(2022) 02 GAU CK 0048

In the Gauhati High Court

Case No : Writ Petition (Civil) No.51 Of 2022

Gauranga Bhattacharjee APPELLANT

Vs

Union Of India And 7 Ors RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Citation : (2022) 02 GAU CK 0048

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Bhattacharjee

Final Decision : Allowed

Judgement

1. Heard Ms. M. Bhattacharjee, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned counsel for the respondents.

2. The petitioner M/S B G Engineering Co. is an assessee under the GST laws bearing registration No. AIKPB3945MST001. For the purpose of payment of service tax for the period 2013-2014 to 2016-2017, the petitioner availed the benefit of one time settlement scheme known as Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in short SVLDRS. The scheme is stated to have been valid up to 30.06.2020. In other words it has to be understood that any of the assessee who were in default of payment of service tax could have availed the benefit of the scheme up to 30.06.2020. In response thereof, the petitioner by the remittance order dated 30.06.2020 had remitted an amount of Rs.1,25,629.60 paisa in favour of the department towards payment of the service tax for the aforesaid period. The payment was made in respect of an Account Number 002000STUR0105629202006224441 7. As per the Mandate Form Details available at Page-25, the total duty amount the petitioner was liable to pay was Rs.1,25,629.20 paisa and the payment was required to have been made before 30.06.2020. As the petitioner had paid an amount of Rs.1,25,629.60 paisa in place of Rs.1,25,629.20 paisa as was assessed, the

payment was rejected, meaning thereby that by virtue of such rejection the petitioner was refused the benefit of the SVLDRS allowance scheme. On a representation being submitted, the authorities in the GST department had passed the speaking order No.01/2021/ SVLDRS, wherein in paragraph 19(e) thereof it was provided that as the last date of making payment of tax amount had not been extended by the Board, therefore, the request of the assessee to allow them to pay the exact amount as estimated in SVLDRS-3 on a later date cannot be accepted.

3. Being aggrieved, this petition is instituted. Considering the entire conspectus of the facts leading to this writ petition would clearly reveal that there was an entitlement of the petitioner to avail the SVLDRS benefits scheme and to pay the required tax amount on or before 30.06.2020. The tax amount to be paid was assessed to Rs.1.25,629.20 paisa but for some reason the amount paid was Rs.1,25,629.60 paisa. It is taken note of that the amount of Rs. 1,25,629.60 was paid on or before the last date and the only discrepancy was that instead of Rs.1.25,629.20 paisa, an amount of Rs. 1,25,629.60 paisa was paid, i.e. 0.40 paisa more. In the circumstance, it cannot be said that the petitioner had not paid the tax amount to the department on or before the last date of such payment under the scheme nor it is a case that the petitioner had paid any amount less than the required amount that was to have been paid.

4. In the circumstance, although technically the department may have rejected the payment of taxes by the petitioner on 30.06.2020 but such rejection itself would also have to be considered to be arbitrary from the point of view that the department could either have accepted the excess payment amounting to Rs. 1,25,629.60 or the excess amount of 40 paisa could have been returned to the petitioner instead of rejecting the entire amount.

5. In the circumstance, the subsequent offer of the petitioner to tender the exact amount and rejection of the same by the department on the ground that the payment was made on the last date of payment also cannot be accepted. The subsequent payment of the petitioner cannot be said to be a late offer of payment and it has to be construed to be an act of repayment of the amount which was already paid earlier but was rejected.

6. In view of the above, interest of justice will be made if the amount required to be paid by the petitioner is paid and the department accepts it to be the payment that was made on or before 30.06.2020. The payment be made within two weeks from today. In the event, it is not paid, the department will be at liberty to pass any order.

7. An issue had arisen that as the portal under the SVLDRS has been closed by the Department, therefore, the payment cannot be accepted through the online method. If it is so, the petitioner may tender the required amount by means of a Challan from a Nationalized Bank to be deposited in the appropriate account of the GST Department.

Writ petition stands allowed as indicated above.

