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W.P.No.11797 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.11797 of 2021 and
W.M.P.No.12551 of 2021

M/s.Padmavathi Srinivasa,
Rep. by its Partner Mr.A.Sai Sankaraiah (M/53),
Old No.5, New No.7,
Srinivasa Road,
T.Nagar, Chennai 600 017. ..Petitioner

Vs.

The Joint Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex, Anna Salai,
Nandanam, Chennai 600 035. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the Respondent in the impugned Order in Original No.11 & 12/2021 – JC dated 27.03.2021, in DIN No.20210359TL000000E945 and quash the same as it has been passed assuming jurisdiction in respect of adjudication of the dispute for which Discharge Certificate has been



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issued under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and without considering the objections raised against the allegations and also without giving any findings.

For Petitioner : M/s.G.Varshitha
for K.Vaitheeswaran

For Respondent : Mr.V.Sundareswaran
Standing Counsel

ORDER

The present writ petition is filed challenging the impugned order in Original No.11 & 12/2021 – JC dated 27.03.2021, for the period April 2014 to June 2017 on the premise that for the period 01.04.2014 to 30.06.2017 the petitioner was issued Discharge Certificate in Form No.SVLDRS-4 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (hereinafter referred to as “SVLDRS”) and thus the impugned order of adjudication made without revoking or cancelling the Discharge Certificate by the appropriate authority is without jurisdiction.

2. The question that arises for consideration in this writ petition is whether it is open to the adjudicating authority i.e., Central Excise

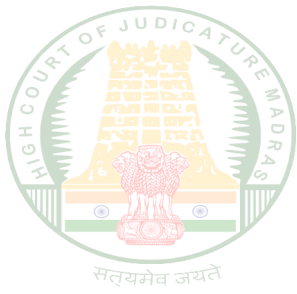
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Officer to proceed to adjudicate for the period and the subject in respect of which a Discharge Certificate has been issued in Form No.SVLDRS-4 under the Sabka Viswas (Legacy Dispute Resolution) Scheme Rules, 2019.

3. Brief Facts:

3.1. The petitioner is a partnership firm engaged in execution of works contract and obtained a registration under the provisions of erstwhile Chapter V of the Finance Act, 1994. A show cause notice No.30 of 2019 dated 11.11.2019 was issued on the premise that verification of financial documents revealed that the petitioner received income towards provision of works contract services, however, the petitioner had not filed periodical returns in form ST-3 nor have they paid appropriate service tax. The notice proposed to treat the income disclosed under the income tax return as representing the value of taxable services in the absence of contract copies, agreements, customer details, completion certificate etc., without extending any abatement. The notice also proposed to levy interest, penalty and late fee under the Finance Act, 1994.

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3.2. While so, the Central government introduced a scheme viz., Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019, with an intention to close the long pending litigation in respect of certain class / categories of disputes enumerated in Section 125 of the Scheme.

3.3. The Petitioner filed a declaration under the Scheme of the tax dues payable on account of voluntary disclosure for the period 01.04.2014 to 30.06.2017 in Form SVLDRS-1 under Section 125 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019. The petitioner paid the tax dues voluntarily disclosed under the Scheme. A Discharge Certificate in Form SVLDRS-4 was issued on 12.07.2020.

3.4. Thereafter, a reply dated 02.09.2020 was also filed by the petitioner to the show cause notice dated 02.09.2020 wherein it was submitted that the petitioner had made a declaration under SVLDRS Scheme for the period in dispute, while enclosing a copy of the acknowledgment along with the detailed summary of taxes paid under the SVLDRS Scheme . The petitioner also submitted that they are eligible for abatement of 60% for the material portion involved in the execution of works contract and thus the levy of tax on the entire receipts

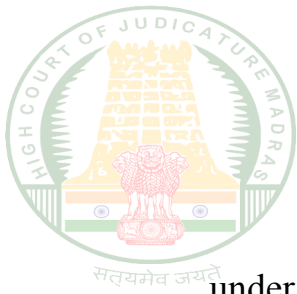
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is illegal. Apart therefrom it was also submitted that the liability of the petitioner in terms of Notification No.30 of 2012 – Service Tax dated 20.06.2012 is only to the extent of 50% of the tax liability, since the remaining 50% is to be discharged by the service receipt.

