# IN THE HIGH COURT OF JUDICATURE AT MADRAS

| **Reserved on:** | **Pronounced on:** |
|---|---|
| 10.07.2023 | 31.01.2024 |

CORAM

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

W.P.No.1917 of 2021
and
W.M.P.No.2160 of 2021

Michelin India Pvt.Ltd.,
(Rep.by its authorized representative)
Subramanian Raghavan .. Petitioner

**Vs.**

1. The Designated Committee,
Office of the Commissioner of GST & Central Excise,
Chennai Outer, Gummidipoondi-I Range,
Chennai 600 035.

2.The Additional Commissioner,
GST & Central Excise Audit-II Commissionerate,
692, MHU Complex, Nandanam,
Chennai 600 035.

3.The Superintendent,
GST & Central Excise Audit-II Commissionerate,
692, MHU Complex, Nandanam,
Chennai 600 035.

4. The Central Board of Indirect Taxes and Customs,
Department of Revenue,
North Block, New Delhi 110 001. .. Respondents

**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 the impugned order in Form SVLDRS-1 bearing Reference ARN LD14012000001082 ARN Date 14.01.2020, generated on 04.03.2020 passed by the 1st respondent, quash the same and direct the 1st respondent to issue discharge certificate to the petitioner in SVLDRS-4.

For Petitioner : Mr.Raghavan Ramaradran

For Respondents : Mr.M.Santhanaraman
Senior Standing Counsel

**O R D E R**

The petitioner is aggrieved by the following two remarks in the impugned order in *Form SVLDRS*-1 bearing Reference ARNLD14012000001082 ARN dated 14.01.2020, of the 1st respondent :-

Remarks :-

| |
|---|
| ***The committee examined the case and found that an amount of Rs.8,36,913/- was paid towards interest and the SVLDRS Scheme does not allow the set of interest against duty liability. Accordingly, the Committee decided to accept only the pre-deposit of duty of Rs.20,76,274/- towards pre-deposit.*** |
| ***Tax dues pertain to GST which are out of the purview of the scheme*** |

2. The petitioner had filed Form SVLDRS - 1 under The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 on 14.01.2020 in Chapter-V of Finance (No.2) Act, 2019. The aforesaid scheme came into force on 01.09.2019. The last date for filing application was to expire on 31.12.2019. However, the last date was later extended to 15.01.2020. The petitioner thus filed the above application on 14.01.2020.

3. The petitioner had Input Tax credit that was lying unutilized in its CENVAT Account under CENVAT Credit Rules, 2004 for a sum of Rs.160,75,20,741/- as on 30.06.2017. The petitioner managed to transition the aforesaid credit under the new regime in terms of Section 140 of CGST Act, 2017, effective from 01.07.2017 by filing Form GST Tran-I under Section 140

of the CGST Act, 2017. A dispute arose whether the petitioner was indeed entitled to the aforesaid credit under CENVAT Credit Rules, 2004.

4. Under Section 125 (1)(e) of Chapter V of Finance Act (No.2) Act, 2019, a person is not eligible to make declaration who has been subjected to an enquiry or investigation or audit where the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th date of June, 2019. Section 125(1)(e) of Chapter (No.2) Act, 2019 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019, reads as under:-

"Declaration under Scheme

125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely

(a)
(b)
(c)
(d)
e)who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th date of June, 2019;

5. After, the petitioner had transitioned the Credit, the Audit Wing, namely the office of the 3rd respondent had raised queries and by a communication dated 17.12.2018 bearing C.No.III/10/41/2018-C7 G2 – Misc., informed the petitioner that the petitioner had wrongly transitioned an amount of Rs.17,21,05,852/- out of Rs.160,75,20,741/- as Input Tax Credit under Section 140(1) of the CGST Act, 2017.

6. Under these circumstances, the petitioner was called upon to update the details in the worksheet, which was sent to the petitioner on 04.12.2018 and submit the same to the 3rd respondent. The petitioner was also called upon to furnish the details of credit already reversed in the prescribed format. The relevant portion of the aforesaid communication reads as under:-

> "Gentlemen,
>
> Sub: Tran-1 Credit Verification M/s.Michelin India Pvt. Ltd., - Reg.
>
> ---
>
> Please refer to the Tran-1 credit verification of

M/s.Michelin India Pvt Ltd situated at the above address and this Office worksheet sent to you on 05.12.2018 through email. Since you have not revert back on the worksheet and also not contested the workings sent by us it is construed that the worksheet sent by us is accepted and final hence you are requested to reverse the ineligible credit immediately as mentioned hereunder and report to this Office.

