

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**

PRACHI
PRANESH
NANDIWADEKAR

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PRACHI PRANESH
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WRIT PETITION NO.465 OF 2022

Munish Rajkumar Mahajan)
 Proprietor of KDS Security Services)
 having his address at 517/68)
 Flat No.110, 5th Floor,)
 Shivaji Pride, Shivaji Park,)
 Kolhapur 416 001.) .. Petitioner

Versus

1. The Union of India)
 through the Revenue Secretary,)
 Department of Revenue, Ministry of Finance)
 having his office at 128-A, North Block,)
 New Delhi.)

2. The Designated Committee)
 under SVLDRS, comprising of)
 the Joint Commissioner and)
 Deputy Commissioner of CGST &)
 Central Excise, Kolhapur Commissionerate,)
 ‘Vasant Plaza’ Commercial Complex,)
 4th and 5th Floor, C.S. No.1079/2/KH)
 Rajaram Road, Near Bagal Chowk,)
 Kolhapur 416 008.)

3. The Commissioner of CGST &)
 Central Excise, Kolhapur Commissionerate,)

Vasant Plaza, 4th and 5th Floor,)
Bagal Chowk, Kolhapur 416 008.) .. Respondents

Ms.Manasi Patil i/by M/s.Cenex Services for the petitioner.
Mr.Jitendra B. Mishra a/w Mr.Dhananjay B. Deshmukh for the respondents.

**CORAM : R.D. DHANUKA &
N.R. BORKAR, JJ.**
RESERVED ON : 24th January 2022
PRONOUNCED ON : 11th February 2022

Judgment :- (per R.D.Dhanuka, J.)

. Rule. Mr.Mishra, learned counsel for the respondents waives service. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus, directing the Designated Committee under SVLDR Scheme to consider the tax dues as Rs.39,47,420/- i.e. the amount of demand confirmed, in the Order-in-Original dated 23rd December 2019 and declared in the SVLDRS-1 and compute an amount of Rs.15,78,968/- as the estimated/determined amount payable i.e. by applying 40% under Section 124(c)(i) of the Finance (No.2) Act, 2019 on the said dues of Rs.39,47,420/-. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner is engaged in providing security and detective agency services and was holding necessary registration under Service Tax law and now under GST law. The petitioner was paying appropriate

service tax on the said services of security and detective agency provided by them.

4. It is the case of the respondents that during the verification of the data received from third party, it was observed that there was an apparent mismatch in the payment of Service Tax and the turnover of the assessee. As per third party data, Income Tax Department viz. ITR/TDS data (Tax deducted at Source in Form-26AS), it was observed that the petitioner had shown income as per ITR/TDS for the period of 2013-14 as under:-

<i>Year</i>	<i>Differential (Max-ST3)</i>	<i>Service Tax payable on Differential (Max-ST3)</i>
2013-14	3,36,32,851/-	41,57,020/-

5. According to the respondents, there was a non-payment of the differential Service Tax by the petitioner on variation of taxable value as per the information in third party data received from the Income Tax Department, in comparison to the taxable amount as per ST-3 returns filed for the corresponding period.

6. The office of Deputy/Assistant Commissioner, Central GST Division-III, Kolhapur issued a Show Cause-cum-Demand Notice to the petitioner for the assessment year 2013-14 on the basis of the income tax return filed by the petitioner for the assessment year 2013-14. It was mentioned in the show cause notice that the petitioner had short-paid or not-paid Service Tax of Rs.41,57,020/- on Max Differential ST-3 value of Rs.3,36,32,851/-. It was alleged that the petitioner had contravened Section 68(1) of the Finance Act, 1994 read with Section 66/Section

66B read with Rule 6 of the Rules as applicable during the relevant period and Sections 77, 70(1) read with Rules 7(1), 7(2), 7(3) of the Rules made thereunder.

7. The petitioner was called upon to show cause as to why the Service Tax of Rs.41,57,020/- inclusive of cesses which was not paid on taxable services provided by them during the period from April 2013 to March 2014, should not be demanded and recovered from them under the provisions of proviso to Section 73(1) of the Act.

8. On 15th November 2019, the petitioner had provided the details of amounts as reflected in the Service Tax returns as well as shown under the Income Tax returns received for providing security and detective agency services for the entire period from 2013-14 to 2017-18 (upto June 2017). The petitioner agreed to pay Service Tax of Rs.39,47,420/- on the amount received in cases where the security services were provided by the petitioner other than body corporates.

