IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.12718 of 2020 & 4434 of 2022
and
W.M.P.Nos.15712 & 15714 of 2020 & 4576 of 2022

W.P.No.12718 of 2020:-

Sendhamarai Engineering Private Limited,
Represented by its Managing Director,
Plot No.178, New No.11 (Old No.5),
Lakshmi Nagar 1st Main Road,
Porur,
Chennai – 600 116. ... Petitioner

Vs.

Designated Committee,
Represented by the Commissioner of GST and Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054, Block-1 2nd Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records in the proceedings in Form SVLDRS-1 ARN No.LD2512190002621 dated 25.12.2019 issued by the Respondent under Section 125 of the Finance (No.2) Act, 2019 and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.Rajinish Pathiyil
Senior Standing Counsel

W.P.No.4434 of 2022:-

Sendhamarai Engineering Private Limited,
Represented by its Managing Director,
Plot No.178, New No.11 (Old No.5),
Lakshmi Nagar 1st Main Road,
Porur,
Chennai – 600 116. ... Petitioner

Vs.

1. The Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
692, M.H.U Complex,
Nandanam,
Chennai – 600 035.

2. Designated Committee,
Represented by the Commissioner of GST and Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054, Block-1 2nd Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records in the proceedings in Order in Original No.06/2022 (C) dated 31.01.2022 passed by the first respondent and quash the same.

For Petitioner	: Mr.Joseph Prabakar in both W.Ps.
For R1	: Mr.V.Sundareswaran Senior Panel Counsel
For R2	: Mr.Rajinish Pathiyil Senior Standing Counsel

COMMON ORDER

By this common order both the writ petitions are being disposed of.

2. In **W.P.No.12718 of 2020**, the petitioner has challenged the Impugned Communication dated 08.11.2019 rejecting the application filed by the petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as SVLDRS, 2019).

3. In W.P.No.4434 of 2022, the petitioner has challenged the Order in Original No.06/2022(c) dated 31.01.2022 passed by the first respondent therein.

4. In **W.P.No.4434 of 2022**, the first respondent, the Commissioner, Office of the Commissioner of GST and Central Excise has confirmed the demand against the petitioner proposed in Show Cause Notice No.84/2019-ST dated 08.11.2019 vide Impugned Order in Original No.06/2022 (C) dated 31.01.2022.

5. The petitioner had filed an application under SVLDRS, 2019 on 25.12.2019. The application has been auto-rejected in the system with the following endorsement:-

> ***"Quantification of tax dues was not done on or before 30.06.2019"***

6. The petitioner had filed this application in Form SVLDRS-1 on 25.12.2019 under the main category "Investigation, Enquiry or Audit" by Investigation by DGGI.

7. The petitioner was engaged in supply of tangible goods and had declared a tax liability of Rs.7,81,15,440/-. In the said Form the petitioner has also referred to quantification the audit by 5/2018 dated 05.01.2018.

8. The facts on record indicate that even prior to filing of the application under SVLDRS, 2019 Scheme, the petitioner had filed ST-3 returns after initiation of investigation between 07.01.2018 and 22.02.2018 for the period 2014-2015 to 2017-2018 as detailed below:-

Financial Year	Period	Date of filing	Value of taxable service	Service Tax (including cess)	Service Tax paid using CENVAT Credit	Service Tax paid by cash	Total ST paid
2014-2015	Apr-Sep	07.01.2018	60158650	7435609	2320621	5114988	7435609
	Oct-Mar	10.01.2018	66340267	8234806	2765226	5469581	8234807
2015-2016	Apr-Sep	17.01.2018	86479260	11683658	5122155	6561503	11683658
	Oct-Mar	26.01.2018	99899308	14440461	12222535	2217926	14440461
2016-2017	Apr-Sep	07.02.2018	81148948	12046694	6134484	271089	6405573
	Oct-Mar	08.02.2018	97281016	14682772	4149204	0	4149204
2017-2018	Apr-Jun	22.02.2018	64813367	9722005	8961452	0	8961452
Total			**556120816**	**78246005**	**41675677**	**19635087**	**61310764**

9. The amount that was declared by the petitioner in the returns filed in ST-3 for the above period more or less matches with the amount that was proposed to be demanded from the petitioner vide Show Cause Notice No.84/19-ST dated 08.11.2019.

