

GIB/TS/SEW INFRASTRUCTURE/28.04.2021/HC-227

High Court Category : SVLDRS SCHEME

State : Telangana

Order No.: GIB/TS/SEW INFRASTRUCTURE/28.04.2021/HC-227

Name of Entry :
SEW INFRASTRUCTURE LIMITED

Date : 28-04-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

The petitioner is engaged in infrastructure development sector and is registered assessee with the Service Tax Department, Hyderabad under the Finance Act, 1994 and also under the Income Tax Act, 1961.

The petitioner filed its return of income under the Income Tax Act, 1961 and claimed a refund and he had also filed its Service Tax return under the Finance Act, 1994. The Intelligence Wing of the Central Excise and Service Tax Department (DGCEI), issued a Garnishee Notice under Section 73(1B) r/w Section 87(b)(i) of the Finance Act, 1994 to CIT towards Service Tax and interest demand against petitioner, and petitioner filed application under 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and petitioner's application for settlement of dues under the SVLDRS was accepted by the Tax Department and the petitioner was asked to remit an amount of Rs.18,91,37,548/- as against the original liability of Rs.59,20,19,079 till 30-6-2020

Petitioner contended that because of the COVID-19 Pandemic situation and its own financial difficulties, the only way the petitioner could discharge its liability under SVLDRS was by utilizing the Income tax refund. But, on account of the Garnishee Notice issued by the GST authorities to CIT, the Income Tax Department did not pay to the petitioner the refund. And the petitioner wrote letters seeking modification of the Garnishee Notice to enable it to discharge its liability but CIT did not oblige the petitioner and the petitioner was disabled from discharging its Service tax liabilities by 30.06.2020 and the Income Tax department set off income tax refund of- due to the petitioner against the Service Tax dues of the petitioner.

Decision of Advance Ruling Authority :

DECISION:

Held that if there is a reduction of liability of service tax dues determined under a scheme like

SVLDRS, the authority issuing garnishee notice not only has a power to withdraw or modify it but it is his bounden duty to do so .

A set off is permitted to be made by an Assessing Officer of the income tax refund due to an assessee only as against "sum, if any, remaining payable under this Act". Thus the Assessing Officer can adjust the Income Tax refund due to an assessee only against Income Tax dues, and not towards any other dues of an assessee such as Service Tax dues under the Finance Act, 1994. Therefore, the payment made on by the income tax department towards Service Tax dues of the petitioner is contrary to Section 245 of IT Act.

Since nothing prevented the income tax department from transferring to the Service tax department the amount of Rs.18,19,37,548/- from out of the Income Tax refund of Rs.30,92,60,666/- before 30.06.2020 and this would have protected the petitioner from becoming a defaulter under the SVLDRS scheme and enable it to get the benefits under the said Scheme, this inaction of income tax department is arbitrary and thus the petitioner could not be treated as 'defaulter' in payment of Service Tax dues.