard to the last four lines which we have italicized at paragraph 53 above, we are of the view that the apprehension is misplaced. No doubt, the exercise of fact-finding is an important part of the exercise in the procedure for dealing with a sexual harassment complaint.

62. However, the marshalling of facts at the preliminary stage is only to enable the Complaints Committee/ICC to decide whether, prima facie, the complaint by R4 comes within the contours of a sexual harassment complaint under the Act and Rules. While being an important part of the investigation, it does not bind any of the authorities in the subsequent stages in the procedure.

63. In fact, the very reason why the OM has cautioned against bias is to ensure that, in the event the composition of the Complaints Committee/ICC verifying the complaint at the preliminary stage happens to be the same as the inquiry committee, should one be appointed by the disciplinary authority, then, the inquiry committee should approach the matter afresh and de novo, and take into account the response of the charged officer and any material that he may produce.



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64. They must specifically bear in mind the fact that the charged officer may or may not have been part of the proceedings before the Complaints Committee/ICC based on whether he had been specifically summoned by that Committee at their discretion, and hence he would have to be allowed full opportunity to present his case before the inquiry committee if such a situation arises. The matter will then proceed in accordance with the procedure under the CCS(CCA) Rules and applicable OMs.

65. This then is our decision in regard to the procedure to be followed and the ICC, as re-constituted in light with the directions at paragraph 35 shall continue with the inquiry from the stage of examination of witnesses, hear such parties as they believe necessary for the case, and issue the Report.

66. We make it clear that the statements of the witnesses already on record may be taken into account by the new ICC at their discretion. If the ICC believes that it is desirable or prudent that the witnesses be examined afresh, they may proceed in that direction.

67. Thus, while the Report shall be eschewed, we are of the considered view that the statements of the complainant and witnesses



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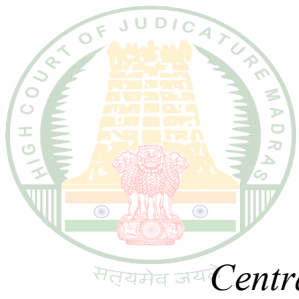
already recorded may stay on the record for consideration by the new ICC at their discretion, and further examination of those witnesses or of new witnesses, the complainant and the appellant may be undertaken by the ICC, again, at their discretion.

68. Once the Report is furnished to the disciplinary authority, that authority shall take a decision in accordance with the CCA(CCS) Rules and applicable OMs as to whether proceedings are to be taken further, and proceed accordingly. We note that the procedure contemplated, and that we have outlined above, provides for the furnishing of complete materials relating to the complaint and opportunity of hearing at three stages to the charged officer, firstly, on issuance of a charge sheet, secondly, before the Complaints Committee in the discharge of its functions as inquiry committee and thirdly, before the Disciplinary authority prior to completion of the proceedings. The element of natural justice is hence satisfied in full.

69. In answering the issues as above, we have taken note of the following citations made by the parties:

Citations of the Appellant in W.A.No.2388 of 2022

1.M/s.Padmavathi Srinivasan V. The Joint Commissioner of GST &



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*Central Excise*⁶

*2.M/s.S.B.Homes V. The Commissioner of CGST & C.Ex., Chennai South GST Commissionerate and others*⁷

*3.Radha Krishnan Industries v. State of Himachal Pradesh and Others*⁸

*4.Dr.R.Rajendran v. Board of Governors, Rep. by the Chairman, National Institute of Technical Teachers Training and Research (NITTTR), Taramani, Chennai-113 and others*⁹

*5.Dr.P.Govindaraju v. The Manonmaniam Sundaranar University, Rep. by its Registrar, Abishekapatti, Tirunelveli-627 012*¹⁰

*6.Manonmaniam Sundaranar University, Represented by its Registrar, Abishekapatti, Tirunelveli-627 012 v. Dr.P.Govindaraju*¹¹

*7.Union of India and others v. Smt.Rema Srinivasan Iyengar, Assistant Registrar of Trade Marks & GI, Intellectual Property Building, GST Road, Guindy, Chennai – 600 032 and others*¹²

*8.Union of India and others v. V.S.Jaitha, Senior Accountant, Office of the Accountant General (A&E), Kerala, Thiruvananthapuram and others*¹³

*9.Mary Rajasekaran v. University of Madras, Rep. by its Registrar, Chennai-600 005*¹⁴

*10.Punjab and Sind Bank and others v. Durgesh Kuwar*¹⁵

*11.Ruchika Singh Chhabra v. M/s.Air France India and Another*¹⁶

*12.Aya Aubkhan Noorkhan Pathan v. State of Maharashtra and Others*¹⁷

*13.Dr.K.Karnamaharajan v. The Registrar, Madurai Kamaraj University, Palkalai Nagar, Madurai – 625 021 and others*¹⁸

*14.Vivek Tyagi v. State of Haryana and others*¹⁹

15.AIR India Limited, Represented By Its Chairman and Managing

6 W.P.No.11797 of 2021 dated 23.02.2024

7 W.P.Nos.24731 of 2021 etc. batch dated 09.02.2022

8 (2021) 6 SCC 774

9 WP.No.15247 of 2021 dated 12.04.2016

10 WP(MD)No.979 of 2019 dated 24.01.2020

11 WA(MD)No.428 of 2020 dated 20.04.2022

12 WP.Nos.10689, 24290 & 4339 of 2019 dated 17.02.2020

13 2016 SCC OnLine Ker 16750

14 WP.No.10364 of 2016 dated 25.08.2021

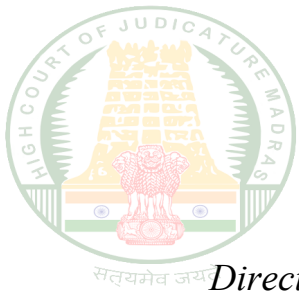
15 (2020) 19 SCC 46

16 2018 SCC OnLine Del 9340

17 (2013) 4 SCC 465

18 WP(MD)No.19440 of 2019 dated 24.01.2020

19 CWP-32707-2019 (O&M) dated 22.03.2021



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*Director and Others v. L.S.Sibu and Others*²⁰

*16.Union of India, rep. by the Post Master General, Central Region [TN], Tiruchirappalli and Others v. The Registrar, Central Administrative Tribunal, Chennai 600 104.*²¹

*17.Medha Kotwal Lele and others v. Union of India and others*²²

*18.Dr.Vijayakumaran C.P.V. v. Central University of Kerala and Others*²³

*19.Mohd. Mustafa v. Union of India & Others*²⁴

*20.State of Madhya Pradesh v. Sheetla Sahai and Others*²⁵

*21.Chairman-cum-Managing Director, Coal India Limited and Others v. Ananta Saha and Others*²⁶

*22.Ms.X v. Union of India and Others*²⁷

*23.Abhay Jain v. High Court of Judicature for Rajasthan and Another*²⁸

*24.Bharat v. State of Maharashtra, Through the Police Station and Another*²⁹

*25.Union of India and Others v. Gyan Chand Chattar*³⁰

*26.Anant R. Kulkarni v. Y.P.Education Society and Others*³¹

*27.Zunjarrao Bhikaji Nagarkar v. Union of India and Others*³²

*28.Government of Tamil Nadu, Rep. by Secretary to Government, Environment and Forests Department, Fort St. George, Chennai-9. and others v. M.Subramanian*³³

