IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.07.2023
Pronounced on	18.01.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.8123 of 2020
and
W.M.P.Nos.9645 and 9647 of 2020

Shree Vijayalakshmi Charitable Trust,
(Represented by its Managing Trustee, A.Senthil Kumar)... Petitioner

Vs

1. The Designated Committee,
   Office of the Principal Commissioner of GST & Central Excise,
   6/7 ATD Street,
   Race Course Road,
   Coimbatore – 641 018.

2. The Commissioner of Central Excise and Service Tax,
   6/7, A.T.D. Street, Race Course Road,
   Coimbatore – 641 018.

3. Union of India,
   Represented by its Secretary,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi – 110 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to Form SVLDRS-3 bearing reference L290220SV301317 dated 29.02.2020 issued by the first respondent, quash the same and direct the first respondent to adjust the moneys paid after deducting the waived amount from the total tax due as provided for under Section 124(2) of the Scheme.

For Petitioner : Mr.K.Sankaranarayanan

For Respondents : Mr.A.P.Srinivas,
learned Senior Standing Counsel

ORDER

I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

2. In this writ petition the petitioner has challenged the Impugned Order dated 29.02.2020 of the first respondent viz., the Designated Authority under the provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as announced in Chapter V of the Finance (No.2) Act, 2019.

3. In the impugned communication in Form SVLDRS-3 dated 29.02.2020, the tax relief has been stated as **Rs.4,85,63,483/-.** Thus, the amount payable by the petitioner has been determined as **Rs.7,23,47,343/-**.

4. The facts are not in dispute. A short point that arises for consideration in this writ petition is whether 50% of the amount which was paid by the petitioner under the Provisions of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 is to be set off against the amounts due as payable by the petitioner under the provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

5. The petitioner had earlier attempted to settle the dispute with the Service Tax Department under the provisions of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 under Chapter VI of the Finance Act, 2013.

6. Under the aforesaid Scheme 50% of the admitted tax was to be paid along with the application and the balance was to be paid on or before 30th June 2014.

7. The petitioner had declared total tax due on the activity undertaken by the petitioner under the Service Tax Voluntary Compliance Encouragement Scheme, 2013, however, had failed to pay the balance 50% of the admitted tax on or before 30th June 2014.

8. The petitioner partly complied with the requirements of the scheme by depositing a sum of **Rs.13,15,41,380/-** being 50% of the admitted tax liability. Since the petitioner failed to pay the balance 50% of tax of **Rs.13,15,41,380/-**, the petitioner was not entitled to the benefit of the aforesaid Scheme.

9. Under these circumstances, a Recovery Notice was issued under Section 110 of the Finance Act, 2013. This was subject matter of a Writ proceedings before this Court in W.P.No.34005 of 2014. W.P.No.34005 of

2014 was dismissed by this Court vide order dated 25.10.2018. Aggrieved by the aforesaid order, the petitioner had filed Writ Appeal in W.A.No.672 of 2019.

10. The Hon'ble Division Bench also dismissed W.A.No.672 of 2019 filed by the petitioner vide its order dated 15.03.2019. An appeal against order dated 15.03.2019 in W.A.No.672 of 2019 is said to be pending on the date of hearing before the Hon'ble Supreme Court in S.L.P.No.11762 of 2019.

11. After the Parliament had announced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under Chapter VI of the Finance Act, 2013, the petitioner opted to settle the dispute by filing Form SVLDRS-1 on 31.12.2019. In SVLDRS-1 filed on 31.12.2019, the petitioner admitted the tax liability of **Rs.26,30,82,760/-.** The respondent admitted the application in Form SVLDRS-2 on 07.02.2020 and estimated an amount of Rs.7,89,24,829/- as the tax due of the petitioner.

12. Form SVLDRS-2 admits pre-deposit of **Rs.13,15,41,380/-** made by the petitioner against the total tax liability of **Rs.26,30,82,760/-**.

13. Form SVLDRS-2 dated 07.02.2020 admits the tax relief to the petitioner as **Rs.5,26,16,552/-** and after adjusting **Rs.13,15,41,380/-** and estimates a sum of **Rs.7,89,24,829/-** as the amount payable by the petitioner.

14. Form SVLDRS-3 dated 29.02.2020 admits the tax relief to the petitioner as **Rs.4,85,63,438**. As per Form SVLDRS-3 dated 29.02.2020, the amount payable by the petitioner is Rs.7,23,47,343.00.

