BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	12.04.2022
Pronounced on	10.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD).No.720 of 2022
and
W.M.P.(MD).No.568 of 2022

(Through Video Conferencing)

M/s Balaji Electrical Engineering,
Represented by its Proprietor,
Shri. S.Kandasamy. ... Petitioner

Vs

1.The Designated Committee,
Sabka Vishwas Legacy Disputes Resolution Scheme (SVLDRS),
Office of the Commissioner of CGST & Central Excise,
Central Revenue Building,
Tractor Road,
NGO "A" Colony,
Tirunelveli – 627 007.

2. The Assistant Commissioner of Central Taxes & Central Excise,
Kovilpatti Division,
913-Catholic Centre,
Main Road,
Kovilpatti-628 501,
Tuticorin District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records relating to the impugned Order-in-Original No.KVPT/ST/AC/05/2021 dated 30.11.2021 passed by the second respondent and quash the same and direct the first respondent to issue discharge Certificates in form SVLDRS-4 to the petitioner in accordance with the scheme SVLDRS, 2019 treating the three payments made by the Petitioner on 29.12.2021, as the payments made against the three Form SVLDRS-3 dated 13.01.2020 issued by the first respondent.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.S.Ragaventhre
Junior Standing Counsel

ORDER

Mr.S.Ragaventhre, Junior Standing Counsel takes notice on behalf of the respondents.

2. The petitioner has filed this writ petition for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 30.11.2021 in Original No.KVPT/ST/AC/05/2021 passed by the 2nd respondent, to quash the same and to direct the 1st respondent to issue discharge certificates in Form SVLDRS-4 to the petitioner in accordance with the scheme SVLDRS, 2019 treating the three payments made by the petitioner on 29.12.2021, as the payments made against the three Form SVLDRS-3 dated 13.01.2020 issued by the 1st respondent.

3. It is the specific case of the petitioner that the petitioner was a work contractor and was liable to pay tax on the abated value during the period between 2015-2016, 2016-2017 and 2017-2018 up to June 2017.

4. As per the petitioner, the tax due for the aforesaid three periods are as under:-

Year	**Value as per Form 26 AS**	**Abatement 60%**	**Taxable Value 40%**	**Total tax payable**	**Service Tax already paid**	**Balance to be paid in SVLSDRS**
2015-2016	9385314.55	5631189.00	3754126.00	544349.00	364433.00	179916.00
2016-2017	9313927.50	5588357.00	3725571.00	558836.00	374963.00	183873.00
2017-2018 up to June '17	7870192	4722115.00	3148077.00	472211.00	310939.00	161272.00
	26569434.05	15941661.00	10627774.00	15,75,396.00	10,50,335.00	525061.00

5. It is the case of the petitioner that the Government had announced Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019, which gave an opportunity for defaulters to settle their dispute by offering to pay the tax and therefore, the petitioner filed an application on 31.12.2019, which was the last date as per the scheme, which was later extended to 15.01.2020. After the petitioner

filed an application in SVLDRS-1 on 31.12.2019, the 1st respondent also issued Form SVLDRS-3 on 13.01.2020 by directing the petitioner to pay the amount within 30 days, which would have expired on 12.02.2020.

6. The petitioner however, made an attempt to make the payment on 16.03.2020 assuming the last date as 28.02.2020 as per the Challans generated in the ICE Gate of the respondents. After the amounts were paid by the petitioner on 12.02.2020, these amounts were re-credited into the petitioner's account and on 19.03.2020 a sum of Rs.1,83,873/- was re-credited on the same day and the other two amounts of Rs.1,61,273/- and 1,79,915/- were re-credited on 19.03.2020.

7. It is further submitted that the petitioner had sufficient balance in the account to pay the amount and the payment was rejected on account of technical glitch. It is submitted that the Central Board of Indirect Taxes and Customs has also subsequently extended the time for payment of the amount to 30.06.2020 due to the outbreak of COVID-19 pandemic.

