IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP Nos.16467 & 16471 of 2021
and
WMP No.17436 & 17439 of 2021

M/s.Master Plan,
Represented by its Proprietor,
Shri James Sekar,
5th Floor, Kasi Arcade, Landscape Architects,
No.116, Thyagaraya Road,
Pondy Bazaar, Thyagaraya Nagar,
Chennai- 600017. ... Petitioner in
WP Nos.16467 & 16471 of 2021

versus

1.The Additional Commissioner,
Office of the Principal Commissioner of
CGST & Central Excise, Chennai-North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai-600034.

2.The Additional Commissioner, Member
Designated Committee under the
Sabka Vishwas Legacy Dispute Resolution Forum
Chennai.

3.Joint Commissioner,
Member,
Designated Committee under the
Sabka Vishwas Legacy Dispute Resolution Forum,
Chennai. ... Respondents

WP Nos.16467 & 16471 of 2021

PRAYER in W.P.No.16467 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, calling for the records in the File C.No.GEXCOM/ADJN/ST/JC/182/2020-CH.N.ADJN of the first respondent pertaining to the impugned order-in-original No.22/2021-CH.N(ADC) dated 21.05.2021 and quash the same as illegal, arbitrary and violative of principle of natural justice and consequently give a direction, directing the first respondent to drop the proceedings and pass orders.

PRAYER in W.P.No.16471 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, calling for the records in the File C.No.IV/11/1068/2019-TRC-SVS of the second and third respondents pertaining to the impugned order of rejection of the SVLDRS declaration filed by the petitioner dated 29.10.2020 and quash the same as illegal, arbitrary and violative of principle of natural justice and consequently give a direction, directing the second and third respondents to close the legacy dispute accepting the SVLDRS declaration filed by the petitioner and to pass orders.

For the Petitioner	:Mr.ANR Jayaprathap for M/s.Law Vision
For the Respondents	:Mr.M.Santhanaraman Senior Standing Counsel for R1 to R3

COMMON ORDER

There are two writ petitions filed viz., WP No.16471 of 2021 and W.P.No.16467 of 2021 with the following prayers:

WP No.16471 of 2021 is in the nature of a writ of Certiorarified Mandamus, calling for the records in the File C.No.IV/11/1068/2019-TRC-SVS of the second and third respondents pertaining to the impugned order of rejection of the SVLDRS declaration filed by the petitioner dated 29.10.2020 and quash the same as illegal, arbitrary and violative of principle of natural justice and consequently give a direction, directing the second and third respondents to close the legacy dispute accepting the SVLDRS declaration filed by the petitioner.

W.P.No.16467 of 2021 is in the nature of a writ of Certiorarified Mandamus, calling for the records in the File C.No.GEXCOM/ADJN/ST/JC/182/2020-CH.N.ADJN of the first respondent pertaining to the impugned order-in-original No.22/2021-CH.N(ADC) dated 21.05.2021 and quash the same as illegal, arbitrary and violative of principle of natural justice and consequently give a direction, directing the first respondent to drop the proceedings and pass orders.

2. Petitioner is engaged in the business of interior designing and are offering design and consultancy services, works contract services, installation erection of pool and irrigation equipment and annual maintenance for gardens and swimming pools and have their main office at Chennai.

2.1. During the period from from 2014-15 to Jun 2017, petitioner had rendered the above stated services and collected service tax on those services.

2.2. Though tax was periodically paid upto March 2016, due to sudden ill-health and complications suffered by the proprietor coupled with the consequent financial issues faced by petitioner, tax was not remitted for the period April 2016 to June 2017 nor ST-3 returns filed. With the introduction of Sabka Vishwas-Legacy Dispute Resolution Scheme, 2019 (in short 'SVLDRS'), the petitioner filed an application under the said

Scheme. The application was rejected on the premise that the petitioner had not disclosed the factum of initiation of investigation by DGGST, Puducherry Regional Unit at the time of filing the SVLDRS declaration.

2.3. In view of the alleged mis-declaration, the impugned order proceeds that it must be presumed as if the declaration was never made under Section 129(2)(c) of Chapter V of FA (No.2) Act, 2019-SVLDRS and thus the petitioner is ineligible in terms of the Scheme.

3. Learned counsel for the petitioner, at the outset, would submit that the impugned order is contrary to the order of this Court in W.P.No.25601 of 2021 inasmuch as the alleged investigation which is stated to have been not disclosed was initiated only on 18.09.2019, which is not in dispute.