3.5 The impugned order of adjudication dated 27.03.2021 came to be passed rejecting the submission made by the petitioner that the adjudication ought to be dropped inasmuch as the petitioner had opted under the SVLDRS Scheme, on the premise that the assessee was subjected to investigation and the amount of duty involved pursuant to the enquiry was not quantified before 30.06.2019 i.e., the cut off date under SVLDRS. It is this order which is under challenge in this writ petition.

4. It was submitted by the learned counsel for the petitioner that the impugned order of adjudication is without jurisdiction inasmuch as the respondent herein does not have the authority / jurisdiction to proceed with adjudication unless and until the Discharge Certificate is revoked or cancelled. The power / authority to revoke or cancel the Discharge Certificate is vested only with the Designated Committee constituted

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under the Scheme and not the respondent herein.

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5. To the contrary it was submitted by the learned counsel for the respondent placing reliance upon the counter that the petitioner being ineligible to even file a declaration under the scheme in view of the fact that an investigation was pending as on 30.06.2019 and thus hit by Section 125 (f)(i), the Discharge Certificate ought to be treated as non-est. Reliance was placed on Section 129(2)(c) which provides that in the case of voluntary disclosure where any material or particular furnished in the declaration is subsequently found to be false within a period of one year of issue of the Discharge Certificate, it shall be presumed as if the declaration was never made. It is the submission of the learned counsel for the respondent that once the declaration contains particulars which are false, Section 129(2)(c) would automatically become operational giving rise to a statutory presumption, as if the declaration under the scheme was never made thereby enabling the authorities under the Act to proceed with adjudication. It was thus submitted that the contention of the petitioner that the Discharge Certificate ought to be revoked / cancelled before proceeding with the adjudication is without any merit.

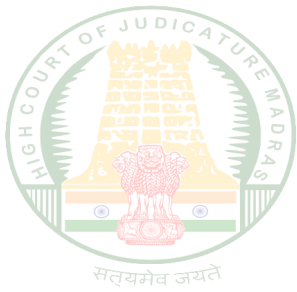
6. Against the above background, question arises whether the

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respondent herein i.e., adjudicating officer has the power / authority to proceed to adjudicate in respect of a subject / matter and time with regard to which a discharge certificate has been issued by the Designated Committee on the premise that the adjudicating authority is of the view that the Declaration contains material particulars which are false.

7. In the present case the impugned order proceeds on the basis that the Discharge Certificate is obtained on the basis of false particulars furnished by the Declarant inasmuch as an investigation was initiated on 18.06.2019 when a notice was issued on 18.06.2019 wherein it was stated that verification of Service Tax payment was being conducted for the period 2014 -15 and the petitioner was called upon to produce the documents such as reconciliation statement for the taxable income between ST-3 returns and I.T. returns for the period 2014-15, Balance Sheet, Form 26AS etc. The impugned order proceeds to find that the assessee having been subjected to investigation and the amount of duty involved in the enquiry having not been quantified before 30.06.2019, the petitioner is not eligible to apply under the scheme and has proceeded to pass the impugned order of adjudication dated 27.03.2021.



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8. I am of the considered view that the reasoning contained in the impugned order suffers from the following infirmities which are fatal to its validity:

(i) Lack of jurisdiction to proceed with adjudication without cancelling / revoking the Discharge Certificate - Absence of Jurisdiction with the respondent to revoke / cancel Discharge Certificate :

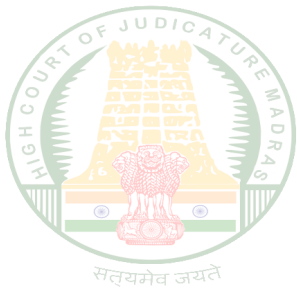
Before proceeding further it may be relevant to note the object of the SVLDRS Scheme as explained by the Central Board of Indirect Taxes and Customs (CBIC) in its Official Website as under :

Finance Minister Speech

GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than Rs.3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow business to move on. I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations.