8. The learned counsel for the petitioner submits that the attempt of the petitioner to pay the amount thereafter remained futile and thereafter Show Cause Notice was issued to the petitioner on 22.12.2020 by the second respondent, which has culminated in the Impugned Order dated 30.11.2021.

9. The learned counsel for the petitioner further submits that prior to the filing of the writ petition, the petitioner has also paid the amount on 29.12.2021 and therefore, the benefit of the scheme allowing the defaulters to settle the dispute cannot be rejected. It is further submitted that there was no mistake in the amount determined by the petitioner as the petitioner is a work contractor and is liable to pay tax only on the abetted value of 40% including Swachh Bharat.

10. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the *suo motu* Special Leave Petition, wherein extensions were granted on account of the outbreak of COVID-19 pandemic, which ought to have been considered both by the Allahabad High Court and the Hon'ble Supreme Court while dismissing the *Yashi Construction case (referred supra)*.

11. Opposing the prayer, the learned Junior Standing Counsel for the respondents submits that this is a case of a “voluntary disclosure” and therefore, the petitioner was required to pay 100% tax in terms of Section 124-1(e) of the Act. It is therefore submitted that the tax determined by the petitioner as payable under the aforesaid scheme was incorrect and therefore even if Form SVLDRS-3 was issued accepting the declaration in Form SVLDRS-1 of

the petitioner, the respondents are entitled to reject the application in terms of Section 129-2 (c) of the aforesaid scheme. It is therefore submitted that there is no merit in this writ petition.

12. That apart, it is submitted that the extension granted by the Central Board of Indirect Taxes and Customs vide a Notification dated 14.05.2020 was applicable only to those persons, who were required to pay the amount between 20.03.2020 and 29.06.2020 and since the due date for the petitioner expired on 12.02.2020, the belated attempt of the petitioner to pay the amount on 16.03.2020 also would not come to the petitioner's rescue. It is therefore submitted that the benefit of the above scheme is not applicable to the petitioner.

13. The learned Junior Standing Counsel for the respondents has placed reliance on the decision of the Allahabad High Court in Writ Tax No.541 of 2021 ***(M/S. Yashi Construction*** *Vs.* ***Union of India and another)*** dated 11.08.2021 as affirmed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.2070 of 2022, vide order dated 18.02.2022.

14. By way of rejoinder, the learned counsel for the petitioner submits that there is no discussion in the order passed by the Allahabad High Court on account of the outbreak of the COVID-19 pandemic and therefore, the decision rendered by the Allahabad High Court, which has been upheld by the Hon'ble Supreme Court, has been confined to the facts peculiar to the aforesaid case alone. In any event, this is a fit case for resolving the dispute and therefore, the benefit of the scheme cannot be denied to the petitioner.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents.

16. The point for consideration in this Writ Petition are as follows:

(a) Whether the petitioner has made a declaration in SVLDRS-1 in time under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 and the rules made there under.

(b) Whether the petitioner can be denied the benefit of scheme for not having paid the amount mentioned in SVLDRS-3 dated 13.1.2020 within 30 days stipulated by the Designated Committee in SVLDRS-3 dated 13.1.2020? and

(c) Whether the petitioner has made a correct declaration of the tax payable, if so whether the petitioner was therefore was entitled to settle the dispute under the Sabka Vishwas

(Legacy Dispute Resolution) Scheme Act, 2019?

(d) As per the scheme, originally the declaration ought to have been filed on or before 31.12.2019. In this case, the petitioner has filed an application in time. The Government has further extended the time up to 15.01.2020 for payment of the amount. However that was confined only to the persons, who could not pay the amount during the period between 20.03.2020 and 29.06.2020. In this case, the petitioner was required to pay amount on or before 12.02.2020. The petitioner had time up to 28.02.2020 and admitted to make payment on 16.03.2020.

