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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 679 OF 2023

Metallurgical Services
Partnership Firm
Having Registered Office at,
Mehta House, Ashok Silk Mills Lane,
Off. LBS Marg,
Ghatkopar (West), Mumbai – 400 086
Through Its Partner
Mr. Shishir R. Mehta

... Petitioner

Versus

1. Union of India
represented by the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110 001
2. Central Board of Indirect
Taxes and Customs
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 100 001
3. Commissioner,
CGST, Mumbai East
9th Floor, Lotus Info Centre,
Station Road, Parel (West)
Mumbai 400 012
4. Joint Commissioner
Designated Committee
CGST, Mumbai East,
9th Floor, Lotus Info Centre,
Station Road, Parel (East),
Mumbai 400 012
5. Principal Commissioner

Designated Committee
CGST, Mumbai East,
9th Floor, Lotus Info Centre,
Station Road, Parel (East),
Mumbai 400 012

6. Superintendent
CGST, Mumbai East,
9th Floor, Lotus Info Centre,
Station Road, Parel (East),
Mumbai 400 012

...Respondents

Mr.Bharat Raichandani a/w Mr.Prathamesh Gargate i/b M/s.VBR Legal
Advocates for the Petitioner
Smt.Asha Desai a/w Smt. Maya Majumdar for the Respondent Nos.3 to 6

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 11th March, 2024

JUDGMENT: (PER FIRDOSH P. POONIWALLA, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.
2. The Petitioner is a Partnership Firm, *inter alia*, engaged in technical testing / inspection and certification agency services. The Petitioner was registered as a service provider under the provisions of the Finance Act, 1994.
3. Based on certain information gathered by the service tax department from the Income Tax Returns of the Petitioner, the service tax department alleged that there was a difference of services of Rs.19,80,37,410/- shown in the Income Tax Returns vis-a-vis the value shown in the service tax returns for the period under dispute. On the basis of this enquiry, a Show Cause Notice dated 12th April 2019 was issued to the Petitioner proposing to demand and recover an amount of Rs.2,44,77,423 (12.36% of 19,80,37,410), along with interest and penalty.

4. It is the case of the Petitioner that the allegation in the said Show Cause Notice that the turnover declared by the Petitioner in Form ST-3 is NIL is incorrect. It is the case of the Petitioner that, for the period from April 2013 to September 2013, returns were filed on 13th December 2013 declaring the turnover of services of Rs.6,37,16,462/- and service tax of Rs.78,75,354/- (including cess) was paid in respect of the same. It is also the case of the Petitioner that, subsequently, for the period from October 2013 to March 2014, returns were filed on 22nd April 2014 declaring the turnover of services of Rs.7,42,00,743/- and service tax of Rs.91,71,211/- (including cess) was paid in respect of the same. It is the case of the Petitioner that from the total proposed demand of Rs.2,44,77,423/- shown in the Show Cause Notice, the Petitioner had already deposited an amount of Rs.1,70,46,567/-. It is the case of the Petitioner that this fact was not considered in the said Show Cause Notice.

5. In the meantime, the Central Government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("Sabka Vishwas Scheme"). This Scheme was introduced to bring an end to pending litigation under the erstwhile indirect tax regime.

6. On 10th January 2020, the Petitioner filed Form SVLDRS 1 under the Sabka Vishwas Scheme wherein the Petitioner declared Rs.2,44,77,423/- as the amount of tax dues for the period 2013-14.

7. The Sabka Vishwas Scheme provided an opportunity to assesseees to opt for the benefits thereunder if Show Cause Notice had been issued and no final hearing had taken place before 30th June 2019. In the case of the Petitioner, Show Cause Notice was issued before 30th June 2019 and no final hearing had taken place before 30th June 2019. Hence, it is the case of the Petitioner that it was eligible to file a declaration under the Sabka Vishwas Scheme.

8. Further, Section 124(1)(a) of the Sabka Vishwas Scheme states that the amount payable under the Scheme is 50% of the tax dues in a case where tax dues are more than Rs.50.0 lakhs, where the tax dues are relatable to a Show Cause Notice which is pending as on 30th June 2019. Section 124(2) of the Sabka Vishwas Scheme, *inter alia*, allows for deduction of the amount of any pre-deposit / any deposit paid by the declarant. It is the case of the Petitioner that, in the present case, the tax dues i.e. the amount in dispute is Rs.2,44,77,423/-. Thus, the amount payable by it before adjusting the pre-deposit / deposit is Rs.1,22,38,711.50 (50% of Rs.2,44,77,423/-).

