IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

Rev.Aplw.Nos.116 to 134 of 2021
in
WP.Nos.14152, 14155, 14158, 14160, 14161, 14167, 14170, 14174, 14168, 14169, 13995, 14004, 14002, 13998, 14141, 14144, 14145, 14146 & 14138 of 2021
and
WMP.Nos.20184, 20178, 20189, 20186, 20187, 20194, 20192, 20180, 20167, 20171, 20179, 20170, 20169, 20176, 20174, 20181, 20188, 20166 & 20191 of 2021

Rev.Aplw.No.116 of 2021

M/s.Mehra Computer Systems Limited,
Represented by its Managing Director,
Mr.Praveen K.Mehra,
No.142, Old Mahabalipuram Road,
Near Thangavelu Engineering College,
Karapakkam, Chennai-600 096. ...Review Petitioner/Petitioner

Vs.

1.The Designated Committee under the
Sabka Vishwas (Legacy Dispute Resolution)
Scheme, 2019,
Chennai South Commissionerate,
Sholinganallur Range II,
Chennai.

2.The Commissioner,
Designated Committee under the
Sabka Vishwas (Legacy Dispute Resolution)
Scheme, 2019,
Chennai South Commissionerate,
Chennai.

3.The Central Board of Indirect Taxes,
Represented by its Chairman,
North Block, Central Secretariat,
New Delhi, Delhi 110 001.

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

5.The Commissioner,
Officer of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex,
Nandanam, Chennai-600 035. ...Respondents / Respondents

PRAYER: Review Application filed under Section 114 read with Order 47 Rule 1 of C.P.C., to review the order dated 09.07.2021 passed in W.P.No.14152 of 2021.

(In all Review Applications)
For Petitioner : Ms.Jayalaksmi .P

For Respondents : Mr.Pramod Kumar Chopda
Senior Standing Counsel

COMMON ORDER

These applications have been filed seeking review of order dated 09.07.2021, wherein a batch of writ petitions in WP.Nos.14152 of 2021 and batch, filed by the petitioner had been dismissed. The prayer in the writ petitions had been for a mandamus directing the Designated Committee to accept remittance of tax under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short 'SVLDRS'), as stipulated by the petitioners in their application for settlement under that Scheme.

2. The dismissal had been triggered by the fact that there had been no efforts by the petitioner to either remit the amount or express readiness to pay the amount prior to the closure of the scheme on 30.06.2021. At paragraph 3 to 5 of order dated 09.07.2021, I have stated as follows:

> *3. In W.P.Nos.9769 of 2020 and 14454 of 2020, I have, noting that the Writ Petitions were filed on 09.07.2020 and 29.09.2020 respectively, permitted the assessee therein to remit the amount determined in Form 3 along with interest at the rate of 15% and thereafter permitted the Writ Petitioners therein to file applications before the Board seeking condonation of delay. Those Writ Petitions have been closed in the aforesaid terms.*
>
> *4. In the present case, the Writ Petitions are presented only on 30.04.2021, 10 months after the last date for remittance of the amounts. No plausible reason is set out in the affidavit justifying the delay except to state that the*

assessees were facing hardships on account of the COVID-19 pandemic.

5. In the light of the long delay sans explanation, there is no merit in these Writ Petitions and the same are dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

3. In these review applications, the petitioners bring to light an e-mail, which, they say, they have sent to the respondent on 30.06.2022 at 05:16 p.m., wherein they seek some more time to effect payment. This e-mail has been sent in response to an e-mail received from the Customs Authorities calling for immediate payment of the outstanding dues.

4. According to the learned counsel for the petitioner, the factum of e-mail came to their knowledge after the order dismissing the writ petitions was passed by this Court and hence, there had been a bonafide and inadvertent error in not presenting the same before the Court.

5. Learned Senior Standing Counsel appearing for the respondents does not very seriously object to the maintainability of the review applications, though he would tentatively counter the e-mail itself, stating that the same has not been received by the authorities.

6. A copy of the e-mail has been placed at page 39 of the compilation of documents along with a screenshot of the outbox/sent items folder which establishes issuance of the e-mail. With this, there appears to be no ambiguity

on the fact that e-mail has indeed been sent and the objections of the revenue, on this score, are rejected.

7. Coming to the veracity of the petitioner's request, on merits, the objection of the respondent is premised on a judgment of the Hon'ble Supreme Court in the case of *Yashi Constructions Vs. Union of India & Others,* [(2022) 3 TMI 110], dated 18.02.2022 wherein the Hon'ble Supreme Court has confirmed the rejection of relief to those assessees who had sought extension of time to effect remittence under a Samadhan Scheme.

8. The Court states '*It is a settled proposition of law that a person, who wants to avail the benefit of a particular Scheme has to abide by the terms and conditions of the Scheme scrupulously. If the time is extended not provided under the Scheme, it will tantamount to modifying the scheme which is the prerogative of the Government'.*

9. Per contra, learned counsel for the petitioner would point out that this Court has considered this very question and in the case of *N.Sundararajan VS. Union of India,* Writ Appeal No.2047 to 2098 of 2021 by order dated 26.08.2021, a Division Bench of this Court has, in fact, extended the time limit for SVLDRS under the Customs Act till 30.09.2020 in line with SVLDRS under the Income Tax Act 1961.