10. In the Show Cause Notice No.84/19-ST dated 08.11.2019, the cumulative amount that was demanded from the petitioner is Rs.7,83,78,642/- which amount was paid and sought to be appropriated as it was was paid by the petitioner partly through a debit from its Cenvat Credit Account and partly through cash as detailed on the above table.

11. The case of the petitioner is that the respondent in W.P.No.12718 of 2020 ought not to have rejected the application filed by the petitioner in Form SVLDRS-1 on 25.12.2019 or confirmed the demand vide Impugned Order in Original No.06/2022 (C) dated 31.01.2022 as there was a proper quantification of tax prior to 30.06.2019.

12. The learned counsel for the petitioner submits that the order rejecting the application filed under the aforesaid scheme on 24.02.2020 by the designated authority in W.P.No.12718 of 2020 was in gross violation of principles of natural justice as neither the petitioner was heard nor called for "personal hearing".

13. That apart, on merits the learned counsel for the petitioner would submit that issue stands covered by following Circular issued by Central Board of Indirect Taxes and Customs as detailed below:-

Sl. No.	Date	Circular No.	Relevant Paragraph
1.	27.08.2019	1071/4/2019-CX.8	4. The relief extended under this Scheme is summed up, as follows:- a) For all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved if it is Rs.50 lakhs or less and 50% if it is more than Rs.50 lakhs. <u>The same relief is available for cases under investigation and audit where the duty involved is quantified and communicated to the party or admitted by him in a statement on or before 30.06.2019</u>. b) In cases of confirmed duty demand, where there is no appeal pending, the relief offered is 60% of the confirmed duty amount if the same is Rs.50 lakhs or less and it is 40% if the confirmed duty amount is more than Rs.50 lakhs. c) In cases of voluntary disclosure of duty not paid, the full amount of disclosed duty would have to be paid. d) There will be full waiver of interest and penalty under all the categories of cases, as at

			(a) to (c) above.
2.	12.12.2019	1074/07/2019-CX	(V) For the purpose of eligibility under the Scheme in some of the categories such as litigation, audit/enquiry/investigation etc., the relevant date is 30.06.2019. However, it may so happen that the facts of a case may change subsequently. **For instance, in a case under audit/investigation/enquiry where the tax dues have been quantified on or before 30.06.2019, a show cause notice is issued after where the tax dues have been quantified on or before 30.06.2019, a show cause notice is issued after 30.06.2019. Similarly, a case, which was under appeal as on 30.06.2019, may attain finality in view of appeal period being over etc. It is clarified that the eligibility with respect to a category in such cases shall be as it was on the relevant date i.e., 30.06.2019.**

14. It is a specific case of the petitioner that the amount that was quantified by the petitioner in the returns filed by the petitioner during the period mentioned above more or less matches with the amount that was proposed in Show Cause Notice No.84/19-ST dated 08.11.2019 and that there is only a minor variation between the amount proposed in the said Show Cause Notice and the amount declared by the petitioner in Form SVLDRS-1 on 25.12.2019.

15. It is submitted that the difference is marginal and is confined to only Rs.2,63,202/- (Rs.7,83,78,642 – Rs.7,81,15,440) and therefore submits that in view of the second mentioned Circular dated 12.12.2019 read with first mentioned Circular dated 27.08.2019, the application filed by the petitioner ought to have been accepted by the respondent in W.P.No.12718 of 2020 viz., the Designated Authority.

16. Consequently, it is submitted that the Impugned Order in Original No.06/2022 (C) dated 31.01.2022 passed by the Commissioner in W.P.No.4434 of 2022 which confirms the proposals contained in Show Cause Notice No.84/19-ST dated 08.11.2019 was liable to be quashed.

17. The learned counsel for the respondent on the other hand in the respective Writ Petitions have submitted that the petitioner was not entitled to file an application under the aforesaid scheme as there is no quantification of tax before 30.06.2019 and therefore, the application filed by the petitioner was rightly rejected.