9. It is further the case of the Petitioner that, inadvertently, the Petitioner, instead of declaring Rs.1,70,46,567/- under the pre-deposit column in Form SVLDRS 1, showed the same under the title "Reason for disagreement". It is the case of the Petitioner that, as the amount deposited by it was more than the tax dues under the Scheme, the amount payable by it under the Scheme was NIL.

10. However, Respondent Nos.4 and 5 issued Form SVLDRS 3, which is impugned in the present Petition, disallowing the pre-deposit paid by the Petitioner to the extent of Rs.1,70,46,567/-, thereby resulting in a demand of Rs.1,22,38,711.50 of tax dues payable under the Sabka Vishwas Scheme to avail of the benefit under the Scheme.

11. It is the case of the Petitioner that Section 127(2) of the Sabka Vishwas Scheme requires the Designated Committee to issue Form SVLDRS 2 if there is a dispute regarding the amount payable under the Scheme. However, despite the Petitioner having disputed the amount payable in Form SVLDRS 1 itself, no such Form was issued to the Petitioner.

12. By a letter dated 19th June 2020, Respondent No.5 issued a reminder to the Petitioner for making payment under the Sabka Vishwas Scheme as per

Form SVLDRS 3. By an email dated 19th June 2020, the Petitioner requested Respondent No.5 to consider the deposit made by it and, thereafter, issue Form SVLDRS 3.

13. Thereafter, by letters dated 24th June 2020 and 1st July 2020, the Petitioner once again requested Respondent No.4 to consider the deposit made by it. Copies of the Challans were submitted to Respondent No.4 and the calculation was also shown to him.

14. However, by a letter dated 8th December 2020, Respondent No.6 directed the Petitioner to submit the relevant documents and file a reply to the Show Cause Notice dated 12th April 2019 which had been issued to it earlier. By a letter dated 29th December 2020, the Petitioner informed Respondent No.6 that it had opted for the Sabka Vishwas Scheme and had already paid an amount in excess of the amount payable under the said Scheme.

15. Thereafter, the Petitioner again submitted the aforesaid letter dated 1st July 2020 to Respondent Nos.2, 4 and 5 on 15th January 2021.

16. In these circumstances, the Petitioner filed the present Petition seeking the following final reliefs:

(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity, and legality of the provisions set aside and quash SVLDRS Form 3 vide impugned order dated 21.02.2020 (Exhibit "A") and Show cause notice dated 12.04.2019 (Exhibit "B").

(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions stay the operation of SVLDRS Form 3 vide impugned order dated 21.02.2020 (Exhibit "A");

(c) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction

under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality of the provisions direct the respondents to not initiate any coercive action seeking recovery of alleged dues against the Petitioner during the pendency of the present petition;

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction ordering and directing the Respondent to accept the application (Form SVLDRS 1) filed by the Petitioner and issue discharge certificate (Form SVLDRS 4) to the Petitioner because, the Petitioner is eligible for the relief/benefit available under SVS, 2019 and has rightly opted for it and paid the designated/specified amount required to be paid."

17. We have heard the learned counsel for the parties and perused the documents on record.

18. The main submission of Mr.Raichandani, on behalf of the Petitioners, was that if there is a dispute regarding the amount payable under the Scheme, the Designated Committee is mandated to grant personal hearing to the declarant.

19. Mr.Raichandani referred to the provisions of sub-sections (2) to (4) of Section 127 of the Sabka Vishwas Scheme. Mr.Raichandani also relied upon Rule 6 of the Sabka Vishwas (Legacy Dispute Resolution Scheme) Rules 2019 ("Sabka Vishwas Rules"). Mr.Raichandani submitted that Rule 6 dealt with clarification by the Designated Committee. As per sub-rule (3) of Rule 6 where the amount estimated to be payable by the declarant exceeded the amount declared by the declarant then the Designated Committee was required to issue a declaration in Form SVLDRS 2 giving an estimate of the amount payable by the declarant along with a notice of opportunity for personal hearing. He further submitted that sub-rule (4) of Rule 6 provides that, if the declarant wanted to indicate agreement or disagreement with the estimate referred to in sub-rule (3), or wanted to make written submissions or waive personal hearing or seek an adjournment, he should electronically file Form SVLDRS-2A indicating the same. Further, he submitted that as per the

