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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-06-2026

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WP.No.3060 of 2023
and
WMP.Nos.3141 & 3143 of 2023

M/s.SB Aditya Power Projects Private Limited,
Represented by its Manager Accounts G. Sridhar,
No.3 First Street, Vedammal Avenue,
Dr.Subrayan Nagar, Kodambakkam
Chennai – 600 024.

..Petitioner(s)

Vs

1. Union of India,
   Represented by its Secretary,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi – 110 001.

2. The Chairman, Designated Committee 1
   Under the Sabka Vishwas (Legacy Dispute
   Resolution) Scheme 2019,
   Chennai South Commissionerate,
   5th Floor, MHU Complex, Nandanam,
   Chennai – 600 035.

3. The Office of the Commissioner of
   GST and Central Excise,
   Chennai South Commissionerate,
   5th Floor, MHU Complex, Nandanam,
   Chennai – 600 035.

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned order vide C.No.IV/16/287/2019 dated 02.11.2022 with DIN

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No.20221159TL000000A0D5 issued by the 2nd respondent and to quash the same as illegal, arbitrary and bad in law and consequently direct the 2nd respondent to take into account the credit available to the petitioner to the tune of Rs.1,03,71,501/- instead of Rs.4,30,328/- as allowed by the Designated Committee and consequently direct the 2nd respondent to issue discharge certificate namely SVLDRS 4.

For Petitioner(s):	Mr.T.Mohan, Sr. Advocate for Mr.M.N.Bharathi
For Respondent(s):	Mr.Sai Srujan Tayi, Sr. Standing Counsel

ORDER

Show cause notice dated 18.06.2018 was issued to the petitioner calling upon the petitioner to show cause as to why the petitioner is not liable to pay the amounts mentioned in paragraph 27 therein, including the denial of CENVAT credit of Rs.1,03,71,501/-. The petitioner applied under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (SVLDRS) by declaring the total tax dues as Rs.3,49,09,640/- and further declaring that there are no tax dues under the SVLDRS after considering the tax relief and the pre-deposit. Rejecting this contention, order dated 14.01.2020 was issued. This order was challenged in W.P.No.818 of 2021.

2.This Court allowed the writ petition by holding, in relevant part, as under:-

“52. The demand if any could have been restricted only

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to the net of the amount after adjustment of Rs.1,03,71,501 from Rs.3,49,09,640 less the amount deposited by the petitioner merely because the credit cannot be denied, provided the credit was validly availed. This ought to have been properly examined by the Designated Committee as unnecessarily the assessee is being denied is not of the right to settle the dispute under the Scheme.

53. If the credit was lying un-utilized, the petitioner was entitled to pay 50% of the net amount that is the tax due from the petitioner. However, this has not been done. There is no discussion in the Impugned Order.

54. Therefore, there is no merits in the impugned order passed by the respondents by demanding a sum of Rs.1,54,20,216 from the petitioner. The rules contemplate hearing. The hearing is meant for proper determination of the amount to be paid by an assessee. The petitioner has not been heard. Therefore, I set aside the impugned order dated 14.01.2020 and remit the case back to the jurisdictional officer to arrive at the proper amount to be paid by the petitioner in the provisions of the aforesaid scheme."

Upon remand, order dated 02.11.2022 was issued, which is impugned herein.

3.Adverting to show cause notice dated 18.06.2018, learned Senior Counsel for the petitioner contends that the only objection raised in such show cause notice to the availment of CENVAT credit by the petitioner was that the

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petitioner had claimed such credit beyond the prescribed time limit. Referring to the impugned order, he points out that it is recorded therein that there was no time limit during the periods 2012-2013 and 2013-2014. As a consequence of such finding, learned Senior Counsel contends that the entire CENVAT credit claim of the petitioner should have been accepted. Instead, he points out that the Designated Committee denied such credit, except to the extent of Rs.4,30,328/-, on the erroneous ground that supplies were made to other premises. He relies upon the judgment of this Court in *Commissioner of Service Tax-III, Chennai v. Reed Elsevier Pvt. Ltd., 2018 (8) G.S.T.L. 355,* for the proposition that the law also does not mandate that supplies should be received at the registered premises. For the proposition that the tax authority cannot travel beyond the show cause notice, he relies upon the judgment of the Hon'ble Supreme Court in *Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., 2007 (8) TMI 10.*

4.Responding to these contentions, learned Senior Standing Counsel refers to the SVLDRS and, in particular, the definition of tax dues in Section 123 thereof. He points out that tax dues in relation to a show cause notice are the amounts stated to be payable by the declarant in the said notice. He submits further that the Designated Committee does not undertake an adjudication under the scheme.

