

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-1667-2020

Date of Decision:-01.02.2023

M/s Hilton Hotel Management Services Pvt. Ltd.

...Petitioner

vs.

Union of India and ors.

...Respondents

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

Present:- Mr. Harish Bindumadhvan, Advocate with
Mr. Vikrant Kackria, Advocate
for the petitioner

Mr. Ajay Kalra, Sr. Standing counsel
for the respondents-department.

Ritu Bahri, J.

Petitioner-Company has filed the present writ petition seeking writ in the nature of certiorari for quashing the portion of the Impugned statement issued by the Designated Committee in the Form of SVLDRS-3 dated 08.01.2020 (Annexure P-1) whereby the Designated Committee has not adjusted the amount of INR 1,32,27,955/- already deposited by the petitioner (as interest under protest) during the stage of investigation against the amount payable under the Sabka Vikas (Legacy Dispute Resolution) Scheme, 2019.

At the very outset, learned counsel for the petitioner has referred to Division Bench judgment of this Court in a case of *Schlumberger Solutions Pvt. Ltd vs. Commissioner, Central GST and others, passed in CWP-6845-2020, decided on 30.11.2021* wherein the petitioner was served with a show cause notice whereby further amount of Rs.9,86,53,074/- was sought to be recovered on account of cenvat credit.

This amount included interest and penalty as well. In the meantime, Finance (No. 2) Act 2019 was introduced by the Central Government. The object of the scheme was to provide the settlement of pending disputes related to indirect taxes. The petitioner being eligible under the said scheme availed the same by making declaration in Form SVLDRS-1. The question before this Court was that as to whether the petitioner is entitled for credit of amount deposited under the head of interest and penalty while quantifying the amount payable under the scheme. This Court allowed the petition and the operative part of the judgment reads as under:-

Section 124 of the Finance Act provides for calculation of the relief available to the declarant and the same reads as follows:-

“124. (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:-

(a) where the tax dues are relatable to a show cause notice or one or more appeals rising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,-

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent of the tax dues;

(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(c) where the tax dues are relatable to an amount in arrears and,-

(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent of the tax dues;

(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;

(iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,-

(A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(B) amount indicated is more than rupees fifty lakhs, then, forty percent of the tax dues;

(d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is-

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund."

A bare reading of Section 124(2) reveals that the relief calculated under Section 124(1) is subject to the condition that any amount paid during the enquiry, investigation or audit has to be deducted when issuing the statement indicating the amount payable by the declarant. The bare provision talks of 'any amount paid', the same does not distinguish between the amounts paid under different heads. It clearly envisages two kinds of deductions firstly any pre-deposit made at any stage of appellate proceedings under the indirect tax enactment and secondly, any deposit made during enquiry, investigation or audit. Both these species of 'pre-deposit' need to be deducted while finalizing the computation.

Amount deposited by the petitioner falls in the second category. The provision only talks of amount irrespective of whether it has been paid as tax or interest or penalty. Thus, the view taken by the Designated Committee cannot be sustained. There is another side to the story. Had the petitioner remitted the entire amount paid by him towards tax, the respondents would have given credit of entire amount and his interest liability would have been waived off as well. The petitioner cannot be punished for depositing the amount under different heads once the provision mandates to discount the amount paid during the investigation de hors the head it has been deposited under.

In the present case, in the reply filed by respondent Nos. 1 to 3, in para No. 17, it has been submitted that the petitioner has filed declaration in Form SVLDRS-1 bearing ARN-LD1912190001918 dated 19.12.2019 under the

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under category:- ‘Litigation’ and Sub Category ‘SCN INVOLVING DUTY PENDING’. In the SVLDRS-1, the petitioner has declared that the amount of Duty/Tax involved is Rs.21,93,02,883/- in relation to ‘Other Taxable Services’ provided by them. The assessee declared that they have deposited an amount of Rs.6,12,82,361/- as Pre-Deposit. The tax dues less tax relief as per Form SVLDRS-1 is Rs.4,83,69,080.50. On verification of SVLDRS-1 filed by the petitioner, it was observed that the petitioner deposited the duty/tax amount of Rs.4,80,54,406/- and amount of interest of Rs.1,32,27,955/- as pre deposit amount. It has been stated that there is no provision in the scheme regarding adjustment of any amount towards estimated amount payable in cases where the said amount has been specifically paid against the interest. The declarant can adjust only duty portion paid as pre-deposit from the duty comes after relief under this scheme. Thus, the Estimated amount payable has rightly been calculated by the Designated Committee.”

Learned counsel for the respondent has not been able to dispute that Section 124 of the Finance Act has been interpreted by this Court in *Schlumberger Solutions Pvt. Ltd’s case (supra)*.

Section 124 (2) lays down that the relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant. Hence the provisions of Section 124 (2) is mandatory in nature that any amount deposited during enquiry, investigation is to be deducted when issuing the statement. Further the department has not filed any appeal against CWP-6845-2020 and thus this judgment attained finality.

In view of the above, the writ petition is allowed. Accordingly, impugned statement issued by the Designated Committee in the Form of SLVDRS-3 dated 08.01.2020 (Annexure P-1) is quashed. The Designated Committee is directed to re-consider the claim of the petitioner within four weeks from the receipt of certified copy of the order by adjusting amounts paid towards interest and penalty, in accordance with law and the petitioner is directed to make the payment within four weeks from the date Designated Committee issues SVLDRS-3.

Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed off.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.02.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No