proviso to sub-rule (4), which provides that if no such agreement or disagreement is indicated till the date of personal hearing and the declarant does not appear before the Designated Committee for personal hearing, the Designated Committee should decide the matter based on available records. Mr.Raichandani submitted that, from a cohesive reading of the provisions of Section 127 and Rule 6, it can be seen that, if the amount estimated to be payable by the declarant exceeded the amount declared by the declarant, then the Designated Committee was required to give an opportunity to the declarant by way of issuing Form SVLDRS 2. In the present case, no Form SVLDRS 2 was issued despite the declarant having disputed the amount payable in Form SVLDRS 1 itself. Further, no opportunity of personal hearing was granted to the Petitioner. He submitted that this was in clear violation of the provisions of Section 127 of the Sabka Vishwas Scheme and Rule 6 of the Sabka Vishwas Rules. Mr.Raichandani submitted that, in these circumstances, this Court ought to quash the said Form SVLDRS 3 issued by the Respondents.

20. Mrs.Asha Desai, the learned counsel for Respondent Nos.3 to 6, would submit that the pre-deposit of Rs.1,70,46,567/- is not appearing in the Show Cause Notice for which the application is made in Form SVLDRS 1 under the Scheme. She further submitted that there is no such mention of the pre-deposit in the Show Cause Notice stating that an amount of Rs.1,70,46,567/- had already been paid by the Petitioner nor is there any proposal for appropriation of the said amount in the Show Cause Notice. She further submitted that the Petitioner had also not mentioned the said amount in the “Pre-deposit column” appearing in the SVLDRS 1 Form. Although a specific column had been provided in the said Form for mentioning the pre-deposit, if any, the figure appearing in Form SVLDRS 1 filed by the Petitioner was zero. She submitted that, in the absence of information of pre-deposit, the

application filed by the Petitioner in Form SVLDRS 1 was correctly disposed of by the Designated Committee on the basis of the information available to it. She therefore submitted that there was no reason for this Court to interfere with the said Form SVLDRS 3 issued by the Designated Committee.

21. Before dealing with the rival contention of the parties, it would be appropriate to set out the relevant provisions. Sub-sections (1) to (4) of Section 127 of the Sabka Vishwas Scheme are relevant and are set out hereunder.

“127. (1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic Form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.

(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic Form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration.

(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant:

Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.

(4) After hearing the declarant, a statement in electronic Form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.”

22. Further, Rule 6 of the Sabka Vishwas Rules is also relevant and is set out hereunder.

“6. Verification by designated committee and issue of estimate, etc. -

(1) The declaration made under section 125, except when it relates to a case of voluntary disclosure of an amount of duty, shall be verified by the designated committee based on the particulars furnished by the declarant as well as the records available with the Department.

(2) The statement under sub-sections (1) and (4) of section 127, as the case may be, shall be issued by the designated committee electronically, within a period of sixty days from the date of receipt of the declaration under sub-rule (1) of rule 3, in Form SVLDRS-3 setting forth therein the particulars of the amount payable :

Provided that no such statement shall be issued in a case where the amount payable, as determined by the designated committee is nil and there is no appeal pending in a High Court or the Supreme Court.

(3) Where the amount estimated to be payable by the declarant exceeds the amount declared by the declarant, then, the designated committee shall issue electronically, within thirty days of the date of receipt of the declaration under sub-rule (1) of rule 3, in Form SVLDRS-2, an estimate of the amount payable by the declarant along with a notice of opportunity for personal hearing.

(4) If the declarant wants to indicate agreement or disagreement with the estimate referred to in sub-rule (3) or wants to make written submissions or waive personal hearing or seek an adjournment, he shall file electronically Form SVLDRS-2A indicating the same:

Provided that if no such agreement or disagreement is indicated till the date of personal hearing and the declarant does not appear before the designated committee for personal hearing, the committee shall decide the matter based on available records.

