IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.12.2021
Pronounced On	16.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1074 & 1077 of 2021
and
W.M.P.No.1195 of 2021

M/s.Subramaniya Siva Co.Operative Sugar
Mills Ltd.,
Represented by its Managing Director,
Shri.H.Rahamathullah Khan,
Gopalapuram, Alapuram Post,
Pappireddipatti Taluk 636 904.
Dharmapuri District. .. Petitioner in both W.Ps.

vs.

1. Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi 110 001.

2. The Designated Committee (Sabka Vishwas),
No.1, Foulke's Compound, Anaimedu,
Salem 636 001.

3. The Deputy Commissioner GST & Central Excise,
GST Bhawan, No.1, Foulke's Compound,
Anaimedu, Salem 636 001.

4. The Commissioner of GST & Central Excise(Appeals),
No.6/7, ATD Street, Race Course Road,
Coimbatore 641 018. ... Respondents 1 to 4 in both W.Ps.

5. State Bank of India
Represented by its Manager,
Salem Bypass, Harur,
Tamil Nadu 636 903.

(R5 impleaded vide order dated 23.02.2021
made in W.M.P.No.3491/2021in WP.No.1074/2021)
... 5th Respondent in W.P.No.1074/2021

Prayer in W.P.No,1074 of 2021. : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned letter dated 23.09.2020 issued by the 3rd respondent in C.No.IV/16/862/2019-GST CELL and quash the same and direct the 2nd respondent to accept the payment of Rs.9,79,028.70 and issue SVLDRS-4 (Discharge Certificate) under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

Prayer in W.P.No,1077 of 2021. : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order in Appeal No.50/2020-CE dated 19.10.2020 issued by the 4th respondent in Appeal No.15/2019 and quash the same.

For Petitioner in both W.Ps.	:	Mr.G.Derrick Sam
For R1 to R4in both W.Ps.	:	Mr.Umesh Rao Senior Central Government Standing Counsel
For R5 in W.P.No.1074/2021	:	Mr.K.Chandrasekaran

C O M M O N O R D E R

The petitioner is a Cooperative Sugar Mills Limited and has filed these writ petitions challenging the communication dated 23.09.2020 bearing reference C.No.IV/16/862/2019-GST CELL passed by the third respondent and Order-in-Appeal No.50 of 2020-CE dated 19.10.2020 passed by the fourth respondent.

2. By the impugned communication dated 23.09.2020 bearing reference, the 3rd respondent has communicated as follows:-

> "Please refer to your letter Rc.No.7020/2018-A7 dated 17.09.2020 on the above subject.
>
> 02. In this regard, it is informed that as per para 10(j) of Circular No.1071/4/2019-CX.8 dated 27.08.2019(as amended) with respect to SVLDRS scheme;
>
> " the declarant shall pay the amount indicated in the statement issued by the designated Committee on or before 30th day of June, 2020. If the declarant does not pay

within the stipulated time, due to any person, the declaration will be treated as lapsed".

03. Since the due date for payment of tax dues was 30.06.2020 and no extension of time for payment of dues or whatsoever has been provided by the CBIC till date, your request for payment of dues towards the applications filed under the SVLDRS 2019 cannot be considered at this juncture.

04. This is for your kind information."

3. By the impugned Order-in-Appeal No.50 of 2020-CE dated 19.10.2020 passed by the fourth respondent, the fourth respondent has rejected the petitioner's appeal against O/O No.2/2019 C.Ex (AC 1 Dvn) dated 1/5/2019 Assistant Commissioner of GST and Central Excise, Salem -1 Division .

4. The specific case of the petitioner is that there were about five different cases against the petitioner, one of which was pending before the Commissioner (Appeals) respect in which an Order in Original has been passed and pre-issues at the Show Cause stage.

5. It is the case of the petitioner that the petitioner wanted to settle the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 announced by Chapter V of the Finance Act, 2019.

6. The learned counsel for the petitioner submits that the petitioner also paid the amount by approaching the fifth respondent bank(State Bank of India) to make payments for the amount due under the scheme through RTGS (Real Time Gross Settlement).

7. It is the further case of the petitioner, that the petitioner was also successful in making payment. It is further submitted that after the payment was made there was a re-credit of the aforesaid amount to the petitioner's account and that the petitioner was unaware of the aforesaid development and came to know only after the second mention Order-in -Appeal No.50 of 2020-CE - Appeal No.15 of 2019-CE was passed.

8. The learned counsel for the petitioner submits that the amount of Rs.9,79,020.70/- vide UTR No.SBIN120177558763 was paid by the petitioner much before the expiry of the time prescribed on 25.06.2020, and since the petitioner was unaware of the above portal, the petitioner cannot be penalized and denied the benefit of the aforesaid scheme.

9. The learned counsel for the petitioner submits that the fact that the amount had been re-credited to the petitioner's account came to the knowledge of the petitioner only when the petitioner attempted to take a chance in the personal hearing fixed for hearing in the appeal before the Commissioner of Central Excise.