15. Tax due, Tax relief and the amount payable as per Form SVLDRS-2 and SVLDRS-3 are as under:-

	Name	**Tax Dues**	**Tax Relief**	**Pre-Deposit/any other deposit of duty**	**Estimated Amount payable**
Form SVLDRS-2	Renting of immovable property service – 00440406	Rs.26,30,82,760.00	**Rs.5,26,16,552.00**	**Rs.13,15,41,380.00**	**Rs.7,89,24,829.00***
Form SVLDRS-3	Renting of immovable property service – 00440406	Rs.26,30,82,760.00	**Rs.4,85,63,438**	**Rs.14,21,71,979.00**	**Rs.7,23,47,343.00**

***Estimated**

16. In the affidavit filed in support of the present writ petition, the petitioner has estimated the amount payable by him and the amount estimated by the 1st respondent as detailed below. In so far as the estimate of 1st respondent is concerned there are few arithmetical corrections.

Computation of amount under the Scheme by the petitioner and respondent is as under :-

Particulars	Petitioner's Estimate		1st Respondent's Estimate	
Tax Demand	A	Rs.26,30,82,760/-	P	Rs.26,30,82,760/-
Pre-Deposit	B	Rs.13,15,41,380/-	Q	Rs.13,15,41,380/-
Balance Tax Payable	C=A-B	Rs.13,15,41,380/-	R=P-Q	Rs.13,15,41,380/-
Tax Collected until filing declaration	D	Rs.1,01,32,781/-	S	Rs.1,06,30,596/-
Tax payable under Scheme	E=60% of Rs.26,30,82,760/-	Rs.15,78,49,656/-	T =60% of R+S-	Rs.7,23,47,343/-
Tax collected after filing declaration	F	Rs.17,75,726/-	U	Rs.12,77,911/-
	G	Rs.14,34,49,887/-	V	Rs.14,21,71,976/-
Net Payable	H=E-G	Rs.1,43,99,769/-	W=T	Rs.7,23,47,343/-

17. In the the counter affidavit filed by the Respondents the calculations of the amount arrived by the respondents in form SVLDRS-3 and the amount arrived by the peitioner is compared in a table which is extracted below:-

Sl. No	*Particulars*	*Amount to be paid as per Declarant*	*Amount to be paid as per Dept.*
1	Tax due from the declarant	Rs.26,30,82,760	Rs.13,15,41,380

Sl. No	Particulars	Amount to be paid as per Declarant	Amount to be paid as per Dept.
			(out of Rs.26,30,82,760, Rs.13,15,41,380 was paid under VCES on 30.12.2013)
2	Amount paid before 31.12.2019 (date of filing the declaration)	Rs.13,15,41,380	Rs.1,01,32,784 (Recovered through attachment of property)
3	Amount payable after relief under SVLDRS (40%)	Rs.2,63,08,276	Rs.7,28,45,158 (60% of Rs.13,15,41,380 - Rs.1,01,32,784)
5	Amount paid	Rs.1,19,08,507	Rs.4,97,815 (Amount paid after 31.12.2019)
5	Balance amount payable (3-4)	Rs.1,43,99,769	Rs.7,23,47,343

18. The amount of "tax due" of the petitioner on the date when the petitioner opted to settle the dispute earlier under the Service Tax Voluntary Compliance Encouragement Scheme, 2013 was **Rs.26,30,82,760/-**. Both the petitioner and respondent are in agreement on this aspect.

19. Since the amount of tax due was more than **Rs.50,00,000/-**, the petitioner was entitled for a relief equivalent to 40% of the tax due in terms of Section 124(1)(c)(ii) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

20. Thus, the relief that was available to the petitioner will be

Rs.10,52,33,104/- being 40% of **Rs.26,30,82,760/-**. Thus, the balance payable by the petitioner under the Scheme is **Rs.15,78,49,656/- (Rs.26,30,82,760 – Rs.10,52,33,104)**.

21. As per Sub section (2) to Section 124 of the Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019, the relief calculated under Sub section (1) shall be subject to the condition that any amount paid as pre deposit at any stage of appellate proceeding 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.

22. Section 124(2) of the Chapter-V of the Finance Act, 2019 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 reads as under:-

> *"124(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."

