

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 3120 of 2022

**M/s. Millenium Construction and Ors.
Vs.
Designated Committee, Siliguri Commissionerate and Ors.**

Mr. Himangshu Kumar Ray
Mr. Abhilash Mittal
...for the petitioners

Mr. Sudipto Kumar Mazumder. Ld. D.S.G.I.
Mr. Sourab Kar
...for the Union of India

Mr. Ratan Banik
..for the respondents

Item No. 01.

Judgment on: 08.02.2023

BIBEK CHAUDHURI, J. : –

The petitioner No.1 is a partnership firm of which the petitioner Nos. 2 and 7 are the partners. The petitioners are aggrieved by the action of the respondent No.1 who did not issue discharge certificate in Form SVLDRS-4 under Section 127(8) of the scheme of Sabka Vishwas (Legacy Dispute

Resolution) Scheme, 2019 and under Rule 9 of Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 within 30 days of the date of payment i.e., 30th June 2020 and recovery of penalty of a sum amounting to Rs.12,15,185/- by attachment of bank account of the petitioners on 23rd April, 2021.

It is the case of the petitioner that on 7th December, 2017 the respondent No.3 passed an order recording petitioners' obligation to pay tax for the period 2011-2012, 2012-2013, 2013-2014, 2014-2015 and demanded tax (including cess) of Rs.7,83,780/-. The petitioners paid taxes of Rs. 7,41,404/- before passing of the aforesaid order. The balance amount of Rs.42,376/- remained due.

The petitioners claimed relief to the tune of Rs.60 per cent of the remaining amount amounting to Rs. 25,426/- under the scheme of 2019 and deposited 40 per cent of the admitted dues amounting to Rs.42376/-, i.e., Rs.16950/- on 30th June, 2020 through bank challan vide cheque No. 814625 drawn in favour of Reserve Bank of India. The said amount was deposited by the State Bank of India, Matigarahat Branch along with E-Mandate Form. The said amount was credited to the account of

the respondents on 1st July, 2020. The respondent No.1 imposed penalty for one day's alleged delay to the tune of Rs.12,15,185/- and recovered the amount unilaterally by attachment of bank account of the petitioners.

It is submitted on behalf of the petitioners that the Central Board of Indirect Taxes and Customs under the Ministry of Finance Department of Revenue, Government of India issued Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under which the petitioners are entitled to get relief to the tune of Rs.60 per cent of the remaining amount due to the authority. By a notification dated 21st August, 2019 the said scheme was extended up to 15th January, 2020. Thereafter by a Government notification dated 31st March, 2020 the Central Government issued the Taxation and other Laws (Relaxation Certain Provisions) Ordinance, 2020. Rule 3 (2) of the said Ordinance states as hereunder:-

“(3)(2):- Where any due date has been specified in, or prescribed or notified under, the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020

to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and such amount has not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act,-

- (a) The rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent for every month or part thereof
- (b) No penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.”

It is submitted by the learned advocate for the petitioner that in view of the above ordinance the petitioners were under obligation to deposit the tax by 30th June, 2020 after deducting the statutory relief and the said amount was duly deposited on 30th June, 2020 by the petitioners. However, due to technical

glitches the amount was credited to the account of the respondent authority on 1st July, 2020. For this delay the petitioners cannot be held liable.

It is further submitted by the learned advocate for the petitioners that subsequently on 14th May, 2020 the Ministry of Finance Department of Revenue, Government of India issued another notification No.01 of 2020 amending certain provisions of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Paragraph 3 of the said Notification is relevant and quoted below:-

“In the said rules, in rule 7 for the words “within a period of thirty days from the date of its issue” the words figures and letters “on or before 30th day of June, 2020” shall be substituted.”

Learned advocate for the petitioners thus submits that the said notification is absolutely clear that the petitioners were under obligation to pay taxes by 30th June, 2020 which they did. Therefore, recovery of penalty of the respondent authority is illegal and arbitrary and liable to be quashed.

In support of his contention the learned advocate for the petitioner relies on a decision of the Hon'ble Supreme Court in the case of **Union of India versus Vishnu Aroma Pouching (P.) Ltd.** reported in **(2021) 129 taxmann.com 17 (SC)**. The said report relates to payment of G.S.T. and filing of returns. The fact of the said report is that for August, 2017 the petitioner discharged its total tax liability, partly by paying tax in cash and partly by paying tax through legally availed input Tax Credit (ITC) on 19.09.2017. Thereafter the petitioners proposed to furnish GSTR-3B which system accepted, however, though payment of tax liability had been fully made by petitioner, due to system crash, information and details in all columns of this return were shown as zero. Therefore, petitioner immediately informed respondent GST Authorities, however, respondent authorities maintained silence for a considerable period of time and did not provide remedial measures till directed by Court. Consequently, liability was declared in GSTR 3B return filed for September 2019. Petitioner received notice from department that they were liable to make payment of interest for period 21.09.2017 to

