HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.01.2023

1. CWP-1493-2021
M/s. Shoe Sales Corporation **....Petitioner**

V/s.

Union of India and others **....Respondents**

AND

2. CWP-1496-2021
M/s. Kapoor International **....Petitioner**

V/s.

Union of India and others **....Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. N.K.Sharma, Advocate
for the petitioner(s).

Mr. Alankrit Bhardwaj, Central Govt. Standing counsel
for the respondents.

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Ritu Bahri, J.

This order shall dispose of two writ petitions i.e. CWP-1493-2021 and CWP-1496-2021 as the issue involved in both the petitions is identical. For the sake of brevity, facts are being extracted from CWP-1493-2021.

The petitioner-M/s. Shoe Sales Corporation is seeking writ of certiorari for setting aside orders of the Designated Committee made under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as 'SVLDR Scheme') whereby the application of the petitioner has been rejected vide letter/order dated 23.12.2019 (Annexure P-5) by observing as under:-

"The said application was filed with respect to your appeal filed before Hon'ble CESTAT vide appeal no. E/52743/2015 EX-[DB] which is in pending state. However, as per concerned O-I-O no. 02/TS/D-III/2014-15 dated 19.05.2014, the matter involves Redemption Fine.

The amount of fine in lieu of confiscation of goods has not been proposed for relief in the Sabka Vishwas Scheme as the scheme encompasses only the matters in which demand of Duty, Interest and Penalty are involved. Accordingly, your SVLDRS-1 application having ARN LD1410190000014 dated 14.10.2019 has been rejected."

The benefits under the SVLDR Scheme has been reflected in Annexure P-4, which are as under:-

- Total waiver of interest, penalty and fine.
- Immunity from prosecution.
- Cases pending in adjudication or appeal, a relief of 70% from the duty demand if it is Rs.50 Lakh or less and 50% if it is more than Rs.50 Lakh.
- The same relief for cases under investigation and audit where the duty involved is quantified on or before 30th June, 2019.
- In case of an amount in arrears, the relief offered is 60% of the confirmed duty amount if the same is Rs.50 Lakh or less and it is 40% in other cases.
- In cases of voluntary disclosure, the declarant will have to pay full amount of disclosed duty.

Learned counsel for the petitioner while referring to letter/order dated 23.12.2019 (Annexure P-5) has argued that his application under the SVLDR Scheme was made on 14.10.2019 against the demand of penalty of Rs.1,98,597/- and redemption fine of Rs.9,64,062/-(Annexure P-3). While rejecting his application, it was observed that since the matter involves redemption of fine and this fine was in lieu of confiscation of goods which had not been proposed for relief in the said scheme as the said scheme only relates to the matters involving demand of duty, interest and penalty.

He has referred to a judgment passed by the High Court of Gujarat in a case titled as ***Synpol Products Pvt. Ltd. Vs. Union of India, 2020 (32) G.S.T.L 705 (Guj.)*** (Annexure P-6). While interpreting the contents of the Sabka Vishwas Scheme, 2019, it was held that when the Central Board of Indirect Taxes and Customs had issued flyers, press release and FAQs, it was clearly stated that there would be full waiver of interest, fine and penalty and also complete immunity from prosecution and the cases involving redemption of fine and confiscation cannot be excluded under the said scheme. In this backdrop, the explanation given by the Board with respect to redemption fine cannot be treated separately than the amount of duty under the scheme. The term 'fine' mentioned in the Board's flyers, press release and FAQs cannot be fine imposable under Section 9 of the Central Excise Act, 1944 and the fine mentioned in flyers, press release and FAQs is redemption fine only. As per Section 125 of the Scheme, a declarant cannot be made ineligible to file a declaration for non-payment of redemption fine. The declarant is required to include redemption fine as part of the duty demanded so as to calculate the amount in arrears as per Section 121 (c) of the Scheme.

Learned counsel for the petitioner has also stated that Special Leave to Appeal (C) No. 449 of 2021 against the aforesaid judgment has been dismissed on 03.03.2021 and the judgment has attained finality.

He has referred another judgment of Allahabad High Court passed in ***Writ Tax No. 832 of 2020 M/s. Jay Shree Industries Vs. Union of India 838 of 2020***, allowed on 06.08.2021 whereby the application under the SVLDR Scheme had been rejected by the designated committee on 17.11.2020 on the ground that there was an outstanding amount of Rs.30

lacs of redemption fine and the application could not be considered unless the petitioner paid that amount and in this backdrop, discharge certificate could not be issued under Section 129 of the Scheme.

