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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12135/2021 & C.M.Nos.37865-37866/2021

MS ERS SERVICES PRIVATE LIMITED ..... Petitioner

Through Mr.Pawan Arora with Ms.Hemlata Rawat and Mr.Pramod Kumar Rai, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr.Akshay Amritanshu, Sr.Standing counsel with Mr.Nitin Khanna, Advocate.

% Date of Decision: 27th October, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the intimation letter dated 14th September, 2020 issued by respondent No.4, Assistant Commissioner of Central Excise and Service Tax, whereby the application filed by the petitioner for rectification of an alleged clerical error in SVLDRS 1 declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme [SVLDR Scheme] was rejected. Petitioner seeks directions to the respondent to accept the balance payment of Rs.10,19,821/- from the petitioner and issue Discharge Certificate in Form SVLDRS-4 under the SVLDR Scheme. The relevant portion of the impugned order is

reproduced hereinbelow:-

> *"2. As per provisions of the scheme, the benefit of pre-deposits claimed in SVLDRS-1, could only be given prior to issue of SVLDRS-3, and, in the application in consideration i.e. application bearing ARN-LD3112190012514, no pre-deposits were claimed in SVLDRS-1, SVLDRS-3 was issued in on 27.02.2020, in accordance with the SVLDRS-1 filed by the applicant. Payment against the SVLDRS-3 issued was not made by 30.06.2020 in terms of the Section 127(5) of the Finance Act (No.2), 2019 read with Section 7(iv) of the Taxation and other laws (relaxation of certain provisions) ordinance, 2020 and accordingly the SVLDRS application had been treated as lapsed."*

3. Learned counsel for the petitioner states that the petitioner had filed the Application SVLDRS-1 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. He however states that due to a clerical error the petitioner had left the "pre- deposit" column blank in the declaration and had not filled the amount of pre-deposit of Rs.1,38,91,813/- in the Declaration Form. He states that the petitioner's application seeking rectification of the declaration was rejected by the respondent without providing an opportunity of being heard to petitioner and without rectifying the SVLDRS 3 statement issued by the respondent No.2 by reducing the pre-deposited amount of Rs.1,38,91,813/- from the amount payable of Rs.1,49,11,634/-. He submits that Section 126(1) of SVLDR scheme read with Rule 6(1) SVLDRS Rules, states that the declaration made under Section 125, except, when it relates to a case of voluntary disclosure of an amount of duty shall be verified by the designated committee based on the particulars furnished by the declarant as well as the records available with the Department. He states that the department has committed an error by not

correcting the pre-deposit column.

4. Learned counsel for the petitioner states that the actions of the respondent are in contravention of the intent and purpose of the SVLDRS, which was to facilitate the assessee to comply with the new GST regime without any backlog of encumbrances. He states that the bonafide mistakes of the petitioner are not fait accompli and technical errors cannot take away the substantial rights of the petitioner.

5. Admittedly, the petitioner had left the pre-deposit column blank in its Declaration Form. For its own mistake, the petitioner cannot blame the respondents. The respondent was obliged in law to verify the correctness of the declaration made [under Section 126(1)], but not to complete an incomplete form.

6. Further, no rectification application was filed by the petitioner within the period of thirty days stipulated in the SVLDR Scheme. Though, learned counsel for the petitioner states that due to Covid-19 pandemic, he could not rectify the Declaration Form, yet this Court finds that as the said Form had been filed on 31st December, 2019, the petitioner had sufficient time before the onset of Covid-19 pandemic to rectify its mistake. Allegedly, the same was done on 30th June, 2020 [date of the closure of the Scheme] i.e. much beyond the period of thirty days.

7. The petitioner had also not deposited the balance amount of Rs.10,19,821/- till 30th June, 2020. At this stage, learned counsel for the petitioner states that the petitioner had given instructions to its bankers on 30th June, 2020 to credit the balance amount of Rs.10,19,821/- with the respondents, but the said instruction was not carried out by the bank as well as Reserve Bank of India and, thus, the petitioner cannot be blamed for the

same.

8. Since the bank is not a party to the present proceedings, this Court is of the opinion that it cannot reach a conclusion behind the back of the bank that there was a default/negligence on the part of the bank(s) or the Reserve Bank of India. If the Bank or Reserve Bank of India has been guilty of any default, the petitioner is at liberty to initiate proceedings against them, if permissible in accordance with law.

9. Accordingly, the present writ petition along with pending applications being bereft of merits is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

OCTOBER 27, 2021
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