BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.04.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) No.4260 of 2022

M/S.Jai Guru Cables,
represented by its Proprietor,
O.R.Mathiprakash
S/o.O.Rajendren,
2/51-N-4, Nalluveeran Patti Road,
Seemanuthu,
Usilampatti,
Madurai District. ... Petitioner

/vs./

1.The Principal Chief Commissioner of GST and Central Excise,
No.26/1, GST Bhavan,
Uthamar Gandhi Road,
Nungambakkam,
Chennai 600 034.

2.The Additional Commissioner/Member of Designated Committee,
Sabka Vishwas Scheme,
O/o. the Deputy Commissioner of GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

3.The Deputy Commissioner/Member of Designated Committee,
Sabka Vishwas Scheme,
O/o. the Deputy Commissioner of GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 625 002.

4.The Assistant Commissioner,
Madurai-I Division, Sabka Vishwas Scheme,
O/o. the Assistant Commissioner of GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 625 002.

5.The Superintendent,
Thirumangalam Range, 3rd Floor,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd and 3rd respondent in his order dated 03.02.2022 and quash the same and to direct the respondents 1 to 3 to accept the payment of Rs.1,51,797.20/- under the sabka vishwas (Legacy Dispute Resolution) Scheme, 2019 which was issued under SVLDRS-3 and to issue discharge certificate in form SVLDRS -4 in respect of the arrears payable by the petitioner within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.Niranjan S.Kumar for M/s.T.Tamil Yazhini

For Respondents : Mr.S.Ragaventhre Junior Standing Counsel

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to call for the records relating to the order passed by the respondents 2 and 3 dated 03.02.2022 and quash the same, to direct the respondents 1 to 3 to accept the payment of Rs.1,51,797.20/- under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and to issue discharge certificate in form SVLDRS -4 in respect of the arrears payable by the petitioner.

2.This is the third round of litigation by the petitioner. Earlier the petitioner has filed a writ petition in W.P.(MD) No.1803 of 2021 to direct the respondents 1 to 3 therein to accept the payment of Rs.1,51,797.20/- paid by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

3.The said scheme was announced by the Parliament in the Finance Act,2019 and gave rights to the chronic defaulters to settle the dispute once for all. It appears that the petitioner had suffered an adverse order dated 26.12.2011 in original No.MAD-CEX-000-ASC-021-11. The petitioner however did not file further appeal against the said order of the original authority. Thus, the petitioner was required to pay a sum of Rs.4,94,274/- towards tax for the services provided by the petitioner and further penalty of Rs.5,07,274/- totalling to a sum of Rs.9,13,730/-.

4.The petitioner offered to settle the dispute by filing declarations under the aforesaid scheme on 30.09.2019, vide Declaration No.LD3009190000313, pursuant to which the designated authority under the scheme also issued the Form in SLVDRS-3 No.L111119SV300222 and quantified the tax amount to be paid by the petitioner as Rs.1,51,797.20/-.

5.The respondents had issued Form in SLVDRS-3 on 11.11.2019. The petitioner however did not pay the amount in time. Later, in the light of certain clarifications and circulars of the Government, the time was extended up to 30.06.2020. The petitioner thus made a payment of Rs.1,51,800/-. The amount was however re-credited back to the petitioner's account on the same day. This led to string of communication being exchanged to the petitioner and the Department, by which time, the designated authority under the scheme had became *functus officio* and had been dissolved.

6.Under these circumstances, the petitioner has filed the first writ petition to direct the respondents to consider the petitioner's representation. An order came to be passed on 29.03.2021, which ultimately culminated in an order dated 28.06.2021 of the 2nd respondent under the aforesaid scheme. The petitioner therefore filed the second writ petition in W.P.(MD) No.17748 of 2021 to quash the aforesaid communication dated 28.06.2021 of the 2nd respondent. After considering the rival submissions, the Court observed as under:-

> *"20.But it is to be noted that, in order to establish the bonafide on the part of the petitioner, on the next day, that is, on 01.07.2020, the petitioner made further attempt to make the payment of Rs.1,51,797.20/~and this amount, infact has been debited from the account of the petitioner, however, on the next day, that is, on 02.06.2020, it has been again re~credited in the account of the petitioner. Therefore, these consistent efforts taken by the petitioner, ofcourse, during the last minute, cannot be disputed.*
>
> *21.In this regard, it is further to be noted that, the very scheme itself is only to give solace to those, who are in default of tax arrears, and in order to make the One Time Settlement, these type of schemes are being introduced and implemented by the Central Government/Revenue to collect more tax and revenue within a particular time. Therefore, under the scheme, both the revenue as well as the assesses are benefited. But, at the same time, when the scheme is introduced, where certain procedures have been contemplated; where certain schedule has been given, that has to be strictly followed.*
>
> *22.Here in the case in hand, if the attempt made by the petitioner to make the payment on 30.06.2020, being the last date of making the payment has become successful, certainly, the petitioner would have been in a position to get the declaration under the scheme, but in that attempt, the petitioner has failed, eventhough genuinely that attempt was made by the petitioner. In order to show the bonafide, the next day also, such attempt had been made to make the payment and in fact, the payment has been debited from the account, only after 24 hours, that is, on 02.07.2021, it has been re~credited in the account of the petitioner.*

23.All these transactions, which are reflected in the statement of account of the petitioner show that,. the petitioner did make attempt to make the payment as per the scheme, and because of the technical glitches, if the said payment made by the petitioner has not been accepted by the account/website or whatever the E~Governance platform or web portal of the revenue, the blame cannot be put against the petitioner. Therefore, this Court feel that, the request of the petitioner can be reconsidered and hence, the present impugned order, reiterating the earlier reasons stated in this regard once again, despite the direction given by this Court in the earlier round of litigation, cannot be justifiable.