9. On 23rd December 2019, the Assistant Commissioner of Central GST, Division-III, Kolhapur passed an Assessment Order after the issuance of show cause notice dated 24th April 2019 issued by him and confirmed the demand of Service Tax of Rs.39,47,420/- against the petitioner under the provisions of Section 73(2) of the Finance Act, 1994 read along with the proviso to the provisions of Section 73(1) of the Finance Act, 1994 and ordered to recover a sum of Rs.39,47,420/-. The Assessing Officer ordered to impose penalty of Rs.20,000/- for each return and directed that interest at an appropriate rate from the assessee as specified under Section 75 of the Finance Act, 1994 would be charged.

The Assessing Officer imposed a penalty of Rs.10,000/- under Section 77(2) of the said Finance Act on the petitioner for failure of payment of tax electronically. The petitioner did not challenge the said order passed by the Assistant Commissioner, Central GST, Division-III, Kolhapur.

10. On 1st August 2019, the Finance (No.2) Bill/Act, 2019 was introduced/enacted wherein the Central Government introduced a special legacy scheme known as “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019” (for short “the said SVLDR Scheme”) for resolution of old tax disputes pending as on 30th June 2019 under the Central Excise and Service Tax laws. The said scheme existed for a limited period from 1st September 2019 to 31st December 2019 which was thereafter extended upto 15th January 2020. One of the conditions for availing the benefit of the scheme was that the dispute must be pending as on 30th June 2019 at any stage i.e. enquiry or investigation or audit or SCN or adjudication or appellate stage etc.

11. It is the case of the petitioner that to mitigate the issue, the petitioner opted for resolution of the dispute covered under the said Order-in-Original dated 23rd December 2019 under the said scheme by filing necessary declaration in Form SLVDRS-1 on 31st December 2019 showing the estimate amount payable as Rs.15,78,968/-. The said application was filed under category “Arrears” and sub-category “Appeal not filed or appeal having attained finality.” The petitioner mentioned the details of the said Order-in-Original dated 23rd December 2019 in the said declaration form.

12. It is the case of the petitioner that the Designated Committee comprising of Joint Commissioner and the Deputy Commissioner issued an Estimate under Section 127 in Form SVLDRS-2 on 19th February 2020 showing the “tax dues” as Rs.81,04,440/- and “estimated amount payable” as Rs.40,52,220/-. It was mentioned in the said SVLDRS-2 that in case if the Declarant did not agree with the estimated amount payable, he shall appear for a personal hearing before the Designated Committee on 26th February 2020.

13. The petitioner submitted Form SVLDRS-2A in terms of Section 127 read with Rule 6 of the said Rules on 25th February 2020 and mentioned therein that “Written submissions would be filed at the time of personal hearing” for the reason for disagreement. The petitioner thereafter appeared for personal hearing on 26th February 2020 and submitted ‘written submissions’ in addition to oral arguments advanced.

14. On 4th March 2020, the Designated Committee did not accept the submissions made by the petitioner and issued the statement in Form SVLDRS-3 indicating the “tax dues” as Rs.81,04,440/-, “pre-deposit/any other deposit of tax” as zero and “estimated tax payable” as Rs.40,52,220/-.

15. Due to the Covid-19 pandemic and consequential lockdown throughout the country, the time limit for payment of tax dues under the scheme was extended from 31st March 2020 to 30th June 2020.

16. Ms.Manasi Patil, learned counsel for the petitioner invited our attention to some of the exhibits annexed to the writ petition. She

submits that the Assistant Commissioner, Central GST Division-III, Kolhapur had issued a Show Cause-cum-Demand Notice dated 23rd December 2019 to the petitioner for payment of Service Tax of Rs.41,57,020/- (inclusive of cesses) along with interest and penalty under the Finance Act, 1994. The petitioner had quantified their total Service Tax Liability @ Rs.39,47,420/-. The adjudicating authority had in the said Order-in-Original dated 23rd December 2019 after scrutiny of Income Tax Returns and Annual Financial Statement for the disputed period, accepted and confirmed the total Service Tax Liability to the extent of Rs.39,47,420/- under Section 73(2) of the Finance Act, 1994 and had also demanded interest and penalty.