Introduction :

The Sabka Vishwas (Legacy Dispute Resolution) Scheme is a one time measure for liquidation of past disputes of Central Excise and Service Tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The Scheme shall be enforced by the Central Government from a date to be notified. It provides that eligible persons shall declare the tax dues and pay the same in accordance with the provisions of the Scheme. It further provides for certain immunities including penalty, interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 to those persons who pay the declared tax dues.



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Objectives :

- To encourage voluntary disclosure of past disputes of Central Excise, Service Tax and 26 other Indirect Tax Enactments.
- To facilitate an eligible person to declare the unpaid tax dues and pay the same in accordance with the provisions of this scheme.
- To provide certain immunities, including Penalty, Interest or any other proceedings including prosecution, to eligible persons who pay the declared tax dues.

8.1. Having had an overview of the object of the SVLDRS it may be necessary to refer to the following provisions of the Scheme which may be relevant to answer the above question:

“125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely;-

(a)

(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;

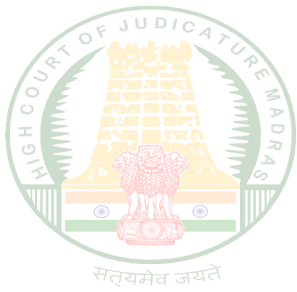
(f) a person making a voluntary disclosure,-

(i) after being subjected to any enquiry or investigation or audit; or

(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;

(g)

126. (1) The designated committee shall verify the correctness of the declaration made by the Declarant under section 125 in such manner as may be prescribed:



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Provided that no such verification shall be made in case where a voluntary disclosure of an amount of duty has been made by the Declarant.

(2) The composition and functioning of the designated committee shall be such as may be prescribed.

127. (1) Where the amount estimated to be payable by the Declarant, as estimated by the designated committee, equals the amount declared by the Declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the Declarant, within a period of sixty days from the date of receipt of the said declaration.

(2) Where the amount estimated to be payable by the Declarant, as estimated by the designated committee, exceeds the amount declared by the Declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the Declarant within thirty days of the date of receipt of the declaration.

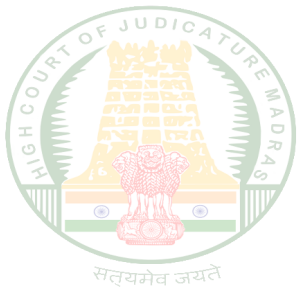
(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the Declarant, if he so desires, before issuing the statement indicating the amount payable by the Declarant:

Provided that on sufficient cause being shown by the Declarant, only one adjournment may be granted by the designated committee.

(4) After hearing the Declarant, a statement in electronic form indicating the amount payable by the Declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.

(5) The Declarant shall pay electronically through internet banking, the amount payable as indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.

(6) Where the Declarant has filed an appeal or reference or a reply to the show cause Notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in



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any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

(7) Where the Declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the Declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the designated committee, in such manner as may be prescribed, along with the proof of payment referred to in sub-section (5).

(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a Discharge Certificate in electronic form, within thirty days of the said payment and production of proof.

128. Within thirty days of the date of issue of a statement indicating the amount payable by the Declarant, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the Declarant or suo motu, by the designated committee.

