IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 12.08.2025

PRONOUNCED ON: 20.08.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.A.No.602 of 2025
and CMP.No.4807 of 2025

1.The Designated Committee
(under SabkaViswas (Legacy Disputes
Resolution) Scheme, 2019)
Consisting of Commissioner of Central Excise
and Additional Commissioner of Central Excise,
Chennai outer Commissionerate,
Anna Nagar, Chennai-600 040.

2.The Commissioner of Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054-I : II Avenue,
Anna Nagar, Chennai – 600 400.

.. Appellants

vs

M/s.Heaven Engineering,
Represented by its Prop: S.Sathish Kum3ar,
No.1/123, Perumal Koil Street,
Iyyanpanthangal,
Chennai-600 056.

.. Respondent

Prayer : Appeal filed under Clause 15 of Letters Patent to against the order dated 13.12.2024 passed in W.P.No.11098 of 2024 on the file of this Court.

For Appellants: Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by Mr.RajnishPathiyil,
Senior Panel Counsel
and
Ms.S.LydiaSteffi, Junior Panel Counsel

For Respondent: Mr.M.A.Mudimannan

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

The present appeal has been filed by the Designated Committee under the SabkaViswas Legacy Disputes Resolution Scheme, 2019 (in short 'Scheme'/A1) and the Commissioner of Central Excise, Chennai Outer Commissionerate/R2 challenging the order of the Writ Court dated 13.12.2024 passed in W.P.No.11098 of 2024. The Writ Petitioner is arrayed as the sole respondent.

2. The Writ Petition had been filed by M/s.Heaven Engineering represented by its Proprietor S.Sathish Kumar challenging a show cause notice bearing No.01/2020 dated 06.02.2020 issued by A2.

3. The basis of the challenge was that the show cause notice would no longer survive, as the Designated Committee had issued a Discharge Certificate

in Form SVLDRS – 4 on 23.07.2020 under the Scheme. The Writ Petition had come to be allowed on 13.12.2024 on the ground that the declaration filed by the respondent had been acknowledged, Form SVLDRS – 3 was issued on 28.02.2020, Form SVLDRS-4 issued on 23.07.2020 and hence hearing notice dated 07.02.2022 in reference to show cause notice dated 06.02.2020 could not have been issued, unsettling the case settled under the provisions of the Scheme. As against that order, the Designated Committee and the Central Excise Commissioner are in appeal.

4. Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Mr.RajnishPathiyil, learned Senior Panel Counsel and Ms.Lydia Steffi, learned Junior Panel Counsel for the appellants advance the following submissions.

5. There are several illegalities in the Declaration made by the respondent. Firstly, the application purports to have been filed by '*Sundaram Satish Kumar*, whereas the registered dealer is called '*Heaven Engineering*'. Secondly, the respondent has selected the category of '*voluntary disclosure'* knowing fully well that the matter was under investigation. The category '*Investigation, Enquiry, Audit*' thus ought to have been selected.

6. The respondent had been subjected to investigation from 2014 onwards which continued till 2019 and hence he had been ineligible to even apply under the Scheme. However, on 15.01.2020, the last date of the SVLDRS Scheme, an application had been made offering an amount of

Rs.64.32 lakhs (approx) as tax arrears for the period April, 2014 to June, 2017. However, he selected the category *'voluntary disclosure'* merely to render himself eligible for the SVLDRS Scheme.

7. By virtue of the incorrect form filed, the Declaration came to be processed, SVLDRS – 3 issued on 28.02.2020, payment received from the respondent under SVLDRS on 29.06.2020 and SVLDRS – 4, Discharge Certificate, had been issued on 23.07.2020.

8. The entirety of the proceedings under SVLDRS stands vitiated by the mis-representation and fraud committee by the respondent in the Declaration form. That apart, the impugned show cause notice had been issued on 06.02.2020 proposing imposition of duty of Rs.9.07crores for the period October, 2012 to June, 2017 and received by the respondent on the same day.

9. The respondent had purposely delayed in revealing the fact that anDeclaration had been filed under SVLDRS. In any event, with the detection of the factum of concealment, Section 129 (2)(c) stands triggered, as per which mis-declaration of a material fact would vitiate the Declaration and this provision has not been taken note of by the Writ Court.

10. These are patent misdeclarations and fraud played on the department and now, the Court.He cites the judgment of the Supreme Court in the case of *S.P.Chengalvaraya Naidu (Dead) By LRs V. Jagannath (Dead) by LRs. and others* ((1994) 1 SCC 1) for the proposition that fraud would vitiate all acts

and a judgment or decree obtained by playing fraud on the Court would be a nullity and non-est in the eyes of law. The discrepancies/illegality/irregularities in the Declaration filed by the respondent would render it susceptible to the ratio of the aforesaid judgment.

11. He also takes us in detail through the extracts of file notings to illustrate that the case falls squarely within the ambit of Section 129(2)(c) of the Scheme and hence the Department is within its rights to proceed with show cause notice dated 06.02.2020. He would conclude by saying that no prejudice would be caused to the respondent as the show cause notice would be adjudicated in accordance with law.

12. Per contra, Mr.Mudimannan, learned counsel for the respondent points out that, the requirement under Section 129(2)(c) of the Scheme is that the Discharge Certificate be revoked within one year. Such revocation has not transpired till date. Hence, the conclusion of the Writ Court is correct.

13. He would also point out that there is no suppression as the respondent has, in second reply dated 14.08.2020 to the impugned show cause notice, made a disclosure that a Declaration had been made under the Scheme, seeking time to file a reply. Even at that stage, it had been open to the Department to have taken action under Section 129(2)(c), despite which, they did nothing. Hence, the respondent cannot be penalised for the inaction and carelessness on the part of the Department.

