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(2023) 06 GUJ CK 0067

In the Gujarat High Court

Case No : R/Special Civil Application No. 182 Of 2021

N N Harsora Pvt. Ltd APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Companies Act, 1956 — Section 11AB, 11AC
Finance Act, 2017 — Section 127

Citation : (2023) 06 GUJ CK 0067

Hon'ble Judges : Vipul M. Pancholi, J;Devan M. Desai, J

Bench : Division Bench

Advocate : Dhaval Shah, Utkarsh R Sharma

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Looking to the issue involved in the matter and with the consent of learned advocates appearing for the parties, this petition is taken up for final hearing at an admission stage.

2. Rule. Learned advocate, Mr. Utkarsh Sharma waives service of notice of rule for respondent nos.3 and 4.

3. This petition is filed under Article 226 of the Constitution of India, in which, the petitioners have prayed for following reliefs,

"(A) Your Lordships be pleased to issue a Writ of Certiorari or any other appropriate writ, direction or order, quashing and setting aside the order of the Designated Authority (Respondent no.3) in the Form of SVLDRS-3 (Annexure – A) made under Sabka Visvas (Legacy Dispute Resolution) Scheme, 2019 thereby directing the Respondents, their servants and agents to treat the declarations/ applications filed by the petitioners under Sabka Vishvas (Legacy Dispute Resolution) Scheme, 2019 valid and accept the calculation submitted by the

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Petitioner in its Form SVLDRS-1 as sufficient compliance of the Scheme, and issue final discharge certificate under Form SVLDRS-4;

(B) Pending hearing and final disposal of the present petition, Your Lordship may be pleased to direct Respondent no. 3 to issue fresh challans to make a deposit of Rs.1,22,381/- and direct them to issue SVLDRS – 4, which will be subject to the final outcome of the present petition.

(C) Pending the hearing and final disposal of the present petition, Your Lordship may be pleased to direct the Respondents not to take any coercive steps in respect of the tax dues of Rs.22,18,148/-;

(D) xxx xxx xxx.

(E) xxx xxx xxx."

4. Heard learned advocate, Mr. Dhaval Shah for the petitioners and learned advocate, Mr. Utkarsh Sharma for the respondent nos.3 and 4.

5. The brief facts leading to the filing of the present petition are as under,

5.1 It is the case of the petitioners that the petitioner no.1 – Company is incorporated under the Companies Act, 1956. The petitioner no.1 – Company is engaged in the business of manufacture of excisable goods like SS Reactors, SS Vessels, SS Tanks etc. and also structures of iron and steel, which the petitioner – Company has been clearing on payment of duties in compliance with the provisions of the Central Excise Act, 1944 (hereinafter referred to as "Act of 1944").

5.2 It is the case of the petitioners that the petitioner no.1 opted for CENVAT Credit scheme contained in the Cenvat Credit Rules, 2004 (hereinafter referred to as "Rules of 2004") to avail of the credit of specified taxes, paid on input services and for utilization of such credit towards payments of specified taxes, leviable on the specified finished excisable goods.

5.3 It is stated that DGCEI authorities conducted inquiries against the petition no.1 – Company, which commenced from 01.12.2004. The panchnama was prepared at the factory of the petitioner no.1 – Company and statement of the petitioner no.2 was recorded and, thereafter the search, inquiries and recording of the statements at the premises of various other entities like M/s. Nerka Chemicals Pvt. Ltd. etc. to whom the petitioner no.1 has alleged to have sold and delivered various goods without payment of excise duties. It is stated that during the course of inquiry, the petitioner no.1 – Company deposited a total sum of Rs.19,12,196/- by different challans. It is also stated that the investigation culminated into show cause notice dated 30.11.2006 proposing to recover a total sum of Rs.22,18,148/- as excise duties from the petitioner no.1 – Company on the alleged illegal clearances amounting to Rs.1,38,63,422/- made by the petitioner no.1 – Company from December, 2003 to July, 2004.

That, the amount deposited by the petitioner no.1 – Company were proposed to

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be adjusted against the demand and penalties proposed to be imposed on both the petitioners and interest was also proposed to be recovered from the petitioner no.1 – Company under the show cause notice dated 30.11.2006.

