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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 07.07.2022*

\+ **W.P.(C) 2882/2020**

AMBIENCE COMMERCIAL DEVELOPERS PVT. LTD...Petitioner
Through: Mr V. Lakshmikumaran with Mr Kunal Kapoor, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondents
Through: Ms Anju Gupta with Mr Roshan Lal Goel, Advocates for respondent no.1.
Mr Zoheb Hossain, Sr. Standing Counsel with Mr Vivek Gurnani and Mr Dawang Singh Chauhan, Advocates for respondent no.2.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition is directed against the statement dated 24.12.2019 issued by the Designated Committee i.e., respondent no.3, in the prescribed form i.e., SVLDRS-3, and the order dated 23.01.2020, whereby the petitioner's rectification application preferred under Section 128 of the Finance Act, 2019 [in short "2019 Act"] was rejected by respondent no.4.

2. Notice in the above-captioned writ petition, after hearing counsel for the parties for some time, was issued, *via* order dated 11.05.2022. On the

said date, the following essentials concerning the dispute obtaining between the parties were captured by the Court:

> *"1. Mr V. Lakshmikumaran, who appears on behalf of the petitioner, has drawn our attention to the Order-in-Original dated 20.04.2015, whereby the following is noted qua demand raised against the petitioner :*
> *"(a) I confirm the demand of service tax of Rs.16,61,78,084/- (Rupees Sixteen Crore Sixty One Lakh Seventy Eight Thousand Eighty Four Only) against M/s Ambience Commercial Developers Private Ltd., under subsection (1) of Section 73, read with Section 66 & 68 of the said Act; as the amount of Rs. 6,39,36,64l/-has already been deposited by the noticee, I order appropriation of the same and also order, for the payment of the balance amount of Rs.10,22,41,443/-.*
> *(b) I disallow the Cenvat credit of Rs.8,07,72,766/- (Rupees Eight Crore Seven Lakh Seventy Two Thousand Seven Hundred Sixty Six only) wrongly availed & utilized against payment of Service Tax liability, under Rule 14 of Cenvat Credit Rules, 2004.*
> *(c) I also confirm the demand of interest from the noticee under section 75 of the Act as proposed in the SCN on the above confirmed demand for Rs.l6,61,78,084/- and as the noticee has already deposited an amount of Rs.l,60,137/- during the Investigation. I order appropriation of the same towards their interest liability."*
> *2. Mr Kumaran says that the demand, as would be evident from the extract above, raised against the petitioner in connection with the service tax was pegged at Rs.16,61,78,084/-.*
> *2.1 As is also evident from the extract above [and according to Mr Kumaran] that CENVAT credit amounting to Rs.8,07,72,766/-, which was utilized to pay service tax, was disallowed.*
> *2.2 It is emphasized by Mr Kumaran that, admittedly, the petitioner has paid in cash towards the tax demand, Rs.6,39,36,641/-.*

3. Under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [hereafter referred to as "Scheme"], the petitioner gets a rebate of 50% of the tax demand, which, according to Mr Kumaran, was pegged at, as noticed above, Rs.16,61,78,084/- and after accounting for rebate would be scaled down to Rs 8,30,89,042/-.

3.1. Therefore, Mr Kumaran says that, if against Rs. 8,30,89,042/-, Rs.6,39,36,641/- is set off, as this amount is already paid, the petitioner, rightly, paid towards tax the balance amount i.e., Rs.1,91,52,401/-.

5. It is Mr Kumaran submission that the insistence of the respondents/revenue that the petitioner should have paid Rs.5,95,38,784/-, is erroneous.

5.1. Furthermore, according to Mr Kumaran, this error has occurred, as the respondents/revenue have added to the demand of the service tax amount quantified at Rs. 16,61,78,084/-, the amount which was disallowed vis-à-vis CENVAT credit i.e., Rs.8,07,72,766/-.

6. There is no dispute that Rs.1,91,52,401/- has been paid by the petitioner, within the timeframe prescribed under the Scheme.

6.1. Mr Kumaran concedes that there was an error made by the petitioner, while filling the declaration form under the Scheme.

7. Issue notice to the respondents.

7.1 Ms Anju Gupta accepts notice on behalf of respondent no.1, while Mr Zoheb Hossain accepts notice on behalf of respondent nos.2 to 4 i.e., revenue.

