

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.3799 of 2021 and

WMP. Nos.4334 & 4335 of 2021

M/s.Chennai Citi Centre Holdings, (P) Ltd.,
No.10-11, Dr.Radha Krishna Salai,
Mylapore, Chennai – 600 004
Represented by its
authorized signatory,
Mr.P.T.Shahul Hameed

...Petitioner

Vs.

The Designated Committee under
Sabka Vishwas Legacy Disputes
Resolution Scheme, 2019,
(Commissioner of GST & Central Excise)
Chennai North Commissionerate,
GST Bhawan, Nungambakkam,
Chennai – 600 034.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to quash FORM SVLDRS-3 No.L040320SV300070 (Declaration ARN No.LD0401200000237) dated 04.03.2020 and to further direct the respondent to issue a Discharge Certificate under FORM SVLDRS -4 by considering the payments made by the lessees against the Petitioner's liability and as declared in FORM SVLDRS 1 vide Declaration No.ARN No.LD0401200000237.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.Rajendran Raghavan,
Senior Standing Counsel

ORDER

The petitioner has challenged an order passed by the sole respondent/the Designated Committee under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, ('Scheme'), calling upon the petitioner to remit an amount of Rs.1.45 Crores (approx) as a pre-condition for issuance of a Discharge Certificate under the Scheme.

2. Heard Mr.G.Natarajan, learned counsel for the petitioner and Mr.Rajendran Raghavan, learned Senior Standing Counsel for the sole respondent.

3. The petitioner had approached the respondent with an Application under the Scheme for settlement of the dispute arising under show cause notice culminating in order-in-original dated 10.02.2017, confirming a demand of Service Tax under the Finance Act, 1994 (in short 'Act') for the period April 2008 to September 2011, under the head '*Renting of Immovable Property Services*'.

4. There was considerable litigation surrounding the levy of service tax under the above head. Many of the assessees upon whom demands were raised had agreements with the service recipients that is, the lessors/landlords/assessee with their lessees/tenants, that the burden of service tax would be borne by the latter. Thus, the private agreements provided that the assessees would pass on the liability to their tenants and this was one of the defences taken by the assessee/landlords before the Service tax Department. In many instances the challenge to

the demands raised, including that to the validity of the statutory provisions itself, was initiated at the instance of the tenant/lessee.

5. The provisions of Finance Act, 1994 imposing service tax on rentals from immovable property were challenged and the challenge came to be dismissed by the Delhi High Court in the case of *Home Solutions Retails (India) Ltd. V. Union of India and others* (2009 (14) STR 433). In petition for Special leave, the Supreme Court directed the lessees to deposit a portion of the dues, upon condition that the balance would be remitted if the issue was held adverse to them. There are no materials placed on record by the petitioner to indicate that similar orders have been passed in the case of the petitioner's lessees in the State of Tamil Nadu as well. This is one of the defenses raised by the respondents in the counter, that there is no proof to the effect that the lessees of the petitioner have effected remittances towards the service tax dues of the petitioner, or the quantification thereof.

6. Since, according to the petitioner, it is entitled to take credit of the amount that has been deposited thus far by its lessees, it adopted the stand that the amount payable by it under the scheme, that is 50% of the disputed demand should be taken to be remitted by way of adjustment of earlier remittances.

7. The application was filed on 04.01.2020 in Form SVLDRS – I. The respondent issued Form SVLDRS – II on 19.02.2020, computing the amount payable at a figure of Rs.1,55,92,131/- and calling upon the petitioner to remit the

same. The Form stated that if the declarant i.e., the petitioner, did not concur with the amount estimated, he could appear for a personal hearing before the respondent on 21.02.2020 to explain its stand.

8. The petitioner appeared before the respondent and also filed written submission dated 28.02.2020 wherein it submitted that payments had already been effected by its lessees pursuant to an interim order passed by the Supreme Court, and such remittances may be given credit to in computing the payment required to be made by it under the Scheme.