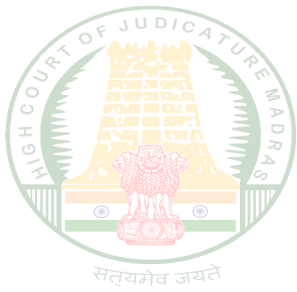
129. (1) Every Discharge Certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and-

(a) the Declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;

(b) the Declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;

(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

(2) Notwithstanding anything contained in sub-section (1),



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(a) no person being a party in appeal, application, revision or reference shall

contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the Discharge Certificate under this scheme;

(b) the issue of the Discharge Certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice,

(i) for the same matter for a subsequent time period; or

(ii) for a different matter for the same time period;

(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the Discharge Certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.”

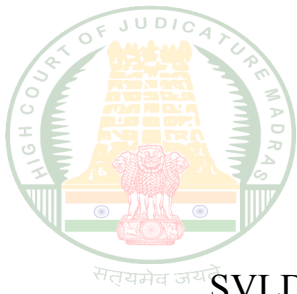
8.2. On a cumulative reading and analysis of Section 125, 126, 127

128 and 129 of the SVLDRS the following position appears to emerge :

a) The Designated Committee on receipt of the declaration made by the Declarant under Section 125 shall verify the correctness of the declaration.

b) The amount which the Declarant is required to pay under the Scheme is decided on hearing the Declarant.

c) The Discharge Certificate issued under Section 127(8) of the



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SVLDRS Scheme is declared to be conclusive under Section 129(1) of the Scheme as to the matter and time period stated in the Discharge Certificate. The exception to the conclusivity of resolution of the dispute under the Scheme in the case of a voluntary disclosure, is if any material particular is subsequently found to be false within a period of one year of issuance of the Discharge Certificate. If so, the scheme provides that it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.

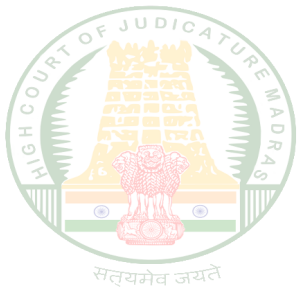
d) Section 129(2)(c) on which emphasis was placed by the learned counsel for the respondent reads as under :

(2) Notwithstanding anything contained in sub-section (1),

(a) -----

(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the Discharge Certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted."

8.3. A reading of the above provision would show that it has 2 limbs viz.,



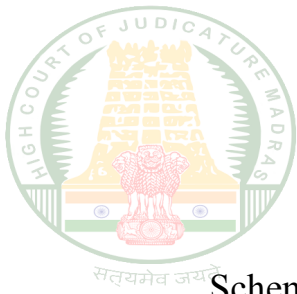
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i) The material particulars furnished in the declaration is found to be false within a period of one year of issue of the Discharge Certificate.

ii) The consequence which follows as a result of finding that the material particulars furnished in the Discharge Certificate is false, is to presume as if the declaration was never made and to institute proceedings under the applicable indirect tax enactment.

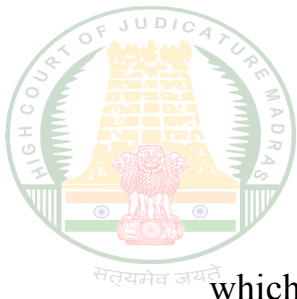
8.4. The learned counsel for the respondent would submit that once the material particulars are found to be false then the consequence viz., the presumption that a declaration under the Scheme was never made would automatically follow by force of law. While there cannot be any quarrel as to the above position, the issue here is whether the respondent is conferred with the authority / power to find that the material particulars furnished in the Declaration under the Scheme is false or is it that the Designated Committee is vested with the power / authority to carry out such exercise. I would think that it ought to be the Designated Committee and not the adjudicating authority who would have to find that the issuance of Discharge Certificate stands vitiated as material particulars furnished in the Declaration is false. The SVLDRS

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Scheme is a special scheme and the adjudicating authority has no role whatsoever commencing with the receipt of the declaration and deciding the amount which is to be paid by the Declarant and issuance of the Discharge Certificate. None of the above acts under the Scheme is carried out by the adjudicating authority instead it is performed / carried out by the Designated Committee. The respondent herein has no role under the Scheme nor is any declaration filed before the respondent herein. Importantly, the Discharge Certificate issued under Section 127 is declared to be conclusive which imposes an embargo on the power of the authorities to make any adjudication with respect to the matter and time period with regard to which the Discharge Certificate is issued. The impugned order stands vitiated inasmuch as the Discharge Certificate is admittedly not revoked / cancelled by the Designated Committee thus the embargo under the Scheme with regard to adjudication of the matter and time period constituting the subject matter of the Discharge Certificate would continue to operate.

