

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION Nos.2, 3 & 5 OF 2021

Between:

WRIT PETITION No.2 OF 2021

Bharathi Cement Corporation Pvt. Ltd.,
Nallalingayapalli, Kamalapuram Mandal,
Kadapa District – 516 289, A.P. --- Petitioner.

And

The Additional Commissioner of Central Tax,
Office of the Commissioner of Central Tax,
Guntur Central GST Audit Commissionerate,
9/86-A, Amaravati Nagar,
West Church Compound,
Tirupati – 517 502 and three (3)
others. --- Respondents.

DATE OF COMMON ORDER PRONOUNCED : 16.08.2021

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI

AND

HON'BLE SRI JUSTICE K.SURESH REDDY

1. Whether Reporters of Local Newspapers
may be allowed to see the common order? Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to
see the fair copy of the order? Yes/No

JOYMALYA BAGCHI, J

K.SURESH REDDY, J

*** HON'BLE SRI JUSTICE JOYMALYA BAGCHI**

AND

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! Counsel for the Petitioner : Sri Raghava Ramabhadran

^ Counsel for Respondents : Sri Suresh Kumar Routhu

< Gist:

> Head Note:

? Cases referred:

This Court made the following:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI**AND****HON'BLE SRI JUSTICE K.SURESH REDDY****WRIT PETITION Nos.2, 3 & 5 OF 2021**

(Taken up through video conferencing)

COMMON ORDER: (Per Hon'ble Sri Justice Joymalya Bagchi)

1. All these Writ Petitions are heard analogously and are disposed of by way of this common order.

2. Factual matrix giving rise to the proceedings are as follows:

Petitioner is in the business of manufacturing '*cement and clinker*' falling under Chapter 25 of the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the existing law'). During the period from 2014 to June, 2017, the petitioner made sales to customers on '*for destination basis*' from its factory and depots. Petitioner availed credit on the services of GTA and C&F Agents used for outward transportation of goods from factory to customers' premises for the said period, as follows:

Period	Month of Availment	Cenvat credit availed (including cesses)		
		Factory to Customer's place	Depot/Consignment Agent Premises to Customer's place	C&F Agency services
August 14 to April 15	May 2017	8,88,25,992	3,15,78,763	1,36,38,620
November 15 to June 17	Nov 16 to June 17	3,41,05,942	53,07,576	-
		12,29,31,934	3,68,86,339	1,36,38,620
TOTAL		17,34,56,893/-		

3. Respondent - Commissioner of Central Tax : GST Commissionerate, Tirupati, issued a show-cause notice, dated

04.06.2019, proposing recovery of irregularly availed Cenvat Credit of Service Tax of Rs.17,34,56,893/- along with interest and penalty on the ground that petitioner is not entitled to avail Cenvat credit of service tax paid on GTA and C&F Agency Services for outward transportation of goods. The Goods and Services Tax Act, 2017 (hereinafter referred to as 'the GST Act') was introduced with effect from 01.07.2017. In order to resolve and settle pending cases under various laws including Central Excise Act, which were subsumed in the GST regime, the Government floated 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as 'the Scheme') under Chapter-V of the Finance Act, 2019 (for short, 'the Finance Act'). On 21st August, 2019, *vide* Notification No.05/2019 Central Excise-NT, the SVLDRS Rules were notified and the scheme became operational from 1st September, 2019 to 31st December, 2019.

4. Section 122 of the Scheme enumerated the enactments to which the said Scheme would apply, which, *inter alia*, included the Central Excise Act, 1944 and the Rules framed thereunder. The Scheme was made applicable with regard to 'tax dues' under the aforesaid enactments as per Section 123 of the Finance Act. Relevant portion of the said provision, for our purpose, is set out herein below:

"123. For the purposes of the Scheme, "tax dues" means –

.....

(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the

30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;”

5. Exceptions to such eligibility were engrafted in Section 125 of the Finance Act. As the petitioner has been issued show-cause notice, dated 04.06.2019, proposing to recover irregularly availed Cenvat credit of Rs.17,34,56,893/-, as aforesaid, and did not fall within the exceptions provided under Section 125 thereof, he was eligible to avail the said Scheme and, in fact, did so by making a declaration in electronic form (SVLDRS-1) under Section 125 of the Finance Act. Pursuant to such declaration, the 1st respondent - Designated Committee upon verification issued a statement in electronic form being SVLDRS-3 indicating the amount payable by the declarant *i.e.*, Rs.8,67,28,446.50 after availing relief under the Scheme. Petitioner duly paid the said amount within the period stipulated under Sub-section (5) of Section 127 of the Finance Act *i.e.*, within 30 days. However, instead of issuing a discharge certificate within 30 days of the payment, as per Sub-section (8) of Section 127, it is contended that the respondent – Commissioner of Central Tax GST Commissionerate, Tirupati, has issued the impugned letter, dated 24.11.2020, refusing to issue a discharge certificate on the ground that the petitioner has illegally sought transitional credit of the disputed Cenvat credit under the GST Act. As a consequence, the petitioner in Writ Petition No.5 of 2021