*29.Suresh Nanda v. C.B.I.*³⁴

*30. N.S.Madhanagopal v K. Lalitha*³⁵

*31. Mahamood Ali & Ors v State of U.P. & Ors*³⁶

²⁰ 2018 SCC OnLine Ker 13878

²¹ WP.No.32453 of 2019 dated 20.11.2019

²² WP(Criminal)Nos.173-177 of 1999 dated 19.10.2012

²³ (2020) 12 SCC 426

²⁴ Civil Appeal No.6905 of 2021 dated 16.11.2021

²⁵ (2009) 8 SCC 617

²⁶ (2011) 5 SCC 142

²⁷ SLP(C)Nos.10479-10481/2020 dated 02.02.2021

²⁸ 2022 SCC OnLine SC 319

²⁹ 2019 SCC OnLine Bom 1602

³⁰ (2009) 12 SCC 78

³¹ (2013) 6 SCC 515

³² (1999) 7 SCC 409

³³ W.A.No.587 of 2008 dated 03.07.2008

³⁴ Appeal (Crl.)No.179 of 2008 dated 24.01.2008

³⁵ Crl.Appeal No. 1759 of 2022 dated 10.10.2022

³⁶ 2023 INSC 684



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32. *Malik Builders v Union of India*³⁷
33. *Shri Debdulal Maity v National Insurance Co., Ltd.*,³⁸

Citations of R4 in W.A.No.2388 of 2022

1. *Biecco Lawrie Limited and Another v. State of West Bengal and Another*³⁹
2. *National Institute of Technology v. U.dinakar and Another*⁴⁰
3. *Nipun Saxena and Another v. Union of India and Others*⁴¹
4. *Union of India and Others v. Mudrika Singh*⁴²
5. *Union of India and Others v. Dilip Pual*⁴³
6. *Dr.Sohail Malik v. Union of India and Another*⁴⁴
7. *Aureliano Fernandes v. State of Goa and Others*⁴⁵
8. *R.Mohanakrishnan v. Deputy Inspector General of Police and Others*⁴⁶
9. *Champaklal Chimanlal Shah v. Union of India*⁴⁷
10. *Dr.P.S.Malik v. High Court of Delhi and Another*⁴⁸
11. *MS (X) v. Union of India and Others*⁴⁹
12. *Union of India and Another v. R.K.Desai*⁵⁰
13. *Man Singh v. State of Haryana and Others*⁵¹
14. *Chajoo Ram v. Radhey Shyam and Another*⁵²
15. *Santokh Singh v. Izhar Hussain and Another*⁵³
16. *Chanan Singh v. Registrar, Co-op. Societies, Punjab and Others*⁵⁴
17. *RT.Rev.B.P.Sugandhar Bishop in Medak v. D.Dorothy Daya Sheela*

37 Civil Writ Petition No. 7257 of 2021 dt 30.08.2022 (Rajasthan HC)

38 W.P.No. 459 of 2014 dated 07.08.2014 (Calcutta HC)

39 (2009) 10 SCC 32

40 (2014) 13 SCC 180

41 (2019) 2 SCC 703

42 (2022) 16 SCC 456

43 2023 SCC OnLine SC 1423

44 2023 SCC OnLine Del 3764

45 (2024) 1 SCC 632

46 2024 SCC OnLine Mad 2123

47 1963 SCC OnLine SC 42

48 (2020) 19 SCC 714

49 2020 SCC OnLine Del 1618

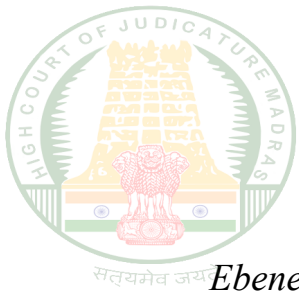
50 (1993) 2 SCC 49

51 (2008) 12 SCC 331

52 1971 (1) SCC 774

53 (1973) 2 SCC 406

54 (1976) 3 SCC 361



*Ebeneser*⁵⁵

18. *Vishaka and Others v. State of Rajasthan and Others*⁵⁶
19. *James Kunjwal v. State of Uttarakhand and Another*⁵⁷
20. *The Research Scholar v. Research Guide/Professor and others*⁵⁸
21. *L.Chandra Kumar v. Union of India and Others*⁵⁹
22. *Union of India and others v. Deep Chand Pandey and Another*⁶⁰
23. *Himachal Pradesh State Electricity Board, Shimla and Others v. Tirath Raj and Others*⁶¹
24. *State of H.P. and Another v. Pawan Kumar Rajput and Others*⁶²
25. *M.Ramasubramani v. The Central Administrative Tribunal, rep. by its Registrar, Madras Bench, High Court Buildings, Chennai-600 104 and others*⁶³
26. *Medha Kotwal Lele and Others v. Union of India and Others*⁶⁴
27. *XYZ v. State of Madhya Pradesh and Others*⁶⁵
28. *Apparel Export Promotion Council v. A.K.Chopra*⁶⁶
29. *M.Kavya & another v. The Chairman, University Grants Commission, New Delhi and others*⁶⁷
30. *Ashok Kumar Singh v. University of Delhi & Ors.*⁶⁸
31. *Rajneesh Khajuria v. Wockhardt Limited and Another*⁶⁹
32. *Nisha Priya Bhatia v. Union of India and Another*⁷⁰
33. *XYZ and Others v. State of Madhya Pradesh and Another*⁷¹
34. *Dr.Punita K.Sodhi v. Union of India and Ors.*⁷²

55 (1996) 4 SCC 406
56 (1997) 6 SCC 241
57 2024 SCC OnLine SC 1943
58 WA(MD)Nos.413 & 414 of 2020 dated 04.12.2024
59 (1997) 3 SCC 261
60 (1992) 4 SCC 432
61 (1995) 5 SCC 678
62 (2006) 9 SCC 161
63 2013 SCC OnLine Mad 3010
64 (2013) 1 SCC 311
65 2022 SCC OnLine SC 1002
66 (1999) 1 SCC 759
67 2015-1-L.W. 835
68 2017 SCC OnLine Del 9935
69 (2020) 3 SCC 86
70 (2020) 13 SCC 56
71 (2021) 16 SCC 179
72 WP(C)No.367/2009 dated 09.09.2010



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Part B – SVLDRS Declaration of M/s Heaven Engineering

70. One thing remains. The parties have advanced very detailed and lengthy arguments on the propriety or otherwise of the processing of the Declaration of the assessee, M/s Heaven Engineering/Sundaram Sathishkumar by R4. R4 was not part of the Designated Committee, responsible for the final processing and acceptance of the Declarations. She was however part of the team of the Designated Committee, entrusted with certain preliminary functions.

71. The entire sequence in regard to this issue, has been the subject matter of narration, discussion and conclusion in W.A.No.602 of 2025, decided by a co-ordinate Bench of this Court of which one of us, Anita Sumanth J., was part. That writ appeal arose from an order dated 13.12.2024 passed in W.P.No. 11098 of 2024 where the assessee, M/s Heaven Engineering/Sundaram Sathishkumar had challenged a show cause notice dated 06.02.2020 proposing a demand in the region of Rupees nine crores (approx.).

