IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2023

Coram

The Hon'ble Mr.Justice **KRISHNAN RAMASAMY**

W.P.No.24366 OF 2021
and
W.M.P.No.25673 of 2021

N.Sundararajan,
Former Partner,
M/s.Genupro Yarn Agencies,
38/24, New Street, Ammapet,
Salem,-636 003.

...Petitioner

Vs.

1. Union of India,
rep. By Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110 001.

2. The Central Board of Indirect Taxes and Customs,
Department of Revenue, rep. By it Chairman,
Ministry of Finance,
Government of India, North Block,
New Delhi.

3. The Deputy Commissioner,
Member, Designated Committeed under
Sabka Vishwas (Legacy Dispute Resolution) Scheme,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem-636 001.

4. The Assistant Commissioner of Central Excise & GST,
Salem-I Division, 106, 3rd Floor, Varalakshmi Orchid,
Ramakrishna Road,
Salem-636 007.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents vide letter CBIC 90224//3/2021-C/O US (CX-VI)-CBEC dated 27.08.2021, quash the same and direct the respondents to issue discharge certificate in Form SVLDRS-4 determining the said amount paid as determined under SVLDRS Form-3 No.L270220SV300892 dated 27.02.2020 since the petitioner has duly complied with the orders of this Hon'ble Court dated 21.06.2021 in W.P.No.14454 of 2020.

For Petitioner : Mr.V.Parthiban

For Respondents : Mr.V.Sundareswaran,
Sr.Standing Counsel

O R D E R

This Writ Petition has been filed, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents vide letter CBIC 90224//3/2021-C/O US (CX-VI)-CBEC dated 27.08.2021, quash the same and direct the respondents to issue discharge certificate in Form SVLDRS-4 determining the said amount paid as determined under SVLDRS Form-3 No.L270220SV300892 dated 27.02.2020 since the petitioner has duly complied with the orders of this Hon'ble Court dated 21.06.2021 in W.P.No.14454 of 2020.

2. The petitioner is a former partner of the company which has since been dissolved in the year 2019. He has exercised option under the Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 vide application reference ARN LD2812190000261 dated 28.12.2019 towards the demand of Service Tax raised by the fourth respondent vide Order No. 08/2019 dated 23.5.2019. The third respondent accepting the petitioner's application dated 28.12.2019 issued order SVLDRS Form -3 on 27.02.2020 quantifying the payable amount at Rs. 3,17,090/- payable on or before 30.06.2020. However, according to the petitioner, due to COVID pandemic, the petitioner closed down the business and was unable to mobilise the requisite amount for payment by 30.6.2020.

Further the petitioner was under bona fide belief that as per the notification dated 27.6.2020 issued by the Government, the due date for payment of Service Tax was extended upto 30.9.2020. Hence, the Petitioner has submitted a detailed representation to the competent authority to extend the outer time limit to settle the dues, which was rejected by the competent authority. Aggrieved by the same, the petitioner filed a Writ Petition in W.P.No.14454 of 2020 before this Court, wherein, vide order dated 21.06.2021, this Court directed the petitioner to remit the balance amount with 15% interest from 1.7.2020. Pursuant to the said order, the petitioner, vide challan dated 25.6.2021 remitted the balance tax amount of Rs. 3,17,090/- with interest at Rs. 46,780/-. Later, this Court, vide order dated 29.06.2021, after taking note of fact that the petitioner complied with the order by remitting the tax amount, allowed the Writ Petition, by permitting the petitioner to make a representation for acceptance of his application under SVLDR Scheme and on such representation being made, the Board was directed to consider the same and pass appropriate orders within four weeks. However, the Board, vide letter in File No. CBIC-90224/3/2021-O/o-

US(CX-VI)-CBEC dated 27.08.2021, rejected the representation. Hence the Writ Petition.

3. A counter affidavit has been filed on behalf of the respondents, the petitioner has exercised option under SVLDR Scheme under which, a sum of Rs.3,17,090/- has been quantified, but the petitioner has not paid the due amount even within the extended time granted upto 30.06.2020. As per Circular No.1071/42019-CX 8 dated 27.8.2019, if the declarant does not pay within the stipulated time, due to any reason, the declaration will be treated as lapsed. As regards the order passed by this Court in W.P.No.14454 of 2020 is concerned, it is stated that since this Court only directed the Board only to consider the application under SVLDR Scheme and not directed specifically to accept the application. Since the petitioner has not made payment within the stipulated time, the declaration filed by the petitioner has been treated as lapsed and consequently, the petitioner is liable to pay original demand along with penalty and interest. With these averments, the respondents sought for dismissal of the writ petition.