(5) On receipt of a request for an adjournment under sub-rule (4), electronically in Form SVLDRS-2B:

Provided if the declarant does not appear before the designated committee for personal hearing after adjournment, the committee shall decide the matter based on available records.

(6) Within thirty days of the date of issue of Form SVLDRS-3, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or suo motu by issuing electronically a revised Form SVLDRS-3."

23. Sub-section (2) of Section 127 of the Sabka Vishwas Scheme clearly provides that where the amount estimated to be payable by the declarant, as estimated by the Designated Committee, exceeds the amount declared by the declarant, then the Designated Committee shall issue in electronic Form an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration. Further sub-section (3) of Rule 127 provides that, after the issue of this estimate, the Designated Committee shall give an

opportunity of hearing to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant.

24. Further, sub-section (4) of Section 127 provides that, after hearing the declarant, a statement in electronic Form indicating the amount payable by the declarant, shall be issued.

25. Moreover, sub-rule (3) of Rule 6 also provides that where the amount estimated to be payable by the declarant exceeds the amount declared by the declarant, then the designated committee shall issue in Form SVLDRS 2 an estimate of the amount payable by the declarant along with the notice of opportunity for personal hearing. Further, sub-rule (4) of Rule 6 provides that if the declarant wants to indicate agreement or disagreement with the estimate referred to in sub-rule (3) or wants to make written submissions or waive personal hearing or seek an adjournment, he shall file Form SVLDRS-2A indicating the same. The proviso to sub-rule (4) provides that if no agreement or disagreement is indicated till the date of personal hearing and the declarant does not appear before the designated committee for personal hearing, the Committee shall decide the matter based on available records. The above provisions show that, on a conjoint reading of Section 127, with Rule 6, where the Designated Committee disagrees with the amount declared by the declarant, then it is required to issue Form SVLDRS 2, grant an opportunity of personal hearing to the declarant and then decide the matter.

26. In the present case, the Petitioner had disputed the amount payable in Form SVLDRS 1 itself. In Form SVLDRS 1, under the title “Reason for disagreement”, the Petitioner had disputed the amount payable by stating as under:

“Reason for disagreement

Show cause is for value of services of Rs. 19,80,37,410/-. However, credit for service tax on value of services as per service tax return filed in Form ST 3 of Rs. 137917204 plus service tax and edu cess & h.edu cess of Rs. 1,70,46,567/-, aggregating to Rs.15,49,63,770/- has not been given. The amount of disputed value of services is Rs.4,30,73,640/- i.e. Rs. 19,80,37,410 less Rs. 15,49,63,770/.”

27. In these circumstances, in our view, as per the provisions of the Section 127 of the Sabka Vishwas Scheme and Rule 6 of the Sabka Vishwas Rules, the Designated Committee was required to issue Form SVLDRS 2 indicating the amount which, according to the Designated Committee, was payable by the Petitioner and giving an opportunity of personal hearing to the Petitioner. If such a Form SVLDRS 2 had been issued by the Designated Committee then the Petitioner would have got an opportunity of personal hearing and of making written submissions by filing Form SVLDRS-2A. However, in the present case, without issuing Form SVLDRS 2, the Designated Committee has straight away issued Form SVLDRS 3, thereby depriving the Petitioner of an opportunity of a personal hearing. In our view, this action of the Designated Committee of straight away issuing Form SVLDRS 3, without issuing Form SVLDRS 2, is not only in violation of Section 127 of the Sabka Vishwas Scheme and Rule 6 of the Sabka Vishwas Rules but is also in total violation of the principles of natural justice.

28. For all these reasons, we are of the view that Form SVLDRS 3 is required to be quashed and the matter is required to be remanded back to the Designated Committee for taking a fresh decision in the matter, after giving an opportunity of hearing to the Petitioner.

29. For the aforesaid reasons, and in the light of the aforesaid discussions, we hereby pass the following orders:

- a. Form SVLDRS 3, dated 2nd December 2020, is hereby quashed and set aside.

- b. The matter is remanded back to the Designated Committee and it is directed to issue Form SVLDRS 2 to the Petitioner and, after giving an opportunity of personal hearing to the Petitioner, to pass a reasoned order within a period of six weeks from the date of intimation of this order.
- c. Rule is made absolute in the aforesaid terms.
- d. Writ Petition is disposed of.
- e. In the facts and circumstances of the case, there shall be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)