17. Learned counsel for the petitioner invited our attention to the said declaration in Form SVLDRS-1 on 31st December 2019 and submitted that in the said Form, the petitioner had specifically mentioned the date of Order-in-Original dated 23rd December 2019 assessing the tax liability of Rs.39,47,420/-. The petitioner had also mentioned the category “Arrears” and sub-category “Appeal not filed or appeal having attained finality.” The petitioner mentioned the ‘tax dues’ as Rs.15,78,968/-. She submits that the petitioner did not file the said declaration for the availment of the said SLVDRS-1 on the basis of the amount of Service Tax demanded by the respondents under the said show cause notice dated 24th April 2019, but had filed the said declaration Form on the basis of the arrears of Service Tax dues of Rs.39,47,420/- under the said Order-in-Original dated 23rd December 2019 passed by the said Assistant Commissioner of Central GST, Division-III, Kolhapur.

18. Learned counsel for the petitioner invited our attention to the Form SVLDRS-3 dated 4th March 2020 issued by the respondent no.2 determining 'tax dues' @Rs.81,04,440/-, 'tax relief' @ Rs.40,52,220/- and 'Estimated Amount Payable' at Rs.40,52,220/-. She submits that the petitioner admittedly did not file any appeal against the Order-in-Original dated 23rd December 2019 and accepted the said amount as arrears under Section 121(c) of the said Finance (No.2) Act, 2019 and more particularly under Chapter V i.e. the said SVLDR Scheme. She invited our attention to the definition of "amount in arrears" under Section 121 (c) of the said Scheme and submitted that the amount of duty which is recoverable as arrears of duty under the indirect tax enactment on account of no appeal having been filed by the Declarant against an order or an order in appeal before expiry of the period of time for filing appeal would fall under the definition of "amount in arrears."

19. Learned counsel placed reliance on Section 123 which provides for 'Tax dues' and more particularly Sections 123(b) and 123 (e). She submits that since the adjudicating authority had already determined the amount of tax dues in the Order-in-Original dated 23rd December 2019 which had attained finality, the said amount was in 'arrears' relating to the petitioner as tax dues. Since the petitioner did not file the said declaration in Form SLVDRS-1 based on the amount quantified in the show cause notice, reliance placed by the respondents on Section 123(b) which provides that 'where a show cause notice under any of the indirect tax enactments has been received by the declarant on or before the 30th day of June, 2019, then the amount of duty stated to be payable by the declarant in the said notice' is misplaced.

20. Learned counsel for the petitioner placed reliance on section 124(1)(c) of the SVLDR Scheme and submitted that the petitioner having satisfied the conditions of the said provisions is entitled to the relief available under section 124(1)(c) of the said scheme. She also relied upon section 125 (1)(e) of the said scheme and submitted that the case of the petitioner would fall under the said provision.

21. Learned counsel for the petitioner invited our attention to the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (for short the said SVLDR Scheme Rules) and more particularly Rule 3(2)(a) and (b) and submitted that since the petitioner had filed a declaration under 'category of arrears', the petitioner had filed a declaration under section 125(2)(b). Learned counsel for the petitioner also invited our attention to the forms required to be filed under different categories. 9.1 provides for the format for filing an application under litigation category. She submits that the case of the petitioner falls under 9.2 i.e. 'category of arrears'.

22. Learned counsel placed reliance on the judgment of this Court in case of ***Jyoti Plastic Works Pvt. Ltd. vs. Union of India & Ors., 2020 SCC Online Bom 2276*** and also in case of ***Morde Foods Pvt. Ltd. & Anr. vs. Union of India and Others, 2021 SCC Online Bom 320*** in support of her contentions.

23. Mr.Mishra, learned counsel for the respondents on the other hand submits that the respondents had issued a Show Cause-cum-Demand Notice dated 24th April, 2019 to the petitioner for demand of

Service Tax of Rs.41,57,020/- on a taxable value of service of Rs.3,36,32,851/- on the basis of data available for the financial year 2013-14. The respondents also proposed to invoke extended period i.e. from 2014-15 to 2017-18 (upto June 2017) along with recovery of interest and penalty on the non-payment of Service Tax without quantifying the Service Tax as the exact data was not available at that point of time. Exact data was subsequently made available on 30th June, 2016, through the Income Tax Department and accordingly reflected in the adjudication order vide Order-in Original dated 23rd December, 2019.