14. Mr.Mudimannan draws attention to the Circulars issued on the heels of the SVLDRS Scheme, pointing to the Frequently Asked Questions in relation to SVLDRS Scheme as well as Circular No. 1072/05/2019-CX dated 25.09.2019and Circular No.1073/06/2019.CX dated 29.10.2019 stating that the Declaration has been properly filled in, and that there was no error in the order of the writ court.

15. We have heard the rival contentions carefully and perused the material records.

16. The SabkaViswas Legacy Disputes Resolution Scheme, 2019 had been framed under Finance (No.2) Act 2019 for settlement of tax arrears. The crux of their submissions, and what is germane for the purposes of this writ Appeal, would be Section 125 of the Scheme which prescribes eligibility of persons to make a Declaration under the Scheme.

17. Section 125 states that all persons shall be eligible to make a Declaration under the Scheme barring, in clause (e), those who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the enquiry/investigation/audit has not been quantified on or before 30.06.2019 and in clause (f), a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit.

18. The Declaration field by the respondent undoubtedly contains an erroneous disclosure in relation to the selection of category. The categories

available for selection are (i) Arrears (ii) Litigation (iii) Investigation, Enquiry or Audit and (iv) Voluntary Disclosure .

19. In the present matter, investigation by the Enforcement and Compliance Management (ECM) Section, Chennai Outer Commissionerate has commenced in 2014. Yet another round of investigation had taken place in 2019 by the same unit and a statement has also been recorded from the respondent on 09.12.2019 and 04.02.202.

20. Therefore, admittedly, the Declaration falls within the category of '*Investigation, Enquiry or Audit*'. However, the respondent has selected *'Voluntary Disclosure'*as the category under which the Declaration has been submitted. By virtue of the said incorrect selection, it is the say of the Appellants that the method of verification has been different as the category in which the Declaration is submitted would determine the mode of verification.

21. According to them, had the Declaration been submitted under the proper category, disclosing that the respondent had been subject to Investigation/enquiry/audit, the further processes of issuing Forms 3, receiving the payment and issuing the Discharge Certificate in Form 4 would not have transpired. They say that the choice of the incorrect category by the Respondent was deliberate so as to thwart the proper processes and attain the acceptance of his application.

22. We have carefully considered the rival contentions in this regard. The

selection of category as *'voluntary disclosure'* is, undoubtedly, incorrect. The factum of investigation in 2014 and 2019 is admitted, as statements have also been recorded from the respondent in the course thereof. Hence it stands to reason that the respondent ought to have selected the category *'Investigation, Enquiry or Audit'* and the selection by him of another category which is incorrect amounts to a material falsehood, to the knowledge of the Respondent.

23. The Circulars relied upon by the Respondent are extracted below, and do indicate some discussion in regard to this aspect.

Circular No. 1073/06/2019.GX

F. No. 267/78/2019/CX-8-Pt.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Dated, the 29th October, 2019

To
The Principal Chief Commissioners/ Chief Commissioners (All)
The Principal Directors General/ Directors General (All)

Subject: Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019-reg

Dear Madam/Sir,

I am directed to invite your attention to Board's Circulars No. 1071/4/2019-CX dated 27th August, 2019 and 1072/05/2019-CX dated 25th September, 2019 on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, the Board has received *further references from field formations as well as from the trade seeking certain clarifications on the Scheme.*

2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made there-under, as follows:

…..

(ii) Under voluntary disclosure category, the Scheme makes two exclusions: (a) not being subjected to an enquiry or investigation or audit; or (b) having already filed a return but not paid the duty declared therein [Section 125(f)(i) and (ii)]. Some of the formations have reported difficulty in verifying these conditions as the proceedings may have been initiated by another formation. Though the Scheme provides that no verification will be carried out in cases of voluntary disclosure, they felt that there may still be a requirement to determine the eligibility to avail the Scheme. It is clarified that such declarations may be accepted without recourse to determination of eligibility as the Scheme provides ample safeguards for taking suitable action in case of false declaration of any material particular [Section 129(2)(c)].

……

Yours sincerely,
(NavrajGoyai)
OSD(CX)

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<u>Circular No. 1072/05/2019-CX.</u>

F. No. 267/78/2019/CX-8-Pt.II?
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
Dated, the 25th September, 2019

To

The Principal Chief Commissioners/ Chief Commissioners (All)
The Principal Directors General/ Directors General (All)

Subject: Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019-reg

Dear Madam/Sir,

I am directed to invite your attention to Board's Circular No. 1071/4/2019-CX.8 dated 27th August, 2019 on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, the Board has received references from field formations as well as from the trade seeking certain clarifications on the Scheme.

2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder, as follows:

(i) Only the persons who are eligible in terms of Section 125 can file a declaration under the Scheme. The eligibility conditions are captured in Form SVLDRS-1 (Sr. No. 8). The system automatically disallows persons who are not eligible from filing a declaration. However, there is a possibility that such ineligible persons may still make a declaration by selecting an incorrect response. For instance, under Sr. No. 8.1, the person making a declaration has to indicate whether he/she has been convicted for an offence for the matter for which the declaration is being made. If, the answer is 'Yes', then the person is ineligible and is not allowed to proceed further by the system. However, such person is able to file a declaration if he/she incorrectly indicates 'No' as the answer even though he/she has been convicted. Such declarations are void and do not merit consideration under the Scheme. Such persons may be informed of their ineligibility through a letter.

.....

(vi) Section 125(1)(f) bars a person from making voluntary disclosure after being subjected to an enquiry or investigation or au-

dit. Further, what constitutes an enquiry or investigation or audit has also been defined [Sections 121(g) and 121(m)]. A doubt has been expressed as to whether benefit of the Scheme would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department, while quoting authority of Section 14 of the Central Excise Act, 1944 etc. It is clarified that the Designated Committee concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the provisions of Section 125(1)(f) are attracted in such cases.

…….

