IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	24.10.2024
Pronounced On	02.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.264 of 2021
and
W.M.P.No.7498 of 2022

M/s.Flinto Learning Solutions Private Limited,
Represented by its Senior Vice President
Finance & Strategy,
Tek Meadows, Tower C,
3rd Floor, Elcot Sez,
Sholinganallur, Chennai – 600 119. ... Petitioner

Vs.

1.The Joint Commissioner of Service Tax (South),
6th Floor, MHU Complex,
692, Anna Salai,
Nandanam, Chennai.

2.The Commissioner of Service Tax (South),
6th Floor, MHU Complex,
692, Anna Salai,
Nandanam, Chennai.

3.The Assistant Commissioner of Service Tax,
5th Floor, MHU Complex,
692, Anna Salai,
Nandanam, Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to treat the tax paid on 27.12.2019 as fulfilment of tax liability under SVLDRS-3 and issue discharge certificate in SVLDRS-4.

For Petitioner	: Mrs.Radhika Chandrasekhar
For Respondents	: Mr.M.Santhanaraman Senior Panel Counsel

ORDER

The petitioner has filed this Writ Petition for a mandamus, to direct the respondents to treat the tax payment of **Rs.22,08,034/-** paid on **27.12.2019** as fulfillment of tax liability of the petitioner under Form SVLDRS-3 dated 07.01.2020 and for a consequential direction to the respondents to issue Discharge Certificate in Form SVLDRS-4 for settling the dispute of the petitioner under the provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 read with Sabka Vishwas Rule, 2009.

2. The petitioner was a recipient on taxable service of Online Information Database Access and Retrieval Services which was subjected to tax on reverse charge basis in terms of Section 68(2) of the Finance Act, 1994 read with **Notification No.30/2012-Service Tax (ST)** dated **20.06.2012**.

3. It appears that as a recipient of the aforesaid service, the petitioner had failed to pay service tax on reverse charge basis and therefore summons were issued to the petitioner on 12.06.2019. It appears that the Director General of GST Intelligence (Goods and Service Tax) under the GST Act, an Officer of DGGI had sent email to the petitioner on 23.12.2019 and 26.12.2019, whereby, the petitioner was informed that the petitioner was liable to pay the tax of **Rs.22,08,034/-**.

4. A copy of the said attachment to the email has been kept along with the typed set of papers. The said email is said to have been received by the petitioner from the personal mail ID of the Officer's name Ramesh Babu from his email address dr.aadesh@rediffmail.com and was addressed to one kr sunil@yahoo.com of the petitioner. On receipt of the aforesaid email, the petitioner paid the aforesaid amount of **Rs.22,08,034/-** on **27.12.2019** and thereafter filed a declaration in Form SVLDRS-1 on **30.12.2019** declaring the total tax liability of **Rs.22,08,034/-** as under the category of a person making a "Voluntary Disclosure".

5. The declarations filed by the petitioner in Form SVLDRS-1 on

30.12.2019 was acknowledged in the system and an auto generated email was also sent to the petitioner on **31.01.2020**, whereby, the declaration filed by the petitioner on 30.12.2019 in Form SVLDRS-1 was acknowledged. Thereafter, Form SVLDRS-3 was issued to the petitioner. However, after the aforesaid email was received by the petitioner in Form SVLDRS-3 which was downloaded on **31.01.2020**, the petitioner did not receive Form SVLDRS-4. Thus, the petitioner has approached this Court.

6. During the interregnum, after filing of the Writ Petition, the petitioner has also received a Show Cause Notice dated 22.12.2020 bearing Show Cause Notice No.40/2020-Service Tax (ST). Show Cause Notice NO.40/2020-Service Tax (ST) dated 22.12.2020 has been issued to the petitioner by the Directorate General of Goods and Services Tax Intelligence, Madurai Regional Unit, wherein, the petitioner has been called upon to pay a sum of **Rs.32,29,747/-** towards Service Tax, Education Cess, Secondary Higher Education Cess, Swachh Bharat Cess etc., for the period between October 2014 to June 2017.

7. The Show Cause Notice also seeks to appropriate payment of **Rs.22,08,034/-** paid by the petitioner on **27.12.2019** which was offered by the petitioner towards the tax liability of the petitioner on 30.12.2019 in its

declaration in Form SVLDRS-1 dated 30.12.2019. It appears that the Show Cause Notice No.40/2020-Service Tax (ST) was also adjudicated and subsequently the Order-in-Original No.4 of 2022 dated 28.02.2022 was passed by the Assistant Commissioner, Chennai South Commissionerate.

8. In the light of the above, the petitioner has also filed a Stay Petition to stay the operation of the aforesaid Order.

