$~31, 32, 15 & 16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02.06.2022

\+ **W.P.(C) 9115/2022 & CM APPL. 27435/2022**

OM SHANTI ELECTRIC CO. (THROUGH SHRI RAJKUMAR BHANDARI PROPRIETOR OF THE FIRM) ..... Petitioner

Through: Mr A.K. Prasad, Advocate

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Jatin Singh, Sr Counsel for R-1.
Mr Harpreet Singh, Sr Standing Counsel with Ms Suhani Mathur, Advocate for R-2 to R-4.

\+ **W.P.(C) 9117/2022 & CM APPL. 27441/2022**

M/S HINDUSTAN ELECTRIC STORE ..... Petitioner

Through: Mr A.K. Prasad, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Avnish Singh, Sr Central Govt. Counsel for R-1.
Mr Harpreet Singh, Sr Standing Counsel with Ms Suhani Mathur, Advocate for R-2 to R-4.

\+ **W.P.(C) 9086/2022 & CM APPL. 27252/2022**

BHANDARI ELECTRIC CO. ..... Petitioner

Through: Mr A.K. Prasad, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: None.

\+ **W.P.(C) 9087/2022 & CM APPL. 27253/2022**

DARVESH SALES CORPORATION ..... Petitioner

Through: Mr A.K. Prasad, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms Saroj Bidawat, Advocate for R-1.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J.: (ORAL)

1. The Petitioners, herein, are manufacturers of electrical motors, control switches and MCB's distribution boards, electricity fans, etc.

2. As per the averments in the petition, pursuant to a search conducted at the factory premises of the Petitioners, certain goods were recovered and seized which were unaccounted for in the books of accounts. The Petitioners paid duty along with the interest and penalty to close the matter. Thereafter, a show cause notice dated 30.08.2016 was issued to the Petitioners, *inter-alia,* proposing confiscation of the seized goods and levying of a redemption fine and penalty on the Petitioners.

2.1. The Petitioners further averred that the allegations in the show cause notice were upheld and that thereafter on Appeal, the Order-in-Original imposed a redemption fine on the Petitioners in respect of the goods seized as follows: -

Serial No.	*Writ Petition No.*	*Redemption Fine Imposed*
1.	*W.P.(C) 9115/2022*	*Rs. 1,00,000/-*
2.	*W.P.(C) 9117/2022*	*Rs. 4,000/-*
3.	*W.P.(C) 9086/2022*	*Rs. 25,000/-*
4.	*W.P.(C) 9087/2022*	*Rs. 20,000/-*

2.2. It is averred by the Petitioners that the above-mentioned Orders-in-Original were upheld by the Commissioner (Appeals), by its order dated 16.05.2017. The said orders in appeal were challenged by the Petitioners before the Customs Excise and Services Tax, Appellate Tribunal (CESTAT).

2.3. By a common order dated 29.12.2017, the CESTAT decided the Orders-in-Original against the Petitioners.

3. The Petitioners have, however, not filed any of the aforegoing documents except for the CESTAT order dated 29.12.2017 which has been filed as Annexure P-1.

4. It is the case of the Petitioners that on introduction of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (the SVLDR Scheme), each of the Petitioners approached the Designated Committee of Respondent No. 4 for settlement of the above issue thereunder on 10.12.2019.

5. By separate e-mails, each dated 25.12.2019, all the Petitioners were informed by Respondent No. 4, that their application(s) under the SVLDR Scheme have been rejected. It is against the order of Respondent No.4, which was communicated by the e-mail dated 25.12.2019, that the Petitioners have

filed the present petitions, which are listed today, praying that their applications should be adjudicated under the SVLDR Scheme.

6. The Petitioners have annexed along with the Petitions as Annexure P-7 (Colly), letters dated 25.11.2020 and 09.12.2020, i.e., written almost after one year of submitting their applications, which were addressed to the Assistant Commissioner (GST), Naraina, South Delhi, Commissionerate, *inter-alia,* requiring a detailed order of rejection from them.