Yours sincerely
Sd/-
(Navraj Goyal)
OSD(CX)

24. The Circulars, particularly Circular dated 25.09.2019 reiterates the requirement that the disclosure of information is true, and there can be no compromise in that regard. The relevant provision makes it clear that suppression of a material fact would efface the very Declaration and this is what has been emphasised in the Circulars. We had sought copies of the records under order dated 08.08.2025 in order to ascertain the sequence of events, and determine what exactly had transpired.

25. A compilation dated 11.08.2025 has been filed with extracts from the file notings. The sequence of dates that unfold are as follows. Investigation by the '*Enforcement and Compliance Management Section, Chennai Outer Commissionerate*' had commenced in 2014 and a statement of the petitioner

had initially been recorded on 07.02.2014.

26. Investigation was re-commenced on 06.12.2019 by the same agency and statements were recorded by the Investigating Officer on 09.12.2019 and 04.02.2020. The position that investigation was on-going is thus established and there can be no two opinions in this regard.

27. Section 125 of the Scheme deals with '*Declaration under Scheme*' and reads as under:

> *125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—*
> *(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;*
> *(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;*
> *(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;*
> *(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;*
> ***(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;***
> ***(f) a person making a voluntary disclosure,—***
> ***(i) after being subjected to any enquiry or investigation or audit; or***
> ***(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;***
> *(g) who have filed an application in the Settlement Commission for settlement of a case;*

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.
(2) A declaration under sub-section (1)shall be made in such electronic form as may be prescribed.
(emphasis ours)

28. Hence, the bars, both under Section 125(1)(e) and (f) stand attracted in this matter, as the investigation, enquiry, audit of the matter was on-going and no demand has been quantified as on 30.06.2019.

29. Notwithstanding the above bar, on 15.01.2020, an application under SVLDRS had been filed by the respondent in the name of '*Sundaram Sathish Kumar'*. The registration number under the GST Act is set out in the application which corresponds with the GSTIN (registration number) issued to M/s.Heaven Engineering. On 06.02.2020, show cause notice was issued, impugned in the Writ Petition, acknowledged by the respondent on the same day.

30. On 20.02.2020, the Commissioner of GST and Central Excise, Chennai Outer Commissionerate /A2 writes to the Directorate General of GST Intelligence (DGGI), Chennai Zonal Unit (CZU) asking for certain particulars in respect of 132 assessees who had made applications under the SVLDRS Scheme.

31. On 26.02.2020, the DGGI (CZU) writes to A2 saying that the DGGI (CZU) has not registered any case or initiated any investigation in respect of

131 cases barring one case with which we are not concerned. Hence, they gave a clean chit to the respondent. The same verification as aforesaid has also been made with the Superintendent (ECM) and Commissioner of GST and Excise, Audit II Commissionerate which also, vide letters dated 27.02.2020 and 21.02.2020 respectively give clean chits to the appellants.

32. On 28.02.2020, the petitioner seeks the documents, based on which the impugned show cause notice has been issued. There is no reference to the SVLDRS application filed by him, in that reply. On the same day, SVLDRS -3 has been issued. On 29.06.2020, the respondent makes the payment under SVLDRS – 3 Scheme. SVLDRS-4 discharge certificate was issued to the respondent on 23.07.2020.

33. On 14.08.2020, a second reply had been filed by the respondent seeking more documents and time to file a reply, incidentally making reference to the SVLDRS application filed by him on 15.01.2020. On 27.08.2020, the Assistant Commissioner of GST and Central Excise (TRC Section) Chennai Outer Commissionerate writes a letter to the Assistant Commissioner ECM referring to SVLDRS application filed by the respondent.

34. The officer notes therein, for the first time, that an investigation was under process against the respondent by the Investigation and Compliance Management Section, Chennai Outer Commissionerate, show cause notice

dated 06.02.2020 had been issued to the tax payer and that there was a deliberate misdeclaration in that application.

35. Interestingly, both the addressee and the addressor in that letter are one and the same, meaning essentially that the same person who was holding two charges, has written to herself from her capacity as Assistant Commissioner (ECM) to herself in the capacity as Assistant Commissioner (TRC Section).

36. The third reply to show cause notice is dated 27.08.2021, wherein the Respondent seeks withdrawal of the show cause notice on the ground that the notice had been issued subsequent to the filing of application under SVLDRS as detailed in his reply.The Department replied on 07.02.2022 stating that the show cause notice cannot be withdrawn, on the reasoning that they have verified the records and found that the SVLDRS Declaration had been filed by the respondent when he was under investigation. They also point out that the impugned show cause notice dated 06.02.2020 had been issued prior to the payment by the respondent in the month of June, 2020.

37. A personal hearing notice dated 08.03.2022 was thereafter issued calling upon the respondent to appear on 05.04.2022 for adjudication of the show cause notice in response to which the respondent sought some time, using that time to move the writ petition before the High Court.

38. Undoubtedly, Declarations made under the Scheme are sacrosanct

and in a case where a discharge certificate has been issued under Section 129, the settlement is final, except in the situations set out under Section 129(2) of the Scheme. The provision is extracted below in full:

> *'129.(1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and-*
>
> *(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;*
>
> *(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;*
>
> *(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.*
>
> *(2) Notwithstanding anything contained in sub-section (1).-*
>
> *(a) no person being a party in appeal, application, revision or reference shall contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the discharge certificate under this scheme;*
>
> *(b) the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice.-*
>
> *(i) for the same matter for a subsequent time period; or*
>
> *(ii) for a different matter for the same time period;*
>
> ***(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.'***

(Emphasis in bold, ours)

39. Section 129(1) says that every discharge certificate issued under Section 126 is conclusive, subject to certain caveats under Section 129(2). The exception that is applicable in this case is set out under Section 129(2)(c) of the Scheme. Our interpretation of clause (c), based on the plain language in which it is couched, is that if a material particular in an application is found to be false within one year from the issue of the Discharge Certificate, there shall be a presumption as though the Declaration had never been made with all statutory consequences to follow.