72. The show cause notice had been issued by the Department after receipt of the SVLDRS Declaration and the stand of the assessee was that no proceedings could be initiated after the filing of the Declaration opting



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

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for the Amnesty Scheme. However, the Department defended the show cause notice on the ground that the Declaration had contained a material defect which vitiated it, and rendered it otiose. The writ petition had been allowed as against which the Department filed a writ appeal in W.A.No.602 of 2025.

73. In fact, even at the time of hearing of these matters, we had indicated that it would be appropriate that that writ appeal be heard along with the present matters, but as there was no move for consolidation, we proceeded to hear these matters and reserved the same for judgement. As per the roster assigned, that writ appeal happened to be listed before the co-ordinate Bench wherein one of us is part, and has been decided by way of the order below, pronounced simultaneously today.

74. We extract the operative portions of that order in the interests of a full narration, and as the issue relating to the SVLDRS Declaration of M/s Heaven Engineering/Sathish Sundaram and the role played by R4 therein, has been answered in that matter. The order passed in that writ appeal, W.A.No. 602 of 2025, may be read as part and parcel of the present order and we extract below operative portions in the interests of a full narration:



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.....
16. *The Sabka Viswas Legacy Disputes Resolution Scheme, 2019 had been framed under Finance (No.2) Act 2019 for settlement of tax arrears. The crux of their submissions, and what is germane for the purposes of this writ Appeal, would be Section 125 of the Scheme which prescribes eligibility of persons to make a Declaration under the Scheme.*

17. *Section 125 states that all persons shall be eligible to make a Declaration under the Scheme barring, in clause (e), those who have been subjected to an inquiry or investigation or audit and the amount of duty involved in the inquiry/investigation/audit has not been quantified on or before 30.06.2019 and in clause (f), a person making a voluntary disclosure after being subjected to any inquiry or investigation or audit.*

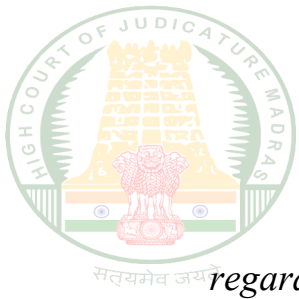
18. *The Declaration filed by the respondent undoubtedly contains an erroneous disclosure in relation to the selection of category. The categories available for selection are (i) Arrears (ii) Litigation (iii) Investigation, inquiry or Audit and (iv) Voluntary Disclosure .*

19. *In the present matter, investigation by the Enforcement and Compliance Management (ECM) Section, Chennai Outer Commissionerate has commenced in 2014. Yet another round of investigation had taken place in 2019 by the same unit and a statement has also been recorded from the respondent on 09.12.2019 and 04.02.202.*

20. *Therefore, admittedly, the Declaration falls within the category of 'Investigation, inquiry or Audit'. However, the respondent has selected 'Voluntary Disclosure' as the category under which the Declaration has been submitted. By virtue of the said incorrect selection, it is the say of the Appellants that the method of verification has been different as the category in which the Declaration is submitted would determine the mode of verification.*

21. *According to them, had the Declaration been submitted under the proper category, disclosing that the respondent had been subject to Investigation/inquiry/audit, the further processes of issuing Forms 3, receiving the payment and issuing the Discharge Certificate in Form 4 would not have transpired. They say that the choice of the incorrect category by the Respondent was deliberate so as to thwart the proper processes and attain the acceptance of his application.*

22. *We have carefully considered the rival contentions in this*



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regard. The selection of category as 'voluntary disclosure' is, undoubtedly, incorrect. The factum of investigation in 2014 and 2019 is admitted, as statements have also been recorded from the respondent in the course thereof. Hence it stands to reason that the respondent ought to have selected the category 'Investigation, inquiry or Audit' and the selection by him of another category which is incorrect amounts to a material falsehood, to the knowledge of the Respondent.

23. The Circulars relied upon by the Respondent are extracted below, and do indicate some discussion in regard to this aspect.

Circular No. 1073/06/2019.GX

F. No. 267/78/2019/CX-8-Pt.III

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

Dated, the 29th October, 2019

To

The Principal Chief Commissioners/ Chief Commissioners
(All)

The Principal Directors General/ Directors General (All)

**Subject: Sabka Vishwas (Legacy Dispute Resolution)
Scheme, 2019-reg**

Dear Madam/Sir,

I am directed to invite your attention to Board's Circulars No. 1071/4/2019-CX dated 27th August, 2019 and 1072/05/2019-CX dated 25th September, 2019 on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, the Board has received further references from field formations as well as from the trade seeking certain clarifications on the Scheme.

2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made there-under, as follows:

.....



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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

(ii) Under voluntary disclosure category, the Scheme makes two exclusions: (a) not being subjected to an inquiry or investigation or audit; or (b) having already filed a return but not paid the duty declared therein [Section 125(f)(i) and (ii)]. Some of the formations have reported difficulty in verifying these conditions as the proceedings may have been initiated by another formation. Though the Scheme provides that no verification will be carried out in cases of voluntary disclosure, they felt that there may still be a requirement to determine the eligibility to avail the Scheme. It is clarified that such declarations may be accepted without recourse to determination of eligibility as the Scheme provides ample safeguards for taking suitable action in case of false declaration of any material particular [Section 129(2)(c)].

.....

Yours sincerely,
(NavrajGoyai)
OSD(CX)

Circular No. 1072/05/2019-CX.

F. No. 267/78/2019/CX-8-Pt.II?

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

Dated, the 25th September, 2019

To

The Principal Chief Commissioners/ Chief Commissioners
(All)

The Principal Directors General/ Directors General (All)

**Subject: Sabka Vishwas (Legacy Dispute Resolution)
Scheme, 2019-reg**

Dear Madam/Sir,

I am directed to invite your attention to Board's Circular No. 1071/4/2019-CX.8 dated 27th August, 2019 on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, the Board has received references from field



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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

formations as well as from the trade seeking certain clarifications on the Scheme.

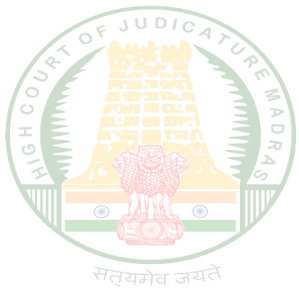
2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder, as follows:

(i) Only the persons who are eligible in terms of Section 125 can file a declaration under the Scheme. The eligibility conditions are captured in Form SVLDRS-1 (Sr. No. 8). The system automatically disallows persons who are not eligible from filing a declaration. However, there is a possibility that such ineligible persons may still make a declaration by selecting an incorrect response. For instance, under Sr. No. 8.1, the person making a declaration has to indicate whether he/she has been convicted for an offence for the matter for which the declaration is being made. If, the answer is 'Yes', then the person is ineligible and is not allowed to proceed further by the system. However, such person is able to file a declaration if he/she incorrectly indicates 'No' as the answer even though he/she has been convicted. Such declarations are void and do not merit consideration under the Scheme. Such persons may be informed of their ineligibility through a letter.

.....

(vi) Section 125(1)(f) bars a person from making voluntary disclosure after being subjected to an inquiry or investigation or audit. Further, what constitutes an inquiry or investigation or audit has also been defined [Sections 121(g) and 121(m)]. A doubt has been expressed as to whether benefit of the Scheme would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department, while quoting authority of Section 14 of the Central Excise Act, 1944 etc. It is clarified that the Designated Committee concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the provisions of Section 125(1)(f) are attracted in such cases.

