

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 3510 OF 2019

Eureka Fabricators Pvt Ltd

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

-
- Mr. Prasannan Namboodri for the Petitioner
 - Mr. Pradeep S. Jetly, Sr. Counsel a/w Mr. Jitendra B. Mishra for the Respondents
 - Mr. Abhay Patki, Addl. G.P. for the State
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CORAM : K.K. TATED &
MILIND N. JADHAV, JJ.

DATE : JUNE 30, 2020.
(Through Video Conferencing)

P.C.:

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. This petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India to challenge the validity and legality of the rejection of the petitioner's Sabka Vishwas (Legacy Dispute Resolution) Form No. SVLDRS-3 dated 18.11.2019 in respect of central excise duty

payable by the petitioner.

3. Briefly, the relevant facts are as under:-

- (a) The petitioner is a manufacturing unit which manufactures pressure vessels viz. Road Tankers and Storage Tanks falling under tariff item 73090090 of the First Schedule to the Central Excise Tariff Act, 1985. An intelligence was received by the officers of the headquarters of Anti Evasion, Thane-I Commissionerate that the petitioner company was clearing Pressure Vessels / Tanks viz. Road Tankers and Storage Tanks for highly inflammable gases such as LPG, Propane, Ammonia etc. without payment of central excise duty under the guise of job work of fabrication on payment of service tax and simultaneously availing credit of central excise duty paid on the inputs which were supplied free of cost to the petitioner by their clients for fabrication of their tanks.

- (b) On 24.11.2015, the petitioner's factory was raided and investigation was carried out resulting in issuance of Show-Cause-cum-Demand notice dated 4.10.2017 to the petitioner calling upon the petitioner to deposit an amount of Rs. 1,66,26,967.00 as worked out and recoverable from the petitioner under the provisions of Section 11A(4) of the Central Excise Act, 1944.
- (c) The petitioner filed application dated 20.7.2018 before the Settlement Commission, which was rejected by order dated 7.8.2018 and liberty was granted to the petitioner to approach the Settlement Commission after compliance of the conditions under Section 32 E of the Act.
- (d) By order dated 31.1.2019, the Settlement Commission confirmed the payment of central excise duty amounting to Rs. 1,66,26,967.00 sought to be recoverable from the petitioner.
- (e) Being aggrieved, the petitioner filed appeal against the above order before the Commissioner (Appeals). In the meanwhile, the petitioner also

made payments of Rs. 50,00,000.00, Rs. 5,17,877.00 and Rs. 18,00,000.00 in the interregnum towards central excise duty and penalty or interest to show its bonafides. By order dated 8.8.2019, the Commissioner (Appeals) rejected the appeal filed by the petitioner and confirmed the payment of central excise duty as decided earlier.

- (f) On 21.8.2019, the Government of India issued notification framing Sabka Vishwas Rules, 2019 giving an opportunity to the parties for declaration of tax dues payable under the Sabka Vishwas (Legaly Dispute Resolution) Scheme, 2019 ("**SVLDR Scheme 2019**" for short).
- (g) On 20.9.2019, the petitioner filed online application in Form No. SVLDRS-1 declaring tax dues payable under the Scheme, after deduction of the amount already paid, as Rs. 9,95,606.00.
- (h) Respondent No. 3 i.e Designated Committee under the SVLDR Scheme 2019 heard the petitioner on 23.10.2019 and quantified the

estimated amount payable under the scheme at Rs. 33,13,483.00. This quantification was issued to the petitioner in Form No. SVLDRS-2.

- (i) Being aggrieved, the petitioner, once again submitted Form No. SVLDRS-2A on 12.11.2019 reiterating that the petitioner was finally liable to pay only Rs. 9,95,607.00 while interpreting the provisions of Section 124(2) of the Finance Act, 2019 to the facts of the petitioner's case.
- (j) Having considered the case of the petitioner, respondent No. 3 issued Form No. SVLDRS-3 on 18.11.2019 quantifying the estimated amount payable under the Scheme at Rs. 55,56,045.00.
- (k) The petitioner, being aggrieved, has filed the present petition.

