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

WRIT PETITION (L) NO. 18092 OF 2023

Jatin S. Thakar (HUF) … Petitioner

Versus

1. Union of India

2. Central Board of Indirect Taxes and Customs

3. Designated Committee under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, Navi Mumbai Commissionerate

4. The Commissioner of CGST & Central Excise, Navi Mumbai Commissionerate

5. Assistant/Deputy Commissioner of CGST & Central Excise Division-IV, Navi Mumbai Commissionerate …Respondents

Mr.Prasannan Namboodin a/w Mr.Tejal Darekar, Mr.Rishabh sinha for the Petitioner
Mr.Subir Kumar a/w Mr.Saket Ketkar, Ms.Sruti Kalyanikar fort he Respondents

CORAM : G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DAYTED : 28th March, 2024

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

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. This Petition is filed seeking the following final reliefs:

"a. That the Hon'ble Court may be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to the Respondent No. 5 set aside/quash Order-in-Original No. CGST/NM/Div-IV/R III/SCN-SVLDRS VOL/JST/1424/2020-21 20.04.2023 issued by Respondent No. 5;

b. That the Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to the Respondent No. 5 to set aside/quash Show Cause Notice cum Demand Notice No. CGST-NM/Div-IV/R-III/SCN-SVLDRS VOL/JST/1424/2020-21 dated 30.12.2020 issued by Respondent No. 5;

c. That the Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to Respondents to accept payment of the estimated amount of Rs. 1,95,024/- the Scheme as per Form No. SVLDRS-3 No. L210220SV300211 dated 21.02.2020 and issue discharge certificate in Form No. SVLDRS-4 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in respect of Application/Declaration in Form No. SVLDRS-1 bearing ARN No. LD3112190009138 dated 31.12.2019;

d. That the Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to Respondents to accept payment of the estimated amount of Rs. 5,98,445/- as per Form No. SVLDRS-3 No. L210220SV301977 dated 21.02.2020 and issue discharge certificate in Form No. SVLDRS-4 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in respect of Application/Declaration in Form No. SVLDRS -1 bearing ARN No. LD3112190009009 dated 31.12.2019;

e. That the Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ/order/directions to Respondents to accept payment of the estimated amount of Rs. 7,12,406/- as per Form No. SVLDRS-3 No. L210220SV300346 dated Dated 21.02.2020 and issue discharge certificate in Form No. SVLDRS-4 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, *2019 in respect of Application/Declaration in Form No. SVLDRS -1 bearing ARN No. LD3112190009058 dated 31.12.2019;"*

3. The Petitioner is a Hindu Undivided Family (HUF) represented by its Karta/Manager, Mr.Jatin S. Thakar. The Petitioner is operating in the name and style of "Hi-Tech Associates' and is engaged in providing works contract services for residential and commercial projects. The Petitioner holds a Service Tax Registration.

4. Respondent No.1 introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ('the Scheme') vide Finance Act, 2019 to bring an end to pending litigations under the indirect tax regime.

5. The Petitioner filed the following applications/declarations in Form No.SVLDRS-1 on 31st December 2019 in the category 'Voluntary Disclosure' in respect of the services provided by the Petitioner for the period from January, 2013 to June, 2017, the details of which are as under:

Sr. No.	Details of application/declaration in Form No.SVLDDRS-1	Period	Amount of Service Tax voluntarily disclosed
1.	LD3112190008771 dated 31.12.2019	01.01.2013 to 31.03.2013	176088
2.	LD3112190008855 dated 31.12.2019	01.04.2013 to 31.03.2014	363759
3.	LD3112190008914 dated 31.12.2019	01.04.2014 to 31.03.2015	323022
4.	LD3112190009009 dated 31.12.2019	01.04.2015 to 31.03.2016	598445
5.	LD3112190009058 dated 31.12.2019	01.04.2016 to	712406

		31.03.2017	
6.	LD3112190009138 dated 31.12.2019	01.04.2017 to 30.06.2017	195024
Total			**2368744**

6. In respect of the three applications/declarations in Form No.SVLDRS-1 bearing ARN No.LD3112190008771, LD311219000855 and LD3112190008914, for the period from January, 2013 to March, 2015, Respondent No.3 issued Form No.SVLDRS-3 dated 21st February, 2020 quantifying the estimated amount payable under the Scheme, and on payment of the estimated amount by the Petitioner, Respondent No.3 issued Form No.SVLDRS-4 i.e. the Discharge Certificate for full and final settlement of Tax dues under the Scheme.

7. In respect of three applications/declarations in form No.SVLDRS-1 bearing ARN No.LD3112190009009, LD3112190009058 and LD3112190009138, for the period from April 2015 to June 2017 being the subsequent period, Respondent No.3 issued Form SVLDRS-3 quantifying the estimated amount payable under the Scheme on 21st February 2019. The due date for payment of the estimated amount under the Scheme was within 30 days of issuance of Form No.SVLDRS-3 i.e. 21st March 2019.