5.4 It is stated that thereafter, the Joint Commissioner of Central Excise and Customs, Vapi, passed an order dated 17.03.2008 and thereby confirmed the demand of Rs.22,18,148/- along with penalty of an equal amount of Rs.22,18,148/- under Section 11AC of the Act of 1944 against the petitioner no.1 – Company, whereas a personal penalty of Rs.10,00,000/- was also imposed upon the petitioner no.2 and interest thereon was also ordered under Section 11AB of the Act of 1944.

5.5 It is stated that thereafter, the petitioners filed appeal before the first Appellate Authority. It is stated that the petitioner no.1 – Company was directed to make pre-deposit of Rs.7,00,000/- and the petitioner no.2 was directed to make pre-deposit of Rs.5,00,000/- for hearing of the appeals on merits, however, the petitioners did not comply with the said order dated 19.11.2008 and, therefore, the appeals filed by the petitioners came to be dismissed vide order dated 31.03.2009 passed by the first Appellate Authority.

5.6 It is stated that the petitioners, thereafter, filed appeals along with stay application before the Appellate Tribunal, where at the stage of hearing of stay application, vide order dated 11.11.2009, the Appellate Tribunal directed the petitioner no.1 – Company to deposit Rs.5,00,000/- and report to the first Appellate Authority. The petitioners were further directed to show evidence having a deposit amount of Rs.19,12,196/- to the first Appellate Authority. The first Appellate Authority was directed to hear the appeals on merits thereafter. It is the case of the petitioners that the petitioners deposited Rs.5,00,000/-as per the direction issued by the Appellate Tribunal and their evidence was also produced before the first Appellate Authority, however, the first Appellate Authority rejected the appeals filed by the petitioners on 25.03.2010.

5.7 It is stated that the petitioners, thereafter, again approached the Appellate Tribunal and the Appellate Tribunal, by an order dated 14.11.2018, partly allowed the appeal of the petitioner no.1 giving an option of paying 25% of the penalty under Section 11AC of the Act of 1944 along with full duty and interest within 30 days from the date and the appeal filed by the petitioners came to be rejected. It is stated that the petitioners did not challenge the said order and the dues became tax arrears.

5.8 It is stated that thereafter, a scheme for resolving pending disputes with regard to the statues like Central excise Act, the Service Tax Laws etc. has been introduced on 05.07.2019, which was named as “Sabka Vishvas (Legacy Dispute Resolution) Scheme, 2019” (hereinafter referred to as “Scheme, 2019”). It is stated that the petitioners were eligible to claim the benefit under the said scheme for the amount in arrears. The petitioner no.1 – Company filed declaration on 23.12.2019 under the scheme in the Form SVLDRS-1 on the

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online portal of the Central Board of Indirect Taxes and Customs. The petitioner no.2 also field declaration under SVLDRS-2 for the penalty of Rs.10,00,000/- .

5.9 It is stated that on receipt of the FORM SVLDRS-1, the respondent no.3 issued Form SVLDRS-2 on 29.12.2019. The said Form gives the estimated amount payable at Rs.1,22,381/-. It is stated that as per the relevant clause of the Scheme, 2019, the petitioners appeared before the concerned respondent authority and explained that the petitioners had deposited total amount of Rs.24,12,196/- (Rs.19,12,196/- + Rs.5,00,000/- by way of pre-deposit) and, therefore, the petitioners are not required to pay amount as mentioned in SVLDRS-3. It is the case of the petitioners that Form SVLDRS-3 came to be served on 03.01.2020 and, thereafter, the petitioners visited the office of the concerned respondents and requested them to reconsider the issue.

5.10 It is also stated that there was no response from the office of the respondent authority from January, 2020 and, thereafter, the Government of India has declared lockdown and because of which, the office of the petition no.1 was closed till June, 2020 and, therefore, the petitioners could not make contact with the office of the concerned respondent authority.

5.11 It is also stated that the declarant was required to pay electronically through internet banking, the amount payable as indicated in the statement issued by the Designated Committee within a period of 30 days from the date of issue of such statement, however, the said provision was amended and, thereafter, the concerned declarant was required to make such payment on or before 30.06.2020.

5.12 It is also stated that since the beneficial scheme was to get over with regard to payment on 30.06.2020 i.e. the last date of the payment, the petitioner sent the said amount through its bank, however, the said amount was returned to the petitioner no.1's account for the reasons 'CPIN is expired' and the funds had been credited to the account of the petitioner. The banker's of the petitioner informed about the said credit of the account vide letter dated 29.10.2020. The petitioners, thereafter, immediately tried to make the payment and requested the concerned respondent to issue fresh challans, however, there is no outcome of the said communication/ request. The petitioners, therefore, preferred present petition.

