IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2021
PRONOUNCED ON : 08.06.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.19618 OF 2020
AND
WMP.NOS.21491, 24244 & 24246 OF 2020

M/s.SDR Engineering,
Rep.by its Proprietor, S.Devarajulu
No.37, 7th Main Street,
Lakshmipuram,
Thirunindravur RS 602 024. ...Petitioner

Vs.

1.Union of India,
Represented by The Designated Authority,
(under SVLDRS Scheme),
Chennai Outer Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai 600 040.

2.The Commissioner of GST & Central Excise,
Chennai Outer Outer Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai 600 040.

3.The Deputy Commissioner of GST & Central Excise (ECM Cell)
Office of the Commissioner of GST & Central Excise,
Outer Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai 600 040. ...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in ARN No.LD3112190003772 dated 31.12.2019 and quash the same and further direct the 1st respondent to pass order afresh granting to relief of waiver of interest.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel.

ORDER

The petitioner has challenged the impugned communication dated 31.12.2019 passed by the second respondent as the Designated Committee under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

2. By the impugned communication dated 31.12.2019, the declaration filed by the petitioner in Form Subka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has been rejected on the ground that the tax dues have not been quantified on or before 30.06.2019.

3. In the impugned communication, the declaration filed by the petitioner in Form SVLDRS-1 on 22.10.2019 has been rejected with a remark," Tax Dues not quantified on or before 30.06.2019".

4. The petitioner submits the rejection of the application was not proper and contrary to the rights of the petitioner to settle the dispute under the aforesaid scheme.

5. It is further submitted that as per the provisions formulated under the scheme, the petitioner filed declaration in Form SVLDRS-1 declaring the arrears of tax as per the Department Letter dated 20.03.2018 towards due as Rs.1,14,02,436/- and gave details and prayed for waiver of the interest amounts as prescribed under the Category of Investigation, Enquiry/Audit.

6. This declaration was filed on 22.10.2019 electronically. The Designated Authority has simply rejected the SVLDRS-1 application filed by the petitioner on the ground that the Tax Dues have not been quantified on or before 30.06.2019" without giving an opportunity for personal hearing to the petitioner.

7. It is further submitted that the petitioner filed the declaration in Form SVLDRS-1 for the 2nd time declaring the same amount under the category of Voluntary Disclosure. This time also the Designated Committee has simply rejected the SVLDRS-1 application filed by the petitioner on the ground of Ineligibility without giving any personal hearing to the petitioner.

8. Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that the petitioner is not entitled to settle the case under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

9. It is submitted that the application to settle a dispute under the aforesaid scheme is not available as investigation was

in progress and subsequently a show cause notice bearing Reference C.No.V/15/21/2020 Adj.Ch.Outer in SCN No.04/2020 was also issued to the petitioner by the second respondent, Commissioner of GST & Central Excise on 29.09.2020

10. It is submitted that the petitioner had evaded a total service tax of Rs.6,64,47,553/- out of which, the petitioner merely paid a sum of Rs.2,02,99,059/- as tax in cash and partially an amount of Rs.23,83,644/- by utilizing CENVAT Credit and that the petitioner had not paid an amount of Rs.4,37,64,850/-.

11. That apart, it is submitted that the intimation of the third respondent on 20.03.2018 relied by the petitioner was merely based on the returns filed by the petitioner in Form SLDRS 1.

12. It is submitted that the petitioner had only partially paid tax belatedly and therefore the petitioner was called upon to pay a sum of Rs.70,80,999/- towards interest under Section 75 of the Finance Act, 1994.

13. It is submitted that the petitioner was informed that failure to pay the aforesaid amount would attract Section 87 of the Finance Act, 1994 read with Section 142 of the Customs Act, 1962. It is submitted that there was also no final determination of tax in the aforesaid communication.

14. It is further submitted that the petitioner has declared only a sum of Rs.1,14,02,436/- as tax dues contrary to the actual tax amount payable by the petitioner. It is therefore submitted that the writ petition is liable to be dismissed.

15. I have considered the arguments advanced by the learned counsel for the petitioner in support of the present writ petition and submissions of the learned Senior Standing counsel for the respondents. The petitioner had opted for the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under Chapter V of the Finance (No.2) Act, 2019 read with Sabka Vishwas (Legacy Dispute Resolution) Rules, 2019.

16. Board Circular No.1071/2019 CX dated 27.08.2019 has expiated the object sought to be achieved under the aforesaid Scheme and Rules, 2019. Para 12 from the said circular is extracted below which reads as under:-

> "12. The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has the potential to liquidate the huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under the legacy

> taxes. The administrative machinery of the Government will also be able to fully focus on helping the tax payers in the smooth implemention of GST. Thus, the importance of making this scheme a grand success cannot be overstated. The Principal Chief Commissioner/Director General and all Officers and staff are instructed to familiarize themselves with this scheme and actively ensure its smooth implementation”.