9. The impugned order, Form SVLDRS- III has been issued on 04.03.2020, wherein credit has been given only to an amount of Rs.10,73,726/- and the petitioner has been called upon to pay a sum of Rs.1,45,18,405/-. The order does not contain any reasoning for the restriction of the credit only to a sum of Rs.10.73 lakhs (approx) and the rejection of the petitioner's request for credit of a sum of Rs.1.55 crores.

10. At paragraph 18 of the respondents counter, they state that the claim of the petitioner for credit of the deposit effected by its lessees cannot be accepted. The rejection is bald and no reasoning is set-forth even in counter, in support of the same. The counter also states that no proof has been placed on record by the petitioner in support of its claim that a sum of Rs.1.55 crores had been remitted by the lessees.

11. A reading of the Scheme reveals that the procedure for processing of a declaration under SVLDRS Scheme is as follows:

(i) A declaration is to be filed by the petitioner in Form SVLDRS – I.

(ii) The declaration made is to be verified by the Designated Authority and a statement issued in Form SVLDRS – II setting out the estimate of the amount to be remitted by the declarant and affording an opportunity of personal hearing to the petitioner to explain the differences in estimate.

(iii) If the declarant wishes to indicate agreement or disagreement with the estimate in Form SVLDRS – II, or waives the right for personal hearing, wishes to seek an adjournment or file written submissions, a request in Form SVLDRS- IIA be filed for these purposes.

(iv) Form SVLDRS -III is to be issued thereafter, either accepting the declaration or indicating the amount to be remitted after taking note of the objections raised by the petitioner/applicant to the estimate made by the Designated Authority.

12. A missing link in the procedure, in my considered opinion, is the passing of a reasoned order in the event the respondent does not agree with the objections raised by the declarant. In my view, it is incumbent upon the authority to take note of the objections raised by the declarant to the estimate made. Should he agree with the objections, there is nothing further to be done, Form – III will indicate the final amount payable which will be in line with the quantification

made by the declarant. In the event that he does not agree with the declarant, then a reasoned order must be passed by the authority indicating the points of difference and the reasoning therefor. It is only in such an event that the need arises for a declarant to be aware of why his objections to the estimate are not being accepted.

13. In the present case, the counter supports the impugned order stating that (i) no credit can be taken of any deposit effected by the petitioner's tenants and (ii) that there is no proof for any deposit having been made by the lessees. Both the aforesaid reasons do not find place in the impugned order.

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

15. Circular No.1073/06/2019.CX in F.No.276/78/2019/CX-8.Pt.III dated 29.10.2019, issued by the Central Board of Indirect Taxes and Customs provides clarifications for several issues arising from the application of the Scheme. One of

the points raised is in regard to demands arising from Service Tax on rentals on immovable properties. At paragraph 2 (v), the Board states as follows:

2.

(v)

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

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

17. The Circular refers to the Supreme Court having permitted the lessees to agitate the service tax demands made upon the landlord and the question that then arises is as to whether the reference to 'such persons' in the seventh line of the paragraph extracted above, is to the lessee mentioned in the previous sentence or the lessor mentioned earlier. This aspect may not be very material in this case as it is the lessor/landlord who has filed the application and it is hence for it to satisfy all applicable parameters under the Scheme.