10. Opposing the prayer, the learned Senior Central Government Standing Counsel for the respondents 1 to 4 submits that the scheme is very specific and in terms of Section 127(5), a declarant has to make payment electronically through Internet banking on the amount payable as indicated in the statement issued by the Designated Authority within a period of thirty days from the date of issue of the statement.

11. It is submitted that after Form No.SVLDRS-3 were issued to the petitioner, the petitioner should have successfully made the payment electronically instead an attempt was made to pay through the bank by utilising the banks RTGS (Real Time Gross Settlement) facility which is impermissible under the aforesaid scheme and therefore there is no merits in the present writ petitions.

12. The learned counsel for the Senior Central Government Standing Counsel for the respondents 1 to 4 also drew attention to the averments in paragraph:8 of the Counter Affidavit, wherein it has been stated that the Deputy Commissioner, Salem Commissionerate vide his Communication dated 19.08.2020 bearing reference C.No.IV/16/862/2019-GST CELL dated 19.08.2020 in response to its office letter dated 18.08.2020 stated that upon issuance of SVLDRS Form3 by the Designated Committee a 10 digit challan was automatically generated and payment was to be made by a declarant under such challan only. However, if the declarant makes payment under Non SVLDRS challan, the same has to be intimated to the Designated Committee for rectification through DG Systems, Delhi. It was informed by the Deputy Commissioner that the assessee's claim regarding off-line payment made needs to be verified and if found correct the matter will be taken with DG Systems, Delhi for rectification and issuance of SVLDRS Form 4. It is therefore submitted that the writ petition filed by the petitioner is liable to be dismissed.

13. The fifth respondent bank has also filed a separate counter, wherein paragraph 4(iii) reads as under:

> "4(iii). Non-payment of an amount equal to 6% of the value of trading activity which is an exempted service for the period from 01.04.2011 to 30.06.2012 appeared to be in contravention of

Rule 6(3) Cenvat Credit Rules, 2004. Hence the Assistant Commissioner, Salem-I Division had issued Show Cause Notice No.14/2014 dated 31.10.2014 demanding Rs.2,31,934/- which was confirmed in the Order in Original No.9/2015-dated 07.07.2015;"

14. The learned counsel for the fifth respondent also submits that there is an presumption that the petitioner would have know that the amount had been re-credited to their account and therefore, the petitioner should have taken prompt steps for making payments. It is further submitted that though the payment was made by the petitioner on 25.06.2020 which was re-credited immediately.

15. Learned counsel for the fifth respondent further submits that illustration to Section 114(f) of the Indian Evidence Act, 1872 makes it clear that mere averment in the affidavit is not sufficient and it is for the petitioner to prove that the amount has not been re-credited to the petitioner's bank account.

16. Learned counsel draws the attention of this Court to Section 114 Sub-Clause f of the Indian Evidence Act, 1872 which reads as follows:

> 114 Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations The Court may presume—
>
> (a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;
> (b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;
> (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;
> (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;
> (e) That judicial and official acts have been regularly performed;

(f)That the common course of business has been followed in particular cases;
(g)That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;
(h)That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;
(i)That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.
But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:— As to illustration (a)— A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business; As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself; As to illustration (b)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable; As to illustration (c)— A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A's influence; As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course; As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances; As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances; As to

illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family; As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked; As to illustration (i)—A bond is in possession of the obliger, but the circumstances of the case are such that he may have stolen it.

(i)There would be presumption in favour of wedlock if the partners lived together for long spell as husband and wife; but it would be rebuttable and heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place; Tulsa v. Durghatiya, 2008 (1) SCR 709: 2008 (4) SCC 520.

(ii)Presumption is rebuttable. If there is any such circumstance weakening such presumption, it cannot be ignored by the court; Sobha Hymavathi Devi v. Setti Gangadhara Swamy, AIR 2005 SC 800.

(iii)When oral and other reliable evidences are satisfactorily giving evidence that the pair lived together as husband and wife, merely because family register does not show them as husband and wife is not a clinching evidence to deny their relationship of husband and wife; Lalta v. District IVth upper Distt. Judge Basti, AIR 1999 All 342.

(iv)Genuine and correctness of document have to be proved by a person believes upon it by cogent and direct evidence; Ashok Kumar Uttam Chand Shah v. Patel Mohmad Asmal Chanchad, AIR 1999 Guj 108.

(v)A court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder; Mukund alias Kundu Mishra v. State of Madhya Pradesh, (1997) 4 Supreme 359.

(vi)The recovery made some days after the dacoity does not raise a presumption under section 114(a) in respect of the offence of dacoity; Vasant alias Roshan Sogaji Bhosale v.

State of Maharashtra, (1997) 2 Crimes 104 (Bom).

17. A question that needs to be addressed in these writ petitions are whether the petitioner can be denied of the benefit of settling these cases under the aforesaid scheme on account of the technical problem which arose after the petitioner successfully made payment through the bank using the RTGS facility under a bonafide belief that the petitioner was entitled to make such payment through 5th respondent in terms of the Chapter V under Section 127 of the Finance Act, 2019.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Central Government Standing Counsel for the respondents 1 to 4 and the learned counsel for the 5th respondent.