4. Mr.V.Parthiban, learned counsel appearing for the petitioner

would submit that the petitioner has filed the declaration under SVLDR Scheme well within the time and the same was also accepted by the respondents and issued SVLDRS Form-3 and the due date for payment was extended till 30.06.2020. But due to pandemic situation, the petitioner could not mobilize the funds to pay the quantified tax amount and he was under bona fide impression that due date would be extended till 30.09.2020 by the 1st respondent vide Notification dated 27.6.2020, but later he came to know that no such extension beyond 30.6.2020 was made.

5. The learned counsel would further submit that the petitioner has immediately filed a Writ Petition in W.P.No.14454 of 2020 on 28.09.2020, seeking a direction to the 1st respondent to accept the payment of Rs.3,17,090/- in terms of SVLDR Scheme Form -3 and this Court also vide order, dated 21.06.2021 directed the petitioner to pay Rs.3,17,090/- along with interest at 15% computed from 01.07.2020 till date within a period of one week and accordingly, the petitioner also made payment of Rs.3,63,870/- vide challan dated 22.6.2021 and

reported to this Court and taking note of the same, vide order dated 29.06.2021, disposed of the writ petition, permitting the petitioner to make a representation for acceptance of its application under SVLDR Scheme and also directed the Board to consider the same. However, unfortunately, the respondents vide order dated 27.08.2021 rejected the representation, which cannot be sustained. He would rely upon the decision reported in "***M/s.Though Blurb versus UOI"*** (W.P.No.871 of 2020, dated 27.10.2020 Bombay High Court); "***Eureka Fabricators Pvt.Ltd. Versus UOI"*** (W.P.No.3510 of 2019-Bombay High Court), wherein, the relief was granted in similar matter relating to delayed payment under SVLDR Scheme. He also relied upon a decision of this Court in W.A.No.2019 & 2098 of 2021, dated 26.08.2021.

6. On the other hand, Mr.V.Sundareswaran, learned Senior Standing Counsel for the respondents would submit that the petitioner has failed to make the payment on or before 30.06.2020 and therefore, cannot get the benefit of SVLDR Scheme. He would further submit that it is settled proposition of law that a person, who wants to avail the

benefit of a particular scheme, has to abide by the terms and conditions of the scheme scrupulously. He pointed out that as there was no statutory provision to make any payment under the scheme beyond the stipulated period and once the petitioner failed to make the payment within the due date, he is not eligible to get the benefit of SVLDR Scheme. He also submitted that pursuant to the directions of this Court, the respondents considered the representation made by the petitioner and rightly rejected, which requires no interference. Hence, he sought for dismissal of the Writ Petition.

7. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents and perused the entire materials placed on record.

8. In the present case, it is clear that by virtue of the Finance Bill, 2019, the SVLDR scheme was declared. Thereafter, the respondent had issued Notification No.04/2019 dated 21.08.2019 stating that the Assessees can avail the said scheme from 01.09.2019 to 31.12.2019.

Subsequently, by virtue of Notification No.07/2019 dated 31.12.2019, the said period to avail the scheme was extended up to 15.01.2020. Pursuant to the same, the petitioner had availed the scheme before 15.01.2020 and filed Form SVLDRS 1. The said Form was accepted and further, the Form SVLDRS 3 was also issued by the respondent to the petitioner on 13.02.2020.

9. According to the petitioner, they could not make the payment within prescribed time limit due to financial crisis faced by them on account of lock down owing to COVID 19 pandemic situation. Though, the petitioner had requested for extension of time by way of representation, the respondents have rejected the same and directed the petitioner to pay entire dues with penalty. Aggrieved by the same, the petitioner moved this Court by filing a Writ Petition in W.P.No.14454 of 2020, wherein, this Court, vide order dated 21.06.2021 directed the petitioner to remit the amount under the scheme at Rs.3,17,090/- along with interest at 15% from 01.07.2020 till the date of payment.

10. Pursuant to the same, the petitioner had remitted the amount by way of challan on 25.06.2021. Taking note of the payment, this Court vide order, dated 29.06.2021 disposed of the above said Writ Petition with the following observation:

> "3. I see no reason to keep this writ petition pending any more in the light of the position that the petitioner has, according to it, remitted the balance of the amount under its declaration. The petitioner is permitted to make a representation for acceptance of its application under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 within a period of one week from today, accompanied by a copy of this order to the Board and the Board is directed to consider the same and pass appropriate orders within a period of four (4) weeks from receipt thereafter."

11. It is pertinent to note that as against the above orders of this Court, viz., dated 21.06.2021 and 29.06.2021, the respondents have not preferred any appeal nor raised any objections before the learned Judge, permitting the petitioner to make the payment under SVLDR scheme and to make representation for acceptance of the application under SVLDR

Scheme. Therefore, by virtue of orders of this Court only, the petitioner made payment along with interest and when a representation was made for acceptance of the payment, unfortunately the respondents passed impugned order, dated 27.08.2021 rejecting the representation contrary to the orders of this Court.