4. It is submitted that the petitioner is under an obligation only to disclose such of those investigation which were initiated prior to 30.06.2019. The petitioner would submit that the investigation was admittedly initiated on 18.09.2019 i.e. after 30.06.2019 and thus, would

have no bearing on the maintainability of the application under the Scheme. The following table is relevant and thus extracted hereunder:

S.No.	Event	Date
1	Investigation Initiated	18.09.2019
2	SVLDRS 1 filed by the petitioner under voluntary disclosure category	13.01.2020
3	SVLDRS 3 issued for payment of Rs.33,94,540/-	22.01.2020
4	Payment made by the petitioner	18.02.2020
5	SVLDRS 4 issued by the Designated Committee	24.02.2020
6	SCN No.44/2020 issued to the petitioner by the DGGSTI, Chennai for an amount of	21.09.2020
7	SVLDRS Rejection Communication by the Designated Committee	29.10.2020

5. In support thereof, the petitioner would place reliance on a judgment of Bombay High Court in the case of ***New India Civil Erectors Private Limited vs. Union of India and Others*** reported in ***(2021) 48 GSTL 17),*** wherein while considering Section 125(i)(e) of the Finance (No.2) Act, 2019, which reads as under:

> *"125.(1) All persons shall be eligible to make a declaration under this Scheme except the*

following namely:-

a).......

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"

held that on a cumulative/conjoint reading of clauses (e) and (f) to Section 125(1) of the Act it would be evident that the embargo filing a declaration on the premise that the declarant has been subjected to an enquiry on investigation would only relate to an enquiry on investigation which has been initiated on or before 30.06.2019.

6. To the contrary, learned counsel for the respondent would submit that the petitioner had submitted its application subsequent to the initiation of the investigation and thus ought to have disclosed the same and failure to disclose would prove fatal to the validity of the declaration itself and thus the impugned order rejecting the application is justified.

7. Heard both sides and perused the materials available on record.

8. In the present case, admittedly, the investigation was initiated by a issuance of a summon only on 18.09.2019 and thus the rejection/withdrawal of the SVLDRS declaration dated 29.10.2020, is unsustainable. In this regard, it may be relevant to refer to following portion of the order in W.P.No.25601 of 2021 dated 23.02.2024:

> *6. The impugned order is liable to be set aside inasmuch as the impugned order proceeds on the erroneous premise that since an investigation was initiated prior to filing of the declaration by the petitioner under the Scheme, the same would be hit by embargo contained in Section 125 (i)(e) of the Act which reads as under:*
>
> > *"125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely;-*
> >
> > *(a) ......*
> >
> > *(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;"*
>
> *6.1. The above provision had come up for consideration and it has been held by the Bombay High Court that on a cumulative / conjoint reading of clauses (e) and (f) to Section 125(1) of the Act it would*

be evident that the embargo against filing a declaration on the premise that the declarant has been subjected to an enquiry on investigation would only relate to an enquiry or investigation which has been initiated on or before 30.06.2019. In the present case admittedly the investigation was initiated by a issuance of a summon only on 26.09.2019 and thus the rejection / withdrawal of the discharge certificate by invoking Section 125(i)(e) is unsustainable. In this regard it may be relevant to refer to the relevant portions of the decision of the Bombay High Court in the case of New India Civil Erectors Private Limited vs. Union of India and others reported in (2021) 48 GSTL 17) wherein it was held as under:

> *"23.3 Section 125 deals with eligibility to make declaration under the scheme. Sub-section (1) opens with the words 'all persons shall be eligible to make a declaration under this scheme except those mentioned in clauses (a) to (h). Thus, from the language of sub-section (1) of Section 127 it can safely be said that eligibility to make a declaration is the som and ineligibility is the exception. As per clause (1)(1), a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit shall not be eligible to make a declaration under the scheme. At this stage, we may mention that tas per exclusion clauses (a), (c) and (e), those persons who have filed appeal before the appellate forum and such appeal had been heard finally on or before 30-6-2019 or those persons who have been issued a show cause notice under an indirect tax enactment*

and final hearing had taken place on or before 30-6-2019 or those persons who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation had not been quantified on or before 30-6-2019 would not be eligible to make a declaration. Clause (e) is just above clause (1) which deals with voluntary disclosure. As we have seen, clause (e) says that a person who has been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30-6-2019 would not be eligible to make a declaration. Immediately following clause (e) is clause (1) which says that a person making a voluntary declaration after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration. If clauses (e) and (f) are to be read in a harmonious manner then logically it follows that the enquiry or investigation or audit referred to in clause (1)(1) would necessarily have to be initiated on or before 30-6-2019.

.....

28. ..... The enquiry or investigation or audit should commence prior to 30-6-2019. Though clause (f) of sub-section (1) of Section 125 does not mention the date 30-6-2019 by simply saying that a person making a voluntary disclosure

> *after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration, the said provision if read and understood in the proper context would mean making of a voluntary disclosure after being subjected to an enquiry or investigation or audit on or before 30-6-2019. Such a view if taken would be a reasonable construct consistent with the objective of the scheme.*
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> *29. That being the position, we are of the opinion that respondent No. 4 was not justified in rejecting the declaration of the petitioner dated 26-12-2019 on the ground that petitioner was not eligible to file declaration under the category of voluntary disclosure since enquiry was initiated against the petitioner on 19-12-2019 whereafter petitioner flied declaration."*
>
> *(emphasis supplied)*