18. The learned counsel for the respondent in W.P.No.12718 of 2020 has also drawn attention to Section 127 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. It is submitted that question of granting the personal hearing under Section 127 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 would arise only where the amount estimated to be paid by the declarant and amount estimated by the designated committee exceeds the amount declared by the declarant. It is submitted that only under those circumstances, the designated committee can issue a notice electronically indicating the estimate of the amount payable by the declarant on or before first day of May 2020.

19. It is submitted that only in the event where such a notice is issued, question of a declarant being heard would arise under Section 127(3) of the Scheme. It is submitted that since there was no quantification before the cut off date viz., 30.06.2019, the application filed by the petitioner under the scheme was not maintainable and therefore was rightly rejected.

20. The learned Senior Panel Counsel for the respondents in W.P.No.4434 of 2022 submits that the issue has been answered against the petitioner in the case of **M/s.Win Power Engineering (P) Ltd.,** vs. **The Designated Committee Sabka Vishwas Legacy Disputes Resolution Scheme, 2019, Chennai and another** rendered in W.P.No.11785 of 2020 and etc., dated 30.11.2022. A specific reference was made to Paragraph 162 to 164, which reads as follows:-

> ***"162. However, only an adhoc quantification was made for the "tax dues" period between April 2017 to June 2017. Therefore, there was quantification for the aforesaid period alone. No quantification was provided by the petitioner for the period between March 2016 to March 2017 for the purpose of definition under Section 121(r) r/w Section 123(c) & Section 124(1)(d). The disability under Section 125(1)(e) of SVLDRS, 2019 is attracted for the period between March 2016 to March 2017 and therefore as an errant taxpayer whose tax liability has not been determined, the petitioner is not entitled to avail the benefit of SVLDRS, 2019 for the period between March 2016 to March 2017***
>
> ***163. In our view, there was neither a proper quantification by the petitioner nor any quantification during audit by the Department. Therefore, the***

petitioner in W.P.No.11785 of 2020 is not entitled to the benefit of SVLDRS, 2019 for the period between March 2016 to March 2017.

164. The petitioner has placed reliance on the decision of Delhi and Bombay High Courts and the FAQs issued by the Central Board of Indirect Taxes and Customs (CBIC) clarifying what is meant by quantification, but the same cannot be applied to the facts of the present case."

21. It is submitted that in view of the above decision of the Court, the challenge to the regulation of application filed by the petitioner under the SVLDRS, 2019 was not maintainable and therefore the Impugned Order passed by the respondent has to be sustained.

22. It is submitted that at best the petitioner can be given liberty to file an appeal before the CESTAT.

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

24. There is no dispute between the amount that was declared by the

petitioner in Form SVLDRS-1 on 25.12.2019 and the amount that was quantified in the Show Cause Notice No.84/19-ST dated 08.11.2019.

25. There is only a marginal variation between the two amounts by Rs.1,93,440/-. The Circulars of the Board although not binding on this Court is binding on the authorities acting under the provisions of the Finance Act, 2019 and under which Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

26. The petitioner has filed application. The petitioner has claimed there was a quantification of the service tax liability on or before 30.06.2019. If any of the exception in Section 125(1) of the aforesaid Scheme was attracted, the declarant would not be entitled to file an application for settling the dispute under the aforesaid scheme.

27. Section 125(1)(e) of the aforesaid scheme bars an assessee from filing an application where the amount of duty involved has not been quantified on or before the 30th day of June, 2019 in the case of an assessee who have been subjected to an enquiry or investigation or audit. Section

125(1)(e) of the aforesaid scheme reads as under:-

"125 Declaration under Scheme

(1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:-
(a) ---
(b)---
(c)---
(d)---
(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019."