17. The petitioner was not entitled to file declaration in Form SVLDRS-1 in view of Section 125 of the Finance Act, 2019. In case of voluntary disclosure, no relief shall be available. The Designated Committee is also not expected to verify the disclosure in the declaration when there is a voluntary disclosure. This is evident from a reading of Section 125 and Section 126 of Chapter V of the Finance Act, 2019, which reads as under:

Section 125	**Section 126**
125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—	*126. (1) The designated committe shall verify the correctness o the declaration made by th declarant under section 125 i such manner as may be prescribed.*
(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;	*Provided that no suc verification shall be made i case where a voluntary disclosur of an amount of duty has bee made by the declarant.*
(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;	*(2) The composition an functioning of the designate committee shall be such as may b prescribed.*

Section 125	Section 126
(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.*	

18. A further reading of Section 129(1)(c), makes it clear that in case of "voluntary disclosure" where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate,

it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted. Section 129 of Chapter V of the Finance Act, 2019 reads as under:

> *"**129.** (1) Every discharge certificate issued under Section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and—*
>
> *(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration; (b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;*
>
> *(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.*
>
> *(2) Notwithstanding anything contained in sub-section (1),—*
>
> *(a) no person being a party in appeal, application, revision or reference shall contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the discharge certificate under this scheme;*
>
> *(b) the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice,—*
>
> *(i) for the same matter for a subsequent time period; or*
>
> *(ii) for a different matter for the same time period;*
>
> ***(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted."***

19. As per Section 124(1)(e) Sabka Vishwas (Legacy Dispute Resolution) Scheme Act, 2019, in case of "voluntarily disclosure", a declarant is not entitled for any concession as is evident from reading of said provision. It reads as under:

"***124.****(1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:—*

(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(c) where the tax dues are relatable to an amount in arrears and,—

(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues; (iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—

(A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of the tax dues; (d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of predeposit or deposit *already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.”*

20. Thus, the petitioner as a declarant was expected to pay both the tax and the interest thereon. The only concession which the petitioner would have got was against the imposition of penalty if Form SVLDRS-1 filed by the petitioner was accepted.

21. In the case of “voluntary disclosure”, the Designated Committee is not expected to verify the disclosure in the declaration made in Form SVLDRS-1. The Designated Committee, merely relies on the declaration in Form SVLDRS-1.

22. As per section 129, in case of “voluntary disclosure”, where any particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as the declaration was never made and the proceedings and the applicable indirect tax enactment shall be instituted. Section 129 reads as under:

“***129.*** *(1) Every discharge certificate issued under Section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and—*
(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration; (b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;
(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.
(2) Notwithstanding anything contained in sub-section (1),—
(a) no person being a party in appeal, application, revision or reference shall contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the discharge certificate under this scheme;
(b) the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice,—
(i) for the same matter for a subsequent time period; or

(ii) for a different matter for the same time period;
(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted."

23. That apart, as per Rule 7 of the aforesaid Rules, a declarant was required to pay the amount within 30 days of the date of issue of Form SVLDRS-3.

24. Declaration in Form SVLDRS-1 was filed by the petitioner on 31.12.2019 for three different periods as detailed below:-

Sl.No.	Period	Amount
1.	01.04.2015 to 31.03.2016	Rs.1,79,915/-
2.	01.04.2016 to 31.03.2017	Rs.1,83,873/-
3.	01.04.2017 to 30.06.2017	Rs.1,61,273/-

25. In the declaration, the petitioner has stated that the declaration was being made under the "voluntarily category".

26. Therefore, the declaration was filed in time as is evident from a reading of Rule 3 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019. However, as per Section 125(1)(e), a person who has been subjected to an enquiry of 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, shall not be entitled to file a declaration under the scheme.

27. The facts of the case indicate that Form SVLDRS-3 was received by the petitioner on 13.01.2020. The 30th day would have expired on 12th day of February 2020.