7. The Petitioners have also filed the acknowledgement receipt(s) of the Form SVLDR-1 issued by the Respondent No. 4, which are annexed as Annexure P-2. The said receipt(s) show that each such receipt contains instructions/remarks by Respondent No-4 for the Petitioners, which read as follows: -

W.P.(C) No.	***Application No.***	***Date of Acknowledgement Receipts***	***Relevant Extract of SVLDR-1 as filed (Annexure P-2): Remarks on page 1 in Column***	***Relevant Extract of SVLDR-1 as filed (Annexure P-2): Remarks on page 2 in Column***
9115/2022	*LD1012190001506*	*10.12.2019*	*As per Chapter V of the Finance Act, the redemption fine is out of the purview of the SVLDRS Scheme*	*Please appear for PH along with supporting documents with respect to application details, category, pre-deposit made if any*
9117/2022	*LD0412190000984*	*04.12.2019*	*As per Chapter V of the Finance Act, the redemption fine is out of the purview of the SVLDRS Scheme*	*Page not filed*
9086/2022	*LD1012190001517*	*10.12.2019*	*Page not filed*	*Page not*

				filed
9087/2022	*LD1012190001525*	*10.12.2019*	*As per Chapter V of the Finance Act, the redemption fine is out of the purview of the Scheme*	*Proof for payment of pre-deposit to be produced for verification*

7.1. As per the remarks mentioned in the acknowledgement receipt(s), the Petitioner in W.P.(C) 9087/2022 was asked to produce the proof of pre-deposit for verification along with supporting documents in order to justify their case. Further the Respondent No.4 had also remarked in W.P.(C) No. 9282/2022 that SVLDR-2 was issued notifying the Petitioners for personal hearing with documents. The Petitioner in W.P.(C) 9117/2022 has filed an incomplete Annexure P-2. The Petitioner in W.P.(C) 9086/2022 has not filed this document at all and has filed the same receipt twice on pages 27 and 28 of the Petition.

7.2. There is no pleading or document to show that the remarks/instructions given by Respondent No. 4 as set forth in Annexure P-2 have been adhered to. There are various other steps and procedures set forth in the SVDLR Scheme which are required to be followed by an Applicant. Therefore, although the Petitioners were given an opportunity to participate further in the SVLDR Scheme, they chose not to do so in the manner prescribed.

8. Besides this, there is an issue relating to delay which needs to be dealt with as well. The SVLDR Scheme was in force for a limited period, which came into effect from 01.09.2019. Rule 3 of the said Scheme, *inter-alia,* states that any declaration to be made under the SVLDR Scheme was to be made by

an Applicant (Declarant) on or before 31.12.2019. The Petitioners state that their application(s) were rejected on 25.12.2019.

8.1. As noticed above, the rejection order was passed on 25.12.2019 and the instant writ petition was filed on 31.05.2022, i.e., after a lapse of 2.5 years.

8.2. Admittedly, the rejection order was made available to the Petitioners on 25.12.2019 itself, but no action was taken thereafter. The only explanation provided by the Petitioners in this regard is in para 14 of their respective petitions which reads as follows: -

> *"14. That the petitioner also made a number of personal visits to the Central Excise Commissionerate but no speaking order has been supplied to the petitioner till date. Further, the petitioner were verbally told that the email dated 25.12.2019 was the only order on this issue."*

No document in support of the above averment has been filed by the Petitioners.

9. This averment in para 14 of the Petition is also contrary to Annexure P-2 filed by the Petitioners. The Petitioners have, therefore, failed to explain why it has taken them more than 2.5 years after the passing of the order of the rejection, to come before this Court. They have also failed to give any explanation with regard to non-compliance of the instructions of the Respondent No. 4 as is set forth in the acknowledgement given to them at Annexure P-2.

9.1. The only other explanation that has been given by the Petitioners is that of the onset of COVID-19. However, the Petitioners choose not to challenge the order of rejection in the pre-Covid period or thereafter, until 2.5 years later.