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

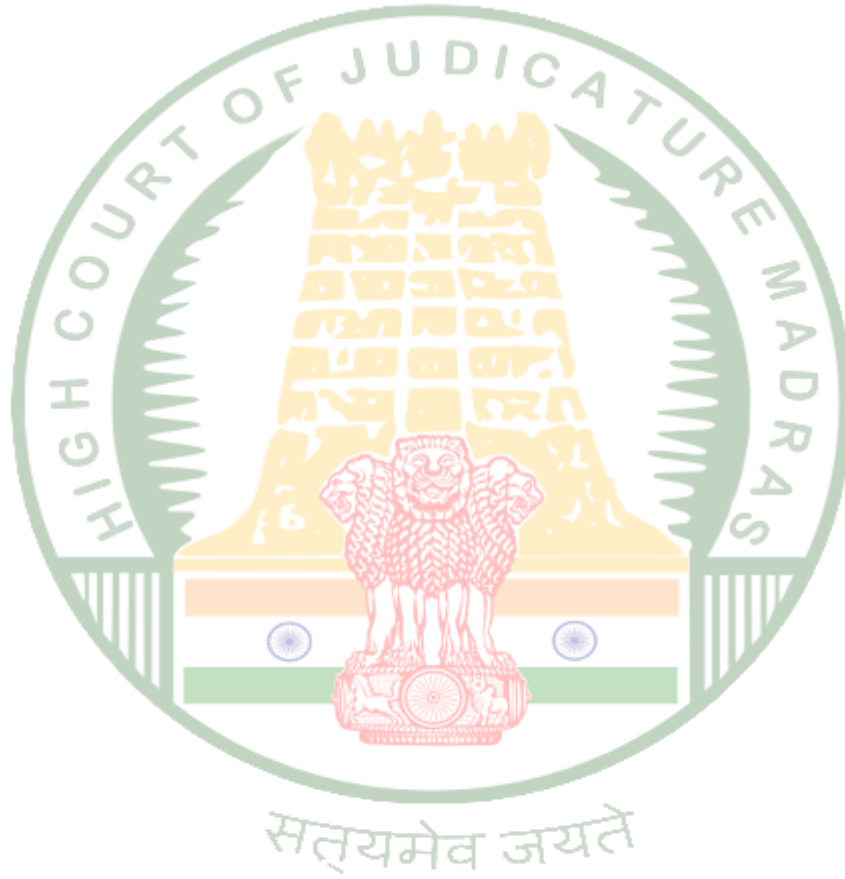
19. This writ petition is disposed in the aforesaid terms. Connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No
Speaking order/Non Speaking Order

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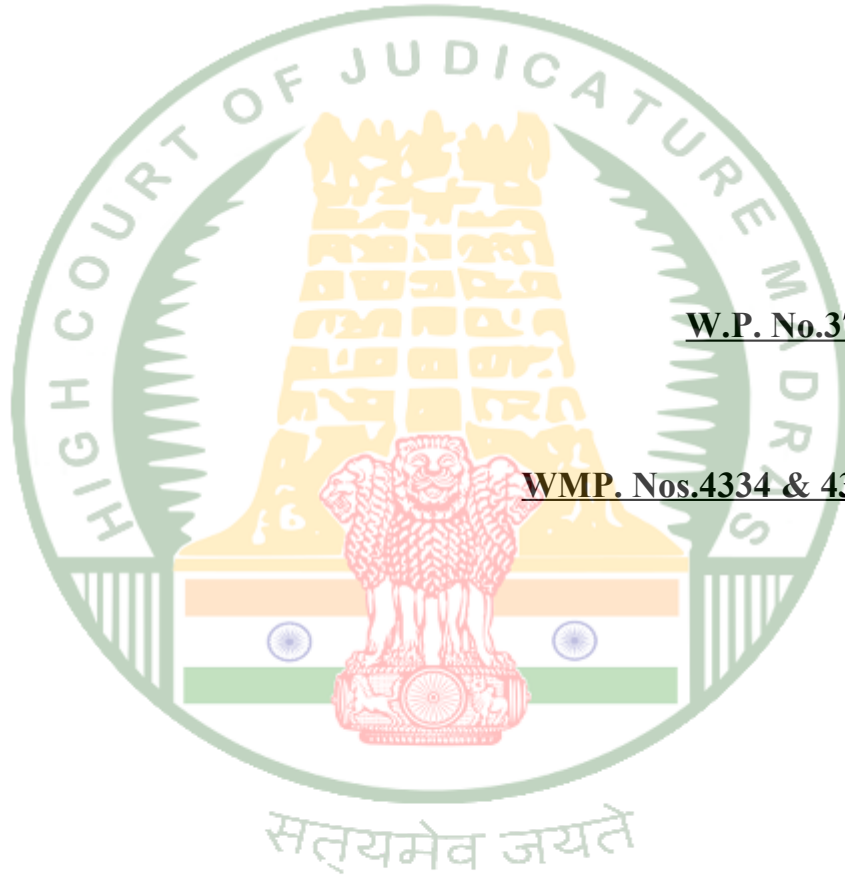
To
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