8. Learned counsel for the respondents say that they will return with instructions.

8.1. In case instructions are received by the learned counsel for the respondents to resist the writ petition, the counter-affidavit(s) will be filed before the next date of hearing.

9. List the matter on 23.05.2022."

3. Pursuant to the hearing held on 11.05.2022, a counter-affidavit has been filed on behalf of the respondent nos. 2 to 4, as they were desirous of resisting the reliefs claimed in the writ petition.

4. We have heard the learned counsel for the parties at some length. The nub of the problem which obtains in the instant case, concerns the amount that the petitioner could have been called upon to pay by the Designated Committee i.e., respondent no.3.

5. According to the petitioner, the total demand raised for the period in issue, as noticed on 11.05.2022, was Rs. 16,61,78,084/-. Against this amount, it is submitted that the petitioner would be entitled to a rebate of 50% under the scheme i.e., Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [in short "Scheme"], which would peg the amount payable at Rs.8,30,89,042/-.

5.1. The petitioner contends that Rs. 6,39,36,641/- having been paid, it should be called upon to pay towards tax, under the extant scheme, the remaining amount equivalent to Rs.1,91,52,401/-.

6. On the other hand, the respondents/revenue contend that the petitioner ought to have paid Rs. 5,95,38,784/-, as was indicated by the petitioner while seeking to avail of the benefit of the Scheme.

6.1. In this regard, Mr Zohaib Hossain, who appears on behalf of the respondents/revenue, has drawn our attention to Form SVLDRS-1.

6.2. It is Mr Hossain's submission, that since the petitioner had wrongly availed CENVAT credit amounting to Rs. 8,07,72,766/-, it is required to be added to the demand quantified at Rs. 16,61,78,084/-.

6.3. Mr Hossain says that the petitioner's initial approach was correct, and therefore, the tax that the petitioner ought to have deposited was Rs.

5,95,38,784/- and not Rs.1,91,52,401/-.

6.4. In support of this plea, Mr Hossain has taken us through the order-in-original dated 20.04.2015 and the appeal preferred by the petitioner.

6.5. Furthermore, Mr Hossain has also sought to place reliance on Rule 14 of the CENVAT Credit Rules, 2004 [in short "2004 Rules"].

6.6. Based on the said provision, Mr Hossain argues that the respondents/revenue are entitled to recover, not only the wrongly availed CENVAT credit amounting to Rs 8,07,72,776/-, but also interest, in accordance with the aforesaid provision.

7. Mr V. Lakshmikumaran, who appears on behalf of the petitioner, contends to the contrary. It is Mr Lakshmikumaran's submission that the wrongly availed CENVAT credit amounting to Rs. 8,07,72,766/- is embedded in the demand pegged at Rs. 16,61,78,084/-.

7.1 The fact that it is embedded, is sought to be demonstrated by Mr Lakshmikumaran by referring to the operative directions contained in the order-in-original dated 20.04.2015.

7.2. Besides this, Mr Lakshmikumaran also submits that the fact that the outstanding demand towards service tax for the period in issue, was rightly pegged at Rs. 16,61,78,084/-, is discernible from a bare perusal of additional directions contained in the order-in-original, concerning interest and penalty.

7.3. It is Mr Lakshmikumaran's say, that a close perusal of the same would show that both interest and penalty was sought to be recovered only on the demand amount i.e., Rs. 16,61,78,084/-, and not on the CENVAT credit amounting to Rs. 8,07,72,766/-, which, as indicated above, was disallowed by invoking Rule 14 of the 2004 Rules.

8. Having considered the matter, we are of the view that Mr

Lakshmikumaran is right; the reason being, that the Designated Committee cannot go beyond either the counters of the show-cause notice dated 07.01.2014 or the operative directions contained in the order-in-original dated 20.04.2015.