| Sl.No. | DESCRIPTION | AMOUNT |
|---|---|---|
| 1 | Excess credit / ineligible credit (worksheet Sl.No.3b, 4a & 4.a.1.) | 1,50,69,898 |
| 2 | Documents not provided (worksheet Sl.no.1,2,3 & 4) | 42,09,314 |
| 3 | Credit availed on the invoices beyond the due date (more than 1 year credit) (worksheet Sl.no.3a, 3c, 4b, 4.b.1, 5, 7, 8 & 9) | 15,28,26,640 |
| | Total | **17,21,05,852** |

Further you are requested to update the details of the above workings in the worksheet which was already sent by us on 04.12.2018 and submit to this Office. Details of credit already reversed may also be reported in the format prescribed. Kindly submit the physical copy of worksheet duly attested in all pages and also submit soft copy of worksheet."

7. Thereafter by another communication dated 27.12.2018, the respondents have confirmed that the petitioner had reversed a sum of **Rs.8,35,48,284/-** in their GSTR-3B return filed on 20.12.2018. Hence, the

petitioner was called upon to reverse the balance of **Rs.8,85,57,568/-** (Rs.17,21,05,852/- - Rs.8,35,48,284/-).

8. On 26.02.2019, the petitioner reversed the further sum of Rs.3,50,49,747/-. Thus, in all, the petitioner has reversed a sum of Rs.**11,85,98,031**/- (Rs.8,35,48,284/- + Rs.3,50,49,747/-) out of Rs.17,21,05,852/-. This has been quantified on the communication of the 3rd respondent. Therefore, the balance to be paid by the petitioner was only Rs.**5,35,07,821**/- (Rs.17,21,05,852/- - Rs.11,85,97,989/-).

9. Meanwhile, with the announcement of the aforesaid SVLDR Scheme, the petitioner filed Form SVLDRS -1 on 14.01.2020. The petitioner had filed the case under the investigation, enquiry or audit category. It has been rejected on the same date, being the last date for settling the dispute under the aforesaid Scheme.

10. The learned counsel for the petitioner has placed reliance on the decision of the High Court of Jharkhand at Ranchi in **Usha Martin Ltd., Vs.**

**Addl. Commissioner of CGST & Ex., Jamshedpur**, 2023 (68) GSTL 338 (Jhar.).

11. The respondents have defended the impugned order stating that the petitioner was not entitled to settle the dispute under the aforesaid scheme. In the counter affidavit, the respondents have stated that the amount declared by the petitioner pertains to the CENVAT wrongly availed which is covered under the scope of the 'indirect tax enactment' as per Section 122(a) of the Scheme and that the same is clarified in CBIC's Circular dated 07.08.2019 that the said demand has also been quantified on 17.12.2018, which is before 30.06.2019 cut-off date provided under the Scheme and as per Circular 29.10.2019, at para 2(i) therein, even audit proceedings that are concluded before 30.06.2019 is covered under the SVLDR Scheme.

12. During the interregnum, the petitioner was also issued with Show Cause Notice dated 19.02.2020 after the petitioner opted to settle the dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 on 14.01.2020 under the “Investigation, enquiry or audit Category” and under

such category " Audit".

13. The point for consideration is whether the petitioner is entitled to settle the dispute under SVLDR Scheme, 2019 under the aforesaid category viz., "Investigation, enquiry or audit Category" . Under the SVLDR Scheme different categories of assessees are entitled to file declaration to settle their disputes under specified enactment.

14. The case of the petitioner is that the petitioner is entitled to settle the dispute in terms of aforesaid scheme under Section 124(1)(a)(ii) as the amount involved was more than Rs.50 lakhs. The reason given by the respondents for rejecting the application is that an amount of Rs.8,36,913/- was paid towards interest and that the SVLDRS Scheme does not allow the set of interest against duty liability. The second remark states " Tax dues pertain to GST which are out of the purview of the scheme".

15. Accordingly, the Committee decided to accept only the pre-deposit

of duty of Rs.20,76,274/- towards pre-deposit. Thus, as against an amount of Rs.11,85,97,989/- pre-deposit, the respondents have decided to accept only a sum of Rs.20,76,274/- towards pre-deposit. It is not clear whether after the impugned Form in SVLDRS-1, the petitioner was issued with SVLDRS-3 under Rule 6 of the SVLDRS Scheme 2019, r/w Section 127 of the said Act.