24. It is submitted by the learned counsel that the petitioner had submitted reply to the show cause notice along with data, on the basis of return of Income Tax Department, for the period 2013-14 to 2017-18 (upto June 2017) and on verification of the said data and information submitted to the Income Tax Department i.e. under form 26AS filed by the petitioner, the quantification of liability for further period i.e. 2014-15 to 2017-18 (upto June 2017) was done along with the re-quantification for the period 2013-14. He submits that the taxable value derived for the period 2014-15 till 2017-18 (upto June 2017) was arrived at Rs.6,10,47,381/-. The service tax payable accordingly was computed at Rs.83,46,041/-. The service tax of Rs.43,98,621/- paid by the petitioner was deducted out of the said service tax payable at Rs.83,46,041/-. The differential service tax payable was arrived at Rs.39,47,420/-.

25. It is submitted that the respondents confirmed the total service tax at Rs. 39,47,420/- including the service tax of Rs.39,47,420/- for the extended period 2014-15 to 2017-18 (upto June 2017) along with

interest and penalty. The petitioner however instead of filing SVLDRS-1 under 'Litigation' category, filed the form under 'Arrears' category and the sub-category 'Appeal not filed or appeal having attained finality' under Rule 3 of the SVLDRS Rules.

26. It is submitted by the learned counsel that the said show cause notice was pending on 30th June, 2019. The designated committee comprising of the Joint Commissioner and Deputy Commissioner found that the show cause notice involving duty, interest/late fee/penalty was pending on or before 30th June, 2019 and thus re-classified it from 'Arrears' to 'Litigation' and the details of service tax liability for the extended period from 2014-15 to June 2017 amounting to Rs.39,47,420/- was calculated on the basis of para (10) of the show cause notice.

27. It is submitted by the learned counsel that the calculation of the liability for the further period from 2014-15 to June 2017 was done by the designated committee/respondent no.2 on the basis of the show cause notice which was also quantified in the Order-in Original passed on 23rd December, 2019. The amount of Rs.40,52,220/- being 50% of the total tax liability calculated as of Rs.81,04,440/- was as estimated by the designated committee/respondent no.2 and Form SVLDRS-02 was issued dated 19th February, 2020, with the remarks that 'the Show Cause cum Demand Notice dated 18th April, 2019 was under adjudication as on 30th June, 2019'. He submits that no arrears in the estimated amount was computed by the designated committee as per the said scheme on the basis of the facts on record.

28. It is submitted by the learned counsel that in the show cause notice issued by the respondent no.2 on 24th April, 2019 issued to the

petitioner for demand of service tax of Rs.41,57,020/- on a taxable value of service of Rs.3,36,32,851/- was on the basis of data available for the financial year 2013-14. It was also proposed in the show cause notice to invoke extended period i.e. from 2014-15 to 2017-18 (upto June 2017 along with recovery of interest and penalty) on the non-payment of service tax as per data available at that point of time. The quantification of the liability was not done in the show cause notice for want of exact data at the time of issuance of show cause notice. The said show cause notice was pending involving duty along with interest/late fee/penalty on or before 30th June, 2019 and thus the litigation was the most correct category for filing the declaration of the petitioner filed under the said SVLDRS.

29. Ms.Manasi Patil, learned counsel for the petitioner in her rejoinder argument submits that the respondent no.2 in the assessment order i.e. the Order-in Original dated 23rd December, 2019 has made reference to the show cause notice issued by the respondent no.2 and the reply to the said show cause notice submitted by the petitioner. She submits that the entire arguments advanced by the learned counsel for the respondent is contrary to the object and the purpose of the said SVLDR Scheme and the principles of law laid down by this Court in catena of decisions. In support of this submission, she also relied upon the judgment of this Court in case of ***Thought Blurb vs. Union of India & Ors., 2020-TIOL-1813-HC-MUM-ST.***

REASONS AND CONCLUSION :-

30. The short question that arises for consideration of this Court is whether the petitioner could have filed a declaration under SVLDR

Scheme under the category of 'arrear' on the basis of the liability determined by the respondent no.2 in Order-in Original dated 23rd December, 2019 or the petitioner ought to have filed the said declaration under the SVLDR Scheme under the category 'litigation' under the provisions of the said SVLDR Scheme on the basis of show cause notice ?