17. The scheme applies to declarants who have not paid tax under any of the enactments specified in Section 122 of the Act. Tax due under Finance Act, 1994 is one of the enactments where the benefit can be availed.

18. The scheme applies to the declarants who have not paid tax under various enactments specified in Section 122 of the Act. Finance Act, 1994 is one of the enactments for which the scheme applies.

19. The expression “ tax dues” is defined in Section 123 of the Finance Act, 2019 as follows:

For the purposes of the Scheme, “tax dues” means—

(a) where—

(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

Illustration 1: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.1000 and amount of penalty of Rs.100. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs.1000 and hence the tax dues are Rs.1000.

Illustration 2: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.900 and penalty of Rs. 90. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs.900.

Illustration 3: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs. 900 and penalty of Rs. 90. The declarant files an appeal against this order of determination. The departmental appeal is for an amount of duty of Rs. 100 and penalty of Rs. 10. The amount of duty which is being disputed is Rs.900 plus Rs. 100 i.e Rs. 1000 and hence tax dues are Rs. 1000.

Illustration 4: The show cause notice to a declarant was for an amount of duty of Rs. 1000. The order was for an amount of duty of Rs.1000. The declarant files an appeal against this order of determination. The first appellate authority reduced the amount of duty to Rs. 900. The declarant files a second appeal. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs. 900;

(b) where a show cause notice under any of the indirect tax enactment 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:

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant; 11 of 1986. 22 of 2004. 17 of 2007. 20 of 2015. 28 of 2016. Tax dues.

(c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019;

(d) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;

(e) where an amount in arrears relating to the declarant is due, the amount in arrears.

20. A reading of Section 123 indicates that the following as the " Tax Due" for the purpose of the Act.

Section 123		Remarks
(a)	In respect of declarant's appeal was pending as on 30th day of June, 2019.	Except when appeal has been heard on or before 30.06.2019
(b)	Where declarant has been issued with show cause notice on or before 30th day of June, 2019.	
(c)	Where an enquiry or investigation or audit was pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019	
(d)	Where an amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;	
(e)	(e) where an amount in arrears relating to the declarant is due, the amount in arrears.	

21. Persons who cannot file declaration are those persons who have been specifically excluded under Section 125 of the Act. Section 125 of the Act reads as under:-

125(1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:

(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;

(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;

c. who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;

(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;

(f) a person making a voluntary disclosure,—

(i) after being subjected to any enquiry or investigation or audit; or

(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;

(g) who have filed an application in the Settlement Commission for settlement of a case;

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.

(2) A declaration under sub-section (1)shall be made in such electronic form as may be prescribed.

22. Though the petitioner had filed a declaration in Form SVLDRS-1 on 22.10.2019 in time, last date being 31.12.2019 and later for the second time on 21.12.2019 in Form SVLDRS-1 under category "Voluntary Disclosure", it appears that the case of the petitioner was under investigation and a show cause notice was to be issued. Thus, the petitioner was not eligible for the benefit.

23. The investigation has culminated in a show cause notice dated 29.09.2020 bearing Reference No.V/15/21/2020 Adj.Ch.Outer in SCN No.04/2020. It indicates that the petitioner has evaded a sum of Rs.4,37,64,850/- towards service tax dues under the Finance Act, 1994.

24. A reading of the above provision of Chapter V of the Finance Act, 2019 containing the provision relating to SVLDR. Scheme indicates that though a person who has not been issued with a show cause notice can opt to settle the case under the scheme by offering to pay the “ tax due” as defined in Section 123 of the Act, it is not available to person who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019. Though, it is not mandatory that a show cause notice or an adjudication order should have been issued and/or passed before filing a declaration in Form SVLDRS-1, to be eligible to settle the case under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, the case should not be under any of the exceptions provided in Section 125 of the Act.

25. The case of the petitioner squarely falls under the exception given in Section 125(1)(e) of the Act as the petitioner was subjected to an enquiry/ investigation and the amount of duty involved in the said enquiry or investigation/ audit had not been quantified on or before the 30th day of June, 2019.

26. The petitioner is therefore not entitled to settle the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme. It has been rightly rejected vide impugned communication dated 31.12.2019. Thus, I do not find any grounds to interfere with the impugned communication. The present writ petition is thus devoid of merits. It is therefore liable to be dismissed and is accordingly dismissed in the light of the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

kkd

To

1.The Designated Authority
Union of India,
(under SVLDRS Scheme),
Chennai Outer Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai 600 040.

2.The Commissioner of GST & Central Excise,
Chennai Outer Outer Commissionerate,
Newry Towers, No.2054-1, II Avenue,
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3.The Deputy Commissioner of GST & Central Excise (ECM Cell)
Office of the Commissioner of GST & Central Excise,
Outer Commissionerate,
Newry Towers, No.2054-1, II Avenue,
Anna Nagar, Chennai 600 040.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.No.33285

+1cc to Mr.Krishnakumar, Advocate Sr.No.32863

W.P.No.19618 of 2020

MG(CO)
RVM(16/06/2022)