.....



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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

Yours sincerely
Sd/-
(Navraj Goyal)
OSD(CX)

24. The Circulars, particularly Circular dated 25.09.2019 reiterates the requirement that the disclosure of information is true, and there can be no compromise in that regard. The relevant provision makes it clear that suppression of a material fact would efface the very Declaration and this is what has been emphasised in the Circulars. We had sought copies of the records under order dated 08.08.2025 in order to ascertain the sequence of events, and determine what exactly had transpired.

25. A compilation dated 11.08.2025 has been filed with extracts from the file notings. The sequence of dates that unfold are as follows. Investigation by the 'Enforcement and Compliance Management Section, Chennai Outer Commissionerate' had commenced in 2014 and a statement of the petitioner had initially been recorded on 07.02.2014.

26. Investigation was re-commenced on 06.12.2019 by the same agency and statements were recorded by the Investigating Officer on 09.12.2019 and 04.02.2020. The position that investigation was on-going is thus established and there can be no two opinions in this regard.

27. Section 125 of the Scheme deals with 'Declaration under Scheme' and reads as under:

125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—

(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;

(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;

(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;



(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(e) who have been subjected to an inquiry or investigation or audit and the amount of duty involved in the said inquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;

(f) a person making a voluntary disclosure,—

(i) after being subjected to any inquiry or investigation or audit; or

(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;

(g) who have filed an application in the Settlement Commission for settlement of a case;

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.

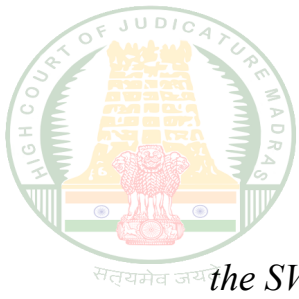
(emphasis

ours)

28. Hence, the bars, both under Section 125(1)(e) and (f) stand attracted in this matter, as the investigation, inquiry, audit of the matter was on-going and no demand has been quantified as on 30.06.2019.

29. Notwithstanding the above bar, on 15.01.2020, an application under SVLDRS had been filed by the respondent in the name of 'Sundaram Sathish Kumar'. The registration number under the GST Act is set out in the application which corresponds with the GSTIN (registration number) issued to M/s.Heaven Engineering. On 06.02.2020, show cause notice was issued, impugned in the Writ Petition, acknowledged by the respondent on the same day.

30. On 20.02.2020, the Commissioner of GST and Central Excise, Chennai Outer Commissionerate /A2 writes to the Directorate General of GST Intelligence (DGGI), Chennai Zonal Unit (CZU) asking for certain particulars in respect of 132 assesseees who had made applications under



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the SVLDRS Scheme.

31. On 26.02.2020, the DGGI (CZU) writes to A2 saying that the DGGI (CZU) has not registered any case or initiated any investigation in respect of 131 cases barring one case with which we are not concerned. Hence, they gave a clean chit to the respondent. The same verification as aforesaid has also been made with the Superintendent (ECM) and Commissioner of GST and Excise, Audit II Commissionerate which also, vide letters dated 27.02.2020 and 21.02.2020 respectively give clean chits to the appellants.

32. On 28.02.2020, the petitioner seeks the documents, based on which the impugned show cause notice has been issued. There is no reference to the SVLDRS application filed by him, in that reply. On the same day, SVLDRS -3 has been issued. On 29.06.2020, the respondent makes the payment under SVLDRS – 3 Scheme. SVLDRS-4 discharge certificate was issued to the respondent on 23.07.2020.

33. On 14.08.2020, a second reply had been filed by the respondent seeking more documents and time to file a reply, incidentally making reference to the SVLDRS application filed by him on 15.01.2020. On 27.08.2020, the Assistant Commissioner of GST and Central Excise (TRC Section) Chennai Outer Commissionerate writes a letter to the Assistant Commissioner ECM referring to SVLDRS application filed by the respondent.

34. The officer notes therein, for the first time, that an investigation was under process against the respondent by the Investigation and Compliance Management Section, Chennai Outer Commissionerate, show cause notice dated 06.02.2020 had been issued to the tax payer and that there was a deliberate misdeclaration in that application.

35. Interestingly, both the addressee and the addressor in that letter are one and the same, meaning essentially that the same person who was holding two charges, has written to herself from her capacity as Assistant Commissioner (ECM) to herself in the capacity as Assistant Commissioner (TRC Section).

36. The third reply to show cause notice is dated 27.08.2021, wherein the Respondent seeks withdrawal of the show cause notice on the ground that the notice had been issued subsequent to the filing of application under SVLDRS as detailed in his reply. The Department replied on 07.02.2022 stating that the show cause notice cannot be



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withdrawn, on the reasoning that they have verified the records and found that the SVLDRS Declaration had been filed by the respondent when he was under investigation. They also point out that the impugned show cause notice dated 06.02.2020 had been issued prior to the payment by the respondent in the month of June, 2020.

37. A personal hearing notice dated 08.03.2022 was thereafter issued calling upon the respondent to appear on 05.04.2022 for adjudication of the show cause notice in response to which the respondent sought some time, using that time to move the writ petition before the High Court.

38. Undoubtedly, Declarations made under the Scheme are sacrosanct and in a case where a discharge certificate has been issued under Section 129, the settlement is final, except in the situations set out under Section 129(2) of the Scheme. The provision is extracted below in full:

'129.(1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and-

(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;

(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;

(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

(2) Notwithstanding anything contained in sub-section (1).-

(a) no person being a party in appeal, application, revision or reference shall contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the discharge certificate under this scheme;



(b) the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice.-

(i) for the same matter for a subsequent time period; or

(ii) for a different matter for the same time period;

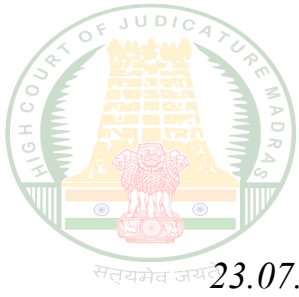
(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.'

(Emphasis in bold, ours)

39. Section 129(1) says that every discharge certificate issued under Section 126 is conclusive, subject to certain caveats under Section 129(2). The exception that is applicable in this case is set out under Section 129(2)(c) of the Scheme. Our interpretation of clause (c), based on the plain language in which it is couched, is that if a material particular in an application is found to be false within one year from the issue of the Discharge Certificate, there shall be a presumption as though the Declaration had never been made with all statutory consequences to follow.

40. The application filed on 15.01.2020 certainly contains a false declaration of a material particular, as the very category under which it has been submitted is wrong. Hence we are of the considered view that the presumption for obliteration of the Declaration stands triggered as per Section 129(2)(c) of the Scheme with all consequences. These aspects ought to have been taken note of by the Writ Court as they have been set out in detail in additional affidavit dated 04.11.2022.

41. The obliteration of the Declaration would be complete and comprehensive in respect of all the processes that have transpired post submission of the application, including the issuance of Form 3, the receipt of the amount and issuance of Discharge Certificate on



23.07.2020. Moreover, Section 130(1) (b) of the Scheme states that any amount paid under this Scheme shall not be refundable under any circumstances. Hence, with the obliteration of the application and all further events upto and including the discharge certificate dated 23.07.2020, the respondent would also forfeit the payment made under the SVLDRS Scheme on 29.06.2020.