16. A reading of the communication dated 17.12.2018 of the 3rd respondent merely indicates there was no final quantification of the amount before 30.06.2019. To be eligible, the amount of duty should have been quantified on or before 30.06.2019. The petitioner could have approached the Designated Authority under the Scheme only if there was a proper quantification of duty on or before 30.06.2019.

17. Letter dated 17.12.2018 bearing C.No.III/10/41/2018-C7 G2-Misc. is merely a communication asking the petitioner to update the workings in the worksheet, which was already sent on 04.12.2018 and to submit the same. It is pursuant to the aforesaid letter, a subsequent communication was issued on 27.12.2018 to the petitioner.

18. A Show Cause Notice was issued to the petitioner in SCN No.4/2020-(ADC) dated 19.02.2020 was issued to the petitioner within the period of 35 days from 14.01.2020 the date of the declaration filed by the petitioner in Form SVLDRS-1 demanding a sum of Rs.31,23,18,218 as detailed below:-

| ***S.No.*** | ***Description of the issue in the Impugned SCN*** | ***Tax Demand*** |
|---|---|---|
| 1 | Cenvat Credit availed without any document and availment of Cenvat Credit twice basis the same doucment | 3,60,59,802 |
| 2 | Cenvat Credit availed beyond the specified time limit | 17,27,09,497 |
| 3 | Availment of inelitible Cenvat Credit | 1,07,67,478 |
| 4 | Availment of credit over and above the eligible credit | 42,91,303 |
| 5 | Availment of credit without documents | 4,61,92,752 |
| 6 | Non-reversal of credit taken on intellectual Property Right (IPR) and market related study services | 2,40,75,313 |
| 7 | Transition of the balance of the EC and SHEC carried forward in the ER-1 returns. | 1,82,22,113 |
| | Total | 31,23,18,218 |

19. It is thus clear that the petitioner was barred from filing the application / declaration under the SVLDRS Scheme, 2019 in view of Section 125(1)(e) of The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. as there was no quantified. If indeed there was a quantification, a Show Cause Notice No.4/2020-(ADC) dated 19.02.2020 would have been issued to the petitioner within the period of 35 days from 14.01.2020 the date of the declaration filed by the petitioner in Form SVLDRS-1. On the date of hearing when the case was reserved for orders on 10.07.2023, the respondent has filed a copy of Order in Original No.24/2023-GST(ADC) dated 31.03.2023. wherein the demand proposed in SCN No.4/2020(ADC) dated 19.02.2020 has confined the demand.

20. Thus, the petitioner was not entitled to settle the dispute under the aforesaid scheme, although the Designated Committee of the 1st respondent has concluded that the Committee examined the case and found that an amount of Rs.8,36,913/- was paid towards interest and the SVLDRS scheme does not allow the set off of interest against duty liability. Accordingly the Committee decided to accept only the pre deposit of duty of Rs.20,76,274/- towards pre

deposit.

21. Further, the Division Bench of this Court in **M/s.Win Power Engineering (P) Ltd., Represented by its Director T.K.Kumar Vs. The Designated Committee Sabka Vishwas Legacy Disputes Resolution Scheme, 2019**, in W.P.Nos.11785, 12957 of 2020, has held as under:-

> "134. There should have been a quantification of the tax dues/duty liability on or before 30.06.2019 as per Section 123(c) where the tax dues are linked to an **enquiry, investigation or audit** against the declarant so as not to attract the exception under Section 125(1)(e). Such a declarant is entitled to relief as specified Section 124 (1)(d) as below:-
>
> > **Section 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)……..*
> >
> > *(b)………..*
> >
> > *(c ) …….*
> >
> > *(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;*

135. For clear understanding of cases where there is quantification before 30.06.2019 in the case of a declarant where an enquiry or investigation was pending, the following table given below:-

<table>
<tr><td>ENQUIRY OR INVESTIGATION OR AUDIT</td><td colspan="2">125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—<br>(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;</td></tr>
<tr><td>Definition</td><td>Tax Due</td><td>Relief</td></tr>
<tr><td>121. In this Scheme, unless the context otherwise requires,—<br>(g) “audit” means any scrutiny, verification and checks carried out under the indirect tax enactment, other than an enquiry or investigation, and will commence when a written intimation from the central excise officer regarding conducting of audit is received;</td><td>123. For the purposes of the Scheme, “tax dues” means—<br>(c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019</td><td>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:—<br>(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—</td></tr>
</table>

| | | |
|---|---|---|
| *(m)''**enquiry or investigation**'', under any of the indirect tax enactment, shall include the following actions, namely:—*<br>*i. search of premises;*<br>*ii issuance of summons; iii.requiring the production of accounts, documents or other evidence;iv. recording of statements;* | | *(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;*<br>*(ii)more than rupees fifty lakhs, then, fifty per cent. of the tax dues;* |

136. Thus, a person is not entitled to avail the benefit of SVLDRS, 2019, if there was no quantification of tax or duty liability where there was either inquiry, investigation or audit.