20.10.2019. The submitted that he had discharged his tax liability by depositing requisite funds in cash ledger within time, however, it was because of technical glitch same could not be credited to Government account, therefore, he would not be liable for interest. The Hon'ble Supreme Court was pleased to hold that the petitioner was not under obligation to pay interest for the period claimed by the respondent authority and the Special Leave Petition was allowed by the Supreme Court imposing cost upon the respondents. On the similar point the learned advocate for the petitioners relies on a decision of the Division Bench of the High Court of Gujarat in the case of **Vishnu Aroma Pouching (P.) Ltd. vs. Union of India** reported in **(2021) 129 taxmann.com 16**. It was affirmed by the Hon'ble Supreme Court in the decision referred to above. The learned advocate for the petitioners also refers to another decision by the Division Bench of Bombay High Court in **Innovative Antares Pvt. Ltd. versus Union of India** reported in **2023-TIOL-160**.

The learned advocate for the respondents, on the other hand, submits that the petitioners wanted to get the relief

under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Referring to a decision of the Hon'ble Supreme Court reported in **2022 (58) GSTL 144 (SC) M/s. Yashi Constructions versus Union of India and Ors.** it is submitted by the learned advocate for the respondents that when the petitioners wanted to avail the benefit of a particular scheme they have to abide by the terms and conditions of the scheme scrupulously. If the time is extended not provided under the Scheme, it will tantamount to modifying the Scheme which is the prerogative of the Government. Since SVLDRS-3 Form clearly stipulates that in order to get the relief under the scheme the declarants (in this case the petitioners) were required to make payment of the amount within 30 days from the date of statement. SVLDRS-3 statement was issued on 25th December, 2019. Therefore, the petitioners were under obligation to deposit the amount within 30 days from 25th December, 2019 in order to avail the relief of the scheme. Since the petitioners failed to deposit the amount after obtaining relief, they are liable to pay penalty and the respondents' action in recovering the penalty is just, proper

and legal. Therefore, he submits that no action is warranted in the instant writ petition.

It is further submitted by the learned advocate for the respondents that the petitioners deposited the admitted sum of Rs.16,951/- after obtaining relief through cheque. The banking rules and statutory provision states that the date of payment of any tax is to be held on the date of realization of cheque amount and crediting the same in the account of the respondents. Since the amount was credited on 1st July, 2020, the petitioners cannot claim refund of penalty by filing the instant writ petition.

Having heard the learned advocates for the parties and on perusal of the entire materials on record it is found from the SVLDRS-3 that a tax payer was mandated to make payment of the amount payable within 30 days from the date of this statement. SVLDRS-3 is the form prepared by the Finance Department in terms of Rule 7 of the Notification dated 21st August, 2019. Rule 7 of the said notification runs thus:-

“Formation and manner of making the payment -

Every declarant shall pay electronically the amount, as

indicated in the Form SVLDRS-3 issued by the designated Committee, within a period of 30 days from the date of its issue.”

However, Rule 7 was subsequently amended vide notification dated 14th May, 2020 and the words “within a period of 30 days from the date of its issue” was substituted by the words figures and letters “on or before the 30th day of June, 2020”.

It is needless to say that the when a procedural law is amended, it takes effect retrospectively. Thus, Rule 7 of the above notification is to be read in the following manner that every declarant shall pay electronically the amount, as indicated in Form SVLDRS-3 issued by the designated Committee, on or before the 30th day of June, 2020. In view of the amendment of Rule 7 by a notification dated 14th May, 2020 the respondents cannot claim penalty for non-payment of taxes within 30 days from the issuance of the statement under SVLDRS-3.

It is directed in Rule 7 that the amount of tax is required to be deposited electronically. Electronic transfer means

transfer by NEFT or RTGS so that the amount is immediately credited to the respondent authority. In the instant case, the amount was deposited on 30th June, 2020 by RTGS through cheque after obtaining E-Mandate Form. E-Mandate Form is electronically generated. When a cheque is deposited for transmission through NEFT or RTGS, it is the duty of the bank to immediately credit the money to the account of the RBI on verification of the account of the petitioners to ascertain as to whether the petitioners have requisite amount to honour the cheque. For the failure of the bank in sending the money by electronic by RTGS on 30th June, 2020, the petitioners cannot be held liable.

Therefore, the instant writ petition is allowed.

The respondents are directed to accept payment of tax of Rs.16,951/- dated 30th June, 2020 as per statement in SVLDRS-3 and issue discharge certificate in favour of the petitioners in Form SVLDRS-4 settling all dues relating to payment of tax and granting consequential relief for the financial year 2011- 2012 to 2014-2015 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

Imposition and recovery of penalty of Rs.12,15,185/- by the respondents from the bank account of the petitioners is accordingly quashed and the respondents are directed to repay the said amount within four weeks from the date of communication of this order.

The instant writ petition is, thus, **allowed** on contest, however, without any order as to costs.

(Bibek Chaudhuri, J.)