42. Another discrepancy pointed out is in regard to the name of applicant. While the GSTN number has been issued to M/s Heaven Engineering, the application has been filed by the proprietor in his name, Mr.Sathish Sundaram. Much has been made of this, stating that it is a deliberate attempt to mislead and obtain a tactical advantage. We do not completely agree on this front.

43. Certain file notings have selectively been produced for our perusal under compilation dated 11.08.2025. The selection of the pages are random and they are also not in order. Be that as it may, we have assimilated the contents of the pages to understand the sequence of events. On 27/28.02.2020, the following note has been made:



3

-11-

C.No. 14/06/994/2020 - TRC

Points for Consideration by the committee

Declarant agrees with the tax dues as calculated by the system : Yes

Amount to be paid by the declarant : Rs 64,32,402/-

The file is put up for perusal and orders, please.

Dattaraj
12-02-2020
(P. Ratan Deep)
Sptt

A/c.

- Voluntary Disclosure

- Period - 01/04/2014 - 31/03/2017

- ST3 returns filed for period Apr 2014 - Mar 2015
(with NIL tax liability)

No ST3 returns filed for Apr 2015 - Jun 17

- As per S.125(1)(f)(ii), where return has been filed and an amount of duty indicated as payable has not been paid, then the ARN becomes ineligible under SUGDRS. However, in this case no duty has been declared in the returns filed

- DfSI, CZU, Audit and ECM have stated that no enquiry or audit initiated against the applicant.

- Form 1 may be accepted and Form 3 may be issued.

Supra
27/02/2020
(Supra Chaudhary)

ADC/JC'S UNIT	IN	OUT
	27/2	27/2

COMMISSIONER'S UNIT	IN	OUT
	28/2	28/2

1760

MANASA GANOTRI KATA / MANASA GANGOTRI KATA
अपर आयुक्त / Additional Commissioner

27/2/20

28/2/20

28/2/20

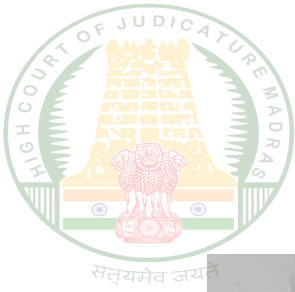
44. This note reveals that the service tax returns filed in Form ST 3 by the respondent have been accessed by the Department. The returns



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will contain the name of the assessee, Heaven Engineering, and in all probability, also state that the assessee is represented by the proprietor Mr.Sundaram Sathish Kumar. Hence, the officers are clearly aware that M/s.Heaven Engineering and Mr.Sundaram Satish Kumar are one and the same. The ST3 returns would contain the GSTN number assigned for the Proprietorship and this would further bolster the position that there is no difference in the two names for tax purposes. The Department, having accessed the records of the Respondent is in full possession of the information in regard to the assessee / respondent.

45. There is one aspect of the matter that remains. A specific clarification was sought by us related to the letters dated 26.02.2020, 27.02.2020 and 21.02.2020 issued by the DGGI (CZU), Superintendent (ECM) and Commissioner of GST and Excise, Audit II Commissionerate respectively, confirming that there was no investigation or audit as against the respondent. Our attention is drawn to the file notings as below:



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

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A draft letter addressed to the TRC section, Chennai Outer Commissionerate Kumar (Prop. Of M/s Heaven Engineering) filed the SVLDRS application (ARN No. BULPS3625PSD001) For Rs. 64,32,40/- under "Voluntary Disclosure" despite being aware of the fact that the case is under "Investigation". Hence, it appears that the taxpayer mis-declared the facts and concealed information deliberately from department to evade the tax. Consequent to the investigation, SCN No. 01/2020 dated 06.02.2020 was issued to the taxpayer involving an amount of Rs. 9,07,53,180/- along with penalty and interest for the period October'2012 to June'2017.

Put up for perusal, approval and signature, please.

Insp 17.08.2020

Supdt

Was the fact that investigation is being conducted communicated to TRC before issue of SVLDRS?
- TRC obtained state of investigation w.r.t volun Declaration SVLDRS applican from Ecm. Was this part ARNs circulated and presence or absence thereof investigation ascertained?

20/08

Supdt

Supdt

Please see the Assistant Commissioners remarks above.

In this regard, TRC section circulated a list of 132 ARNs filed under "Voluntary disclosure" to identify the status of investigation, if any. However, in the said list of ARNs, the name of the unit i.e. M/s Heaven Engineering was not mentioned anywhere. Further, in the said list of 132 ARNs, the name of the proprietor was mentioned as 'Shri Sunderam Satish Kumar' which was also not matching with the name of proprietor as per A-I-O and records available in the file i.e. "Shri Satish Kumar S". Hence, the taxpayers name in the said



7

Copy

Substantively from the
2020 dated 20/02/2020
along with per [unclear]

and letter addressed to [unclear] in front of the [unclear]
[unclear] [unclear] [unclear] [unclear]

HUJ
24/08/2020

[unclear]
24/08/2020

[unclear]
24/08/2020

[unclear]
24/08/2020

[unclear]
24/08/2020

ADG

Pls. split.
OK
26/8/20

[unclear]
27/08

[unclear]
27/08/2020

[unclear]

In continuation of notes on pre-page of the note-sheet, it is submitted that the list of said 132 ARNs under SVLDERS was circulated to this group on 27.02.2020 seeking the details of pending investigation, if any.

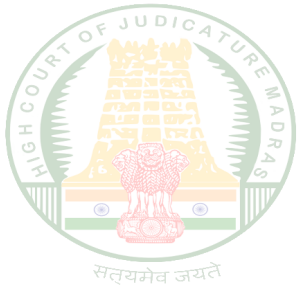
2. However, investigation in respect of M/s Heaven Engineering (Prop. Shri Satish Kumar S, STC-BULPS3625PSD001) was under process till 05.02.2020 in Enforcement & Compliance Management Section, Chennai Outer Commissionerate, and subsequently SCN No. 01/2020 dated 06.02.2020 was issued to the taxpayer. Hence, no investigation was pending on the date of report called for i.e. 27.02.2020 and the same was conveyed to the TRC Section.

This is for information please.

[unclear]
27/08/2020

[unclear]
27/08/2020

[unclear]
27.08.2020

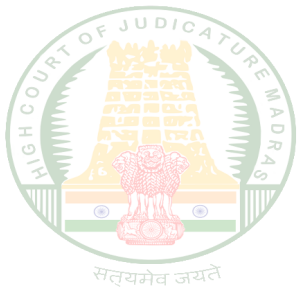


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46. The explanation tendered is that, there was no investigation or audit pending as on that date, that is on 26.02.2020, 27.02.2020 & 28.02.2020, when the letters had been sent, which is why those agencies had stated so in their letters. They also refer to the show cause notice issued on 06.02.2020 in this regard. This explanation is clearly an afterthought.

47. As on 27.02.2020, the stand of the Department as reflected in the file notings is that the Declaration of the Respondent is to be accepted, as they say. 'As per S.125(1)(f)(ii), where return has been filed and an amount of duty indicated as payable has not been paid, then the ARN become ineligible under SVLDRS. However, in this case no duty has been declared in the return filed. - DGGI, CZU, Audit and ECM have stated that no inquiry or audit initiated against the applicant. - Form 1 may be accepted and Form 3 may be issued.'