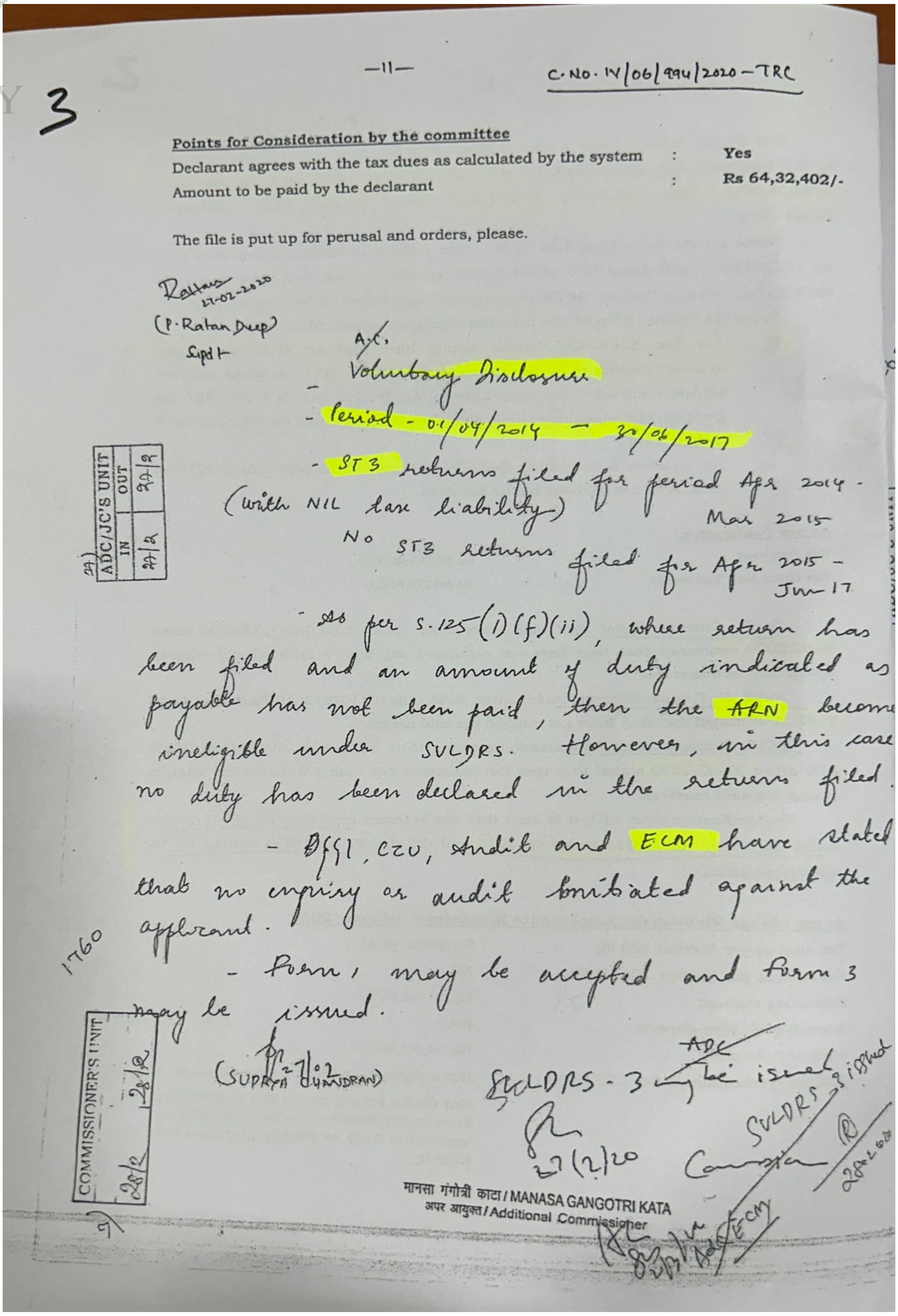
40. The application filed on 15.01.2020 certainly contains a false declaration of a material particular, as the very category under which it has been submitted is wrong. Hence we are of the considered view that the presumption for obliteration of the Declaration stands triggered as per Section 129(2)(c) of the Scheme with all consequences. These aspects ought to have been taken note of by the Writ Court as they have been set out in detail in additional affidavit dated 04.11.2022.

41. The obliteration of the Declaration would be complete and comprehensive in respect of all the processes that have transpired post submission of the application, including the issuance of Form 3, the receipt of the amount and issuance of Discharge Certificate on 23.07.2020. Moreover,

Section 130(1) (b) of the Scheme states that any amount paid under this Scheme shall not be refundable under any circumstances. Hence, with the obliteration of the application and all further events upto and including the discharge certificate dated 23.07.2020, the respondent would also forfeit the payment made under the SVLDRS Scheme on 29.06.2020.

42. Another discrepancy pointed out is in regard to the name of applicant. While the GSTN number has been issued to M/s Heaven Engineering, the application has been filed by the proprietor in his name, Mr.Sathish Sundaram. Much has been made of this, stating that it is a deliberate attempt to mislead and obtain a tactical advantage. We do not completely agree on this front.

43. Certain file notings have selectively been produced for our perusal under compilation dated 11.08.2025. The selection of the pages are random and they are also not in order. Be that as it may, we have assimilated the contents of the pages to understand the sequence of events. On 27/28.02.2020, the following note has been made:



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—11—

C. No. IV/06/994/2020–TRC

Points for Consideration by the committee

Declarant agrees with the tax dues as calculated by the system : Yes

Amount to be paid by the declarant : Rs 64,32,402/-

The file is put up for perusal and orders, please.