10. Thus, where requests have been made by assessees prior to 30.06.2020 for extension of time, the Court had granted the benefit of further extension till 30.09.2020 putting the assessees to terms by way of interest at the rate of 15%. This order has also been followed subsequently by Single Judges including this Court in W.P.No.19919 of 2020, 2942 of 2021 & 17428 of 2022 in order dated 08.09.2022.

11. It is relevant to note that order dated 26.08.2021 has been accepted by the revenue and no special leave petition has been filed. In the interests of consistency, it stands to reason that in cases where an assessee has, prior to 30.06.2020 sought extension of time, such extension must be granted putting that assessee to terms.

12. This view also finds support from an Instruction issued by the Central Board of Excise and Customs on 17.03.2021, which reads as follows:

Instruction No. 01/2021-CX
F. No. 267 /41/2021-CX-8
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Central Excise Wing)
New Delhi, 17th March., 2021.

To

The Principal Chief Commissioner/ Chief Commissioner of CGST & CE (All).

The Principal Director General/ Director General (All).
The Principal Commissioner/ Commissioner of CGST & CE (All).
Madam/Sir,

Sub: - Manual processing of declaration filed under SVLDRS, 2019 in order to comply with the directions of the Hon'ble High Courts- reg.

References are being received in the Board from the CGST Zones in respect of Writ Petitions filed by aggrieved declarants before various Hon'ble High Courts against the decision of the concerned Designated Committees taken under Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS), 2019. The cases in which the Hon'ble High Court has decided in favour of the declarant and remanded the matter back to the concerned Designated Committee for fresh decision are referred to the Board for grant of permission for manual processing of the subject declaration so as to comply with the directions of the Hon'ble High Courts.

2. In this regard, it is to inform that the O / o DG (Systems) have expressed an inability in providing the facility for electronic processing of the subject declaration and suggested for manual processing.

3. The matter has been examined in the Board. It is hereby clarified that henceforth all such references for grant of approval of manual processing of the declarations need not be made to the Board and such cases can be processed manually by the concerned Designated Committees upon fulfilment of the following conditions:-

i The order of the Hon'ble High Court has been accepted by the Concerned Commissionerate.

ii. The Ld ASG/ Sd. Counsel who had represented the case before the Hon'ble Court has opined to accept the said order of the Hon'ble Court.

4. All such declarations that have been processed manually may be reported to the O / o DG (Systems) by J 5th day of the succeeding month, for purpose of record.

Yours faithfully,
(Mazid Khan)
Under Secretary to Govt. of India

13. That apart, there have been a series of instructions and orders that have been issued by the Central Board of Excise and Customs in regard to the delays in settlement of dues prior to 30.06.2020. Under Instruction in F.No.267/65/2020-CX-8 dated 14.07.2020, the Board has recognized the position that there were several decalrants who were unable to remit the quantified amounts of duty under the Scheme before 30.06.2020 on account of the Covid pandemic and they were likely to pay the same in the near future.

14. Then again, on 15.07.2020, a communication has been issued to all assesses who had made declarations under the Scheme but who had not remitted the amount, conveying the inclination of the Department to extend time for receipt of the amounts till 30.09.2020. Communication dated 15.07.2020, reads as follows:

<u>OFFICE OF THE PRINCIPAL COMMISSIONER OF CGST, MUMBAI EAST</u>
<u>9TH FLOOR, LOTUSINFOCENTRE, PAREL EAST, MUMBAI 400012</u>
E:svldrs2019mecgst@gmail.com

F.No.CGST/ME/SVLDRS/Misc./2019

Mumbai, dt. 15th July 2020

Dear Sir/Madam,

Please refer to the SVLDRS application filed by you/your company. As you are aware the last date for payment of tax dues was 30.06.2020. On perusal of this office records it is seen that the tax dues as quantified in SVLDRS – 3 issued to you has not been paid by you/your company.

In case the payment was not made due to any difficulty and you are willing to pay in case payment due dates are extended pl furnish the following information indicating willingness to pay by 30.09.2020.

SVLDSR- 3 pending for payment	
ARN No.	*Amount*

Pl. furnish the report within 3 days without fail. Pl. note that this is only a survey to ascertain willingness.

Yours faithfully

Sd/15.07.2020

15. A conjoint reading of all the above communications would support the conclusion of the order in Writ Appeal No.2047 to 2098 of 2021 dated 26.08.2021, wherein this Court has extended the time for remittance of outstanding till 30.09.2022, though putting the assessees to terms. The fact that the order dated 26.08.2021, has not been questioned by the revenue would further strengthen this position.

16. In light of the aforesaid position, the petitioner was granted liberty to remit the balance outstanding along with interest at the rate of 15% by order of this Court dated 09.07.2021. A memo has been filed on 27.10.2022 enclosing challans of payments along with interest at the rate of 15%. A copy of the same

along with challans has also been supplied to the learned Senior Standing Counsel for the respondents.

17. The review applications stand allowed and as a consequence, appropriate orders, accepting the declarations of the petitioner under the Scheme, shall be passed within a period of four weeks from today. No costs.

02.11.2022

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Index : Yes
Speaking Order

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Dr.ANITA SUMANTH,J.

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