48. Subsequent file notings dated 16.07.2020 as well as the positive action taken by the Department by issuing Form 3 on 28.02.2020, receiving the declared amount on 29.06.2020 and issuing discharge certificate in Form 4 on 23.07.2020 establishes without doubt that they had no idea that there was a defect/lacuna in the application. There is also no reference therein to Section 129(2)(c) of the Scheme. Clearly, they had no inkling of matters at that time. The relevant notings have been furnished and are extracted below:-



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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

Please see the note on pre-page. 4

The copy of Form SVLDRS-3 No. L280220SV301506 is placed in the file. Also, the taxpayer has paid the amount of Rs. 64,32,402/- estimated by the Designated Committee vide the CIN 20200629140640111290 dated 29.06.2020.

Put up for perusal and necessary action.

2651

AC
- Challan copy from A10 placed opposite -
- Form 4 may be issued please.

16/07

ADC
SVLDRS-4
The Board

17

ADC/JC'S UNIT
IN 16/7
OUT 23/7

मानसा गंगोत्री काटा / MANASA GANGOTRI KATA
अपर आयुक्त / Additional Commissioner

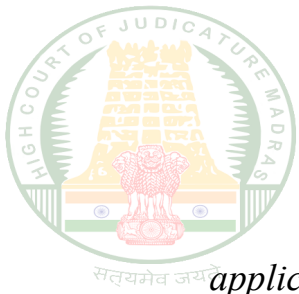
SVLDRS 4 issued
23/7/20
जी. रविन्द्रनाथ
G. Ravindranath

COMMISSIONER'S UNIT
IN 23/7
OUT 23/7

1

23/7
23/7/20
Supd.

49. In fact, if they did have knowledge of the fact that the



application was compromised, and still went ahead to issue Form 3 and discharge certificate, in Form 4, the matter assumes another ominous dimension altogether. In such circumstances, their submissions would be self - inculpatory.

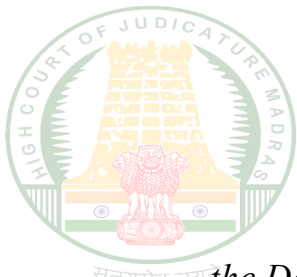
50. One of us, (Anita Sumanth. J.) has separately heard Writ Appeal No.2388 of 2022 relating to a sexual harassment complaint filed by the Assistant Commissioner who had issued letter dated 27.08.2020, as against the Commissioner who had issued the impugned show cause notice. Prior to making that complaint, the Assistant Commissioner was in receipt of charge memo dated 28.02.2022 calling for her response in respect of the lapse in processing the SVLDRS Declaration of Mr.Sundaram Sathish Kumar, Proprietor of M/s,Heaven Engineering.

51. In her complaint dated 24.05.2022, she levels allegations of sexual harassment against the Commissioner, stating parallelly that there was no error in the discharge of her official functions. We have today, pronounced orders in that matter as well. This is the connect between the two matters and we mention this order solely in the interest of completion of narration.

52. I had indicated even at the time of hearing of that writ appeal that it would be appropriate for all the matters to be heard together but no action had been taken by the present appellants towards consolidation. It is providential that the pending orders in that writ appeal, the present matter has come to be listed before us as well as it enables us to have a wholistic picture of the matter.

53. Both in the course of the hearing of W.A.No.2388 of 2022 as well as in the present matter, the learned Standing Counsel have fairly acceded to the position that all was not well in the processing of the SVLDRS applications. There were aberrations and defalcations in the discharge of duty by those officers involved in the implementation of the SVLDRS scheme including the members of the Designated Committee. Disciplinary action was initiated and some token punishment has been imposed.

54. Letter of the officer dated 27.08.2020 makes it clear that it was only at that time and juncture, that the Department awoke to the situation and realised that the Declaration of the respondent was compromised. Though it is projected to be innocuous, this is a material point, that reveals that all was not well with the processing of the applications by



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

WEB COPY *the Designated Committee. That letter reads thus:*
OFFICE OF THE COMMISSIONER OF GST & CENTRAL
EXCISE

CHENNAI – OUTER : I – 2054 . II : 600 040
NEWRY TOWERS : NO.2054 –I : II AVENUE : ANNA
NAGAR : CHENNAI – 600 040

C.No.IV/06/23/2014-SIR Gr XI *Date:*
27.08.2020

To,
The Assistant Commissioner of GST & C Ex
(TRC Section)
Chennai Outer Commissionerate

Madam,

Sub: SVLDRS application of Shri Sundaram
Satish Kumar (ARN No.LD1501200009288) –
Reg.

Please refer SVLDRS application filed by Shri
Sundaram Satish Kumar (STC BULPS3625PSD001) having
ARN No.LD1501200009288.

2. In this regard, it is noticed that SVLDRS-4 has been
issued to the taxpayer (Shri Sundaram Satish Kumar – STC
BULPS3625PSD001) for an amount of Rs.64,32,402/- for the
period April'2014 to June'2017. However, an investigation
was under process against the said taxpayer in Enforcement
and Compliance Management Section, Chennai Outer
Commissionerate and subsequently SCN No.01/2020 dated
06.02.2020 was issued to the taxpayer involving an amount
of Rs.9,07,53,180/- along with penalty and interest for the
period October '2012 to June '2017.

3. Further, it appears that the taxpayer deliberately filed
the SVLDRS application under "Voluntary Disclosure"



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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

despite being aware of the fact that the case is under “Investigation”. Hence, it appears that the taxpayer mis-declared the facts and concealed information deliberately from department to evade the tax.

In view of the above, it is requested that necessary action may be initiated at your end to safeguard the revenue.

Yours sincerely,

.....

*ASSISTANT
COMMISSIONER – ECM.*

Copy to:

*The Assistant Commissioner of GST & C Ex, Adjudication
Section, Chennai Outer Commissionerate for information
please.*

55. The above letter has been, as we have noted earlier, issued by the officer to herself in another capacity and there is nothing to indicate what triggered letter dated 27.08.2020. In any event, it is only in August 2020 that the Designated Committee, and this officer, realise that an investigation was under process in regard to the Respondent and that show cause notice dated 06.02.2020 had been issued.

56. We specifically asked what action has been taken by either that officer or any others to salvage the situation. However, there has been no action barring that the request of the Respondent for dropping of show cause notice dated 06.02.2020 had been rejected. This puts paid to the attempt of the Appellants to justify the letters of the authorities dated 20.02.2020 giving a clean chit to the Respondent by stating that no investigation was pending.

57. In fact the above argument is incorrect, to their knowledge. We have the benefit of the proceedings of the memorandum issued to the Assistant Commissioner who had penned letter dated 27.08.2020, as conveyed to the learned Additional Solicitor General of India, that had been produced before us. The findings and conclusion in those proceedings are as follows:



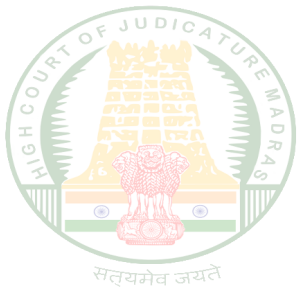
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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

Present state of proceedings related to the memorandum issued to by the Office of the Customs, GST and Central Excise, Chennai, Chennai Outer Commissionerate.