Rattan 27-02-2020
(P. Ratan Deep)
Supdt

A/C,

- Voluntary Disclosure
- Period - 01/04/2014 – 30/06/2017
- ST 3 returns filed for period Apr 2014 - Mar 2015 (with NIL tax liability)
  No ST3 returns filed for Apr 2015 - Jun 17
- As per S.125(1)(f)(ii), where return has been filed and an amount of duty indicated as payable has not been paid, then the ARN become ineligible under SVLDRS. However, in this case no duty has been declared in the returns filed.
- DGGI, CZU, Audit and ECM have stated that no enquiry or audit initiated against the applicant.
- Form 1 may be accepted and Form 3 may be issued.

(SUPRIYA CHANDRAN) 27/2

ADC SVLDRS-3 may be issued
27/2/20

SVLDRS 3 issued
Commissioner
28-2-2020

ADC/JC'S UNIT IN 27/2 OUT 28/2

COMMISSIONER'S UNIT 28/2 28/2

1760

मानसा गंगोत्री काटा / MANASA GANGOTRI KATA
अपर आयुक्त / Additional Commissioner

AC ECM

44. This note reveals that the service tax returns filed in Form ST 3 by the respondent have been accessed by the Department. The returns will contain

the name of the assessee, Heaven Engineering, and in all probability, also state that the assessee is represented by the proprietor Mr.Sundaram Sathish Kumar. Hence, the officers are clearly aware that M/s.Heaven Engineering and Mr.Sundaram Satish Kumar are one and the same. The ST3 returns would contain the GSTN number assigned for the Proprietorship and this would further bolster the position that there is no difference in the two names for tax purposes. The Department, having accessed the records of the Respondent is in full possession of the information in regard to the assessee / respondent.

45. There is one aspect of the matter that remains. A specific clarification was sought by us related to the letters dated 26.02.2020, 27.02.2020 and 21.02.2020 issued by the DGGI (CZU), Superintendent (ECM) and Commissioner of GST and Excise, Audit II Commissionerate respectively, confirming that there was no investigation or audit as against the respondent. Our attention is drawn to the file notings as below:

LXVI

IV/06/23/2014-SIR Gr XI

6

A draft letter addressed to the TRC section, Chennai Outer Commissionerate requesting to initiate necessary action at their end to safeguard the revenue, as Shri S. Satish Kumar (Prop. Of M/s Heaven Engineering) filed the SVLDRS application (ARN No. BULPS3625PSD001) For Rs. 64,32,402/- under "Voluntary Disclosure" despite being aware of the fact that the case is under "Investigation". Hence, it appears that the taxpayer mis-declared the facts and concealed information deliberately from department to evade the tax. Consequent to the investigation, SCN No. 01/2020 dated 06.02.2020 was issued to the taxpayer involving an amount of Rs. 9,07,53,180/- along with penalty and interest for the period October'2012 to June'2017.

Put up for perusal, approval and signature, please.

Insp 17.08.2020

Supdt 17/08/2020

AC

- Was the fact that investigation is being conducted communicated to TRC before issue of SVLDRS?

- TRC obtained status of investigation w.r.t volun Declaration SVLDRS applican from ECM. Was this parti ARN circulated and presence or absence thereof investigation ascertained?