6. Learned advocate, Mr Dhaval Shah for the petitioner would mainly submit that the petitioners are entitled to get benefit of the Scheme, 2019. It is contended that the petitioners have made pre-deposit of Rs.19,12,196/- during the investigation, which was appropriated and, thereafter, the petitioners further paid an amount of Rs.5,00,000/- under the direction of the Appellate Tribunal by its order dated 11.11.2009. Learned advocate submits that against the total tax arrears of Rs.22,18,148/-, the petitioners had already deposited Rs.24,12,196/-, despite that, the respondent did not consider the amount paid by the petitioners as pre-deposit of Rs.5,00,000/-and thereby asked the petitioners to pay

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Rs.1,22,381/-. It is thus contended that by not calculating the amount of Rs.5,00,000/-, which was paid by the petitioners under the order of the Appellate Tribunal, the respondent has committed an error and demand of Rs.1,22,381/- from the petitioners is illegal. In support of the aforesaid contentions, learned advocate has placed reliance upon the decisions of the High Court of Karnataka at Bengaluri in case of H.M. Trust Vs. Designated Committee Sabka Vishwas (LDRS), Bangalore, reported in 2021 (49) GSTL 278 and in case of Mars Estates Pvt. Ltd. Vs. Designated Committee Sabka Vishwas (LDR) Scheme, reported in 2021 (50) GSTL 141. Learned advocate, therefore, urged that appropriate direction be issued to the respondents.

7. Thereafter, learned advocate, Mr. Dhaval Shah for the petitioners submitted that though the petitioners were not liable to make the payment of Rs.1,22,381/- as per the Scheme, 2019 to the respondent on the last day of the scheme i.e. 30.06.2020, the petitioners made the payment electronically through internet banking, on 29.10.2020. Learned advocate submitted that the petitioners came to know from the bank that the amount sent by the petitioners to the respondent was returned with reason "CPIN is expired" and, hence, a request was made to issue fresh challans, however, the request of the petitioners has not been accepted. It is, therefore, submitted that thus because of the technical error, amount was not credited in the account of the respondent though sent in time by the petitioner and, hence, there was no fault on the part of the petitioner. In support of the aforesaid submissions, learned advocate has placed reliance upon the decision of this Court in case of L.G. Chaudhary Vs. Union of India, reported in 2022 (67) GSTL 174. It is, therefore, urged that this petition be allowed.

8. On the other hand, learned Standing Counsel, Mr. Utkarsh Sharma appearing for the respondents has vehemently opposed the present petition. Learned Standing Counsel has referred to the averments made in the affidavit-in-reply filed on behalf of the respondent nos.2 to 5 and submitted that the petitioners submitted declaration in the prescribed form on 23.12.2019 as per Scheme, 2019, in which, it was pointed out that for basic excise duty of Rs.22,18,148/-, the petitioners have made pre-deposit of Rs.24,12,196/- and the said form being SVLDRS-1 was sent for verification to jurisdictional authority and after verification of the record, the concerned respondent found that the petitioners had paid total amount of Rs.19,12,196/- towards the tax liability and, therefore, balance payable by the petitioners towards the tax liability was Rs.3,05,952/-. It is pointed out that the petitioners paid Rs.5,00,000/- as adhoc deposit towards the penalty and, therefore, it could not be considered as pre- deposit against the duty amount. Thus, the respondents considered total payment of Rs.19,12,196/- as pre-deposit amount towards the tax instead of Rs.24,12,166/- as declared by the petitioners. It is further submitted that the petitioners were required to make further payment of Rs.1,22,381/- towards the tax liability as per Scheme, 2019 and, therefore, the petitioners were intimated with regard to the same by sending a communication on 29.12.2019. It is further submitted that the petitioners were required to make the payment of Rs.1,22,381/- within a period

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of 30 days from the date of issuance of the statement on 03.01.2020, however, the petitioners requested by letter dated 17.03.2020 that the Company is facing financial crunch and, therefore, time upto 30.05.2020 be granted for payment of the said amount.