31. It is not in dispute that even prior to the date of introducing the said SVLDR Scheme by the Central Government, the respondent no.2 had already issued a Show Cause-cum-Demand Notice dated 24th April, 2019 to the petitioner in respect of the financial year 2013-14. According to the petitioner, as per the said Show Cause-cum-Demand Notice, the petitioner was liable to pay the service tax including cess, if any, for the period April 2013 to March 2014.

32. In paragraph (13) of the said show cause notice, it was however stated that since the assessee had failed to meet the statutory obligation of the payment of service tax (including cess, if any) for the period of April 2013 to March 2014 for which the data was available with the department and when compared with 26AS and assessee had deliberately suppressed the facts with an intention to evade service tax. It was provided that there was reason to believe that the said assessee had also failed to pay appropriate service tax for the subsequent period from April 2014 to June 2017. However, data for the same was not available at that time. It was provided that on it becoming available, equal or more amount of service tax inclusive of cesses not paid or short paid on taxable services provided by them for the period from April 2014 onwards along with interest thereon and penalties payable shall be demanded and

recovered from them under provision of proviso to section 73(1) of the Act invoking extended period. It was further provided that the documents relied upon in this case was income tax return and ST-3 return data for year 2013-14.

33. A perusal of the reply dated 15th November, 2019 from the petitioner to the Assistant Commissioner, Division-III, Kolhapur in response to the said Show Cause-cum-Demand Notice dated 24th April, 2019 indicates that the petitioner had mentioned the annual turnover for the financial year 2013-14 to the financial year 2017-18 (upto June 2017) in two tables. In table-1, the petitioner mentioned the differential service tax at Rs.39,47,420/- after deducting the amount of service tax already paid during the financial year 2013-14 to 2017-18 (upto June 2017). It is thus clear that the petitioner had provided all the details for the entire financial year 2013-14 to financial year 2017-18 (upto June 2017).

34. A perusal of the order passed by the respondent no.2 on 23rd December, 2019 i.e. Order-in Original indicates that the respondent no.2 had adverted to the said show cause notice dated 24th April, 2019 issued by the respondent no.2 and also the reply submitted by the petitioner in response to the said show cause notice. In paragraph (10) of the said Order-in Original, the respondent no.2 held that the assessee failed to meet the statutory obligation of the payment of service tax (including cess, if any) for the period April 2013 to March 2014 for which the data was available with the department and when compared with 26AS, the assessee had deliberately suppressed the facts with an intention to evade service tax. It was reason to believe that the said assessee also failed to pay appropriate service tax for the subsequent period from April 2014 to June 2017. However, data for the same was not available at present.

35. It was observed in the order that on it becoming available, equal or more amount of service tax inclusive of cesses not paid or short paid on taxable services would be provided by them for the period from April 2014 onwards along with interest thereon and penalties payable and shall be demanded and recovered from them under the provision of proviso to section 73(1) of the Act invoking extended period. In paragraph (13) of the said order, the respondent no.2 referred to the amounts quantified by the petitioner for financial year 2013-14 to 2017-18 (upto June 2017).

36. In paragraph (19) of the said assessment order, the respondent no.2 rendered a finding and held that on perusal of the document submitted by the assessee and scrutiny of the documents submitted by them, the turn over for the year 2013-14 is Rs.1,09,57,045/- instead of Rs.3,36,32,851/- as mentioned in the show cause notice. The assessee has submitted the correct figures of the turnover, as detailed in table 1 and 2 provided in the reply to the show cause notice. All the figures of turnover are found matched with ITR and profit and loss account. The respondent no.2 accordingly accepted those figures for computation of service tax and liability of service tax worked out at Rs.39,47,420/- and confirmed the said amount.

37. In the said order, the respondent no.2 confirmed the demand of Service Tax of Rs.39,47,420/- against the petitioner under the provisions of section 73(2) of Finance Act, 1994 read with proviso to provisions of Section 73(1) of the Finance Act, 1994 and ordered to recover the amount of Rs.39,47,420/- with interest at the rate as specified

under section 75 of the Finance Act, 1994 and imposed penalty of Rs.20,000/- for each return. It is not in dispute that the petitioner did not impugn the said assessment order.