19. The facts are not in dispute. The petitioner had attempted to pay the amount through the 5th respondent bank's RTGS (Real Time Gross Settlement) facility. The amount which was paid through RTGS (Real Time Gross Settlement) facility of the 5th respondent bank was however re-credited into the petitioner's bank account. The amount that was payable by the petitioner as per Form SVLDRS and the corresponding amount determined by the Designated Authority in Form SVLDRS are as follows:

S.No.	Appeal/SCN No. & Date	SVLDRS-1 ARN No. & Date	SVLDRS-3 No.&dATE	Amount (Rs.)	Category
1.	SCN No.SOD Sl.No.55/2013 – C.Ex(ADC) dated 06.09.2013	LD3012190013399 dated 30.12.2019	LD80220SV300944 dated 28.02.2020	563398.8	Litigation
2	15/2019-CE dated 08.06.2019 Commissioner (Appeals)	LD1201200000198 dated 12.01.2020	L290220SV301772 dated 29.02.2020	41331.2	Litigation
3.	SCN No.SOD Sl.No.36/2014 C.Ex.(JC) dated 13.06.2014	LD3012190012968 dated 30.12.2019	L280220SV300949 dated 28.02.2020	219808.80	Litigation

S.No.	Appeal/SCN No. & Date	SVLDRS-1 ARN No. & Date	SVLDRS-3 No.&dATE	Amount (Rs.)	Category
4.	C.No.V/15/17/34/2012 Cx.Adj. dated 01.10.2012	LD3012190011732 dated 30.12.2019	L280220SV300942 dated 28.02.2020	148925.10	Litigation
5.	Order No.03/2017 dated 12.05.2017 issued by Exe.Adj.Authority	LD3012190015457 dated 30.12.2019	L280220SV300952 dated 28.02.2020	5564.8	Arrears

20. The petitioner appears to have paid an amount of Rs.9,79,028.70 through the 5th respondent Harur Branch on 29.03.2020. On 29.06.2020, the Superintendent (Appeals) attached to the 4th respondent namely, Office of the Commissioner of Central Excise (Appeals) called upon the petitioner to furnish a copy of the details of Challan for having remitted the tax amount as per SVLDRS Form-3 and tax discharge certificate in SVLDRS Form-4 in respect of Appeal No.15 of 2019 dated 10.06.2019 filed against the Order in Original No.2 of 2019 CEX (AC I DVN) dated 01.05.2019. By a communication dated 06.07.2020 and 06.08.2020, the Superintendent (Appeals) informed the petitioner that the amount was to be paid by the petitioner by 30.06.2020 but had not been paid by the petitioner therefore the petitioner’s appeal viz., Appeal No.15 of 2019 dated 10.06.2019 filed against the Order in Original No.2 of 2019 CEX (AC I DVN) dated 01.05.2019 was to be taken up for final hearing.

21. It is the case of the petitioner that in response to the scheme the petitioner debited an amount of Rs.9,79,028/- through the 5th respondent which included a sum of Rs.41,331.20/- being the amount payable under the scheme in respect of the Appeal No.15 of 2019 which was pending before the 4th respondent and that the petitioner was yet to receive a copy of tax discharge certificate in SVLDRS Form-4.

22. The facts on record indicates that the amount of Rs.41,331.20/- was indeed paid by the petitioner which however was re-credited back due to technical glitches. Therefore, the legitimate the benefit of the above scheme cannot be denied to the petitioner. Mistake is on account of the system evolved which failed to accept the payment.

23. Under these circumstances, the impugned orders passed

and the communication stands quashed by permitting the petitioner to pay the amounts in respect of which attempt was made by the petitioner to pay through the 5th respondent RTGS (Real Time Gross Settlement) facility on 29.03.2020 within 30 days from the date of receipt of a copy of this Order.

24. If the petitioner pays the aforesaid amount within a period of 30 days from the date of receipt of a copy of this order, the respondent shall bring a closure to the case of the petitioner by accepting the payment subject to the petitioner fulfilling other conditions of the scheme. In case, the petitioner fails to pay the amount within the aforesaid time, the 4th respondent shall pass appropriate orders on merits in accordance with law after hearing.

25. These writ petitions stand disposed of in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rgm/kkd

To

1. The Secretary
   Union of India,
   Department of Revenue,
   Ministry of Finance,
   North Block, New Delhi 110 001.

2. The Designated Committee (Sabka Vishwas),
   No.1, Foulke's Compound, Anaimedu,
   Salem 636 001.

3. The Deputy Commissioner GST & Central Excise,
   GST Bhawan, No.1, Foulke's Compound,
   Anaimedu, Salem 636 001.

4. The Commissioner of GST & Central Excise(Appeals),
   No.6/7, ATD Street, Race Course Road,
   Coimbatore 641 018.

5. The Manager,
State Bank of India
Salem Bypass, Harur,
Tamil Nadu 636 903.

+1cc to Mr.Umesh Rao, Advocate, S.R.No.36261
+1cc to Mr.B.Raghavalu naidu, Advocate, S.R.No.36145
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.36889

W.P.Nos.1074 & 1077 of 2021

EV(CO)
CT/07/07/2022