IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.08.2023	**Pronounced on:** 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11204 of 2020
and
W.M.P.Nos.13702 & 13704 of 2020

M/s.Himang Infrastructure Solutions Pvt. Ltd.,
Rep. By its Director Srivatsava Rajagopalan,
172/4, Murugu Nagar, 5th Street,
Velachery, Chennai – 600 042. .. Petitioner

Vs.

The Designated Committee, SVLDRS Scheme,
GST & Central Excise,
Chennai South Commissionerate,
MHU Complex,
692, Anna Salai,
Nandanam,
Chennai – 600 035. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to Order SVLDR-3 No.L191119SV300290 dated 19.11.2019 passed by the respondent without considering deduction of the pre-deposit of Rs.15,35,755.00 and quash the said Rejection Order and thereby direct the respondent to allow the 'Tax Dues Less Tax Relief' of Rs.3,53,803.40 as generated in Form SVLDRS-1 No.LD1609190001821 under the category 'Appeal not filed or appeal having attained finality' filed by the petitioner under Section 123(d) of Finance Act, 2019 and quash order SVLDR-3 No.L191119SV300290 dated 19.11.2019.

For Petitioner	:	Mr.T.Ramesh
For Respondent	:	Mr.A.P.Srinivas Senior Standing Counsel & Mr.K.S.Ramasamy Junior Standing Counsel

<u>O R D E R</u>

The petitioner has filed this Writ Petition against the impugned order in SVLDR-3 bearing reference No.L191119SV300290 dated 19.11.2019 passed by the respondent without considering the deduction of the amount pre-deposited by the petitioner prior to filing of application under SVLDRS Scheme, 2019 and to direct the respondent to accept the declaration filed under the aforesaid scheme on payment of Rs.3,53,803.40 by the petitioners.

2.The prayer in the Writ Petition reads as under:

> “*calling for the records relating to Order SVLDR-3 No.L191119SV300290 dated 19.11.2019 passed by the respondent without considering deduction of the pre-deposit of Rs.15,35,755.00 and quash the said Rejection Order and thereby direct the respondent to allow the 'Tax Dues Less Tax Relief' of Rs.3,53,803.40 as generated in Form SVLDRS-1 No.LD1609190001821 under the category 'Appeal not filed or appeal having attained finality' filed by the petitioner under Section 123(d) of Finance Act, 2019 and quash order SVLDR-3 No.L191119SV300290 dated 19.11.2019*”

Brief facts of the case is as follows:

3. The petitioner had filed declaration in Form SVLDRS-1 on 16.09.2019. In the said application, the petitioner had referred to Order-in-Original bearing C.No.V/15/12/2017-Adjn. dated 13.08.2018 declaring the amount of tax as Rs.47,23,896/- and an equal amount of penalty.

4. In the said declaration, the petitioner has also stated that the petitioner had pre-deposited a sum of Rs.15,35,755/-. Thus, the petitioner quantified the tax payable by the petitioner as Rs.3,53,803/-. The

respondent namely the Designated Authority has determined the amount of tax payable by the petitioner as Rs.12,75,256/-.

5.The issue that arises for consideration in this Writ Petition is whether under the provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, whether the amount of Rs.15,35,755/- pre-deposited by the petitioner which was appropriated by the Assistant Commissioner vide order in Original No.20/2018 dated 13.08.2018 bearing reference C.No.V/15/12/2017-Adjn. is to be set off against the tax amount of Rs.47,23,896/- confirmed by the Assistant Commissioner and affirmed by the Commissioner of Appeals vider Order-in-Original No.90/2019 (CTA-II) dated 29.04.2019 in Appeal No.498/2018 (CTA-II/CS) dated 13.11.2018.

6. For the purpose of clarify the amount quantified by the petitioner in SVLDRS-1 and the amount quantified by the respondent in SVLDRS-2 are as under:-

Sl. No.	Description	Calculation as per FORM SVLDR-1 (in Rs.)	Calculation as per FORM SVLDR-2 (in Rs.)
1.	Amount of tax confirmed in Order-in-Original	47,48,896/-	47,23,896/-
2.	(Less) Amount of pre-deposit/deposit	15,35,755/-	15,35,755/-
3.	(Less) Tax relief of 60%	28,34,338/-	19,12,685/-
4.	Amount Payable	3,53,803/-	12,75,256/-

7. The learned counsel for the petitioner would submit that the respondent has made an erroneous calculation in Form SVLDRS-3 to arrive at a sum of Rs.12,75,256/- as the amount payable by the petitioner. The learned counsel for the petitioner also placed reliance on the decisions of the High Court of Delhi, High Court of Jharkhand and High Court of Bombay in the following cases in the support of the present Writ Petition:-

(i) **Vassu Enterprises Vs. Union of India**, 2022 (66) G.S.T.L. 112 (Jhar.);

(ii) **B-Earth & Spire (India) Pvt. Ltd., Vs. Union of India**, 2022 (64) G.S.T.L. 81 (Del.) and

(iii)**ICICI Bank Ltd., Vs.Union of India**, 2015 (38) S.T.R. 907 (Bom.)

8. The impugned order is defended by the learned Senior Standing

Counsel for the respondent. It is submitted that the amount that has been determined in impugned Form SVLDRS-3 dated 19.11.2019 is proper and does not warrant any interference under Article 226 of the Constitution of India.

9. That apart, it is submitted that under SVLDRS Scheme has to be read strictly and there is no scope for any conclusion and therefore the petitioner having failed to pay the amount within the due date cannot ask for any relief in this Writ Petition.