7. The above judgment of the Bombay High Court has been followed by this Court in the case of Narayana Associates in W.P.8478 of 2020, wherein after finding that the petitioner's eligibility under the scheme in terms of Section 125(1)(f) of the Act was rejected on finding that the petitioner was in receipt of a letter dated 10.10.2019 calling upon the petitioner to submit various particulars it was held that the above enquiry or investigation being subsequent to 30.06.2019 which has been found to be the cut off date for availing the benefit of the Scheme by the Bombay High Court it was held that it may not be open to the revenue to challenge the correctness of the view in the *case of another assessee without just cause. The relevant portion of the of the order of this court is relevant and thus extracted here under:*

> *"10. A perusal of the entire Scheme, indicates the following. (i) the Scheme was introduced by the Finance Act, 2019 (ii) It has come into force on 01.09.2019, being the effective date. (iii) Section 121 (c) (iii) refers to filing a return of by the declarant under indirect tax enactment on or before '30.06.2019' (iv) Section 123, defining 'tax dues' mentions in sub-clauses (i) (ii) (b) & (c), the date '30.06.2019' as being the cut-off date for computation of tax dues, (v) Section 124, being, 'relief available' under the Scheme clauses (a) & (d) refers to the cut-off date being '30.06.2019' and (vi) Section 125 refers to '30.06.2019' in clauses (a) (c) and (e) thereof.*
>
> *11. Thus, the Scheme has adopted, in several instances, the 30th of June 2019 as a watershed for various purposes, including determination of tax dues/arrears.*
>
> *12. The argument of the respondent is that had it been the intention of legislature that 30.06.2019 be adopted for the purposes of Section 125(f), it would have so stipulated in that clause itself. This is certainly a possible argument. In cases involving the interpretation of a beneficial scheme/exemption notification, the*

accepted Rule is that the scheme be interpreted strictly in line with the avowed and stated intention thereof. Seen in the light, clause 125(f) of the scheme must be read as is, without the addition of the date, 30.06.2019. However, this is not to be, as the interpretation of the Goods and Services Tax Department is itself contrary to that position.

13. Written instructions from the office of the Commissioner, CGST and Central Excise Commissionerate, Belapur in F.No.V/HLC/Bel-GST/MISC/2020-21 dated 22.05.2023, make it clear that pursuant to the order of the High Court dated 31.01.2022, the Bombay Commissionerate has accepted the order on 18.01.2022 'on merit'. The Designated committee of SVLDRS has reconsidered the matter and issued a discharge certificate on 22.04.2022. The instructions read as follows:

> *'Sir,*
>
> *Please refer to your office letter GEXCOM/LGL/HC/ST/155/ 2023-LGL-COMMR-CGST-CHENNAI (OUTER) dated 09.05.2023 on the above subject.*
>
> *It it to inform that vide the order dated 31.01.2022, The Hon'ble Court has remanded the matter back to the Designated Committee of SVLDRS, to consider the declaration of the Petitioners afresh under the voluntary disclosure category*

and thereafter grant consequential reliefs. The Hon'ble Court has directed to grant an opportunity of hearing to the Petitioners and thereafter pass a speaking order. As the matter has been remanded for denovo consideration, thus this office has accepted the said order on 18.01.2022 on merit. Further, the Designated committee of SVLDRS has reconsidered the matter and issued discharge Certificate i.e. SVLDRS-4 on 22.04.2022.

14. In light of the discussion and for the reasons assigned above, this writ petition is allowed. Discharge certificate be issued within a period of two weeks from today.”

8. Following the judgment of the Bombay High Court and this Court referred supra, the impugned order is liable to be set aside. Though other contentions were raised viz., that the impugned order suffers from violation of principles of natural justice and the impugned order by a member of the Designated Committee revoking / cancelling the discharge certificate by the Designated Committee is without jurisdiction, since this Court has already found that the reason which prompted the respondent to withdraw / revoke / cancel the discharge certificate viz., an enquiry / investigation initiated post 30.06.2019 cannot be a bar against the petitioner filing a declaration under the scheme, I am not inclined to examine the above contentions.

9. In view thereof, the impugned order dated 29.10.2020 rejecting the declaration/application under the Scheme is set aside.

10. In view of the orders passed in W.P.No.16471 of 2021, the order of adjudication dated 21.05.2021, which is the subject matter in W.P.No.16467 of 2021 would no longer survive.

11. In case, the respondents are of the view that there is any amounts due either in terms of the Scheme or otherwise, it is always open to respondent authorities to proceed, in accordance with law.

12. The writ petitions stand disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.02.2025

Index : Yes/No
Neutral Citation : Yes/No
mrn

To:
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CGST & Central Excise, Chennai-North Commissionerate,
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MOHAMMED SHAFFIQ, J.

(mrn)

WP Nos.16467 & 16471 of 2021
and
WMP No.17436 & 17439 of 2021

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