8.5. The powers of the adjudicating authority flows from Section 83 of the Finance Act read with Section 12E of the Central Excise Act



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which reads as under :

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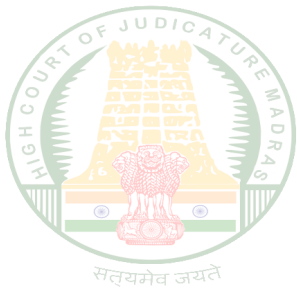
S.12E Powers of Central Central Excise Officers. - (1) A Central Excise Officer may exercise the powers and discharge the duties, conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.

(2) Notwithstanding anything contained in sub-section (1), the [Commissioner of Central Excise (Appeals)] shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.]

SECTION 83. Application of certain provisions of Act 1 of 1944. - The provisions of the following sections of the [Central Excise Act, 1944], as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :-

[[sub-section (2A) of section 5A, sub-section(2) of section 9A], 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 2[12E, 14, 3[15, 15A, 15B] 31, 32, 32A to 32P, 33A, 35EE, 34A, 35FJ]], [35FF,] to 350 (both inclusive), 35Q, 5[35R,] 36, 36A, 36B, 37A, 37B, 37C, 37D [38A] and 40.

8.6. A reading of Section 83 read with Section Section 12E along with the other provisions of the Act would show that the powers of the Central Excise Officer does not extend to perform any act under the Scheme. The Respondent being a statutory authority the power must be limited to that which is expressly conferred under the statute and that which is implied being incidental or ancillary thereto. In this regard it may be relevant to refer to the Karnataka High Court Judgment in the case of East India Hotels Ltd. and another vs. C.R.Shekhar Reddy and another reported in (1998)230 ITR 622 is held as under :



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11. It is basic that the authorities created under the Act have to function within the four corners of the powers and duties assigned to them under the Act. They cannot claim to themselves any inherent power howsoever benevolent or plausible the purpose it is intended to serve.?

8.7. The Scheme is a one time measure and the powers are vested under the Scheme only with the Designated Committee and thus it is beyond the jurisdiction of the respondent herein to enquire if any material particulars in the Declaration filed under the Scheme is false inasmuch as the power of the Central Excise Officer does not extend either expressly or by necessary implication to any proceedings under the Scheme.

ii) Contention of the Revenue if accepted would result in distortion of Administrative / Institutional Hierarchy:

The impugned order is passed by the Joint Commissioner, Central Excise and the Discharge Certificate is issued by the Designated Committee in the instant case comprising of the Assistant Commissioner and Joint Commissioner. The contention by the Revenue that the Discharge Certificate can be discarded, revoked or cancelled by the



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adjudicating authority i.e. Central Excise Officer overlooks the fact that the adjudicating authority could also be lower in rank to the members of the designated committee and to understand that an authority can revoke or cancel an order / certificate passed by a superior authority / body would result in distortion of Institutional Hierarchy. This would be clear if one contrasts the Constitution of the Designated Committee under Rule 5 of the SVLDRS Rules, 2019 vis-a-vis definition of Central Excise Officer who performs / discharges the function of adjudication, which reads as under:

“5. Constitution of designated committee..