4. Mr. Prasannan Namboodri, learned counsel appearing on behalf of the petitioner has painstakingly argued that the present petition involves interpretation of the provisions of Section 123(a) read with Section 124(1)(a) and Section 124(2) of the Finance Act, 2019 to the facts and

circumstances of the petitioner's case. He submitted that the petitioner had already made a pre-deposit, which amount being already deposited earlier in point of time was required to be deducted from the amount payable which was arrived at after deducting the relief from the tax due. He submitted that the term "amount payable" is defined under Section 121(e) of the Finance Act, 2019 as the final amount payable by the declarant and as such, under Section 124(1)(a)(ii) of the said Act, the amount finally payable by the petitioner under the SVLDR Scheme was Rs. 83,13,484.00 i.e 50% of 1,66,26,967.00. He submitted that since the petitioner had already made a pre-deposits of Rs. 50,00,000.00, Rs. 5,17,877.00 and Rs. 18,00,000.00, the said amounts were required to be reduced from the amount of Rs. 83,13,484.00 and thus, the final amount payable under the Scheme came to Rs. 9,95,606.00 as per the provisions of Section 124(2) of the Finance Act, 2019.

5. PER CONTRA, Mr. Pradeep Jetly, learned Sr. Counsel appearing on behalf of the Revenue contested the claim of the petitioner and submitted that in the present

case on introduction of SVLDR Scheme 2019, the petitioner filed application in Form SVLDRS-1 under the category of "litigation - appeal pending" wherein they declared tax dues as Rs. 1,66,26,967.00 and the amount of pre-deposit which it had deposited as Rs. 73,17,877/- and thus, arrived at a final demand of tax dues payable at Rs. 9,95,607.00. He submitted that the Designated Committee i.e respondent No. 3 in the petitioner's case took a view that as per the Board's clarification dated 25.9.2019, the amount which had been appropriated should not be considered for relief resulting in no tax relief admissible to the petitioner on the said application of the admitted central excise duty liability. He submitted that the liability as per the order in original had been accepted by the petitioner without litigating and therefore, the same should not be considered under the Scheme either as arrears or under litigation.

6. Mr. Namboodri in rejoinder vehemently opposed the submissions made on behalf of the revenue and contended that the case of the petitioner is required to be considered in the light of the provisions of Section 123(a)

read with Section 124(1)(a) of the Finance Act, 2019 and it is true and correct interpretation.

7. Without prejudice to the rights and contentions of the parties, it was submitted that the last date for making payment was extended upto 30.6.2020 i.e today and the petitioner was liable to pay the final balance deposit of Rs. 55,56,045.00 by today.

8. In the light of the above, it would be apposite to consider the provisions of Section 123(a), Section 124(1)(a) and Section 124(2) which read thus:-

"123. For the purposes of the Scheme, "tax dues" means-

(a) where -

(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

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Section 124.(1) Subject to the conditions specified in sub-section(2), the relief available to a declarant under this Scheme shall be calculated as follows:-

(a) Where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on 30th day of June,2019, and if the amount of duty is,-

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent of the tax dues;

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(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

9. After hearing the learned counsel for the parties and giving due consideration to the case in hand, it would not be appropriate for us to confirm the quantification of balance final estimated amount payable under the scheme at Rs. 55,56,045.00, especially when it is the petitioner's case that respondent No. 3 Committee has failed to consider the petitioner's case in the light of the interpretation and application of the above provisions and has not heard the petitioner before confirming the balance final demand.

10. Learned counsel for the petitioner submitted that the petitioner is ready and willing to deposit the amount of Rs. 55,56,045.00 with the revenue within a period of one week from today. The order dated 23.6.2020 records the last date for making payment was likely to be extended further beyond 30.6.2020, however we are not being informed of the same today. We permit the petitioner to deposit the same within a period of one week from today.

11. In view of the above, the petition is disposed of by passing the following order:-

- (a) Rule is discharged;
- (b) SVLDRS-3 Form dated 18.11.2019 quantifying the estimated amount payable under the Scheme is quashed and set aside;
- (c) The petitioner shall deposit a sum of Rs. 55,56,045.00 with the Revenue / respondents within a period of one week from today;
- (d) If the petitioner deposits the above amount, respondent No. 3 Committee shall give hearing to the petitioner on the estimation

and computation of the liability of the petitioner under SVLDRS-3, determine the excise duty payable and pass a fresh order in Form No. SVLDRS-3 and intimate the same to the petitioner in accordance with law;

- (e) If respondent No. 3 Committee comes to the conclusion that the balance liability of the petitioner towards payment of excise duty is less than Rs. 55,56,045.00, in that event, the differential amount of deposit made by the petitioner under this order and the duty determined shall be immediately refunded to the petitioner within a period of two weeks from the date of passing of the fresh SVLDRS-3 order.

12. Petition is disposed of on the above terms with no order as to costs.

13. This order will be digitally signed by the Personal Assistant / Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

[MILIND N. JADHAV, J.]

[K.K. TATED, J.]