L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

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GST

Sabka Vishwas Scheme – Amount in arrears – Deposits to be adjusted after determination of amount payable

UPDATE NO. 40 OF 2020

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ISSUE

Whether, for cases falling under 'Amount in arrears' category under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (**'SV Scheme'**) as per the Finance (No. 2) Act, 2019 (**'the Act'**), deposits ought to be adjusted before or after determination of the amount payable?

RELEVANT FACTS

By way of an order passed by the adjudicating authority, the Petitioner was adjudged as being liable to pay service tax, together with interest and penalty thereon. The said order also carried a direction to verify payments made against the said demand even prior to issuance of Show Cause Notice. Subsequently, an Application for Rectification of Mistakes (**'RoM'**) was made by the Petitioner, on the ground that the amount paid by it after the said order was not considered. The said application was dismissed as being devoid of merits. Thereafter, no appeal was filed challenging the said order.

Subsequently, the Petitioner sought to settle the dispute by way of the SV Scheme, which was introduced by the Act. The Scheme *inter alia* provided for manner of determining the sum payable upon availing the scheme. Since no challenge was made to the RoM Order, the Petitioner made an application under 'Amount in arrears' category.

The Designated Committee adopted a different quantification while issuing SVLDRS-3. As per the Petitioner's calculation, no further sum was payable (*sum paid was to be deducted after finally determining amount payable*), whereas, a further sum was payable as per the Department's calculation (*sum paid was to be deducted first and the amount payable was to be computed thereafter*). The Department's calculation, adopting separate method for calculating 'Amount payable' in case of 'Amount in arrears' was endorsed by CBIC Circular bearing F. No. 867/78/2019-CX-8, dated September 25, 2019.

In this background, the Writ Petition was filed by the Petitioner challenging the SVLDRS-3 and the computation adopted by the Department therein.

RELEVANT ARGUMENTS ON BEHALF OF THE PETITIONER

- As per Section 124(2) of the Act, only one mode of computation of relief is stipulated – adjustment of any amount paid as deposit must be made only after finally determining the amount payable.
- The proviso to Section 124(2) disentitles declarants from any refund if the amount of pre-deposit or deposit paid by the declarant exceeds the amount payable. If the department's calculation were correct, such a circumstance would never arise, thereby rendering the proviso redundant.
- That the method for computing relief under Section 124(2) must consistently apply to all categories of applications made under the Act.
- Circular of the Board cannot prevail over statutory provisions of the scheme and is in any case not binding on the Court.

RELEVANT ARGUMENTS ON BEHALF OF THE REVENUE

- In case of 'Amount in Arrears', deposits made are always appropriated as taxes paid.
- The CBIC Circular clarifies that relief available for 'Amount in Arrears' category will be applied to net outstanding amount arrived at, after deducting payments made in the form of pre-deposits appropriated or paid subsequently by the tax payer voluntarily against the outstanding amount.

- In respect of all other categories, any money paid before its appropriation is a deposit only.

RATIO

- The computation adopted by the Petitioner is correct in law. As per Section 124(2) of the Act, computation of tax relief in all categories will be at the stage of determining amount payable. In other words, deposits/pre-deposits will always be adjusted only against the amount payable for all categories prescribed under the Act.

- The CBIC Circular is contrary to the provisions of the Act to this extent.

- However, since the Petitioners in the present case had voluntarily paid part of the demand, the same cannot be construed either as a 'deposit' or 'pre-deposit' so as to be computed in the manner prescribed in the Act.

REASONING

ON METHOD OF COMPUTATION OF RELIEF:

- A plain reading of Section 124(2) goes to show that calculation of relief for all the categories set out in Section 124(1) must uniformly be done at the stage of calculating amount payable.

- Otherwise, the proviso to Section 124(2) will be rendered otiose.

ON FACTUAL ASPECTS:

- The payment made by the petitioner, therefore, was made voluntarily towards tax liability. The amount paid by the Petitioner does not qualify as either a 'deposit' or 'pre-deposit'.

- The contention of the Petitioner through the RoM was that the order did not consider the part payment of liability. Having cleared the liability in part, the Petitioner cannot now claim this amount as a 'deposit'.

- In such circumstances, only the net amount (demand less amount paid) can be construed as 'Amount in arrears' as per Section 123(e) of the Act.

IMPLICATIONS AND COMMENTS

- Though the Petitioners do not benefit by the judgment of the Madras High Court due to the facts of the case, the judgment will benefit all other assessees whose applications under the SV Scheme have been subject to computation as per the CBIC Circular.
- Therefore, those Assessees who had made payments under protest, and those who could otherwise factually demonstrate that the amount paid by them is in the nature of 'deposit' or 'pre-deposit' can directly benefit from the order.
- [*Solamalai Automobiles Pvt. Ltd.* v. *The Designated Committee & 2 others* – WP (MD) No. 8227 of 2020, decided on September 14, 2020, Madras High Court]

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