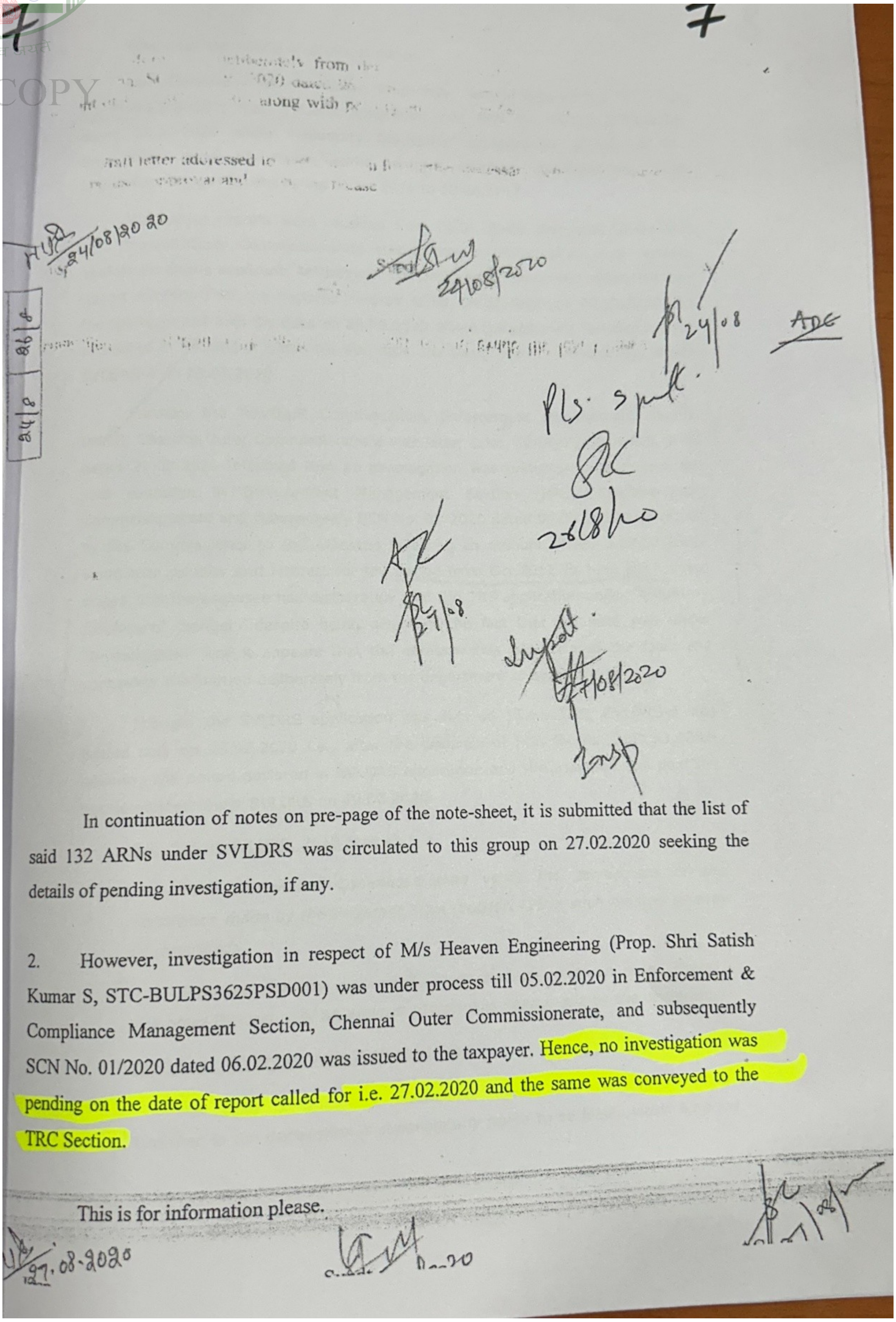
20/08

Supdt 08

Supdt

Please see the Assistant Commissioners remarks above.

In this regard, TRC section circulated a list of 132 ARNs filed under "Voluntary disclosure" to identify the status of investigation, if any. However, in the said list of ARNs, the name of the unit i.e. M/s Heaven Engineering was not mentioned anywhere. Further, in the said list of 132 ARNs, the name of the proprietor was mentioned as 'Shri Sunderam Satish Kumar" which was also not matching with the name of proprietor as per A-I-O and records available in the file i.e. "Shri Satish Kumar S". Hence, the taxpayers name in the said



In continuation of notes on pre-page of the note-sheet, it is submitted that the list of said 132 ARNs under SVLDRS was circulated to this group on 27.02.2020 seeking the details of pending investigation, if any.

2. However, investigation in respect of M/s Heaven Engineering (Prop. Shri Satish Kumar S, STC-BULPS3625PSD001) was under process till 05.02.2020 in Enforcement & Compliance Management Section, Chennai Outer Commissionerate, and subsequently SCN No. 01/2020 dated 06.02.2020 was issued to the taxpayer. Hence, no investigation was pending on the date of report called for i.e. 27.02.2020 and the same was conveyed to the TRC Section.

This is for information please.

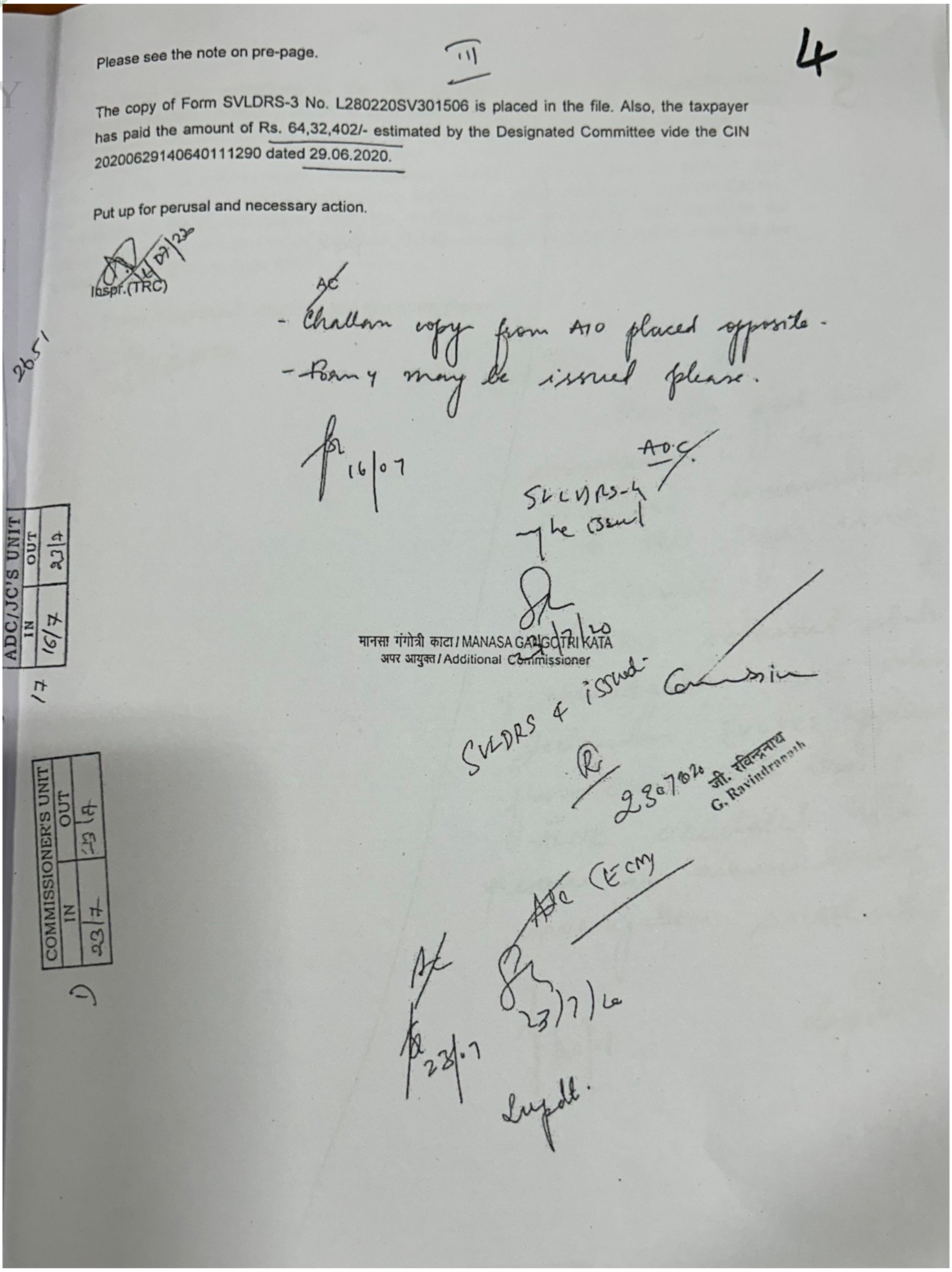
27.08.2020

46. The explanation tendered is that, there was no investigation or audit pending as on that date, that is on 26.02.2020, 27.02.2020 & 28.02.2020, when