8. Respondent No.1 announced relief amid the Covid-19 pandemic and nationwide lockdown and extended the last date for payment of dues to 30th June 2020 under the Scheme vide Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020.

9. Due to the impact of the Covid-19 pandemic on the business of the Petitioner, the Petitioner could not pay the estimated amount in respect of applications/declarations in Form No.SVLDRS-1 bearing ARN

No.LD3112190009009, LD311290009058 and LD3112190009138 for the period April 2015 to June 2017 within the extended period.

10. Since the Petitioner failed to make payment of estimated amount in respect of the said applications, Respondent No.5 issued Show Cause cum Demand Notice dated 30th December 2020 calling upon the Petitioner to show cause as to why Service tax amounting to Rs.15,05,875/- should not be demanded and recovered under proviso to Section 73(1) of the Finance Act, 1994, along with interest and penalty.

11. Subsequent to the issuance of show cause notice dated 30th December 2020, the Petitioner paid the amount of Rs.15,05,875/- under the Scheme vide Challan dated 1st January 2021 for Rs.7,12,406/-, Challan dated 14th February 2021 for Rs.5,98,445/- and Challan dated 14th February 2021 for Rs.1,95,024/-.

12. Thereafter, on 11th February 2021, the Petitioner submitted a reply to the Show Cause Notice dated 30th December 2020.

13. Respondent No.5, vide Order-in-Original dated 20th April 2023, confirmed the Service Tax demand of Rs.15,05,875/- and appropriated the sum of Rs.15,05,875/- paid by the Petitioner vide three Challans dated 1st January 2021 and 14th February 2021 towards the confirmed demand. Respondent No.5 also confirmed interest of Rs.15,05,875/- and imposed penalty of Rs.15,05,875/- on the service tax liability for the period from April 2015 to June 2017 on the ground that the Petitioner did not pay the estimated amount under the Scheme within the stipulated time.

14. The Petitioner contends that Respondent No.5 has failed to consider that, on account of the Covid-19 pandemic and ensuing financial difficulties, the said estimated amount in Form No.SVLDRS-3 for the period April 2015

to June 2017 could not be paid. It is the Petitioner's case that Respondent No.3 and 5 failed to consider that, due to the outbreak of Covid-19 pandemic in March 2020, the Supreme Court took Suo Motu cognizance of the difficulties faced by the citizens of India and vide Order dated 23rd September 2021 in Miscellaneous Application No.665 of 2021, extended the limitation by excluding the period from 15th March 2020 till 2nd October 2020 (which was further extended till 28th February 2022). It is hence contended that the Respondents ought to have accepted the payment of estimated amount of Rs.15,05,875/- vide the three Challans dated 1st January 2021, 14th February 2021 and 14th February 2021 against Form SVLDRS-3 for the period from April 2015 to June 2017 under the Scheme and ought to have issued Discharge Certificates in Form SVLDRS-4. In support of the contentions on behalf of the Petitioner reliance is placed on the decision of the Madras High Court in ***M/s. RR Housing (India) Pvt. Ltd. vs. the Designated Committee (SVLDS) and Anr.***[1]

15. The Respondents have contested the Petitioner's case. An Affidavit in Reply dated 18th August 2023 is filed on behalf of the Respondents to support the Order-in-Original dated 20th April 2023. The Respondents contend that Forms SVLDRS-3 quantifying the estimated amount payable under the Scheme were issued on 21st February 2019. The due date for payment under the Scheme was within 30 days of issuance of Form SVLDRS-3 on 21st March 2019. This was extended to 30th June 2020. It is contended that since the Petitioner did not make payment of the quantified amount by 30th June 2020, the show cause notice was correctly issued and justifiably the Order-in-Original dated 20th April 2023 was passed.

16. It appears to be not in dispute that the Department extended the time in similar terms as per the orders passed by the Supreme Court which considered

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1 W.P.No.11601 of 2021 and W.M.P. No.12352 of 2021 dated 30th October 2023.

the difficulties which would be faced by the public and extended time upto 20th February 2022. Considering the extension of time limit by the Supreme Court till 20th February, 2022, and the financial and other difficulties faced by citizens on account of the Covid-19 pandemic, the Department ought to have accepted the amounts paid by the Petitioner vide one Challan dated 1st January 2021 and two Challans dated 14th February 2021. In our opinion, in the facts and circumstances of the present case, it was obligatory for the Department to have considered the Petitioner's deposits as the amount paid under the Scheme and ought to have issued Form SVLDRS-4. However, the Show Cause Notice dated 20th February 2020 was issued and the impugned Order-in-Original dated 20th April 2023 was passed without considering that the time limit fixed under the Scheme was directory and not mandatory. For such reason, the payments made by the Petitioner on 1st January 2021 and 14th February 2021 should have been accepted under the Scheme and Discharge Certificate in Form SVLDRS-4 ought to have issued.