137. Non-quantification of tax dues acts as a dis-qualifier and therefore inhibits a person from availing the benefit of the SVLDRS, 2019. Such a person cannot file a declaration under the scheme. Quantification of "tax dues" is *sine qua-non* for availing the benefit for relief under Sec.124(1)(d) of SVLDRS,2019."

22. In the FAQ No.10 of the Voluntary Disclosure (VD), it has been held as under:-

"143. The clarification in the FAQs issued reads as under:-

| FAQs | | |
|---|---|---|
| Voluntary disclosure (VD) | Q10. I have been subjected to an enquiry or investigation or audit under indirect tax enactment and I want to make a voluntary disclosure regarding the same. Am I eligible for the Scheme? | Ans. No, you are not eligible to make a declaration under the voluntary disclosure category as per section 125(1)(f)(i). |

144. As far as FAQ 45 is concerned, it has been clarified with written communication will include a letter intimating duty/tax demand or duty/tax liability admitted by the person during enquiry, investigation or audit or audit report etc. However, if enquiry, Investigation or Audit is over, against an assessee, there is no question of availability SVLDRs' 2019.

145. In other words, during the course of enquiry investigation or audit, a person can file a Declaration under SVLDR, 2019 provided there is a proper quantification of tax liability on or before 30.06.2019. However, mere filing of a Declaration *ipso facto* will not mean that the enquiry, investigation or audit has to be stopped. If the amount quantified is correct, such quantification can be accepted. However, if enquiry, investigation or audit is complete, where there is no quantification, there is no scope for filing Declaration.

146. Thus, "Voluntary Disclosure" is not permissible in view of exclusion in Section 125(f) after a person has been subjected to an "Enquiry",

"Investigation", or "Audit" or where having filed returns under the indirect tax enactment, amount payable in it has not been paid. If returns were filed after 30.06.2019 also benefit is not available. Thus, the respective petitioners are *prima facie* not entitled to any relief if there was quantification after 30.06.2019.

147. Only if the "tax due" are linked to an "Enquiry" or "Investigation" or "Audit" where it was quantified on or before the 30th day of June 2019, a Declaration could have been filed.

148. However, it is not the self declared quantification of a Declarant of "tax dues" which will entitle the benefit of the aforesaid scheme. The scheme brings a closure to the tax dispute with issuance of certificate under Section129 of SVLDRS, 2019. It has to be a quantification which ought to have been accepted by the Investigating Wing or Audit Wing of the Department.

149. The question of issuing statement by the Committee under Section 127 read with Rule 6 of the SVLDRS Rules, 2019 would arise only where the application filed itself falls within the four corners of Section 124(1)(d) as extracted above. Only where there was quantification of tax or duty in arrears, the scheme was applicable."

23. Thus, the decision of the High Court of Jharkhand at Ranchi in **Usha Martin Ltd., Vs. Addl. Commissioner of CGST & Ex., Jamshedpur**, 2023 (68) GSTL 338 (Jhar.) relied on by the learned counsel for the petitioner has of no avail.

24. Therefore, there is no merits in this writ petition. The Writ Petition

has to therefore fail and is liable to be dismissed. The Writ Petition accordingly, stands dismissed. However, liberty is given to the petitioner to file an appeal against Order in Original No.No.24/2023-GST(ADC) dated 31.03.2023 before the Commissioner (Appeal) Gst & Central Excise Appeal II Commissionerate at 12th Main Road, Anna Nagar, Chennai 600 040, within a period of 30 days from the date of receipt of this order, if such an appeal has not been already filed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
rgm/krk/kkd

**To**

1. The Designated Committee,
   Office of the Commissioner of GST & Central Excise,
   Chennai Outer, Gummidipoondi-I Range,
   Chennai 600 035.

2. The Additional Commissioner,
   GST & Central Excise Audit-II Commissionerate,
   692, MHU Complex, Nandanam,
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3. The Superintendent,
   GST & Central Excise Audit-II Commissionerate,
   692, MHU Complex, Nandanam,
   Chennai 600 035.

4. The Central Board of Indirect Taxes and Customs,
   Department of Revenue,
   North Block, New Delhi 110 001.

**C.SARAVANAN, J.**

kkd

Pre-delivery Order in
W.P.No.1917 of 2021

31.01.2024