9. Learned Standing Counsel, Mr. Utkarsh Sharma further submits that CPIN, which was generated, was valid upto 31.03.2020, however, the petitioners transferred the amount of Rs.1,22,381/- on 30.06.2020 and in the meantime, CPIN has expired and, therefore, the amount sent by the petitioners was not credited in the account of the respondents and thus, there was no fault on the part of the respondents. Learned Standing Counsel, therefore, urged that the petitioners are not entitled to claim reliefs as prayed for in the petition and the present petition be dismissed.

10. Having heard learned advocates for the parties and having gone through the material placed on record, it would emerge that DGCEI authority conducted inquiry against the petitioner no.1 – Company and, thereafter, show cause notice dated 30.11.2006 came to be issued proposing to recover a total sum of Rs.22,18,148/- as excise duties from the petitioner no.1 – Company and, thereafter, the Joint Commissioner of Central Excise and Customs, Vapi passed an order on 17.03.2006 and thereby confirmed the demand of Rs.22,18,148/-, whereas personal penalty of Rs.10,00,000/- was imposed upon the petitioner no.2 and further interest thereon was also ordered under the provision of the Act of 1944. Against which, the petitioners filed appeal before the first Appellate Authority and the first Appellate Authority directed the petitioners to make pre-deposit of a particular amount, however, the said order was not complied with and, therefore, the appeal was dismissed by the first Appellate Authority. It further transpires that the petitioners preferred appeal before the Appellate Tribunal along with stay application and during the hearing of stay application, learned advocate for the petitioners willingly submitted before the Tribunal that the petitioners are ready and willing to deposit another amount of Rs.5,00,000/- towards the penalty. Thus, the Tribunal, after considering the submissions canvassed by learned advocate for the petitioners, directed the petitioners to deposit further amount of Rs.5,00,000/- within stipulated time, copy of said order is placed on record at Page No.31 of the compilation.

11. Thus from the aforesaid aspects, it is clear that the petitioners paid total amount of Rs.19,12,196/- towards the duty and, thereafter, voluntarily made statement before the Tribunal that an amount of Rs.5,00,000/- towards the penalty will be deposited. Thus, we are of the view that Rs.5,00,000/-, which was deposited by the petitioners pursuant to the order passed by the Tribunal, cannot be considered towards the amount of “tax due” as the said amount was deposited towards the penalty.

12. At this stage, this Court would like to refer to relevant provision of the Scheme, 2019. Clause 124 of the Scheme, 2019 reads as under,

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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 per cent. 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."

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13. Thus from the aforesaid provision of the Scheme, 2019, it is clear that where the tax dues are relatable to an amount in arrears and the amount of duty is Rs.50,00,000/- or less then, 60% of the tax dues are required to be paid under the Scheme, 2019. Thus, relief to the aforesaid extent is available to the declarant.

14. Further sub-clause (2) of Clause 124 further provides that the relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellant 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.

15. Thus we are of the view that in view of the aforesaid Scheme, 2019, amount paid as pre-deposit at any stage of the appellant proceedings or the amount paid towards the deposit during enquiry, investigation and audit, is required to be considered while calculating the amount of tax due.

16. Keeping in view the aforesaid provision, if the facts of the present case as discussed hereinabove, are examined, it can be said that in the present case, the petitioners have paid Rs.19,12,196/- towards the tax dues and, thereafter before the Appellate Tribunal, learned advocate for the petitioners made voluntary statement that the petitioners are ready and willing to deposit Rs.5,00,000/- towards the penalty and, therefore, the Appellate Tribunal directed to pay Rs.5,00,000/- within stipulated time. Thus, an amount of Rs.5,00,000/- deposited by the petitioners by way of penalty cannot be considered towards "tax dues". Thus, the petitioners were required to make the payment of Rs.1,22,181/-. Therefore, the decisions upon which reliance has been placed by learned advocate for the petitioners would not be applicable in the facts of the present case as the facts of the said cases were different.