9.2. The Petitioners have also relied upon the orders of the Supreme Court in *suo moto* writ petition 2020, wherein the Supreme Court has directed that the period from 15.03.2020 till 31.05.2022 shall be excluded from the period of limitation for availing statutory Appellate remedies. The reliance placed by the Petitioners on these orders is misplaced. Even during the period between March 2020 and May 2022, the Courts have been functioning, *albeit* in a truncated manner.

10. It is a settled principle of law that in order to claim relief, a Petitioner must approach the Court at the earliest possible date. If a Petitioner is found guilty of delay and laches, the Courts will deny the claim. The Supreme Court has in ***Royal Orchid Hotels Limited and Another vs G. Jayarama Reddy and Others*** *reported as* ***(2011) 10 Supreme Court Cases 608*** held as follows: -

> *"25. .....Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallised and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard-and-fast rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts."*

> *"29. In Shankara Coop. Housing Society Ltd. v. M. Prabhakar, this Court considered the question whether the High Court should entertain a petition filed under Article 226 of the Constitution after a long delay and laid down the following principles: (SCC pp. 629-30, para 54)*

> > *(1) There is no inviolable rule of law that whenever*

there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

11. The Petitioners have failed to discharge their burden of delay and laches. No cogent explanation for why the Petitioners waited 2.5 years to approach this Court has been provided. No reasons have been given for not following the procedure as set forth in the SVLDR Scheme. In fact, the Petitioners decided not to disclose these facts to the Court in its pleadings. Clearly these details have been deliberately concealed by the Petitioners in the

present Petitions.

12. The Petitioners in support of their case, have filed certain judgments including three judgments of a coordinate Bench of this Court wherein a similar rejection under the SVLDR Scheme has been set aside and an opportunity of hearing has been given to the Petitioners. The judgments cited are as follows: -

(1) Chaque Jour HR Services Pvt. Ltd. vs. Union of India; *2020 (372) E.L.T.522 (Del.)*

(2) Industrial Personnel & Security Services Pvt. Ltd. vs. Commr. of CGST, Delhi South; *2020(373) E.L.T.44 (Del.)*

(3) Vaishali Sharma vs. Union of India; *2020(40) G.S.T.L. 441 (Del.)*

(4) CCR Logistics Pvt. Ltd. vs. Union of India; *2021 (54) G.S.T.L. 8 (Chhatisgarh)*

(5) M/s Jay Shree Industries vs. Union of India and Anr.; *2021-TIOL-1677-HC-ALL-CX*

(6) M/s Synpol Products Pvt Ltd. vs. Union of India; *2020-TIOL-1493-HC-AHM-CX*

12.1. Each of the aforegoing cases have been decided either in early 2020 or the Petitioners therein had approached the Court within a short period of time of their rejection by the concerned authority under the SVLDR Scheme. The decisions aforegoing are also based on the peculiar facts and circumstances which are distinguishable from the present case. As discussed above, in the present case, the Petitioners have failed to cross the threshold of delay and laches.

13. It is a matter of record that the SVLDR Scheme came into force on September 1, 2019 and in terms, *inter-alia,* of the provisions of the Scheme, the declaration thereunder was to be made electronically on or before 31.12.2019. The Scheme has come to an end more than 2.5 years ago and admittedly, no new Scheme or similar Scheme has been floated by the Respondent No. 2/Ministry of Finance, Government of India. Therefore, the Petitioners have failed to show any cause why the relief sought by them under the SVLDR Scheme should be granted once the Scheme and all its proceedings have been closed.

14. Additionally, "one who seeks equity, must come with clean hands". The Petitioners have concealed the fact that the Respondent No. 4 had notified the Petitioners of compliances/instructions. These were deliberately not set forth in the Petition and likely not complied with either.

15. In this view of the matter, the present Writ Petitions are dismissed.

16. All pending applications shall stand closed.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

JUNE 02, 2022/*rhc* *Click here to check corrigendum, if any*