9. Learned counsel for the petitioner further adds that the beneficial scheme under the Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019 cannot be denied to the petitioner merely because the petitioner has made a mistake while filing Form SVLDRS-1 filed on 30.12.2019 under the category of "Voluntary Disclosure".

10. Learned counsel for the petitioner admits that although the petitioner was not entitled to be benefit of the Scheme in view of the restrictions in Section 125(1)(f) of the SVLDRS Scheme, 2019, the facts remains that the petitioner was otherwise entitled to the benefit of the Scheme and the amount that was paid prior to the filing of the declaration has to be accepted in terms of Section 124(2) of the SVLDRS Scheme, 2019.

11. That apart, the learned counsel for the petitioner would also draw attention to the response of the petitioner to the questions before filing the declaration on 27.12.2019 wherein, in response to Question No.6 and Question No.8, the petitioner has categorically answered “yes”. However there was a mistake in answer to Question No.6 and Question No.8 which was answered by the petitioner on 27.12.2019. It reads as under:-

> “6. Have you been subjected to any audit under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 in respect of goods / services or both for which this declaration is being made?
>
> [Note: If you answer YES to this question, you are eligible to proceed further under the VOLUNTARY DISCLOSURE category.]
>
> 8. Have you been subjected to any enquiry or investigation under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 in respect of the goods / services or both for which this declaration is being made by way of any of the following: (a) search of premises (b) issuance of summons (c) requiring the production of accounts, documents or other evidence (d) recording of statements
>
> [Note: If you answer YES to this question, you are ineligible to proceed further under the VOLUNTARY DISCLOSURE category.]”

12. In this connection, the learned counsel for the petitioner also drew attention to Circular No.1074/07/2019-CX issued under Section 133 of the

SVLDRS Scheme, 2019, by the Central Board of Indirect Taxes and Customs dated 12.12.2019. Specifically, she drew attention to Clause (viii) from Paragraph 2. It reads as under:-

> "(viii) There may be cases where the show cause notices were issued on or after 01.07.2019 and such cases are also not covered under any of the categories such as an enquiry or investigation or audit and tax dues having not been quantified on or before 30.06.2019. However, such cases become eligible under 'arrears' category depending the fulfilment of other conditions such appeal period being over or appeal having attained finality or the person giving an undertaking that he will not file any further appeal in the matter (Member's D.O. Letter F.No.267/78/19/CX.8 dated 30th October, 2019). Since the main objective behind the Scheme is to liquidate the legacy cases under Central Excise and Service Tax, it would be desirable that the taxpayer in the above mentioned cases are also given an opportunity to avail its benefits. Therefore, the field formations were asked to take stock of such cases, and complete the on-going adjudication proceeding expeditiously following the due process. Further, it would also be desirable that the process of review is also carried out expeditiously in such cases so that the designated committees are able to determine the tax dues within the time stipulated under the Scheme."

13. That apart, the learned counsel for the petitioner also drew attention to Circular No.1072/05/2019-CX issued under Section 133 of the SVLDRS Scheme, 2019, by the Central Board of Indirect Taxes and Customs dated 25.09.2019. Specifically, she drew attention to Clause (vi) and Clause (vii) from Paragraph 2. It reads as under:-

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

(vii) Section 125(1)(a) excludes cases which are under appeal and where final hearing has taken place on or before 30th June, 2019 from the purview of the Scheme. Similar exclusion has been made applicable, mutatis mutandis, under Section 125(1)(c) to cases under adjudication. It is clarified that such cases, however, may still fall under the arrears category once the appellate or adjudication order, as the case may be, is passed and has attained finality or appeal period is over, and other requirements under the Scheme are fulfilled."

14. Learned counsel for the petitioner further submits that the issue is revenue neutral as admittedly the petitioner was liable to pay tax only on reverse charge basis and since the petitioner was providing / assessing taxable services under the provisions of the Finance Act, 1994, the petitioner would not be entitled to avail the benefit of CENVAT Credit under Rule 3(1) of the CENVAT Credit Rules, 2004 and payment of duty of excise on goods / final products under Section 3(4) of the CENVAT Credit Rules, 2004 and submits that the issue is revenue neutral and that the petitioner has already paid a sum of

Rs.22,08,034/- and the petitioner is entitled to the benefit.

15. This Writ Petition is opposed by the learned Senior Panel Counsel for the respondents primarily on the ground that the petitioner was disqualified, a person was not qualified to file declaration of Form SVLDRS-1, as there is an embargo in terms of Section 125(1)(f) of Chapter-V of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 read with Sabka Vishwas Rules made thereunder.