17. It further transpires from the record that the petitioners filed declaration under SLDRS-1 on online portal as per Scheme, 2019. The respondent issued Form SLDRS-2 on 29.12.2019 and the said form gives estimated amount payable by the petitioners as Rs.1,22,381/-. As observed hereinabove, it is the case of the petitioners that the petitioners had deposited an amount of Rs.24,12,196/- against the tax arrears of Rs.22,18,148/- and, therefore, the petitioners are not liable to make any payment under the Scheme, 2019. However, we have also clarified in the aforesaid paragraphs that Rs.5,00,000/- deposited by the petitioners was towards the penalty and not towards any tax amount and, therefore, the respondent no.3 has rightly said that the petitioners are liable to make the payment of Rs.1,22,381/-. Therefore, the declarant was given form SVLDRS-1 on 03.01.2020 as per the provision of the Scheme, 2019. The declarant – petitioner was required to make the payment within 30 days from the date of issuance of the statement. However, the petitioners requested on 17.03.2020 to give time upto 30.05.2020. At this stage, it is pertinent to note that by Taxation & Other Laws (Relaxation of Certain Provisions) Ordinance, 2020

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dated 31.03.2020, the date of payment under the Scheme, 2020 was extended upto 30.06.2020. It transpires from the record that during that extended time i.e. 30.06.2020, the petitioners sent Rs.1,22,381/- through internet banking, however, the said amount was returned with reason "CPIN is expired".

18. Thus from the aforesaid facts of the present case, it is revealed that the petitioners have tried to make the payment as demanded by the respondent no.3 on the last date of Scheme, 2019 i.e. on 30.06.2020, however due to technical reason, the said amount was not transferred to the account of the respondent no.3.

19. At this stage, this Court would like to refer to the observations made by the Division Bench of this Court in case of L.G. Chaudhary (supra), wherein this Court has observed in Paragraph Nos.8 to 11 as under,

"8. Having considered the submissions made by learned advocate for the respective parties, it is not in dispute that the petitioner was required to make the payment of Rs. 38,64,256/- as determined in Form SVLDRS-3 and the petitioner tried to make the payment through NEFT on 30.06.2020, however, the same was not accepted by the receiving bank and the payment was returned to the petitioner which is apparent from the bank statement produced on record.

9. It also appears from the record that the petitioner could not generate the challan successfully for making the payment and after the advice of its Chartered Accountant, tried making payment through NEFT/RTGS out of abundance caution and to demonstrate the bona fide of the petitioner to make the payment as determined under the Scheme by respondent No.2 Designated Committee. In view of the various decisions cited by the petitioner as reproduced here-in-above, the bona fide attempt made by the petitioner to make the payment cannot be doubted and therefore, the substantive benefit of the Scheme cannot be denied to the petitioner on the ground of procedural technicalities more particularly, in time of Covid-19 Pandemic.

10. The basic object of the Scheme is to reduce litigation by allowing the eligible assessee to make the payment of the outstanding dues after availing the relief under the Scheme. As per the provisions of the Scheme, respondent No.2 has issued a statement as provided under section 127 of Chapter-V of the Finance Act (No.02) 2019 determining the amount payable by the petitioner under the Scheme. Therefore, in the given facts and circumstances, the petitioner made bona fide attempt to make the payment as determined under the Scheme and is also prepared to pay the amount in question in accordance with the Scheme along with interest for the period for which the petitioner was not permitted to make payment by respondent authorities considering extreme Pandemic condition of Covid-19, we are of the opinion that this is a fit case for invocation of the powers under Article 226 of the Constitution of India.

11. The contention raised on behalf of the respondents relying upon the decision of the Apex Court in case of Yashi Constructions (supra) would not be applicable

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in the facts of the case as the petitioner made a bona fide attempt to make the payment within the stipulated time, however, due to technical issues the same was not credited in the account of the respondent and therefore the petitioner cannot be denied the benefit under the Scheme.”

20. Keeping in view the aforesaid observations made by this Court, if the facts of the present case as discussed hereinabove are examined, it can be said that the basic object of the Scheme, 2019 is to reduce litigation by allowing the eligible assessee to make the payment of the outstanding dues after availing the relief under the Scheme, 2019. The petitioners herein made bonafide attempt to make the payment as determined under the Scheme, 2019 and the petitioners are also ready to pay the amount in question in accordance with law along with interest for the period for which the petitioners were not permitted to make the payment by the respondents. Therefore, we are of the opinion that this is a fit case for invocation of powers under Article 226 of the Constitution of India.

21. In view of the aforesaid facts and circumstances of the present case, we are inclined to entertain the present petition on aforesaid ground. Accordingly, the present petition stands allowed partly. The respondent authorities are directed to accept the payment of Rs.1,22,318/- as specified in SVLDRS-3 along with interest @ 9% per annum from 30.06.2020 till the date of payment and grant the benefit of the Scheme to the petitioner. The petitioner shall deposit the said amount with interest within a period of four weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent.

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