17. In support of its submission that payment beyond 30th June 2020 should be allowed, the Petitioner has relied upon the decision of the Madras High Court in ***M/s. RR Housing (India) Pvt. Ltd.*** (Supra). Paragraphs 9 to 22 of the said decision are relevant and read as under:

> *"9. 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. However, due to the COVID pandemic situation, the petitioner had remitted the demanded tax amount only on 02.03.2021 through a regular challan.*

Thereafter, the respondent was supposed to issue Form SVLDRS 4 to discharge the entire liabilities towards tax under the said Scheme. However, the same was not issued.

10. 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 02.03.2021, 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.

11. 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.

12. He would also submit that the 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.

13. 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 situation. 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.

14. 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.*

15. It would be pertinent to point out 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.

16. 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 provisions. As far as if the provisions are directory in nature, certainly 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 02.03.2021 during the pandemic period. Therefore, 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.

17. 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 it is clear that 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.

18. The Hon'ble Supreme Court had extended the time limit up to 28.02.2022, even where the limitation was fixed under the mandatory laws. Further, as discussed above, there is no doubt that the provision of fixing time limit under the

SVLDRS Scheme is directory in nature and that is the reason why the Department had extended the time limit for payment of tax amount under the SVLDRS Scheme by virtue of notifications. When that being the case, the Department is supposed to have extended the time at par with the order passed by the Hon'ble Supreme Court, where it had considered the difficulties faced by the public in mobilizing the money, filing the cases before the Courts, etc. and granted the time limit up to 28.02.2022. However, though the respondent-Department had considered and issued the notifications on 3 occasions, thereafter, they had neither considered the difficulties faced by the Assessee nor issued any notifications extending the time limit for making payment of tax under the scheme.

19. In the present case, the tax was paid by the petitioner on 02.03.2021 based on the Form SVLDRS-3 issued by the Department and the same was accepted by the respondent.

20. Therefore, taking into consideration of all these aspects, this Court is of the view that the amount, which was paid by the petitioner on 02.03.2021 shall be consider as the amount paid under the SVLDRS Scheme and hence, the Department is bound to issue the Form SVLDRS- 4 with regard to the discharge of liabilities.

21. 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 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.

22. Accordingly, the Writ Petition is allowed. The respondents are directed to accept the payment of Rs.14,98,836/- made by the petitioner under SVLDRS-3 on 01.03.2021. The petitioner is directed to pay interest at 15% p.a. on 14,98,836/- from 01.07.2020 till the date of payment, within a period of four weeks from the date of receipt of a copy of this order, failing which, the benefit granted under this order will automatically cease to operate. On such payment being made by the petitioner, the respondents are to issue discharge certificate to the petitioner. No costs."

(Emphasis supplied)

18. We are in agreement with the findings of the Madras High Court in ***M/s. RR Housing (India) Pvt. Ltd.*** (Supra). As held by the Madras High Court, the Supreme Court had extended the time limits under various statutes upto 28th February 2022 even when limitation was fixed under mandatory laws. The Madras High Court had already held that the provisions of fixation of time limit under the Scheme were directory in nature and that is the reason why the Department had extended the time limit for payment of tax amount under the Scheme by virtue of various notifications.

19. For the above reasons, in our clear opinion, the Show Cause Notice dated 30th December 2020 and the Order-in-Original dated 20th April 2023 are required to be quashed and set aside.

20. However, as also held by the Madras High Court in ***M/s. RR Housing (India) Pvt. Ltd.*** (Supra), the Petitioner will have to pay interest for the delayed period.

21. In the light of the aforesaid discussion, the Writ Petition is required to be partly allowed in terms of the following orders:

a. Show Cause Notice dated 30th December 2020 and Order-in-Original dated 20th April 2023 are hereby quashed and set aside.

b. The Respondents are directed to accept the payments made by the Petitioner on 1st January 2021 and 14th February 2021 under the Scheme.

c. The Petitioner is directed to pay interest at the rate of 15% p.a. from 1st July 2020 till 1st February 2021 on the sum of Rs.7,12,406/-, from 1st July 2020 till 14th February 2021 on the sum of Rs.5,98,445/- and from 1st July 2020 till 14th February 2021 on the sum of

Rs.1,95,024/- within a period of four weeks from the date of pronouncement of this order.

d. On such interest being paid, the Respondents shall issue discharge certificate under Form SVLDRS-4.

22. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)