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

% *Decision delivered on: 04.05.2022*

+ **W.P.(C) 13479/2021 & CM No.42489/2021**

SDB INFRASTRUCTURE PVT. LTD.Petitioner

Through: Mr Vivek Sharma and Ms Saumya
Mehrotra, Advs.

versus

MINISTRY OF FINANCE, CENTRAL BOARD

OF EXCISE AND CUSTOMS & ORS.Respondents

Through: Mr Dhruv Bhattacharya, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE POONAM A. BAMBA

[Physical Court Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The substantive prayers made in the writ petition read as follows:

“(a) Issue an appropriate, writ, order, or direction including a writ of Mandamus to Respondent no 2 (Designated Committee, SVLDRS) to manually process the payments of the Petitioner and issue Discharge Certificate under section 127 (8) of the Scheme;

(b) Issue an appropriate, writ, order, or direction including a writ of Mandamus to the Respondents to grant a personal hearing and comply with Instruction no.01/2021-CX dated 17.03.2021 issued by Respondent no.1 in the issue at hand;

(c) Issue an appropriate, writ, order, or direction to the Respondents to not proceed in the pending Service tax litigations (Le. Service Tax appeal no. ST/S0496/2018 pending before Hon'ble CESTAT, New Delhi and Show cause notice no. 07/MDM/R-168/D.NP/2018-19 dated 06.11.2018) till grant of Discharge Certificate as per the Scheme.”

2. Notice in this petition was issued on 30.03.2022. On that date, we had passed the following order :

“W.P.(C) 13479/2021 & CM APPL.42489/2021 [Application on behalf of the petitioner for interim relief]

2. The principal grievance of the petitioner is that having taken recourse to the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, the requisite tax was attempted to be deposited before the cut-off date i.e., 30.06.2020.

2.1. According to the petitioner, despite several attempts, the transaction could not go through, as there was a mismatch between the amount that sought to be remitted and that which was recorded in the challan. For this purpose, our attention has been drawn to the communication dated 23.07.2021, issued by the petitioner's banker, which is, appended on page 59 of the case file.

2.2. It is stated that the amount attempted to be remitted was more than, what was set forth in the subject challan.

2.3. Furthermore, counsel for the petitioner relies on Instruction No.1/2021-CX dated 17.03.2021 [see Annexure P-12], issued by respondent no.1/revenue, pursuant to the orders passed in several cases by various High Courts, which, inter alia, authorizes the processing of payment manually.

3. Issue notice.

3.1. Mr Dhruv Bhattaharya accepts notice on behalf of the respondents.

3.2. Mr Bhattaharya says that he will revert with instructions.

3.3. In case instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.

4. List the above-captioned matter on 04.05.2022.”

3. As would be apparent upon a reading of the aforesaid extract of the order dated 30.03.2022, the controversy in issue falls in a very narrow compass.

3.1. The issue at hand is: whether this Court, in the given facts and circumstances, should direct the respondents/revenue to manually process the application filed by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [hereafter referred to as 'Scheme'].

3.2. We had indicated, as is evident upon reading the order dated 30.03.2022, that in case the respondents/revenue wished to resist the writ petition, a counter-affidavit would be filed before 04.05.2022.

3.3 Concededly, a counter-affidavit has not been filed. It is, however, not disputed by Mr Dhruv Bhattacharya, who appears on behalf of the respondents/revenue, that the petitioner-declarant, while taking recourse to the Scheme to avail the benefits provided therein, had attempted to remit the "amount declared" electronically, and that the only reason remittance could not go through was that there was a miniscule discrepancy between the figure mentioned in the Icegate challan and the amount that was sought to be transmitted. The discrepancy is set forth in the table below:

<i>Sr.No.</i>	<i>Amount mentioned in Icegate Challan (INR)</i>	<i>Amount remitted by the Petitioner on 26.06.2020 (INR)</i>	<i>Amount remitted by the Petitioner on 30.06.2020 (INR)</i>
<i>1.</i>	<i>13,79,905.05/-</i>	<i>13,79,906/-</i>	<i>13,79,906/-</i>
<i>2.</i>	<i>92,137.90</i>	<i>92,138/-</i>	<i>-</i>

3.4. As would be evident from the table above, while remitting the amount declared, the amount mentioned in the Icegate Challan was rounded off, and it was on this account, as indicated above, that the remittance did not go

through.

3.5. We may also note that the deadline fixed for remitting the amount declared under the Scheme was 30.06.2020. The record shows that the petitioner had attempted to remit the amount declared on 26.06.2020, which was well before the deadline.

4. In these circumstances, the petitioner has approached this Court via the instant writ petition and, *inter alia*, relied upon the aforementioned circular dated 17.03.2021 and the judgments rendered by the coordinate benches of this court in ***B-Earth and Spire India Pvt. Ltd. v. CBIC and Ors.***, 2021 (1) TMI 806 and ***Vaishali Sharma v. Union of India***, 2020 SCC OnLine Del. 1386.

4.1. Mr Bhattacharya does not dispute the fact that the circular dated 17.03.2021 would be applicable in the instant case. It is Mr Bhattacharya's contention that this Court would have to be satisfied as to whether this is a fit case for directing manual processing of the petitioner's application.

5. Having regard to the circumstances obtaining in the instant case, we are of the view that a direction should be issued for manual processing of the petitioner's application under the Scheme.

5.1. The reason why we have come to this conclusion is apparent from the narration of facts set out hereinabove.

5.2. The petitioner clearly made an attempt to remit "amount declared" before the deadline i.e., 30.06.2020. The amount that was sought to be remitted was, in fact, more than that was indicated in the Icegate Challan.

5.3. Furthermore, the discrepancy in the remittance was only a few odd paise.

6. Thus, in our view, as alluded to above, a direction needs to be issued

to the Designated Committee i.e., respondent no.2 and/or any other appropriate authority appointed for processing the petitioner's application [in short "Appropriate Authority"] under the Scheme, manually.

6.1 It is ordered accordingly.

7. The authorised representative [in short "AR"] of the petitioner will appear before the Designated Committee and/or the Appropriate Authority on 19.05.2022, at 11:00 A.M.

7.1. In case, for any given reason, the Designated Committee and/or the Appropriate Authority cannot entertain the AR of the petitioner on the given date and time, it shall serve a notice in writing on the petitioner, indicating a fresh date and time for processing the application manually.

7.2. Besides this, if for any reason, the petitioner's AR cannot be entertained physically, a link will be sent for interacting with the AR of the petitioner, *via* video-conferencing mechanism

7.3. In the interregnum i.e., while the Designated Committee and/or the Appropriate Authority takes a decision on the petitioner's application, the respondents/revenue will not proceed with the service tax litigation [i.e. Service Tax Appeal No.ST/50496/2018] pending before the Customs Excise and Service Tax Appellate Tribunal, New Delhi and the show-cause notice no. 07/MDM/R-168/D.NP/2018-19 dated 06.11.2018.

7.4. In case the petitioner's application is found in order by the Designated Committee and/or the Appropriate Authority, the next steps will be taken immediately thereafter, which will include the issuance of the discharge certificate.

8. Parties will act, based on the digitally signed copy of this order.

9. The writ petition is disposed of in the aforesaid terms.

10. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

MAY 4, 2022

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Click here to check corrigendum, if any