38. The conjoint reading of show cause notice dated 24th April, 2019 and the said Order-in Original dated 23rd December, 2019 indicates that the amount of service tax worked out by the petitioner in response to the said show cause notice was accepted as worked out at Rs.39,47,420/-. Though the said assessment order was passed on 23rd December, 2019, the respondents did not pass any additional order demanding the additional amount being the differential amount arising out of the financial year 2014-15 to 2017-18 (upto June 2017) till SVLDR -3 form was issued by the respondent no.2 placing the declaration form submitted by the petitioner under 'litigation' category i.e. on 4th March, 2020. The petitioner had already availed of the said scheme by filing SVLDR-1 on 31st December, 2019. In our view, the petitioner has rightly filed the declaration form i.e. SVLDR-1 by placing the said declaration under 'arrears' category.

39. There is no substance in the submission made by the learned counsel for the respondents that the show cause notice issued by the respondent no.2 having been pending in the circumstances set out in the earlier paragraphs of this order, the petitioner could not have classified its case under 'arrears' category though the assessment order passed by the respondent no.2 on 23rd December, 2019 was passed after considering the show cause notice dated 24th April, 2019.

40. A perusal of section 121(c)(i) of the said scheme clearly indicates that the 'amount in arrears' is defined and means the amount of

duty which is recoverable as arrears of duty under the indirect tax enactment on account of no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal. The 'amount of duty' is also defined under section 121(d) which means the amount of central excise duty, the service tax and the cess payable under the indirect tax enactment. The assessment order dated 23rd December, 2019 was already in place determining the tax liability towards service tax when the petitioner had filed the said declaration form SVLDRS-1. In our view, by virtue of the petitioner not having filed any appeal against the said assessment order, the said declaration showing amount of Rs.39,47,420/- fell under the category of the 'arrears' and not under the category of 'litigation'.

41. Section 123 of the said scheme defines 'tax dues'. Scheme 123(e) of the said scheme which makes a provision of 'tax dues' clearly provides that where an amount in arrears relating to the declarant is due, the amount in arrears would fall under the category of 'tax dues'. Merely because the show cause notice issued by the respondent no.2 prior to the issuance of the said order dated 23rd December, 2019 was not fully decided, the fact remains that in the said assessment order, the respondents had considered issuance of the said show cause notice and had decided the amount of tax dues for the period for which the service tax returns were filed by the petitioner. The petitioner had furnished all the details of the taxable amount payable according to the petitioner for the entire period i.e. 2013-14 to 2017-18 (upto June 2017) in response to the said show cause notice. In our view, the petitioner having satisfied the conditions of section 124 and 125 (1) of the said scheme became

eligible to the relief available to a declarant under the said provisions of the scheme.

42. Rule (3)(2)(b) of the said SVLDRS Rules prescribes the form of declaration under section 125 required to be filed on or before 31st December, 2019. For the purpose of the said rule, explanation (b) provides that the term 'case' means the amount in arrears. Rule 3(2) explanation (a) provided that 'case' means a show cause notice, or one or more appeal arising out of such notice which is pending as on 30th June, 2019. Under the said rule, there were four categories of cases in which the said form of declaration under section 125 of the said scheme could have been filed. It is thus clear that a separate declaration could be filed even in case of amount in arrears.

43. Learned counsel for the petitioner rightly invited our attention to the categories of application prescribed under the said scheme and the rules such as 'litigation', 'arrears', 'investigation', 'query' or audit and 'voluntary disclosure'. There is thus no substance in the submission made by the learned counsel for the respondents that since show cause notice was not decided though an assessment order determining the tax dues was already passed, the petitioner could have classified the declaration under the 'litigation' category and not under 'arrears' category.

44. In our view, the petitioner has rightly filed the said declaration form under the 'arrears' category and was not required to file the said form under the 'litigation' category in view of the tax dues already having been assessed and quantified before the date of the

petitioner filing the said SVLDRS declaration form. A reply to the question no.1 of Frequently Asked Questions (FAQs) would clearly indicate that the person who has recoverable arrears pending is entitled to file a declaration under the said scheme subject to other conditions, under the said scheme.

45. This Court in case of **Jyoti Plastic Works Pvt. Ltd.** (supra) after adverting the judgment of this Court in case of **Thought Blurb** (supra) considered a situation where the total demand of Rs.94,90,264/- made in the show cause-cum-demand notice, had been substantially reduced to Rs.18,93,585/- in the Order-in Original with corresponding reduction of demand vis-a-vis each of the petitioners. It is held that had the petitioner accepted the order dated 29th March, 2006 like the respondents had accepted and had the petitioner not preferred appeals before the CESTAT, Rs.18,93,585/- would have been the determined tax dues of the petitioner.