28. The petitioner however failed to pay even the amount specified in Form SVLDRS-3 in time. The petitioner appears to have made belated attempt to pay the amount on 16.3.2020. This was long after the period specified in Form SVLDRS-3 had expired. The amount which was initially debited from the petitioners account was however later recredited back. Thereafter, the petitioner did not take steps to make the payment. Meanwhile, lockdown was imposed due to outbreak of COVID 19 pandemic.

29. Meanwhile, the petitioner was issued with SCN No.10/DC/2020 dated 22.12.2020 which has culminated in Order in Original No. KVPT-ST-000 AC-05/2021 dated 30.11.2021, wherein, the following order has been passed:

ORDER

i. I confirm the demand of Rs.28,88,010/- (Rupees Twenty Eight Lakhs Eighty Eight Thousand and Ten only) being the short paid Service Tax amount payable on the taxable income of "Works Contract Service" received by Shri.Shanmugam Kandasamy of M/s.Balaji Electrical Engineering for the period from April, 2015 to June, 2017 under the provisions of Section 73(1) of the Finance Act, 1994;

ii. I demand interest at appropriate rate under Section 75 of Finance Act, 1994 from the service provider Shri.Shanmugam Kandasamy on the payment of Service Tax confirmed at Sl.No.(i) above;

iii. I impose penalty of Rs.28,88,010/- (Rupees Twenty Eight Lakhs Eighty Eight Thousand and Ten only) under Section 78 of the Finance Act, 1994; Further, in terms of second proviso to Section 78(1) of the Finance Act, 1994, if the service tax and interest, determined at S.Nos. (i) and (ii) above, are paid within a period of thirty days of the date of receipt of this order, then the penalty payable shall be 25% of the service tax so determined/confirmed under Sl.No.(i) above, provided such reduced penalty amount is also paid within thirty days from the date of receipt of this order.

iv. I confirm the demand of Rs.1,00,000/- (Rupees One Lakh Only) being the late fee recovering from the service provider under Section 70 of Finance Act, 1994 read with Rule 7(C) of Service Tax Rules, 1994 for non-filing of ST3 returns for the period from 2015-2016 to 2017-2018 (upto June 2017);

v. I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) under Section 77(2) of Finance Act, 1994; and

vi. I do not impose penalty under Section 76 of the Act.

30. Reading of the Order-Original No. KVPT-ST-000 AC-05/2021 dated 30.11.2021 clearly demonstrates that the disclosures made by the petitioner in Form SVLDRS-1 on 31.12.2019 were not true. That apart, the petitioner was de-barred from filing declaration in terms

of Section 125(1)(e) as mentioned above.

31. Further, the petitioner was not sincere in as much as the petitioner neither made a correct declaration in the respective Form SVLDRS-1 filed on 31.12.2019 nor paid the amount in time and therefore the petitioner is not entitled for the benefit of the scheme.

32. The petitioner has merely paid an amount on 29.12.2021 stipulated in Form SVLDRS. However, the amount paid by the petitioner is only the amount specified in Form SVLDRS-3.

33. Therefore, there is no merits in the present writ petition. The writ petition is therefore liable to be dismissed and it is accordingly dismissed. However, liberty is given to the petitioner to file statutory appeal before the second respondent within a period of thirty days from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm/rgm

To

1.The Designated Committee,
Sabka Vishwas Legacy Disputes Resolution Scheme (SVLDRS),
Office of the Commissioner of CGST & Central Excise,
Central Revenue Building, Tractor Road,
NGO "A" Colony, Tirunelveli – 627 007.

2. The Assistant Commissioner of Central Taxes & Central Excise,
Kovilpatti Division, 913-Catholic Centre,
Main Road, Kovilpatti-628 501, Tuticorin District.

+1 CC to M/s.S. RAGAVENTHRE, Advocate SR-25659[F] dated 14/06/2022

Order made in
W.P.(MD).No.720 of 2022
and
W.M.P.(MD).No.568 of 2022
10.06.2022

sj(CO)
TR(21.06.2022) 12P 4C