24.In view of the above, this Court to inclined to dispose of this writ petition with the following orders:

> *"that the impugned order is set aside and the matter is remitted back to the respondent for reconsideration. While reconsidering the same, the afore~stated factual matrix shall be borne in mind by the empowered Committee and accordingly, the pragmatic decision shall be taken by taking into account the very purpose of the scheme being introduced and implemented and accordingly, orders to that effect shall be passed."*

25.With these directions this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

7.The petitioner has therefore sent a fresh representation once again in terms of the aforesaid order, which culminated in an order/communication dated 03.02.2022, which is impugned before this Court in this writ petition. The petitioner has further sent a representation on 09.02.2022, which has also been replied by the 2nd respondent herein.

8.It is noticed that the petitioner had suffered an adverse order dated 26.12.2011. Despite the petitioner was suffering by such orders, it appears that no steps were taken to recover the amount from the petitioner under the provisions of the Finance Act, 1994 r/w Section 11 of the Central Excise Act, 1944 as made applicable vide Section 83 of the Finance Act, 1994. The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was the time bound scheme, which gave certain categories of defaulters and chronic defaulters to settle the dispute by paying a percentage of the disputed tax of the penalty.

9.The learned counsel for the petitioner has placed reliance on the decision of the High Court of Rajasthan in S.B.Civil Writ Petition No.10571 of 2020 ***(Agroha Electronics, Prem Nagar, Rajasthan Vs. Union of India, through Secretary, New Delhi and other)***, dated

25.03.2021 and the decision of this Court in W.P.No.14454 of 2020 ***(N.Sundararajan Vs. Union of India, New Delhi and others)*** dated 29.06.2021.

10.Opposing the prayer, the learned counsel for the respondents submits that the aforesaid scheme was a time bound scheme and since the petitioner failed to pay the amount in time as per the scheme and as per the extension given by the Government, the petitioner was not entitled to settle the dispute under the aforesaid scheme and therefore, the learned counsel prays that the writ petition filed by the petitioner is liable to be dismissed. The learned counsel for the respondents referred to the decision of this Court in W.P.No.5409 of 2021 ***(Convenant Insurance Surveyors and Loss Assessors Private Limited, Chennai Vs. The Designated Committee, Chennai and another)*** dated 30.11.2021, wherein under a similar circumstances, the relief was not granted.

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

12.The facts are not in dispute. The petitioner was indeed entitled to avail the benefits of the aforesaid schme under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, as the petitioner was in arrears of tax. Originally as per the scheme, the amount was to be paid by 31st December, 2019. However, the date was extended and the time limit was extended up to 30.06.2020.

13.In this case, the petitioner also paid the amount on the last date by debitting the amount electronically from his bank account. However, after the amount was debited from the petitioner's bank account, it was re-credited back due to technical glitchs. The question therefore raises whether under these circumstances the benefit of the aforesaid scheme can be denied to the petitioner.

14.The respondent Board has incidentally also clarified on 17.03.2021, vide its instructions No.01/2021-CX bearing F.No.267/41/2021-CX-8. The Board has clarified that henceforth all references for grand of approval of manual processing of declaration need not be made to the Board and such cases can be processed manually by the concerned designated committees upon the 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."*

15.The scheme is intended to allow chronic defaulters to pay the amount and buy peace. The delay in payment on account of technical glitches cannot come in the way of the petitioner to settle the dispute. I am therefore inclined to allow this writ petition. For the same reason I am not able to accede to the views of this Court in W.P.No.5409 of 2021 ***(Convenant Insurance Surveyors and Loss Assessors Private Limited, Chennai Vs. The Designated Committee, Chennai and another)*** dated 30.11.2021. Under these circumstances, I am of the view that there is no justification in not accepting the declaration of the petitioner under the scheme or in not accepting the payment by the petitioner belatedly. I therefore direct the respondents to accept the payment from the petitioner, if the amount has not been paid or collected from the petitioner already, within a period of 30 days from the date of receipt of a copy of this order and bring a closure in true spirit of the Sabka Vishwas Scheme.

16.The writ petition stands allowed, in terms of the above observation.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

1.The Principal Chief Commissioner of GST and Central Excise,
No.26/1, GST Bhavan,
Uthamar Gandhi Road,
Nungambakkam,
Chennai 600 034.

2.The Additional Commissioner/Member of Designated Committee,
Sabka Vishwas Scheme,
O/o. the Deputy Commissioner of GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

3.The Deputy Commissioner/Member of Designated Committee,
Sabka Vishwas Scheme,
O/o. the Deputy Commissioner of GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 625 002.

4.The Assistant Commissioner,
Madurai-I Division, Sabka Vishwas Scheme,
O/o. the Assistant Commissioner of GST and Central Excise,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 625 002.

5.The Superintendent,
Thirumangalam Range, 3rd Floor,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai 625 002.

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-16124[F] dated 01/04/2022)

W.P.(MD) No.4260 of 2022
01.04.2022

RK(25/04/2022) 7P 7C