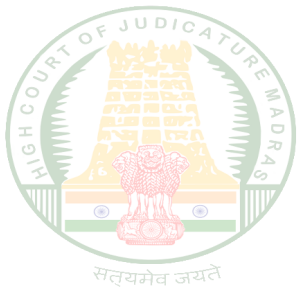
(1) The designated committee under section 126 shall consist of-

(a) the Principal Commissioner or Commissioner of Central Excise and Service Tax, as the case may be, and the Additional Commissioner or Joint Commissioner of Central Excise and Service Tax, as the case may be, in a case where the tax dues are more than rupees fifty lakh:

Provided that there shall be only one such designated committee in a Commissionerate of Central Excise and Service Tax;

(b) the Additional Commissioner or Joint Commissioner of Central Excise and Service Tax, as the case may be, and the Deputy Commissioner or Assistant Commissioner of Central Excise and Service Tax, as the case may be, in a case where the tax dues are rupees fifty lakh or less:

Provided that there will only be one such designated committee in a Commissionerate of Central Excise and Service Tax;



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(c) the Principal Additional Director General (Adjudication) or Additional Director General (Adjudication), Directorate General of Goods and Services Tax Intelligence (DGGI), and Additional Director or Joint Director, Directorate General of Goods and Services Tax Intelligence (DGGI), Delhi.

(2) The members of the designated committee mentioned in clause (a) and (b) of sub-rule (1) shall be nominated by the Principal Chief Commissioner or Chief Commissioner of Central Excise and Service Tax, as the case may be.

(3) The members of the designated committee mentioned in clause (c) of sub-rule (1) shall be nominated by Pr. Director General or Director General, Directorate General of Goods and Services Tax Intelligence (DGGI), as the case may be."

8.8. Definition of Central Excise Officer under Section 2(b) of Central Excise Act (CE) is as under:

"2. Definitions.- [(b)] "Central Excise Officer" means the "[Principal Chief Commissioner of Central Excise, Chief Commissioner of Central Excise, Principal Commissioner of Central Excise or Commissioner of Central Excise], added by Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, "[Joint Commissioner of Central Excise,] Deputy Commissioner of Central Excise, Assistant Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a male Central Excise Officer under this Act;"

8.9. The submission of the Revenue by placing reliance on 129(2)(c) of the Scheme that if the declaration contains false particulars

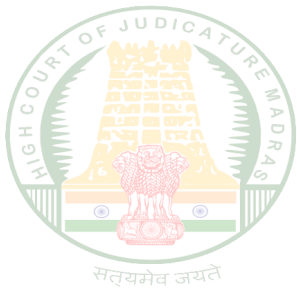


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it would then be open to proceed with adjudication ignoring the Discharge Certificate issued by the Designated Committee cannot be sustained in view of the fact the Central Excise Officer would include an Assistant Commissioner or any other officer of the Central Excise department whereas the designated committee comprises of a Commissioner, Joint Commissioner and Additional Commissioner. Resultantly, to understand that the Discharge Certificate issued by the designated committee could be revoked, cancelled or discarded by an officer of a lower rank would result in distortion of institutional and administrative hierarchy a consequence which ought to be avoided. In this regard it may be relevant to refer to the judgment in the case of *M/s.Muthu Metals Vs. State of Tamil Nadu* reported in 1993(3) M.T.C.R.:

“On a careful consideration of the submission in the light of the governing position of law, we are of the view that there is nothing in the provisions of the Act or the Rules or the scheme underlying assessment and levy of tax which disables a particular authority in the hierarchy who is otherwise entitled to and empowered to exercise powers under Sections 16 and 16-A of the Act from exercising sch powers merely because the original assessment under Section 12 came to be made by an officer of a higher rank or status in the administrative hierarchy. The exercise of powers under Sections 16 and 16-A of the Act is equally an independent one on distinct and separate material or for reasons and the validity or otherwise of such exercise has to be adjudicated on the basis of any infirmity of its ow and not with reference to the exercise of powers said to have made under Section 12 of the Act. Bit, we are also of the view that the same may not be the position when a particular claim of the assessee has been considered and allowed for exemption or concessional levy by the assessing authority under Section 12, and the same turnover is sought to be subjected to tax thought for any reason falling within the ambit of powers under Sections 16 or 16-A of the Act. In such cases, at any rate, principle of propriety as well as administrative discipline ad observance of official decorum requires that an officer of equal or superior rank alone should undertake such an.



