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

WRIT PETITION NO.5943 OF 2021

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| Kundan Industries Limited | .. | Petitioner. |
| v/s. | | |
| The Union of India & Others | .. | Respondents. |

Mr. Prakash Shah i/b. PDS Legal, for the Petitioner.
Mr. Karan Adik with Mr. Dhananjay B. Deshmukh, for the Respondents.



**CORAM: S.V. GANGAPURWALA & VINAY JOSHI,JJ.**
**DATED : 1st APRIL, 2022.**

**P.C.:-**

The Petitioner filed declaration Form – SVLDR-1 under the Litigation category on 19th December, 2019. The Designated Committed on 14th January, 2020 issued Form No. SVLDRS-2 under Arrears category. Personal hearing took place on 22nd January, 2020 and Petitioner filed Form No.SVLDRS-2A. On or about, 27th January, 2020, the Designated Committee issued Form No. SVLDRS-3, giving an estimated amount payable by the Petitioner under the Arrears category. The same is assailed in the present Petition.

2 Mr. Shah, learned Counsel for the Petitioner submits that the Petitioner on 30th July, 2002 submitted the details of the goods involving Central Excise duty at the rate of 16% amounting to Rs.35,57,691 and requested for remission of duty under the provisions of Central Excise

Rules, 2002. Upon direction of Range Superintendent, the Petitioner filed a fresh application for remission of Central Excise duty. On 25th June, 2003, show cause notice was issued to the Petitioner. The Petitioner filed a detailed reply. By order-in-original dated 23rd August, 2004, the then Commissioner of Central Excise, Thane-II gave remission of duty and ordered recovery of the Cenvat credit amounting to Rs.22,73,611/- with penalty. Petitioner filed appeal before the before the Appellate Tribunal. The Appellate Tribunal directed the Petitioner to deposit Rs.5,00,000/- as pre-deposit. The Appellate Tribunal partly allowed the Appeal and remanded the proceedings to the adjudicating authority. The adjudication upon show cause notice, as such was pending. In the interregnum, the Petitioner filed the Form under the SVLDR Scheme. The Respondents considered the Petitioner in Arrears category. The same is erroneous. The case of the Petitioner would fall under the Litigation category. The learned Counsel relies upon Section 121 of the Finance Act.

3 According to the learned Counsel, the erroneous statement of the Counsel of the present Petitioner before the authority that the case of the Petitioner would be covered under the Arrears category, cannot be an estoppel. There cannot be estoppel against statute.

4 The learned Counsel submits that, in view of clear position of law, the case of the Petitioner ought to be considered under the Arrears category, the payment made ought to have been considered. The Petitioner has also deposited Rs. 5,00,000/-. The Petitioner was and is ready and willing to deposit Rs.2,00,000/- and odd amount.

5 The learned Counsel for the Respondents submit that the scheme has come to an end. The Petitioner did not deposit the amount to show his bonafides. The Petitioner wrongly filed Form No. SVLDRS-1 on 19th October, 2019 under the category of Litigation. The proper procedure was ad-hereed to by the Respondents. The Counsel of the Petitioner categorically admitted that the case of the Petitioner would be within the purview of *"arrears"* and only requested to consider the pre-deposit made before CESTAT. Now, the Petitioner has taken U turn. The estimated amount payable by the Respondents is Rs.7,09,444/-. The learned Counsel submits that the scheme has come to an end. Now, it is not possible to consider the case of the Petitioner. The Petitioner has approached the Court after a long delay.

6 We have considered the submissions canvassed by the learned Counsel for the parties.

7 Mr. Shah, learned Counsel relied on the judgment of the Division Bench of this Court in the case of ***Munish Rajkumar Mahajan v/s. Union of India reported in 2022 (2) TMI 561.***

8 The learned Counsel for the Respondents relied upon the order of the Apex Court in the case of the M***/s. Yashi Constructions v/s. Union of India in SLP No. 2070 of 2022*** states that after the scheme is over, the cause of the Petitioner cannot be considered.

9 We have considered the submissions. It is stated that on 31st October, 2020, the scheme Sabka Vishwas (Legacy Dispute Resolution) Rules, 2019 has come to an end. On or about 27th January, 2020, the Form No. SVLDRS-3 was given and the Petitioner was directed to pay estimate

amount of Rs.7,09,444/-. The Counsel for the Petitioner during the course of hearing before the Authority, accepted the category as Arrears. The Respondents accepted the same and issued the estimated amount payable by the Petitioner under the Scheme. It is trite that concession given by an Advocate against the statute would not bind the litigant. However, it needs to be considered that though the estimated amount payable by the Petitioner under the Arrears category, was informed to the Petitioner on or about 27th January, 2020. The Petitioner did not take any steps against the same. The Petitioner did not approach this Court immediately though the scheme was extended up to 31st October, 2020. Petitioner did not pay the amount which according to him, was liable. The Petitioner filed the present Petition only in the August, 2021, after lapse of one and half year.

10 We do not find any bona fide on the part of the Petitioner in offering to make payment nor the Petitioner approached this Court within a reasonable time. The Apex Court in case of M/s. Yashi Constructions (supra), has confirmed the order of High Court, refusing to grant relief to the Petitioner therein for extension of period to make deposit under the scheme.

11 Considering the delay and latches in approaching this Court, so also lack of bonafides on the part of the Petitioner, we are not inclined to entertain the Writ Petition.

12 Writ Petition as such is disposed of. No costs.

**(VINAY JOSHI,J.)** **(S.V.GANGAPURWALA,J.)**