46. It is held that even after the petitioner having filed appeals and following the appellate order, the matter has come back on remand. If the petitioner had not filed declarations under the scheme they would still have been better off with the total demand adjudicated at Rs.18,93,585/- as against the original demand of Rs.94,90,264/- in terms of the show cause-cum-demand notice. This Court accordingly held that the initial show cause-cum-demand notice dated 17th January, 1992 cannot be said to be in existence after the order in original was passed on 29th March, 2006 which order had been accepted by the department. Quantification of dues had been done which was accepted by the department. Those amounts would now be the tax dues of the petitioner and that position

would not change because of the subsequent order of the CESTAT dated 30th October, 2017 setting aside the order in original dated 29th March, 2006 for the purpose of deciding afresh the whole issue on merit, limitation etc. apart from quantification.

47. This Court held that having regard to the objective of the scheme, in a case of this nature, a reasonable and pragmatic approach has to be adopted so that a declarant can avail the benefits of the scheme; a declarant who seeks benefit under the scheme cannot be put in a worse off condition than he was before making declaration under the scheme. That would defeat the very purpose of the scheme. In our view, the principles laid down by this Court in case of **Jyoti Plastic Works Pvt. Ltd.** (supra) would apply to the facts of this case. In this case, the facts are even better though the facts before this Court in case of **Jyoti Plastic Works Pvt. Ltd.** (supra). The respondent no.2 had already adverted to the show cause notice for the larger period and reply of petitioner and had determined tax dues which was the basis adopted by the petitioner rightly by filing the said SVLDRS-1 under the category 'arrears'.

48. This Court in case of **Morde Foods Pvt. Ltd. & Anr.** (supra) after considering the reply to the question nos.5 and 6 of 'Frequently Asked Questions' and after adverting the judgment of this Court in case of **Thought Blurb** (supra) and **Jyoti Plastic Works Pvt. Ltd.** (supra) quashed and set aside the order passed by the authority and remanded back the matter to the authority to take a fresh decision in accordance with law. This Court in the said judgment held that while the declarant would not be eligible under the litigation category but once the order in appeal is passed (which presumably is post 30.06.2019), the declarant can

file a declaration under the arrears category provided the appeal has attained finality or further appeal period is over or that the declarant gives an undertaking that he would not file any further appeal.

49. It is held that final hearing of the appeal on or before 30th day of June, 2019 is not the only decisive factor in determining eligibility. According to the Board, post 30.06.2019, the declarant can still make a declaration under the arrears category once the order in appeal is passed whereby the matter has attained finality or the declarant gives an undertaking that he would not file any further appeal or the period for filing further appeal is over. In the facts of this case also, the petitioner did not file any appeal against the said assessment order. The said assessment order has thus attained finality crystallizing the tax dues of the petitioner. The principles laid down by this Court in case of **Morde Foods Pvt. Ltd. & Anr.** (supra) apply to the facts of this case.

50. This Court in case of **Thought Blurb** (supra) has considered the entire scheme SVLDRS threadbare and has also considered the objects, purpose and intent for framing the said scheme by the Central Government. This Court has considered the declaration made by the Hon'ble Finance Minister clearly deducible from the statement of object and reasons, the scheme as one time measure for liquidation of past disputes of central excise and service tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. The focus is to unload this baggage of pre-GST regime and allow business to move ahead.

51. In our view, the impugned order is contrary to the object, the purpose and the intent of the Central Government to frame the said scheme as one time measure for liquidation of past disputes of central excise and service tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration and the basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty and deserves to be quashed and set aside.

52. In our view, the petitioner had rightly filed the said declaration form considering the tax dues as Rs.39,47,420/- i.e. the amount of demand confirmed in the Order-in Original dated 23rd December, 2019 and had rightly computed an amount of Rs.15,78,968/- as estimated/determined amount payable i.e. by applying 40% under section 124(c)(i) Finance (No.2) Act, 2019 on the said dues of Rs.39,47,420/-.

53. We accordingly pass the following order :-

- (i) Writ petition is allowed in terms of prayer clauses (a) and (b) The petitioner is granted two weeks time for making payment of the said amount of Rs.15,78,968/-. The respondents to issue discharge certificate within thirty days from the date of the petitioner paying the amount.
- (iii) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.
- (iv) The parties to act on the authenticated copy of this order.

N.R. BORKAR, J.

R.D. DHANUKA, J.