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5.In the earlier order, this Court set aside the order dated 14.01.2020 and remanded the matter for the limited purpose of examining whether CENVAT credit had been validly availed of by the petitioner. In the show cause notice dated 18.06.2018, it was proposed to reject the claim of CENVAT credit on the ground that such credit had been claimed beyond the time limit. Noticing this in the impugned order, the following conclusion was reached:-

> *"b) In terms of Sub-rule 7 of Rule 4 of CENVAT Credit Rules, 2004, as amended vide Notification No.13/2011-Central Excise (N.T.0 dated 31.03.2011 (with effect from 01.04.2011),* ***CENVAT Credit shall be allowed on or after the day on which the invoice, bill or challan is received*** *and hence the CENVAT Credit availed by the assessee are eligible credit except as mentioned in Para 3 above in as much as there was no time limit prescribed in the said rules. The amendment with regard to availment of CENVAT credit within six months was brought vide Notification No.21/2014 Centrla Excise (N.T.) dated 11.07.2014 with effect from 01.09.2014. As such, the restriction does not apply to the instant case for the period 2012-13 & 2013-14 since all the invoices are dated prior to 01.09.2014."*

6.In view of the above conclusion, the Designated Committee should ordinarily have further concluded that the petitioner is entitled to CENVAT credit of Rs.1,03,71,501/-. Instead, relying on Rule 9 of the CENVAT Credit

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Rules, 2004 (the CENVAT Credit Rules), CENVAT credit was denied, except for the sum of Rs.4,30,328/-. Rule 9 of the CENVAT Credit Rules is set out below in relevant part:-

"RULE 9. Documents and accounts. —

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

a. an invoice issued by -

i. a manufacturer for clearance of -

I. inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

II. inputs or capital goods as such;

ii. an importer;

iii. an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

iv. a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

b. a supplementary invoice, issued by a manufacturer or

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importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or

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contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or

c. a bill of entry; or

d. a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; [or, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the Customs airport,]; or

e. a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or

f, an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

g. an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994.

h. Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.;

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(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

(3) Omitted

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in

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the invoice issued by him.

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or

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quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within [ten days] after the close of the quarter to which the return relates.

(8) . . . .

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) . . . .

(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be."

7.There is nothing in the above Rule which makes it a pre-requisite for the availment of CENVAT credit that the goods should be delivered in the registered place of business of the petitioner. Learned Senior Counsel for the petitioner submitted that the nature of the petitioner's business is such that

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goods are often delivered at the client's site. Reference may also be made in this regard to the judgment of the Allahabad High Court in *M/s Cyquator Media Services P. Ltd. v. Union of India and two others, 2017 (12) TMI 775.*

8.Learned Senior Standing Counsel also contended that the Designated Committee does not undertake adjudication and, therefore, the sum specified in the show cause notice is sacrosanct. This contention is untenable for at least two reasons. First, Section 127 empowers the committee to examine the amounts estimated by the declarant and thereafter either accept such amounts or provide its estimate. In cases where the estimate of the Designated Committee deviates from the estimates provided by the declarant, Sub-section 3 of Section 127 provides for the declarant to be heard before a decision is reached. Therefore, the SVLDRS envisages determination by the Designated Committee although the same may not qualify as a full fledged adjudication. The second reason for rejecting the contention is that the Designated Committee has undertaken determination of CENVAT credit and allowed the claim only to the extent of Rs.4,30,328/-. In addition, the ground of rejection in the impugned order is different from that raised in the show cause notice.

9.The conclusion that follows from the above discussion is that the rejection of the petitioner's claim for CENVAT credit is erroneous. Therefore, the impugned order is set aside and the Designated Committee is directed to

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take further action on the basis of the declaration provided by the petitioner by issuing the necessary discharge certificate under the SVLDRS. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

10.The writ petition is disposed of on these terms without any order as to costs. Consequently, the connected writ miscellaneous petitions are closed.

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Index: Yes
Speaking order
Neutral Citation: Yes

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SENTHILKUMAR RAMAMOORTHY,J.

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To

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2.The Chairman, Designated Committee 1
Under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019,
Chennai South Commissionerate,
5th Floor, MHU Complex, Nandanam,
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3.The Office of the Commissioner of
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