the letters had been sent, which is why those agencies had stated so in their letters. They also refer to the show cause notice issued on 06.02.2020 in this regard. This explanation is clearly an afterthought.

47. As on 27.02.2020, the stand of the Department as reflected in the file notings is that the Declaration of the Respondent is to be accepted, as they say. '*As per S.125(1)(f)(ii), where return has been filed and an amount of duty indicated as payable has not been paid, then the ARN become ineligible under SVLDRS. However, in this case no duty has been declared in the return filed. - DGGI, CZU, Audit and ECM have stated that no enquiry or audit initiated against the applicant. - Form 1 may be accepted and Form 3 may be issued.*'

48. Subsequent file notings dated 16.07.2020 as well as the positive action taken by the Department by issuing Form 3 on 28.02.2020, receiving the declared amount on 29.06.2020 and issuing discharge certificate in Form 4 on 23.07.2020 establishes without doubt that they had no idea that there was a defect/lacuna in the application. There is also no reference therein to Section 129(2)(c) of the Scheme. Clearly, they had no inkling of matters at that time. The relevant notings have been furnished and are extracted below:-



4

Please see the note on pre-page.

The copy of Form SVLDRS-3 No. L280220SV301506 is placed in the file. Also, the taxpayer has paid the amount of Rs. 64,32,402/- estimated by the Designated Committee vide the CIN 20200629140640111290 dated 29.06.2020.

Put up for perusal and necessary action.

Inspr.(TRC)

AC

- Challan copy from A/O placed opposite.
- Form 4 may be issued please.

16/07

A.D.C.

SVLDRS-4 may be issued

मानसा गंगोत्री काटा / MANASA GANGOTRI KATA
अपर आयुक्त / Additional Commissioner

ADC/JC'S UNIT	
IN	OUT
16/7	23/7

SVLDRS 4 issued

Commissioner

23.07.2020 जी. रविन्द्रनाथ G. Ravindranath

COMMISSIONER'S UNIT	
IN	OUT
23/7	23/7

ADC (ECM)

23/7/20

23/7

Supdt.

49. In fact, if they did have knowledge of the fact that the application was compromised, and still went ahead to issue Form 3 and discharge

certificate, in Form 4, the matter assumes another ominous dimension altogether. In such circumstances, their submissions would be self - inculpatory.

50. One of us, (Anita Sumanth. J.) has separately heard Writ Appeal No.2388 of 2022 relating to a sexual harassment complaint filed by the Assistant Commissioner who had issued letter dated 27.08.2020, as against the Commissioner who had issued the impugned show cause notice. Prior to making that complaint, the Assistant Commissioner was in receipt of charge memo dated 28.02.2022 calling for her response in respect of the lapse in processing the SVLDRS Declaration of Mr.Sundaram Sathish Kumar, Proprietor of M/s,Heaven Engineering.

51. In her complaint dated 24.05.2022, she levels allegations of sexual harassment against the Commissioner, stating parallelly that there was no error in the discharge of her official functions. We have today, pronounced orders in that matter as well. This is the connect between the two matters and we mention this order solely in the interest of completion of narration.

52. I had indicated even at the time of hearing of that writ appeal that it would be appropriate for all the matters to be heard together but no action had been taken by the present appellants towards consolidation. It is providential that the pending orders in that writ appeal, the present matter has come to be

listed before us as well as it enables us to have a wholistic picture of the matter.

53. Both in the course of the hearing of W.A.No.2388 of 2022 as well as in the present matter, the learned Standing Counsel have fairly acceded to the position that all was not well in the processing of the SVLDRS applications. There were aberrations and defalcations in the discharge of duty by those officers involved in the implementation of the SVLDRS scheme including the members of the Designated Committee. Disciplinary action was initiated and some token punishment has been imposed.

54. Letter of the officer dated 27.08.2020 makes it clear that it was only at that time and juncture, that the Department awoke to the situation and realised that the Declaration of the respondent was compromised. Though it is projected to be innocuous, this is a material point, that reveals that all was not well with the processing of the applications by the Designated Committee. That letter reads thus:

OFFICE OF THE COMMISSIONER OF GST & CENTRAL EXCISE

CHENNAI – OUTER : I – 2054 . II : 600 040
NEWRY TOWERS : NO.2054 –I : II AVENUE : ANNA NAGAR : CHENNAI – 600 040

C.No.IV/06/23/2014-SIR Gr XI *Date: 27.08.2020*

To,
The Assistant Commissioner of GST & C Ex
(TRC Section)

Chennai Outer Commissionerate

Madam,

Sub: SVLDRS application of Shri Sundaram Satish Kumar (ARN No.LD1501200009288) – Reg.

Please refer SVLDRS application filed by Shri Sundaram Satish Kumar (STC BULPS3625PSD001) having ARN No.LD1501200009288.