8.1. For the sake of convenience, the operative directions, which are contained in the order-in-original, are extracted hereinafter:

> *"(a) I confirm the* ***demand of service tax of Rs. 16,61,78,084/-*** *(Rupees Sixteen Crore Sixty One Lakh Seventy Eight Thousand Eighty Four Only) against M/s Ambience Commercial Developers Private Ltd., under subsection (1) of Section 73, read with Section 66 & 68 of the said Act;* ***as the amount of Rs. 6,39,36,641/- has already been deposited by the noticee, I order appropriation of the same and also order for the payment of the balance amount of Rs. 10,22,41,443/.***
> *(b)* ***I disallow the Cenvat Credit of Rs. 8,07,72,766/-*** *(Rupees Eight Crore Seven Lakh Seventy Two Thousand Seven Hundred Sixty Six only)* ***wrongly availed & utilized against payment of Service Tax liability, under Rule 14 of Cenvat Credit Rules, 2004****.*
> *(c)* ***I also confirm the demand of interest from the notice under section 75 of the Act as proposed in the SCN on the above confirmed demand of Rs. 16,61,78,084/-*** *and as the noticee has already deposited an amount of Rs. 1,60,137/- during the investigation. I order appropriate of the same towards their interest liability.*
> *(d)* ***I also impose Penalty, equal to duty amount confirmed as above, under Section 78 read with Cenvat Credit Rule, 2004 of the Finance Act, 1994,*** *inasmuch as the noticee had failed to discharge their Service Tax liability to the exchequer by suppression of facts with intent to evade payment of Service Tax.*
> *(e) I do not impose any Penalty under Section 77 of the Finance Act, 1994 as penalty is already imposed under*

Section 78 ibid.
The penalty shall be reduced to 25% provided the duty demanded along with interest and 25% of the penalty is paid within 30 days of receipt of this order."

8.2. A careful perusal of the directions would show that the demand, as is contended by Mr Lakshmikumaran, is pegged at Rs. 16,61,78,084/-. This is evident on a bare perusal of clause (a) of the operative directions.

8.3. Insofar as clause (b) is concerned, it simply says that CENVAT credit amounting to Rs. 8,07,72,766/- which was wrongly availed and utilised against payment of service tax liability, is disallowed and in that behalf Rule 14 of the 2004 Rules has been invoked.

8.4. It is important to highlight that Rule 14 of the 2004 Rules is a recovery provision, which entitles the respondents to straightaway proceed to recover CENVAT credit which has been taken or utilised wrongly or has been erroneously refunded, along with interest.

9. The intrinsic evidence, which, according to us, is available in this case, indicates that this amount i.e., the CENVAT credit which has been disallowed, is embedded in the demand of Rs. 16,61,78,084/-.

9.1. If this was not the position, then surely the order-in-original would have adverted to the fact that interest is also payable, in consonance with Rule 14 of the 2004 Rules, on Rs. 8,07,72,766/-. Concededly, both interest and penalty are demanded *via* the order-in-original, on Rs. 16,61,78,084/-.

9.2. Therefore, if that be the position, then the calculation presented by the petitioner is right.

9.3. The fact that the petitioner made a mistake in stating a higher amount concerning outstanding service tax demand, cannot result in an estoppel and

thus impede the petitioner from seeking the requisite benefits under the Scheme and the provisions of the Act. The calculation presented by the petitioner on the principles articulated before us, is not disputed by the respondents/revenue.

9.4. What the respondents/revenue dispute is, as indicated above, that the demand cannot be limited to Rs. 16,61,78,084/-, as the amount which was disallowed by way of CENVAT credit i.e., Rs. 8,07,72,766/-, had to be added to the same.

9.5. Besides this, in the alternative, Mr Hossain says that the said amount (i.e., Rs. 8,07,72,766/-), in any event, was recoverable under Rule 14 of the 2004 Rules.

9.6. We have queried Mr Hossain, if that was the case, why were no recovery proceedings commenced, even though the order-in-original was passed as far back as on 20.04.2015.

9.7. In fairness, Mr Hossain has submitted, that he has no immediate answer to the query raised by the Bench. From this, it can only be concluded that the understanding of the authority which passed the order-in-original, was no different to what has been stated, hereinabove, by us.

10. It is not in dispute that the petitioner has already deposited Rs.1,91,52,401/- *via* challan no. 20200630121620175040, dated 30.06.2020.

11. Having regard to the foregoing, we are inclined to allow the writ petition.

11.1. It is ordered accordingly.

12. The impugned statement dated 24.12.2019 and the order dated 23.01.2020, passed in the rectification application, are set aside.

12.1. The Designated Committee is directed to issue a fresh statement in the

prescribed form, having regard to what is stated hereinabove. In other words, in effect, the Designated Committee is called upon to issue fresh statement and a discharge certificate in terms of section 127 of the 2019 Act.

13. The writ petition and pending application are disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

JULY 7, 2022 / tr

Click here to check corrigendum, if any