10. That apart, it is submitted that the determination stand made as early as on 19.11.2019 in Form SVLDRS-3, however, the Writ Petition has filed only on 14.08.2020 and the Writ Petition was liable to be dismissed on account of latches.

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

12. The facts on record indicate that the petitioner has suffered and an adverse order in Order in Original No.20/2018 dated 13.08.2018 bearing reference C. No.V/15/12/2017-Adjn.

13. Aggrieved by the same, the petitioner preferred Appeal No.493/2018 (CTA-II CS) before the Commissioner (Appeals) who vide Order in Appeal No.90/2019(CTA-II) dated 29.04.2019 dismissed the said appeal. The petitioner had three months time to file an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) under Section 86 of the Finance Act, 1994 .

14. The last date for filing an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) would have expired on 29.06.2019. The petitioner opted to settle the case on Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 Chapter V of the Finance Act, 2019 by filing for FORM SVLDRS-1 on 16.09.2019.

15. Since, the petitioner did not chose to file an appeal against the Order in –Appeal No.90/2019 (CTA-II) dated 29.04.2019 before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) tax dues

of the petitioner are relatable to amount in arrears as defined in Section 121(C) of Chapter V of the Finance Act, 2019 contrary the Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS). The define of " amount in arrears" in Section 121© of the Chapter V of the Finance Act, 2019 contrary the Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS) is reproduced below:-

> Section 121(c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of—
>
> (i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
>
> (ii) an order in appeal relating to the declarant attaining finality; or
>
> (iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it; Special provision for retrospective exemption from service tax in certain cases relating to long term lease of plots for development of infrastructure for financial business. 32 of 1994. 12 of 2017. Short title and commencement.

16. As per Section 124(1)(c) of the Finance Act, 2019 where the

amounts of tax in arrear is Rs.50,00,000/- or less, a declarant is entitled to 60% relief. In other words, such a declarant has to pay 40% of the dispute tax. Extract of Section 124(1)(a) & (c)(i) to (iii) of the SVLDR Scheme, 2019 from Chapter V of the Finance Act, 2019 is reproduced below:-

124(1) from the Chapter V of Finance Act, 2019	
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 arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—	(c)where the tax dues are relatable to an amount in arrears and,-
(i)rupees fifty lakhs or less, then, seventy per cent of the tax dues;	**(i)the amount of duty is more than rupees fifty lakhs or less, then, sixty per cent of the tax;**
(ii)more than rupees fifty lakhs, then, fifty 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,—

17. Therefore, on the tax amount of Rs.47,27,896/- as confirmed by the Assistant Commissioner vide Order in Original No.20/2018 dated 13.08.2018, which was affirmed by the Appellate Commissioner vide Order in Appeal No.90/2019(CTA-II) dated 29.04.2019, the petitioner is entitled to 60% for relief in terms of Section 124(1)(c) of Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019. Thus, the petitioner is entitled to relief upto 60% of Rs.47,27,896/- and therefore the petitioner was required to pay a sum of **Rs.18,99,158.40/-** (rounded off to Rs.18,99,158/-) being 40% of **Rs.47,27,896/-** of the amount as confirmed by the Assistant Commissioner vide Order in Original No.20/2018 dated 13.08.2018, which was affirmed by the Appellate Commissioner vide Order in Appeal No.90/2019(CTA-II) dated 29.04.2019.

18. The amount that was pre-deposited by the petitioner is available for being set off in terms of Section 124(2) of Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019. Section 124(2) of the said Act which reads as under:-

> 124(2): 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 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 petitioner .
>
> Provided that if the amount of pre-deposit or deposit already paid by the declarant proceeds 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.

19. The petitioner is entitled to deduct **Rs.15,35,735/-** being the amount pre-deposited by the petitioner during the course of investigation in terms of Section 124(2) of Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 from the aforesaid sum of Rs.18,99,158.40 Thus, the petitioner is required to pay only a sum of **Rs.3,63,419/-** (Rs.18,99,154.40 – Rs.15,35,735/-) and not **Rs.12,75,256/- .**

20. The amounts quantified as payable both by the petitioner in Form SVLDRS-1 and by the respondent vide impugned Form SVLDRS-3 dated 19.11.2019 are incorrect.

21. Thus, the amount quantified by the petitioner should have been Rs.3,63,419/- and not **Rs.3,53,803/-** in Form SVLDRS-1. Therefore, **Rs.12,75,258/-** quantified by the respondent in the impugned SVLDRS-3

is also incorrect.

22. In view of the above, the following orders to be passed:-

(i) The petitioner shall pay a sum of **Rs.3,63,419/-** as quantified above within 30 days of receipt of this order together with interest at 12% from the 30th day of expiry of Form SVLDRS-2.

(ii) In case, the petitioner has already paid an amount of **Rs.3,53,803/-,** the petitioner shall pay only the differential amount of **Rs.9,616/- (Rs.3,63,419 – Rs.3,53,803/-)**

(iii) The petitioner shall also pay the interest at 12% p.a. on **Rs.3,63,419**/- from expiry of 30 days SVLDRS in Form – 3.

(iv) Subject to the petitioner paying the aforesaid amount, pursuant to the above, the case of the petitioner shall be settled in terms of Chapter V of the Finance Act, 2019 contrary Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019.

23. This writ petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

31.01.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

The Designated Committee, SVLDRS Scheme,
GST & Central Excise,
Chennai South Commissionerate,
MHU Complex,
692, Anna Salai,
Nandanam,
Chennai – 600 035.

C.SARAVANAN, J.

krk/kkd

Pre-delivery Order in
W.P.No.11204 of 2020

31.01.2024