10. With reference to the above, it is submitted that vide letter dated 28.08.2024, the office of the Principal Chief Commissioner of GST and Central Excise, Chennai has informed inter alia that the investigation in respect of the case/issue referred to in the Memorandum No.GEXCOM/IGG/MISC/88/2021-VIG-O/O COMMR-CGST-CHN(O) dated 28.02.2022 was taken up by the Director General of Vigilance (DGOV), New Delhi and that after completion of the investigation the DGOV, New Delhi has communicated its decision/directions through a letter F.No.V.527/03/2023/794 dated 15.01.2024 to the Principal Chief Commissioner of GST and Central Excise wherein, at Para 4(ii) it is stated that “regarding the role of Ms.Supriya Chandran, the then Assistant Commissioner, it was observed that she was in-charge of both investigation and SVLDRS processing in the material time; that however, there was a lapse on her part in as much as furnishing “NIL” report denoting that there was no investigation against the declarant; that it appeared that the officer did not notice the name of the unit viz. M/s.Heaven Engineering while putting up the file to the designated Committee. It is further stated, in the letter that though it is a fact that SVLDRS-1 declaration has a mention of M/s.Heaven Engineering in the addressed block, it was taken to be a lapse by over sight and not a deliberate act, as it may not practically be possible for an officer at the rank of the Assistant Commissioner to compare each and every detail of the application vis-à-vis reports received; and thus



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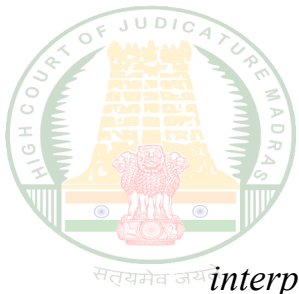
W.A.No.2388 of 2022 & W.P.No.11457 of 2023

while there appeared to be a negligence on the part of the Officer, but the same cannot be attributed to a deliberate mis-conduct and thus an Administrative Warning to the Officer for being more careful in future has been approved by the Competent Authority”.

11. Further, vide letter F.No.DGoV/Conf/MISC/97/2022-O/oPr.DG-HQRS-DELHI dated 30.08.2024, the DGoV informed at Para 3 that “The investigation into a complaint regarding wrong acceptance of SVLDRS-3 and consequent issuance of SVLDRS-4 (Discharge Certificate) in respect of Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) declaration filed under “Voluntary Disclosure” category by Sh.Sundaram Satish Kumar, Proprietor of M/s.Heaven Engineering was taken up. The investigation sought to find out the act of omissions and commissions on the part of the officers in dealing with the matter. As per the finding of the investigation, issuance of Administrative Warning was proposed. Accordingly, with the approval of the competent authority, an Administrative Warning was issued to (then AC), the complainant on 24.02.2024. Administrative Warning was also issued to other three (03) officers namely Sh.Meenakshi Sundaram (AC), Sh.Ganpat Singh Meena (Supdt.) and Sh.Ranjith Kumar, Supdt. on the same matter. (name withheld by us)

58. With this, the total lack of coordination between the officers in the Department is apparent, especially between the authority who issued the show cause notice and the officers in the Designated Committee, who proceeded to issue Form SVLDRS -3 and discharge certificate without reference to the show cause notice.

59. In light of our detailed discussion as above, particularly our

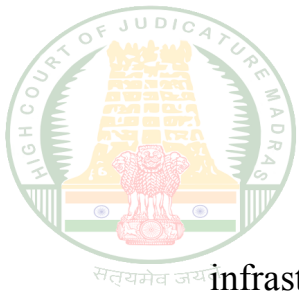


interpretation of Section 129(2)(c) of the Scheme, we are of the view that the application filed in this case is vitiated by non-disclosure of material particulars, being the field relating to 'category'. As a result, the SVLDRS application is presumed not to have been filed at all. We hence reverse the order of the Writ Court and allow this Writ Appeal.

60. The Department is directed to proceed with the show cause notice in accordance with law, adhering to the principles of natural justice and conclude the proceedings within a period of three (3) months from date of receipt of a copy of this order. In light of the discussion as above, let the adjudication of the impugned Show Cause Notice be entrusted to some other Commissionerate and the directions in this paragraph, be communicated, to ensure compliance.

75. With this, the issue in regard to the processing of the SVLDRS Declaration stands decided. After devoting our anxious consideration to this matter, we conclude that this issue is a stand-alone, independent one, and that the issue relating to sexual harassment can well be decided without reference to, or the need to advert to the SVLDRS Declaration. The inquiry of the ICC, as directed, will reveal whether R4 has, in fact, levelled the allegations of sexual harassment as a counter-blast and bring the truth to light. R4's complaint of sexual harassment will hence be decided on the strength of the allegations levelled in that complaint.

76. As far as the application filed by the Appellant alleging perjury on the part of the R4 in making a false averment in her affidavit, we do not agree. The averment related to a technical matter in regard to the IT



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infrastructure for receipt and processing of SVLDRS Declarations. The statement of R4 only makes a general averment in that regard and does not, as is made out to be, convey any specific information that may be regarded as being a falsehood. This Miscellaneous Petition is hence dismissed.

Part C - W.P.No.11457 of 2023

77. In this Writ Petition the Union of India/P1, Internal Complaints Committee/P2 and Chief Commissioner of Customs/P3 challenge order of the Central Administrative Tribunal (in short 'CAT'/'Tribunal') dated 20.02.2023. The appellant in W.A.No.2388 of 2022 is arrayed as R1 and had been the applicant before the Tribunal. The Registrar of the Tribunal is arrayed as R2. In the interests of uniformity, we refer to the parties in the Writ Petition also as per their array in the Writ Appeal, barring R2 in the Writ Petition, who is referred to, where necessary, as Registrar, CAT.

78. The appellant had challenged the order of the Union of India dated 13.07.2022 suspending him from service before the Tribunal. Learned counsel for the Union had submitted that the suspension was on the basis of the allegation of sexual harassment and where the ICC had



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

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rendered a finding that he was guilty. The Tribunal noted that the impugned order dated 13.07.2022 did not refer to a sexual harassment complaint or any matter pending before the ICC or any other offence for that matter.

79. At the time when the impugned order of the Tribunal was passed, the order passed in W.P.No.17798 of 2022 dated 09.09.2022 had been carried in appeal and the order of the Writ Court had been stayed on 03.11.2022. One of the prayers before the Writ Court had been for setting aside the suspension order dated 13.07.2022 and as regards that, the Writ Petition had been dismissed stating that since O.A.No.609 of 2022 had been pending before the Tribunal, it is only the Tribunal which is the appropriate authority to hear the same.

80. In regard to order dated 13.07.2022, the Tribunal has ultimately disposed the application for the reasons that i) the suspension order did not indicate anything about sexual harassment, ii) no disciplinary proceedings were initiated nor was there any charge memo issued, iii) the headquarters of the appellant had been shifted to Principal Chief Commissioner of Central Goods and Services Tax (Kolkata Zone), iv) that there had been a direction that the appellant should not leave the



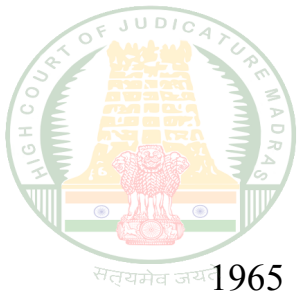
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headquarters without the permission of the competent authority, v) that he had been entitled to receive subsistence allowance and vi) that the suspension initiated by the Chennai Zone could not continue when his office has been shifted to the Kolkata Zone.

