

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. No.7388 of 2020
and
WMP. Nos.8838 & 8839 of 2020

M/s.Vamsee Overseas Marine Private Limited,
Represented by its Managing Director,
Mr.J.Ramesh Chowdary, Aged 48 years,
No.A-10, 2nd Avenue, Anna Nagar,
Chennai – 600 102.

.. Petitioner

Vs.

1. The Commissioner of Service Tax,
Service Tax Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai – 600 040.
2. Designated Committee,
Subka Vishwas (Legacy Dispute Resolution)
Schem 2019,
GST Bhawan, Nungambakkam,
Chennai – 600 034.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the second respondent

culminating in the communication SVLDRS-3 dated 02.03.2020 confirming the amount payable as Rs.25,95,678.50 and quashing the same, confirm the balance amount payable as Rs.9,37,350.50.

For Petitioner : Mr.S.Murugappan

For Respondents : Ms.Hema Muralikrishnan,
Senior Standing Counsel

ORDER

The petitioner is an assessee for the purposes of Service Tax and is registered under the head 'Ship Management Service'. Proceedings were initiated by the Service Tax Commissionerate on the ground that receipts from chartering of ships would be liable to tax under the head 'Supply of Tangible Goods Services'. Since the petitioner had not obtained a registration under this head, a show cause notice had been issued proposing assessment as aforesaid for the period April 2008 to March 2013, invoking extended period of limitation.

2. In the course of investigation, the petitioner deposited a sum of Rs.66,05,012/- towards tax liability and a sum of Rs.16,58,328/- towards interest. A show cause notice was issued and after hearing the petitioner, an order-in-original was passed on 16.09.2014 confirming the proposals in the notice. An appeal is

stated to have been filed before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, which is pending.

3. In the meanwhile, the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2018 (Scheme) was announced by the Government providing for the settlement of pending disputes. The petitioner availed of the Scheme and its declaration has been accepted with a variation in the computation of the amount payable in terms thereof.

4. According to the respondent, only the sum of Rs.66.05 lakhs remitted towards tax would be given credit to but not the sum of Rs.16.58 lakhs as the latter was remitted towards interest, and accounted for by the Department under that head, not liable to be taken into the reckoning in the computation under the Scheme. The petitioner however, relies on the provisions of Section 125(2) as per which 'any amount' paid as a pre-deposit or prior to issue of Show Cause Notice should be taken into account and given credit to in quantifying the amount liable to be paid under the Scheme. This is the dispute to be decided.

5. The provisions of Section 124 relate to the methodology to be adopted in computation and read as follows:

124. (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:—

(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(c) where the tax dues are relatable to an amount in arrears and,—

(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. Of the tax dues;

(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;

(iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—

(A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(B) amount indicated is more than rupees fifty lakhs, then, forty percent. of the tax dues;

(d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

6. Sub-Section (2) to Section 124 states that the relief computed under Sub-Section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under an indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the final settlement.

7. In the present case, the petitioner has, admittedly, remitted amounts of Rs.66.05 and Rs.16.58 lakhs as deposits even prior to the issuance of show cause notice. However, the petitioner has specifically demarcated the amount of Rs.66.05 lakhs as towards tax and Rs.16.58 lakhs as towards interest. Thus the respondent, while accepting the eligibility of the petitioner to the benefit of the Scheme, has proceeded to ignore the amount of Rs.16.58 lakhs, since the amount has been credited under the accounting head relevant for interest payments.

8. Having heard learned counsel, I am of the view that this writ petition must be allowed for the following reasons:

(i) Section 124(2) comes to the aid of the petitioner. It envisages two kinds of deductions: firstly, that any pre-deposit made at the stage of appellate proceedings under an indirect tax enactment be given credit to or secondly, any deposit made during enquiry, investigation or audit, be deducted when finalising the computation.

(ii) In the present case, the amount was not remitted towards pre-deposit. It was remitted during investigation and even prior to issuance of show cause notice and thus is, in my view, covered by the second limb of Section 124(2).

(iii) The rejection of the petitioner's computation is on the ground that the amount of Rs.16.58 lakhs accounted by the Department under a different accounting head. However, the fact that it has, in fact, been remitted and is available to the credit of the petitioner, is not denied. In such circumstances, the objection raised by the Revenue appears to be hyper-technical to say the least.

(iv) Accounting methodology cannot, and must not dictate or stand in the way of substantive relief that is otherwise available to an assessee. Accounting standards and methods are only formulated to aid proper recording of transactions and have

limited relevance in deciding upon a substantive issue, such as the present. Useful reference may be made to the judgment of the Supreme Court in *Kedarnath Jute Mfg. Co. Ltd vs Commissioner Of Income Tax* (82 ITR 363) to the effect that accounting entries are hardly relevant to arrive at the true nature of a transaction and will not be decisive or conclusive in deciding a substantive issue.

(v) Moreover, the object of the scheme should not be lost sight of, as the scheme has itself been formulated for the smooth settlement of disputes. Interpretation of the provisions thereof should be to carry forward the object rather than to frustrate the same, giving rise to more litigation.

9. Interestingly, had the declaration filed by the petitioner been accepted, there would have been a total waiver of interest liability, as per the Scheme. Thus if only petitioner had remitted the entire amount of Rs.82,63,340/- (Rs.66.05 plus Rs.16.58 lakhs) towards tax, the respondent would have simply given credit to the entire amount, waiving interest liability in full. It is the apportionment that has given rise to the present situation and the petitioner must not be made to suffer on account of this, irrelevant fact.

10. Learned counsel for the petitioner points out that the amount pending payment under the declaration is liable to be paid within 30 days of receipt of the declaration. Since the petitioner has enjoyed an order of interim stay during the pendency of this writ petition, the period of 30 days for effecting payment will start today.

11. This Writ Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

03.02.2021

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Index: Yes
Speaking order

To

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