challenged the impugned letter, dated 24.11.2020, and prayed for a direction upon the respondents to issue discharge certificate in form SVLDRS-4 in terms of Section 127(8) of the Finance Act. In the meantime, the respondent - Principal Commissioner of Central Tax GST Commissionerate, Tirupati, proceeded with adjudication of the show-cause notice, dated 04.06.2019, with regard to the irregularly availed Cenvat credit of service tax paid on GTA and C&F Agencies which was the subject matter of declaration in SVLDRS, as aforesaid, and passed the order-in-original, dated 12.10.2020, which came to be challenged in Writ Petition No.3 of 2021. Respondent – Additional Commissioner (Audit), Visakhapatnam, also issued a show-cause notice, dated 10.11.2020, with regard to irregular availment of transition credit of Rs.17,46,55,825/- under Section 140 of the Central Goods and Services Tax Act, 2017 including the irregularly availed Cenvat credit of Rs.17,34,56,893/- for availing GTA and C&F Agency services *i.e.*, the subject matter of the declaration under the SVLDRS Scheme, which has been challenged in Writ Petition No.2 of 2021.

6. Mr.Raghava Ramabhadran, learned counsel appearing for the petitioner, submits that the Scheme had been introduced under Chapter-V of the Finance Act of 2019 in order to put a hiatus to all pending disputes relating to tax dues under the laws including Central Excise Tax, which were subsumed into the GST Act, upon its introduction on 1st July, 2017. Show-cause notice, dated 04.06.2019, issued upon his client for allegedly availing irregular Cenvat credit to the tune of Rs.17,34,56,893/- fell under the category

of 'tax dues' under the Scheme. Accordingly, petitioner was advised to make a declaration under Section 126(1) of the Finance Act. Pursuant to such declaration, the tax relief claimed was accepted and statement in electronic form SVLDRS-3 was issued by the 1st respondent – Designated Committee on 26.02.2020. Petitioner duly paid the said amount as per Sub-section (5) of Section 127 of the Finance Act. Under such circumstances, it was incumbent on the part of the 1st respondent – Designated Committee to issue a discharge certificate within 30 days of payment. Instead of doing so, impugned letter, dated 24.11.2020, refusing to issue the discharge certificate was issued. The respondents proceeded with the adjudication under the Central Excise Act and the order-in-original, dated 12.10.2020, came to be passed. He submitted that once the declaration was accepted under the Scheme and the amount was paid as per SVLDRS-3 statement, there was no scope on the part of the 1st respondent – Designated Committee to refuse issuance of discharge certificate and proceed with the adjudication under the Central Excise Act, 1944. He further submitted that the Cenvat credit available to his client as on 30.06.2017 after payment of the amount under Sub-section (5) of Section 127 was validly transited under Section 140 of the GST Act and therefore the impugned show-cause notice issued under Section 140 of the said Act so far as it relates to the aforesaid transited amount is liable to be quashed.

7. Mr.Suresh Kumar Routhu, learned Senior Standing Counsel for Customs, submits that the petitioner has blown hot and cold at the same time. He availed the Scheme and made a declaration

under Section 125 of the Finance Act with regard to the '*tax dues*' and also paid the estimated amount after availing relief under the Scheme. Having done so, the petitioner was ineligible to seek transitional credit on the irregular Cenvat credit under Section 140 of the GST Act.

8. Chapter-V of the Finance Act of 2019 provided a scheme for settlement of disputes under various laws including the Central Excise Act and the Rules framed thereunder, which were subsumed under the GST Act. The purpose of framing the Scheme was to settle all outstanding disputes and avoid complications of carrying over the disputes into the GST regime. A person who had '*tax dues*' as defined under Section 123 of the Finance Act was entitled to make a declaration in electronic form under Section 125 stating the amount payable by him after availing relief under the Scheme. In the present case, a show-cause notice had been issued upon the petitioner for availing of irregular Cenvat credit on GTA and C&F Agency services to the tune of Rs.17,34,56,893/- for the period of April, 2014 to June, 2017, which fell within the ambit of '*tax dues*' as aforesaid and the petitioner availed of the scheme by making a declaration under Section 125 of the Finance Act proposing to pay an amount to the tune of Rs.8,67,28,446.50 after availing relief as per the Scheme. The said proposal appears to have been verified and accepted by issuance of a statement in electronic form namely SVLDRS-3 by the 1st respondent – Designated Committee and the estimated amount was also paid by the petitioner within the stipulated time. Sub-section (8) of Section 127 of the Finance Act

mandates the 1st respondent – Designated Committee to issue a discharge certificate in electronic form within 30 days of payment of the said amount. Instead of issuing the discharge certificate, the respondents proceeded with adjudication of the aforesaid show-cause notice under the Central Excise Act and passed the impugned order-in-original, dated 12.10.2020, and also issued a letter, dated 24.11.2020, refusing to issue the discharge certificate on the premise he has illegally claimed transitional credit on the irregular Cenvat credit under the GST Act. Another show-cause notice, dated 10.11.2020, was issued upon the petitioner under the provisions of the GST Act for illegally availing transitional credit for Rs.17,46,55,825/-, which included the aforesaid sum of Rs.17,34,56,893/- which was the subject matter of the declaration under the Scheme.

