IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 795 OF 2021

M/s Reliable Homes ....Petitioner

V/s.

Union of India & Ors. ...Respondents

Mr. Ranjit Agashe a/w Ms Vinsha Charya i/b Mr. Akshit Kothari for Petitioner.
Ms Maya Majumdar for Respondents.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 18th OCTOBER 2022

P.C. :

1 By consent, taken up for hearing at the admission stage itself.

2 Petitioner has impugned communication dated 17th March 2020 issued by Respondent No. 2 thereby rejecting Form SVLDRS-1 dated 13th January 2020 filed by petitioner.

3 Petitioner, a Partnership Firm, was engaged in the business of construction, building and development of residential complexes and was registered with the Service Tax Department under the category 'Construction of Residential Complexes Services', vide its Registration No. AAPFR8743NSD002.

4 Sometime in June 2017, an enquiry was initiated against petitioner under VISIT MODE based on the intelligence which was gathered by the officers of Directorate General of GST Intelligence (formerly, Directorate General of Central Excise Intelligence).

5 During the course of the visit, statement of the Partner of petitioner was recorded and, on a specific query, he stated that service tax liability to the tune of Rs.29,64,507/- remained unpaid which was on account of the financial crisis being faced by petitioner. He further assured to pay the same at the earliest.

6 The GST Commissionerate, thereafter, carried out further investigation and informed petitioner about its total service tax liability to the tune of Rs.60,04,710/-. Petitioner informed the Audit Officers that it had paid a sum of Rs.2,18,717/- and, therefore, the total outstanding service tax liability is Rs.57,85,993/-.

7 During the course of investigation, petitioner had further paid a sum of Rs.25,77,768/-, vide various GAR-7 Challans which has been verified by the GST Commissionerate through ACES.

8 After detailed investigation, the GST Commissionerate issued Show Cause Notice dated 18th October 2019 thereby calling upon petitioner to explain as to why service tax aggregating to a sum of Rs. 57,85,993/- (Rs. 56,21,539/- + Rs. 1,64,454/-) should not be demanded or recovered from it under the provisions of Section 73 (1) r/w Sections 66B and 68 of the Finance Act, 1994, r/w Section 174 of the CGST Act, 2017. The said Notice further sought further explanations from petitioner, including an explanation as to why the penalty should not be imposed upon it under the provisions of Section 76 r/w Section 68 of the Finance Act, 1994, r/w Rule 6 of the Service Tax Rules, 1994, r/w Section 174 of the CGST Act, 2017.

9 Petitioner, thereafter, decided to apply for reliefs under the 'Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019' (hereinafter referred to as **'SVLDRS'**, for brevity). After SVLDRS came into force with effect from 1st September 2019, petitioner filed its online application Form SVLDRS – 1 on 25th December 2019. Respondent No. 2 issued Form SVLDRS – 2 dated 24th January 2020 showing the amount payable under the scheme as NIL but granting personal hearing to petitioner if it so desired.

10 In response to the said Form SVLDRS–2, petitioner informed Respondent No.2, vide its Form SVLDRS – 2A dated 5th February 2020, that it had filed fresh Form SVLDRS–1 and requested respondent no.2 to consider the same. During the course of the arguments, the learned Counsel for petitioner submits that petitioner was required to file fresh Form SVLDRS–1 as there were certain mistakes in the category and sub-category required to be selected at the time of filing up the Form.

11 Respondent no.2 rejected the said subsequently filed Form SVLDRS – 1 as the duty demanded, as mentioned in the Show Cause Notice dated 18th October 2019, was incorrectly mentioned by petitioner while filing up the Form. The learned Counsel for petitioner submits that petitioner had correctly informed about the duty demanded, which was as per the said Show Cause Notice and the same is reflected from the subsequent Forms. As the said Forms SVLDRS – 1 were rejected by respondent no. 2, petitioner has approached this Court.

12 During the course of the arguments, the Counsel for petitioner, while

placing reliance on order of this Court dated 11th July 2022 in Writ Petition No.809 of 2022 in the matter of ***B Chopda Construction Pvt Ltd. Vs. Union of India & Ors.,*** has submitted that petitioner is eligible to make a declaration and seek reliefs under SVLDRS as it had admitted its tax liability during the enquiry, specifically conducted on 29th June 2017 and, therefore, the amount of duty was quantified on or before 30th June 2019 which would fall within the definition of "quantified" under Section 2(r) of SVLDRS.

13 Mr. Agashe further informed that petitioner is ready and willing to pay the entire outstanding amount of Rs.32,08,225/- (Rs.57,85,993/- minus Rs.25,77,768/-) as mentioned in the Show Cause Notice dated 18th October 2019 within a period of 4 weeks and requested that the penalty may not be imposed upon petitioner as it is not praying for any reliefs while making the reduced / relieved payments under SVLDRS. Counsel for petitioner relied upon the judgment of this Hon'ble Court in ***Thought Blurb Vs. Union of India***[1] and submitted that the statement and objects of SVLDRS are to endeavor to unload the baggage relating to the legacy taxes, viz. Central Excise and Service Tax which have been subsumed under GST and to allow businesses to make a new beginning and focus on GST.

14 Ms Majumdar submitted that there is no prayer in the petition for waiver of penalty and, therefore, Mr. Agashe cannot request this court to direct respondents not to levy any penalty. Ms Majumdar stated that it is settled law that once the scheme period is over, the court should not extend

1. AIR Online 2020 Bom 2695

the time and in any case, if petitioner wants to make entire payment as mentioned in the show cause notice to put an end to the dispute, petitioner may make a proper representation in this regard before Respondent no.3 and Respondent no.3 may be directed to consider the representation and dispose the same in accordance with law.

15 As held by this court in *Thought Blurb (Supra)*, the scheme has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand. The primary focus being to is to unload the baggage of pending litigation in respect of service tax and central excise from pre-GST regime so that the businesses can move on. If this broad picture is kept in mind while considering not only the application under the SVLDRS scheme seeking amnesty, in the fact situation of this case, such a broad picture has to be kept in mind. Mr. Agashe stated that the main partner Ali Asgar Abid Bhanpurawala, who was looking after all financial activities of the firm, died on 4th March 2017 and his death was the cause for delay in payment of tax etc.Mr. Agashe prays that a direction be given to Respondent no.3 not to impose any penalty. In our view, this is something which Respondent no.3 will have to consider on the facts and circumstances of the case. We would only request respondent no.3 to keep in mind that petitioner had filed an application under the SVLDRS which came to be rejected not because petitioner was not eligible but due to certain incorrect entries being made. Therefore, the objective of the scheme may be extended to the case at hand

while considering petitioner's representation.

15 Petition disposed with no order as to costs.

(A. S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**