12. A plain reading of the above orders makes it explicit that this Court had accepted the plea raised by the petitioner and permitted to make payment under SVLDR Scheme and after payment, directed the Board to consider the representation of the petitioner for acceptance of the payment under SVLDR Scheme and pass appropriate orders. It is a positive order and no contrary view could be taken, however, the respondents passed impugned order, which in the opinion of this Court, is unreasonable and cannot be sustained and accordingly, it is liable to be set aside.

13. Thereafter, the respondent was supposed to issue Form

SVLDRS 4 to discharge the entire liabilities towards tax under the said Scheme. However, the same has not been issued so far.

14. The learned counsel for the respondent would fairly submit that the petitioner had availed the scheme within the prescribed time and hence, they had issued Form SVLDRS 3. However, though the intimation in Form SVLDRS 3 was issued on 13.02.2020, the demanded tax amount was paid only on 25.06.2021, which is beyond the prescribed time limit. Therefore, they are not in a position to issue Form SVLDRS 4 to the petitioner to discharge the tax liabilities.

15. Further, the learned counsel would contend that the extension was granted only upto 14.03.2020 and hence, any payment made after the said period will not be considered or appropriated under the said scheme and the same would be appropriated only against the original tax due.

16. The SVLDRS scheme was originally brought in vide the

Finance Bill, 2019 and by virtue of the said Finance Bill, the power was provided to the Central Government to issue notification with regard to the fixation of time limit to avail the said scheme and make payment. Due to the reason of COVID pandemic, the time limit for availing scheme was extended upto 15.01.2020 by virtue of Notification dated 31.12.2019. Thereafter, with regard to payment of tax under the said scheme, in terms of the intimation provided by the respondent to the petitioner, the said time limit was extended up to 31.12.2020 by virtue of the Notification No.450/61/2020.

17. Under these circumstances, since the Central Government was delegated with power to fix the time limit for availing the scheme and for making the payment, the Central Government came with the Notifications and provided time limit for the same and the said time limit was extended from time to time due to COVID pandemic. Even according to the petitioner, the said scheme was extended upto 30.09.2020 for making the payment by virtue of the Notification dated 27.06.2020.

18. Therefore, it is clear that the provisions under the Finance Bill,

with regard to the fixation of time limit for availing the scheme and with regard to the extension of time for making payment of tax, is directory in nature. If it is mandatory, there will not be any delegation with regard to the Central Government to fix the time limit for availing the scheme and payment of tax. Since there is delegation with regard to the Central Government, it will only be directory in nature and that is the reason why the Central Government depends upon the situation prevailing in the country and extended the time limit from time to time.

19. It would be pertinent to mention here that the Hon'ble Supreme Court, *suo motu,* vide order dated 23.03.2020 in W.P.No.3 of 2020, had extended the mandatory provisions of limitation under various Acts, due to the reason of COVID pandemic from 01.03.2020 to 28.02.2022. Pursuant to the same, the respondent had also extended the time limit by considering the COVID pandemic situation.

20. Further, there is no doubt that if the provisions are mandatory in nature, this Court normally will not interfere and pass orders against the said substantive provisions of law. Since the provisions are directory

in nature, based on the prevailing situation and the inability of the petitioner due to the said pandemic would be the factors that have to be considered by this Court to pass an appropriate order. In the present case, no doubt that the petitioner had paid the amount on 25.06.2021 during the pandemic period by virtue of the Court order. Under these circumstances, certainly, this Court can interfere and look into the grievances of the petitioner and if this Court is satisfied, this Court will consider the same and pass appropriate orders.

21. The judgement of the Hon'ble Supreme Court, dated 27.09.2023 in Special Civil Application No.844 of 2022, was also placed before this Court, wherein the order passed by the Division Bench of the High Court, rejecting the extension of time for making payment under the Scheme, was challenged. The said judgement dated 27.09.2023 was dismissed in the SLP stage itself without assigning any reasons. Further no submission was made as to whether the provision is mandatory or directory before the Hon'ble Supreme Court and under the said circumstances only, the aforesaid dismissal order was passed. However,

the said aspect was pressed before this Court.

22. Under these circumstances, this Court is of the view that the application, filed on 13.02.2023 consequent to the payment made by the petitioner, has to be accepted under the SVLDRS scheme by the respondent and in such view of the matter, this Court has no hesitation to direct the respondent to issue Form SVLDRS-4 to discharge the tax liabilities within a period of 30 days from the date of receipt of copy of this order.

23. Accordingly, the Writ Petition is allowed. The impugned order dated 27.08.2021 is set aside. The respondents are directed to issue discharge certificate to the petitioner. No costs. Consequently, the connected miscellaneous petition is also closed.

19.10.2023

suk/nsa
Index: Yes/No
Internet: Yes/No

KRISHNAN RAMASAMY, J.

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