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exercise and not an officer of an inferior rank otherwise it would lead to absurd results and a mockery of the grades of officers in the hierarchy.”

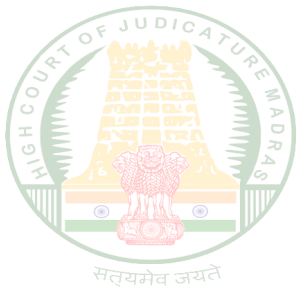
iii) Conflicting Orders - on the same subject:

Unless and until the Discharge Certificate is revoked or cancelled permitting a parallel adjudicating proceedings on the basis that the adjudicating authority is of the view that the declaration contains false particulars may result in plurality of orders on the same subject, a result frowned upon by the Supreme Court and which ought to be avoided. In this regard it may be relevant to refer to the following Judgments:

(i) NGEF Ltd. vs. Chandra Developers (p)ltd. and another reported in (2005) 8 SCC 219:

“It is difficult to accept the submissions of the learned counsel appearing on behalf of the respondents that both the Company Court and BIFR exercise concurrent jurisdiction. If such a construction is upheld, there shall be chaos and confusion. A company declared to be sick in terms of the provisions of SICA, continues to be sick unless it is directed to be wound up. Till the company remains a sick company having regard to the provisions of sub-Section(4) of Section 20, BIFR alone shall have jurisdiction as regards sale of its assets till an order of winding up is passed by a Company Court.

46. It is inconceivable that in law not only will the approval have to be taken from both the courts; in case of any private sale, the Company will have to obtain the consent of both the Company Court and BIFR. While interpreting the provisions of the two statutes, the court cannot remain oblivious of the fact that in a given case, possibility of a conflict in the orders passed by the two courts may arise, which must be avoided.”



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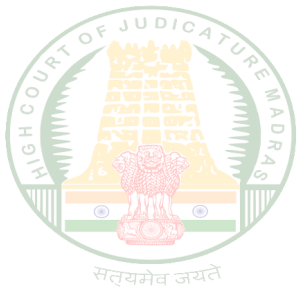
(ii) Commissioner of Customs Vs. Sayed Ali and another reported in (2011) 3 SCC Cases 537 :

“20. From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under Section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions.

21. Moreover, if the Revenue's contention that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a "proper officer" in terms of Section 28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, inasmuch as all officers of Customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be "proper officers". In our view, therefore, it is only the officers of Customs, who are assigned the functions of assessment, which of course, would include reassessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act.”

9. From the above discussion I am of the view that the impugned order is liable to be set aside for the following reasons :

a) Once the Discharge Certificate is issued by the Designated Committee it is not open to proceed with adjudication.



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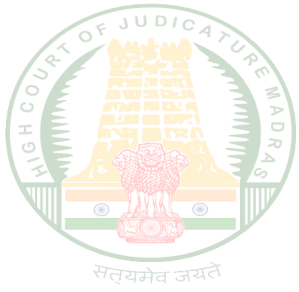
b) The authority / power to revoke or cancel the Discharge Certificate on the premise that the material particulars furnished in the Discharge Certificate is false, lies with the exclusive jurisdiction of the Designated Committee.

c) To assume Adjudicating Authority / Central Excise Officers to have the power to revoke or cancel Discharge Certificate issued by the Designated Committee which may comprise of officers superior in rank to that of the Central Excise Officers carrying out adjudication would result in distortion of Administrative / Institutional Hierarchy.

d) In the absence of the Discharge certificate being revoked / cancelled by the Designated Committee, adjudication by the Central Excise officers could result in plurality of orders on the same subject conflicting with each other, which ought to be avoided.

10. In view of the above, the impugned order is set aside and the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

23.02.2024



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Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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