81. Mr.AR.L.Sundaresan, assisted by Mr.M.Santhanaraman, learned Senior Standing Counsel would maintain that the suspension had emanated only from the recommendations of the ICC. He would also submit that the extant statutory provisions and regulations require suspension of an employee charged with allegations of sexual harassment till such time finality is reached in respect of the complaint.

82. He would assail the order of the Tribunal on the ground that the suspension had been set aside even prior to the expiry of the period of 270 days as stipulated in Rule 10(7) of the CCS(CCA) Rules, and taking into account the stay granted by the Division Bench on 03.11.2022, the period of 270 days of suspension had not been complete at the time when the impugned order had been passed by the Tribunal on 20.02.2023.

83. The entire sequence of events has been taken note of by the Union in order dated 06.04.2023, wherein, it has taken note of amendment dated 19.10.2022 to Rule 10(7) of the CCA (CCA) Rules,



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1965 which stipulates that in a case where no charge sheet has been issued under those Rules, the total period of suspension including an extended period in terms of sub-Rule (6) shall not exceed 270 days.

84. R1 for his part would defend the order of the Tribunal, referring to the following cases. We have heard the learned counsel. In light of the conclusion that we have arrived at, we, however, do not see any need to advert to the following cases cited by R1.

Citations of 1st respondent in WP.No.11457 of 2023

1. *Union of India and Others v. Shibram Sarkar*⁷³
2. *R.Patchaiappan v. The Principal Secretary Cum Commissioner, Hindu Religious and Endowment Department, Mahatma Gandhi Road, Nungambakkam, Chennai-34 and others*⁷⁴
3. *Mahendra Singh Rajawat v. Punjab National Bank and others*⁷⁵
4. *Dr.P.Govindaraju v. The Manonmaniam Sundaranar University, Rep. by its Registrar, Abishekapatti, Tirunelveli-627 012.*⁷⁶
5. *Manonmaniam Sundaranar University, Represented by its Registrar, Abishekapatti, Tirunelveli-627 012 v. Dr.P.Govindaraju*⁷⁷
6. *Pradip Mandal v. Metal Scrap Trade Corporation Ltd. and Others*⁷⁸
7. *Institute of Hotel Management, Catering Technology and Applied Nutrition & ors. V. Suddhasil Dey & Another*⁷⁹
8. *Zunjarrao Bhikaji Nagarkar v. Union of India and Others*⁸⁰
9. *Yoginath D.Bagde v. State of Maharashtra and Another*⁸¹
10. *Union of India and Another v. Ashok Kumar Aggarwal*⁸²

73 2019 SCC OnLine Cal 9105

74 WP(MD)No.16994 of 2019 dated 01.08.2019

75 S.B.Civil Writ Petition No.14558 of 2022 dated 03.01.2023

76 WP(MD)No.979 of 2019 dated 24.01.2020

77 WA(MD)No.428 of 2020 dated 20.04.2022

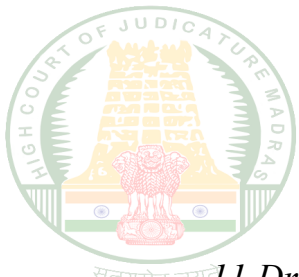
78 2022 SCC OnLine Cal 1304

79 WPCT 137 of 2019 dated 13.03.2020

80 (1999) 7 SCC 409

81 (1999) 7 SCC 739

82 (2013) 16 SCC 147



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11. *Dr.A.Manimekalan v. The Registrar, Bharathiar University, Coimbatore-641 046*⁸³

12. *Dr.Kali Charna Sabat v. Union of India and Others*⁸⁴

13. *Pawan Kumar Niroula v. Union of India & others*⁸⁵

14. *Abhijit Karjee v. The State of West Bengal and others*⁸⁶

15. *Dina Nath Pandey v. The State of West Bengal & Others*⁸⁷

16. *Neeraj Dhama v. State of U.P. and others*⁸⁸

17. *Union of India & Others v. Ashiquzzaman*⁸⁹

18. *Tapas Kumar Roy v. The State of West Bengal & Another*⁹⁰

19. *Gurpal Singh v. High Court of Judicature of Rajasthan*⁹¹

85. We are given to understand that the appellant has reported for duty in Jharkhand and is serving there. Disciplinary proceedings, we are told, were under contemplation, but have not been initiated thus far. We also find that the order of suspension of the appellant impugned before the CAT is completely silent on the reasons for suspension. Moreover, we have directed the ICC to be re-constituted and issued a series of directions for conduct of inquiry, also setting out timelines in that regard.

86. In such circumstances, we do not feel that there is any necessity for orders to be passed at this juncture, varying the services of the Appellant. Hence, and as far as the service of the appellant is concerned,

83 WP.No.5764 of 2023 etc. batch dated 27.07.2023

84 2024 SCC OnLine MP 7314

85 2022 SCC OnLine Cal 180

86 WP.ST.83 of 2018 dated 23.02.2021

87 2018 SCC OnLine Cal 5313

88 2019 SCC OnLine All 7286

89 WP(C)No.12859 of 2020 dated 31.07.2020

90 WPST.4 of 2024 dated 06.08.2024

91 (2012) 13 SCC 94



W.A.No.2388 of 2022 & W.P.No.11457 of 2023

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let status quo be maintained till the completion of the proceedings referred to the ICC in terms of directions at paragraph 35 above, and subject thereto.

87. The Writ Appeal and Writ Petition stand disposed in terms of this order with directions as above. No costs. C.M.P.No.14442 of 2024 stands dismissed and all other connected Miscellaneous Petitions are closed.

[A.S.M., J] [G.A.M., J]
20.08.2025

sl
Index:Yes
Speaking order
Neutral Citation:Yes

To

1.The Chairman,
Central Board of Indirect Taxes & Customs,
North Block,
New Delhi – 110 001.

2.Internal Complaints Committee
Headed by Ms.Prachi Saroop, IRS
Principal Additional Director General,
Directorate General of Vigilance,
West Zonal Unit,
New Custom House,
Annex Building, 7th Floor,
Mumbai – 400 001.



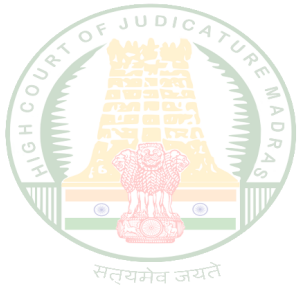
W.A.No.2388 of 2022 & W.P.No.11457 of 2023

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3.The Principal Chief Commissioner,
Central Goods Services Tax & Central Excise,
Tamil Nadu & Puducherry Zone,
121, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

4.The Chief Commissioner,
Chennai Customs Zone,
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

5.The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.



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W.A.No.2388 of 2022 & W.P.No.11457 of 2023

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

sl

WA.No.2388 of 2022 and
CMP.No.14442 of 2024 and
CMP.No.18244 of 2022 and
CMP.Nos.2733 & 4018 of 2023 and
WMP.Nos.11338, 11339 & 5149 of 2023 and
WP.No.11457 of 2023

20.08.2025