28. The expression "enquiry" and "quantified" have been defined in Section 121 (m) & Section 121 (r) of the aforesaid Scheme. Section 121 (m) & Section 121 (r) of the aforesaid scheme reads as follows:-

Section 121 (m)	***Section 121 (r)***
121 (m) "enquiry or investigation", under any of the indirect tax enactment, shall include the following actions, namely:- *i. search of premises;* *ii. issuance of summons;* *iii. requiring the production of accounts, documents or other*	*121 (r) "quantified", with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment.*

Section 121 (m)	***Section 121 (r)***
evidence; *iv. recording of statements.*	

29. If a declarant against whom an "enquiry" or "investigation" under any indirect tax enactment was pending and where the amount was quantified on or before 30.06.2019, such a declarant would be entitled to relief under Section 124(1)(d)(ii). Section 124(1)(d)(ii) reads as under:-

> *"124(1)(d)(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues*"

30. While calculating the amount under Section 124(1) of the Scheme any amount paid as pre-deposit at any stage of appeal proceeding of Indirect Tax enactment, investigation or audit is to be deducted while issuing a statement indicating the amount payable by the declarant. The aforesaid statement is to be issued in Form SVLDRS-3 as per Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

31. In this case, the Board has itself clarified the position vide 1071/4/2019-CX.8 dated 27.08.2019. Relevant portion has been already

extracted above at the beginning of this order.

32. It has been clarified that for all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved if it is Rs.50,00,000/- or less and 50%, if it is more than Rs.50,00,000/-. The clarification further states that same relief is available for cases under investigation and audit where duty involved is quantified and communicated to the party or admitted by him in statement on or before 30.06.2019.

33. In the same clarification it has been further clarified that such written communication will include a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc. In this case, the petitioner has quantified the liability by filing returns in ST-3 for the period on the date specified in the table before 30.06.2019.

34. The Board has further clarified the position in the second mention Circular No.1074/07/2019-CX dated 12.12.2019 bearing

reference:F.No.267/78/2019/CX-8-Pt.III, content of which has also been extracted above. It has been clearly stated that in case of enquiry/investigation/audit where tax due have been quantified on or before 30.06.2019, application can be filed.

35. In the present case, the petitioner has field belated returns between 07.01.2018 and 22.02.2018 for the returns in ST-3 for the period between 2014-2015 and 2017-2018 as is evident from the reading of the Show Cause Notice and the table in paragraph 7.6. which has been again extracted above.

36. The variance in the amount is only Rs.1,93,440/-. Thus, there is quantification by the petitioner based on the audit that was conducted which has culminated in the issuance of Show Cause Notice No.84/2019-ST dated 08.11.2019.

37. Therefore, the petitioner is entitled to be relief under the scheme. Consequently, the proposals in the Show Cause Notice No.84/2019-ST dated 08.11.2019 was unwarranted. Order in Original No.06/2022 (C) dated 31.01.2022 ought not to have been passed against the petitioner vide Order in

Original No.06/2022 (C) dated 31.01.2022.

38. The statement of the learned counsel for the petitioner that the petitioner undertakes to pay the balance amount together with interest. These writ petitions are allowed. No cost. Consequently, connected miscellaneous petitions are closed.

39. Under these circumstances, Court is inclined to accept the prayer of the petitioner in W.P.No.12718 of 2020. Accordingly, W.P.No.12718 of 2020 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed. The Designated Authority or the authority nominated after the Scheme came to an end is directed to issue Form SVLDRS-3 and Form SVLDRS-4. The petitioner shall discharge the tax liability as per the application filed by the petitioner in Form SVLDRS-1 on 25.12.2019. There shall be no refund of the amount already paid by the petitioner. Amount payable by the petitioner shall be paid strictly in accordance of Section 127(5) of the SVLDRS, 2019.

40. In view of the of the above discussion, W.P.No.4434 of 2022 also deserves to be allowed. Accordingly, Impugned Order in Original No.06/2022 (C) dated 31.01.2022 also stands quashed. No costs. Consequently, connected miscellaneous petitions are closed.

20.09.2023

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

1. The Commissioner,
   Office of the Commissioner of GST & Central Excise,
   Chennai South Commissionerate,
   692, M.H.U Complex,
   Nandanam,
   Chennai – 600 035.

2. Designated Committee,
   Represented by the Commissioner of GST and Central Excise,
   Chennai Outer Commissionerate,

Newry Towers, No.2054, Block-1 2nd Avenue,
12th Main Road, Anna Nagar,
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C.SARAVANAN, J.

rgm

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