

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 71 of 2021

- Chhattisgarh Cement Carriers, Having Its Office At Satkar Complex 1st Floor, Ring Road No.2, Bhanpuri Raipur Through Its Proprietor Chintan Babaria, S/o Pankaj Babaria, Aged About 35 Years, R/o F. No. 5ab, Nirmal Ganga Apt., Opp. Dagdi Park 110, Ramdaspath, Nagpur - 10 (M.S.)

---- Petitioner

Versus

1. Union Of India Through Its Secretary, Finance, Department Of Revenue, Room No. 46, North Block, New Delhi - 110001,
2. The Central Board Of Indirect Taxes And Customs, Through Its Chairman, Ministry Of Finance, Department Of Revenue Room No.46, North Block, New Delhi - 110001
3. Principal Commissioner, Central Excise, Customs And Service Tax, Central Excise Building Tikra Para, Dhamtari Road, Raipur Chhattisgarh Pin - 492001,
4. The Designated Committee Constituted Under Rule 5 Of The Sabka Vishwas (Legacy Dispute Resolution) Rules 2019, Headed By The Additional Commissioner, Central Excise, Customs And Service Tax, Central Excise Building Tikra Para, Dhamtari Road, Raipur Chhattisgarh Pin - 492001

---- Respondents

For Petitioner	:	Mr. Abhay Agrawal, Advocate
For Respondents	:	Mr. Ramakant Mishra, A.S.G.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

15.06.2021

1. Heard on admission.
2. The challenge in this writ petition is to the levy of tax which was claimed under Form SVLDRS-1 i.e. the claim under the Scheme of Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019. The claim of the petitioner is that they have filed the service tax return in Form ST-3 for the period from October 2015 to March 2016 on 24.02.2018 and had duly paid the admissible service tax dues, but it was filed late. The petitioner did not pay any interest or penalty as applicable for the aforesaid period, as a result of which, the petitioner had applied under the SVLDRS Scheme to get waiver

from interest and penalty as was promised under the Scheme of 2019. It is contended that the respondent No. 4, without considering the provision of Scheme of 2019 and without giving any opportunity of hearing to the petitioner passed the order on 16.03.2020 (Annexure P/1) in a mechanical manner by which the Form SVLDRS-1 submitted by the petitioner was summarily rejected.

3. The case of the petitioner is that the Form under the SVLDRS Scheme was filed on 28.12.2019 and the order under challenge by Annexure P/1 casts a duty upon the petitioner to pay the penalty and interest for late payment of tax. It is stated that the said order was passed without giving any opportunity of hearing to the petitioner.
4. The petitioner is an assessee under the Finance Act 1994 for payment of service tax. It is not in dispute that the petitioner had to pay the service tax and the return was filed by them with delay for the different assessment years. The Government of India introduced the scheme named and styled as Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [hereinafter referred as 'SVLDRS Scheme'] wherein it was contemplated that the amount declared means the amount declared by the declarant under Section 125 of the SVLDRS Scheme and the amount estimated was described as the amount estimated by the designated committee under Section 127 of the SVLDRS Scheme. The scheme which was introduced under Section 125 of the SVLDRS Scheme prescribes the eligible persons to make declaration under the scheme except certain categories. The scheme was predominantly was in nature of benevolent legislation and was aimed to put an end to existing or previous disputes.
5. For the sake of brevity, Section 125 of the SVLDRS Scheme is reproduced hereinbelow which purports the eligible persons except certain categories.

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

- (a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;
 - (b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;
 - (c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;
 - (d) who have been issued a show cause notice, under indirect tax enactment for an erroneous refund or refund;
 - (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) who have filed an application in the Settlement Commission for settlement of a case;
 - (h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.
- (2)** A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.”

6. According to the Scheme, once the assessee avails the Scheme and files the return by declaration, the verification of declaration by the designated committee was prescribed under Section 126 of the SVLDRS Scheme and the issue of statement by the designated committee is covered under Section 127 of the SVLDRS Scheme. For the sake of convenience, the relevant part of Section 127 of the SVLDRS Scheme is reproduced hereinbelow:-

“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.”

7. The petitioner claims that he had applied under the said scheme and has applied for exemption from penalty and the interest on the payment of late service tax in the Form SVLDRS-1 by Annexure P/1, which was rejected by the Committee with the following endorsement:-

“Remarks:

SVLDRS-1 rejected being unfit as period /reason/relief applied for is not clear being NIL declaration in “Tax dues declared in return as payable but not paid category”.
--

8. As per Section 127 of the SVLDRS Scheme, when the declaration made by the petitioner was rejected, meaning thereby he would be liable to pay

further interest and penalty on late payment and return. However, to levy any such liability under Section 127 of the SVLDRS Scheme, under Section 127(3), it mandates that after the issue of estimate under Section 127(2), the designated committee shall give opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant.

9. The order which is on record whereby the declaration of the petitioner was rejected, meaning thereby he would be liable to pay the additional amount, which would be a levy imposed. In order to impose such levy, the designated committee was duty bound to hear the petitioner by giving him an opportunity of hearing. Considering the benevolent scheme which has been set into motion by the respondents, the petitioner was required to be heard even otherwise under the statutory mandate.
10. Therefore, the order whereby the Form SVLDRS-1 was rejected by the designated committee which is embodied in the remarks column is set-aside. The cases are remanded back to the designated committee with a direction to give an opportunity of hearing to the petitioner by adhering to the rules of natural justice. After hearing the petitioner, the designated committee shall be at liberty to pass the orders in accordance with law.
11. Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Goutam Bhaduri)
Judge