23. The petitioner has deposited a sum of **Rs.1,06,30,596/-** **[Rs.1,01,32,784 (**before filing declaration) + **Rs.4,97,815 (**after filing declaration)**]** over and above **Rs.13,15,41,380/-** being 50% of the admitted tax liability under Service Tax Voluntary Compliance Encouragement Scheme, 2013.This is also admitted by the respondents. The petitioner has also deposited **Rs.12,77,911/-** on various dates after filing of declaration which has not been taken into consideration in the impugned communication in Form SVLDRS-3 dated 29.02.2020 as detailed below :-

Sl.No	***CHQ/DD.No***	***Date***	***Amount in Rs.***
1	10477	24.01.2020	5,45,389/-
2	23064	27.01.2020	2,34,707/-
3	17164	04.02.2020	1,55,815/-
4	78585	13.02.2020	3,42,000/-
5	Total		**Rs.12,77,911/-**

24. Thus, in all the peittioner has deposited an amount of **Rs.14,34,49,887/- (Rs.13,15,41,380.00 + Rs.1,06,30,596 + Rs.12,77,911/-)** which is to be deducted under Section 124(2) of the Chapter-V of the Finance Act, 2019 of the Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019.

25. Thus, the amount to be paid by the petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 after deduction under Section 124(2) of the Chapter-V of the Finance Act, 2019 of the Sabka Vishwas (Legacy Dispute Resolution Scheme), 2019 is only **Rs.1,43,99,769/- (Rs.15,78,49,656 – Rs.14,34,49,887/-)** and not **Rs.7,23,47,343/-** as quantified vide impugned Communication in Form SVLDRS-3 dated 29.02.2020. The calculation of the tax relief of **Rs.4,85,63,458/-** only by the respondent in Form SVLDRS-3 dated 29.02.2020 is not correct.

26. Following Table will explain the amount payable by the petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019:-

Sl.No	Particulars	Amount	Amount

A	Amount amount of Tax due	Rs.26,30,82,760/-	
B	Relief available to the petitioner under Section 124(1)(C)(ii) of SVLDRS* Scheme, 2019 i.e **40% of Rs.26,30,82,760**/-	Rs.10,52,33,104/-	
C	**Amount of Tax Payable by the petitioner Due i.e 60% of Rs.26,30,82,760/-**	**Rs.15,78,49,656/-**	**Rs.15,78,49,656/-**
	(i) Pre Deposit under STVCE # Scheme,2013	Rs.13,15,41,380/-	
	(ii) Amount paid before 31.12.2019 (before filing declaration)	Rs.1,01,32,784/-	
	(iii) Amount paid after 31.12.2019 (after filing declaration)	Rs.4,97,815/-	
		Rs.12,77,911	
	TOTAL	**Rs.14,34,49,887/-**	
D	**Amount Deductible under Section 124(2) of SVLDRS* Scheme, 2019**		**Rs.14,34,49,887/-**
E (C-D)	**Amount payable**		**Rs.1,43,99,769/-**

Note: *Sabha Vishwas (Legacy Dispute Resolution)

Service Tax Voluntary Compliance Encouragement Scheme,2013

27. Since, the petitioner is required to pay only a sum of **Rs.1,43,99,769/-** under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and since the calculation in impugned Communication in Form SVLDRS-3 dated 29.02.2020 is erroneous, the Impugned Order is therefore liable to be set aside and the case is remitted back to the first respondent or such other officer designated who has been given the power to accept the declarations under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 after the expiry of the aforesaid scheme for issuing necessary forms to bring a closure.

28. Therefore, the petitioner is directed to pay a sum of **Rs.1,43,99,769/-** togehter with interest at 12% on the aforesaid amount of **Rs.1,43,99,769/-** calculated from 29.03.2020 within a period of six (6) weeks from the date of receipt of a copy of this order.

29. Subject to the petitioner paying the aforesaid amount of **Rs.1,43,99,769/-** and interest , the declaration filed by the petitioner under Chapter V of the Finance Act, 2019 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 shall be accepted.

30. The writ petition stands allowed with the above observations and directions. No cost. Consequently, connected miscellaneous petitions are closed.

18.01.2024

Neutral Citation: Yes/No
Internet: Yes/No
Speaking/Non-speaking Order
rgm

To

1. The Designated Committee,
   Office of the Principal Commissioner of GST & Central Excise,
   6/7 ATD Street,
   Race Course Road,
   Coimbatore – 641 018.

2. The Commissioner of Central Excise and Service Tax,
   6/7, A.T.D. Street, Race Course Road,
   Coimbatore – 641 018.

3. Union of India,
   Represented by its Secretary,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi – 110 001.

C.SARAVANAN, J.

rgm

W.P.No.8123 of 2020
and
W.M.P.Nos.9645 and 9647 of 2020

18.01.2024