In the present case, written statement on behalf of respondents No. 1 to 3 dated 19.04.2021 has been filed. The respondents have placed on record letter/order dated 23.12.2019 (Annexure R-1) rejecting the application of the petitioner for relief under the SVLDR Scheme and have taken a plea that the letter/order was made on 23.12.2019 (Annexure R-1) and the Government had not extended the dates regarding the Sabka Vishwas Legacy Dispute Resolution Scheme, 2019. The order dated 23.12.2019 was served upon the petitioner through speed post on 04.01.2020 as informed by the Superintendent of Post Office, Faridabad vide letter dated 10.03.2021 (Annexure R-2). The writ petition has been filed on 07.01.2021 i.e. after a gap of more than one year of the date of the order and the same is liable to be dismissed on the ground of delay.

Rejoinder by way of affidavit of the Proprietor Jagjit Singh of M/s. Shoe Sales Corporation dated 22.09.2022 has been filed in response to written statement on behalf of respondents No. 1 to 3. It is stated therein that he wrote a letter dated 15.12.2020 to the Assistant Commissioner of Central GST, Faridabad to know the fate of his application under SVLDR Scheme, 2019 and vide letter dated 01.01.2021, the respondents intimated the petitioner that his application stood rejected vide letter/order dated 23.12.2019. It is further stated in the rejoinder that for the purpose of effecting service through speed post, it had to accompany proof of delivery as per provisions of Section 37 C(a) of the Central Excise Act, 1944.

At this stage, reference can be made to an order passed by the

Hon'ble Supreme Court in ***Suo Motu Writ Petition (C) No. 3 of 2020*** whereby the Hon'ble Supreme Court vide order dated 10.01.2022 had extended the period of limitation which was to expire during the period between 15.03.2020 till 28.02.2022 and all persons will have a limitation period of 90 days from 01.03.2022.

During the period of COVID-19, Reserve Bank of India had also issued notification dated 27.03.2020 (Annexure P-9) whereby Reserve Bank of India had granted moratorium of three months on all payments due from March 1, 2020 to May 31, 2020. In the same background, the Government of India had announced relief for the MSME under COVID times which has been placed on record by the petitioner as Annexure P-10. The petitioner company is registered under MSME Act and is seeking extension of time in this backdrop.

Learned counsel for the petitioner has further submitted that keeping in view the ordinance dated 31.03.2020 issued by the Ministry of Law and Justice to provide relaxation in the provisions of certain Acts in view of the spread of pandemic COVID-19, the Ministry of Finance had also made rules to amend the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 by which payment was to be made on or before 30.06.2020 (Annexure P-8). The petitioner is ready to abide by the orders of the designated committee and would pay the redemption fine as well if his case is considered again.

With respect to question of limitation, first of all the object of the SVLDR Scheme has to be seen. The main object of the scheme was to reduce litigation, service tax and central excise cases and to free large number of small tax payers of their pending disputes with the tax administration. The petitioner in its application dated 14.10.2019 wanted to consider its case under the SVLDR Scheme against demand of penalty of Rs.1,98,597/- and redemption fine of Rs.9,64,062/-. The application of the petitioner was rejected merely on the ground that redemption fine was not part of the scheme and this aspect has already been considered by the Gujarat High Court in ***Synpol Products Pvt. Ltd.'s case (supra).*** As per the case of the respondents, order dated 23.12.2019 was served upon the petitioner through speed post on 04.01.2020 and as per the petitioner, letter/order dated 23.12.2019 (Annexure P-5) was received vide letter dated 01.01.2021 from the Assistant Commissioner of Central GST, Faridabad when the petitioner made a letter dated 15.12.2020 to the latter. The petitioner immediately filed instant writ petition on 07.01.2021. Since, the object of the SVLDR Scheme was to reduce litigation and the said Scheme is for the benefit of small tax payers, hence, for all intents and purposes, delay can be condoned by the Court as observed by the Supreme Court in the case of ***Centaur Pharmaceuticals Pvt. Ltd. and anr. Vs. Standfort Laboratories Pvt. Ltd.*** that suo motu order extending limitation period on account of COVID-19 would also include the period which can be condoned in exercise of the statutory discretion. It is further observed that since the designated committee had wrongly rejected the case of the petitioner, there was no occasion for the petitioner to file a fresh application within the stipulated time and, hence, his case cannot be rejected on the ground of limitation.

Keeping in view the aforesaid judgment passed by Gujarat High Court, upheld by the Hon'ble Supreme Court after dismissal of Special Leave to Appeal (C) No. 449 of 2021 and the object of the SVLDR

Scheme, writ petitions are allowed and the orders of the designated committee are being set aside. The matter is remanded back to designated committee to consider the case of the petitioner(s) as per the SVLDR Scheme and redetermine payable including redemption fee/fine under the SVLDR Scheme by passing fresh order. The designated committee will give six months' time after making assessment under the SVLDR Scheme so that the petitioner(s) can deposit the amount in time.

(RITU BAHRI)
JUDGE

19.01.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No