9. A conjoined reading of the provisions of the aforesaid Scheme would show that in the event a declaration is made with regard to 'tax dues' under the Scheme by a person eligible under Section 125 of the Finance Act and the same is accepted by the 1st respondent – Designated Committee upon issuance of statement in form SVLDRS-3 indicating the amount payable after relief and such amount is paid within the stipulated time, it is incumbent upon the 1st respondent – Designated Committee to issue a discharge certificate under Sub-section (8) of Section 127 of the Finance Act. As per Section 129 of the Finance Act, the discharge certificate gives immunity to the declarant on the following issues:

- (I) Any further duty, interest or penalty in respect of the subject matter and the period for which the declaration is made;
- (II) Any prosecution in respect of the aforesaid subject matter; and
- (III) No reopening of any other proceeding under the Indirect tax enactment for the self same subject matter and period.

10. Sub-section (2) of Section 129 *inter alia* provides that the discharge certificate shall be presumed to be void if the same was procured on the basis of any material particular furnished by the declarant which is subsequently found to be false. Immunity available to the declarant under the Scheme is therefore restricted to any future demand of tax, penalty, or interest or prosecution on the subject matter to which the declaration relates to or reopening of other proceedings under the Indirect tax enactment with regard to self same subject matter. Availing the Scheme, however, does not entitle the declarant to a stamp of legitimacy vis-à-vis the tax dues *i.e.*, irregular availing of Cenvat credit under the Central Excise Act as in the present cases. Thus, we are of the view once the declarant has paid the estimated amount as per the statement under the form of SVLDRS-3 within the stipulated time, he has the immunity from any further claim of tax, interest or penalty on the self same subject matter *i.e.*, availing irregular Cenvat credit which is the substratum of the show-cause notice issued under the Central Excise Act. However, it is debatable whether availing the Scheme renders the

claim of Cenvat credit on GTA and C&F Agency services under the Central Excise Act as eligible transitional credit under Section 140 of the GST Act.

11. In the light of the aforesaid discussion, we are of the view that once the declarant had made payment of the estimated amount as per the statement in the form of SVLDRS-3 within the stipulated time, it was beyond the jurisdiction of the respondents to proceed with adjudication of the show-cause notice issued under the Central Excise Act with regard to the self same subject matter and pass impugned order-in-original, dated 12.10.2020. However, it is the matter of adjudication whether availing of Scheme would attach legitimacy to the Cenvat credit on GTA and C&F Agency services to the tune of Rs.17,34,56,893/- and the same would be eligible for the purpose of transition under Section 140 of the GST Act. Thus, impugned show-cause notice, dated 10.11.2020, issued upon the petitioner with regard to availing of transitional credit under Section 140 of the GST Act in respect of the aforesaid Cenvat credit cannot be said to be without jurisdiction. Thus, we do not wish to interfere with the said show-cause notice and leave it open to the adjudicating authority to take appropriate decision thereon. With regard to the issue of the 1st respondent – Designated Committee refusing to issue discharge certificate under Sub-section (8) of Section 127 of the Finance Act, we opine that there is nothing in the Scheme which empowers the said respondent to refuse issuance of the discharge certificate on the basis of any subsequent event apart from the fact of discovery of false statement relating to any material particular in

the declaration. Availing of transitional credit by the petitioner under the GST Act on the Cenvat credit for GTA and C&F Agency services under the Central Excise Act is a subsequent and separate transaction from the declaration made by him under the Scheme and the adjudication of such claim cannot be said to be barred in law or without jurisdiction. Hence, we set-aside the letter, dated 24.11.2020, and remand the matter to the 1st respondent – Designated Committee to consider the issuance of discharge certificate without prejudice to the adjudication under the aforesaid show-cause notice, dated 10.11.2020, issued under the GST Act.

12. In view of the aforesaid facts, we dispose of these Writ Petitions directing as follows:

- (i) The impugned order-in-original, dated 12.10.2020, passed by the Respondent-Principal Commissioner of Central Tax GST Commissionerate, Tirupati, is set-aside;
- (ii) Letter, dated 24.11.2020, issued by the Respondent-Commissioner of Central Tax GST Commissionerate, Tirupati, is also set-aside and the matter is remanded to the 1st respondent – Designated Committee to consider the issuance of a discharge certificate under Sub-section (8) of Section 127 of the Finance Act without prejudice to the adjudication in the show-cause notice, dated 10.11.2020, issued under the GST Act; and

(iii) The respondents shall proceed with the adjudication of show-cause notice, dated 10.11.2020, after giving an opportunity to the petitioner to respond thereto and the same shall be disposed of as expeditiously as possible and in accordance with law.

13. As a sequel, miscellaneous applications pending in these Writ Petitions, if any, shall stand closed.

JOYMALYA BAGCHI, J

K.SURESH REDDY, J

Date: 16-08-2021
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