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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 02.06.2022*+ **W.P.(C) 9102/2022 & CM APPL. 27397/2022****BENTEX CONTROL AND SWITCHGEAR PVT LTD..... Petitioner**

Through: Mr A.K. Prasad, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Manish Kumar, Advocate for R-1.

Mr Harpreet Singh, Sr Standing
Counsel with Ms Suhani Mathur,
Advocate for R-2 to R-4.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Court Hearing/ Hybrid Hearing (as per request)]****TARA VITASTA GANJU, J.: (ORAL)**

1. The Petitioner, herein, is a manufacturer of electrical motors, control switches and MCB's distribution boards, electricity fans, etc.
2. As per averments in the petition, pursuant to a search conducted at the factory premises of the Petitioner, certain goods were recovered and seized which were unaccounted for in the books of accounts. The Petitioner 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 Petitioner, *inter-alia*, proposing confiscation of the seized goods and levying of a redemption fine and penalty on the Petitioner.



2.1. The Petitioner 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 of Rs. 18,00,000/- for finished goods and Rs. 72,000/- for raw materials on the Petitioner.

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

2.3. By order dated 29.12.2017, the CESTAT confirmed the redemption fine of Rs. 18,00,000/- imposed with respect to finished goods and set aside the fine of Rs. 72,000/- for raw materials.

3. The Petitioner has, however, not filed any of the foregoing 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 Petitioner that on introduction of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (the SVLDR Scheme), the Petitioner approached the Designated Committee of Respondent No. 4 for settlement of the above issue thereunder on 10.12.2019.

5. By an e-mail dated 25.12.2019, the Petitioner was informed by Respondent No. 4, that his Application under the SVLDR Scheme has been rejected. It is against the order of Respondent No.4, which was communicated by the e-mail dated 25.12.2019, that the Petitioner has filed the present petition, which is listed today, praying that his application should be adjudicated under the SVLDR Scheme.



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

7. The Petitioner has also filed the acknowledgement receipt of the Form SVLDR-1 issued by the Respondent No. 4, which is annexed as Annexure P-2. The said receipt shows that the receipt contains instructions/remarks by Respondent No. 4 for the Petitioner 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
9102/2022	LD1012190001552	10.12.2019	As per Chapter V of the Finance Act, the redemption fine is out of the purview of the SVLDRS Scheme	Please submit the undertaking in view of para vii of CBIC Circular No. 1074/07/2019-CX dated 12.12.2019

7.1. As per the remarks mentioned in the acknowledgement receipt the Petitioner was asked to produce an undertaking in terms of para vii of CBIC Circular No. 1074/07/2019-CX dated 12.12.2019.

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 Petitioner was given an opportunity to participate further in the SVLDR



Scheme, it 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 Petitioner states that his application was 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 Petitioner on 25.12.2019 itself, but no action was taken thereafter. The only explanation provided by the Petitioner in this regard is in para 14 of his petition 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 Petitioner.

9. This averment in para 14 of the Petition is also contrary to Annexure P-2 filed by the Petitioner. The Petitioner has, therefore, failed to explain why it has taken him more than 2.5 years after the passing of the order of the rejection, to come before this Court. The Petitioner has 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 Petitioner is that of the onset of COVID-19. However, the Petitioner chose not to challenge the order of rejection in the pre-Covid period or thereafter, until 2.5 years later.

9.2. The Petitioner has 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 Petitioner 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, the Petitioner must approach the Court at the earliest possible date. If the Petitioner is found guilty of delay and laches, the Courts will deny his 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 Petitioner has failed to discharge this burden of delay and laches. No cogent explanation for why the Petitioner 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 Petitioner decided not to disclose these facts to the Court in its pleadings. Clearly these details have been deliberately concealed by the Petitioner in the present Petition.

12. The Petitioner in support of his case, has 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 Petitioner. 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 (Chhattisgarh)*
- (5) *M/s Synpol Products Pvt Ltd. vs. Union of India; 2020-TIOL-1493-HC-AHM-CX*
- (6) *M/s Jay Shree Industries vs. Union of India and Anr.; 2021-TIOL-1677-HC-ALL-CX*

12.1. Each of the foregoing 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 foregoing are also based on the peculiar facts and circumstances which are distinguishable from the present case. As discussed



above, in the present case, the Petitioner has 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 Petitioner has failed to show any cause why the relief sought by him 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 Petitioner has concealed the fact that the Respondent No. 4 had notified the Petitioner 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 Petition is 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](#)

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