2. In this regard, it is noticed that SVLDRS-4 has been issued to the taxpayer (Shri Sundaram Satish Kumar – STC BULPS3625PSD001) for an amount of Rs.64,32,402/- for the period April'2014 to June'2017. However, an investigation was under process against the said taxpayer in Enforcement and Compliance Management Section, Chennai Outer Commissionerate and subsequently SCN No.01/2020 dated 06.02.2020 was issued to the taxpayer involving an amount of Rs.9,07,53,180/- along with penalty and interest for the period October '2012 to June '2017.

3. Further, it appears that the taxpayer deliberately filed the SVLDRS application under "Voluntary Disclosure" despite being aware of the fact that the case is under "Investigation". Hence, it appears that the taxpayer mis-declared the facts and concealed information deliberately from department to evade the tax.

In view of the above, it is requested that necessary action may be initiated at your end to safeguard the revenue.

Yours sincerely,
…………………

ASSISTANT COMMISSIONER – ECM.

Copy to:
The Assistant Commissioner of GST & C Ex, Adjudication Section, Chennai Outer Commissionerate for information please.

55. The above letter has been, as we have noted earlier, issued by the officer to herself in another capacity and there is nothing to indicate what triggered letter dated 27.08.2020. In any event, it is only in August 2020 that the Designated Committee, and this officer, realise that an investigation was under process in regard to the Respondent and that show cause notice dated 06.02.2020 had been issued.

56. We specifically asked what action has been taken by either that officer or any others to salvage the situation. However, there has been no action barring that the request of the Respondent for dropping of show cause notice dated 06.02.2020 had been rejected. This puts paid to the attempt of the Appellants to justify the letters of the authorities dated 20.02.2020 giving a clean chit to the Respondent by stating that no investigation was pending.

57. In fact the above argument is incorrect, to their knowledge. We have the benefit of the proceedings of the memorandum issued to the Assistant Commissioner who had penned letter dated 27.08.2020, as conveyed to the learned Additional Solicitor General of India, that had been produced before us. The findings and conclusion in those proceedings are as follows:

> ***Present state of proceedings related to the memorandum issued to ………………… by the Office of the Customs, GST and Central Excise, Chennai, Chennai Outer Commissionerate.***
> *10. With reference to the above, it is submitted that vide letter dated 28.08.2024, the office of the Principal Chief*

Commissioner of GST and Central Excise, Chennai has informed inter alia that the investigation in respect of the case/issue referred to in the Memorandum No.GEXCOM/IGG/MISC/88/2021-VIG-O/O COMMR-CGST-CHN(O) dated 28.02.2022 was taken up by the Director General of Vigilance (DGOV), New Delhi and that after completion of the investigation the DGOV, New Delhi has communicated its decision/directions through a letter F.No.V.527/03/2023/794 dated 15.01.2024 to the Principal Chief Commissioner of GST and Central Excise wherein, at Para 4(ii) it is stated that "regarding the role of Ms.Supriya Chandran, the then Assistant Commissioner, it was observed that she was in-charge of both investigation and SVLDRS processing in the material time; that however, there was a lapse on her part in as much as furnishing "NIL" report denoting that there was no investigation against the declarant; that it appeared that the officer did not notice the name of the unit viz. M/s.Heaven Engineering while putting up the file to the designated Committee. It is further stated, in the letter that though it is a fact that SVLDRS-1 declaration has a mention of M/s.HeavenEngineering in the addressed block, it was taken to be a lapse by over sight and not a deliberate act, as it may not practically be possible for an officer at the rank of the Assistant Commissioner to compare each and every detail of the application vis-à-vis reports received; and thus while there appeared to be a negligence on the part of the Officer, but the same cannot be attributed to a deliberate mis-conduct and thus an Administrative Warning to the Officer for being more careful in future has been approved by the Competent Authority".

11. Further, vide letter F.No.DGoV/Conf/MISC/97/2022-O/oPr.DG-HQRS-DELHI dated 30.08.2024, the DGoV informed at Para 3 that "The investigation into a complaint regarding wrong acceptance of SVLDRS-3 and consequent issuance of SVLDRS-4 (Discharge Certificate) in respect of Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) declaration filed under "Voluntary Disclosure" category by Sh.Sundaram Satish

> *Kumar, Proprietor of M/s.Heaven Engineering was taken up. The investigation sought to find out the act of omissions and commissions on the part of the officers in dealing with the matter. As per the finding of the investigation, issuance of Administrative Warning was proposed. Accordingly, with the approval of the competent authority, an Administrative Warning was issued to* **. . . . . . . (then AC),** *the complainant on 24.02.2024. Administrative Warning was also issued to other three (03) officers namely Sh.Meenakshi Sundaram (AC), Sh.Ganpat Singh Meena (Supdt.) and Sh.Ranjith Kumar, Supdt. on the same matter.*
> *(name withheld by us)*

58. With this, the total lack of coordination between the officers in the Department is apparent, especially between the authority who issued the show cause notice and the officers in the Designated Committee, who proceeded to issue Form SVLDRS -3 and discharge certificate without reference to the show cause notice.

59. In light of our detailed discussion as above, particularly our interpretation of Section 129(2)(c) of the Scheme, we are of the view that the application filed in this case is vitiated by non-disclosure of material particulars, being the field relating to 'category'. As a result, the SVLDRS application is presumed not to have been filed at all. We hence reverse the order of the Writ Court and allow this Writ Appeal.

60. The Department is directed to proceed with the show cause notice in accordance with law, adhering to the principles of natural justice and conclude

the proceedings within a period of three (3) months from date of receipt of a copy of this order. In light of the discussion as above, let the adjudication of the impugned Show Cause Notice be entrusted to some other Commissionerate and the directions in this paragraph, be communicated, to ensure compliance. No costs. Connected Miscellaneous Petition is closed.

[A.S.M., J] [N.S., J]

20.08.2025

sl
Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No

DR. ANITA SUMANTH, J.
and
N.SENTHILKUMAR, J.

sl

W.A.No.602 of 2025
and CMP.No.4807 of 2025

20.08.2025