16. It is further submitted that there was no need for verification of Form SVLDRS-1 and that Designated Committee issued Form SVLDRS-3 without verification. However, it was later found that the petitioner had paid only a sum of Rs.22,08,034/- through normal challan on 27.12.2019 i.e., even before issuance of Form SVLDRS-3. It is therefore submitted that the petitioner ought to have disclosed that investigation was pending instead they have filed Voluntary Disclosure in terms of Section 125(1)(f) of the said Scheme. Hence, this Writ Petition is liable to be dismissed.

17. Learned Senior Panel Counsel for the respondents on the other hand would submit that the petitioner was not entitled to avail the benefit as

investigations were on going and therefore the petitioner could not have filed an application in view of the specific embargo under Section 125(1)(f) of the SVLDRS Scheme, 2019.

18. That apart, there is no scope for adjusting the amount prior to the declaration in Form SVLDRS-1. That apart, the learned Senior Panel Counsel for the respondents would submit that the petitioner was issued with Show Cause Notice No.40/2020-ST dated 22.12.2020 issued by the Directorate General of Goods and Service Tax Intelligence, Madurai Regional Unit, Madurai which has now culminated in Order-in-Original No.4 of 2022 dated 28.02.2022. Hence, he would submit that the petitioner has to work out the remedy, if any.

19. Learned Senior Panel Counsel for the respondents has drawn attention to the decision of the Division Bench of this Court in **M/s.Win Power Engineering (P) Ltd.,** Vs. **The Designated Committee, Sabka Vishwas (Legacy Disputes Resolution) Scheme, Chennai and another** in W.P.Nos.11785 and 12957 of 2020 and W.P.Nos.3320 and 3322 of 2022 dated 30.11.2022.

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

21. The fundamental issue that arises for consideration is as to whether the petitioner was indeed entitled to avail the benefit of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 which came into effect from the appointed date. Prior to the aforesaid Scheme, investigations were being made regarding the tax liability of the petitioner and several notices including summons were issued to the petitioner on **12.06.2019**, statements were also recorded from the Director of the petitioner namely D.Arunprasad on **12.06.2019**. Similarly on **13.09.2019**, statement was also recorded from Mr.Sunil Kalamangalam who was looking after the Senior Vice President and Head of Finance of the petitioner's company. In response, the categorical stand of the petitioner during the course of investigation was the petitioner was not liable to pay tax. It appears that during the course of investigation, e-mail was also received from the officer from the investigation team indicating the amount of tax to be paid by the petitioner as **Rs.22,08,034/-** vide e-mail dated **23.12.2019**. Although copy of the e-mail that was sent by Ramesh Babu with the e-mail ID dr.aadesh@rediffmail.com to petitioner's aforesaid Mr.Sunil Kalamangalam.

Copy of the working sheet has not been enclosed. The aforesaid amount was paid by the petitioner on 27.12.2019 on the following three heads:-

S.No	***Details of Duty***		***Period Involved***		***Issue involved***	***Tax Dues less Tax Relief***
	Duty/Tax/ Cess	Amount	From Period	To Period		
1	Legal consultancy service	27,030.00	01/07/2014	30/06/2017	Reverse Charge	27,030.00
2	Security/detective agency service	17,825.00	01/05/2016	30/06/2017	Reverse charge	17,825.00
3	Online information and database access service through computer network	21,63,179.00	01/12/2016	30/06/2017	Reverse Charge	21,63,179.00
	Grand Total	22,08,034.00				22,08,034.00

22. Subsequently, the Department has issued Show Cause Notice No.40/2020-Service Tax (ST) dated 22.12.2020. The amount paid by the petitioner on 27.12.2019 under the above three heads and the amount that has been proposed in the Show Cause Notice are as under:-

Sl.No	***Head***	***Amount***	***Form SVLDRS***
1	Legal Consultancy Service	5,400/-	27,030/-
2	Security Charges	57,496/-	17,825/-
3	Goods and Transport	10,25,791/-	---

Sl.No	***Head***	***Amount***	***Form SVLDRS***
	Services		
4	Online	21,63,174/-	21,63,179/-
	Total	32,51,866/-	22,08,034/-

There was a difference of Rs.10,43,832/-.

23. As per Section 125(1)(f), a person making a voluntary disclosure under the following two circumstances:-

> *(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.*

are not eligible to file a declaration. This is evident from reading of Section 125(1) which reads as under:-

> "125(1). All persons shall be eligible to make a declaration under this Scheme **except the following namely**:-
> "(a)......
> (b).....
> (c).....
> (d)....
> (e)....
> (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."

24. Thus, the petitioner was not entitled to file a declaration in Form SVLDRS-1 in terms of Section 125(1) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

25. In this case, the Form SVLDRS-1 that was filed on 30.12.2019 was accepted by the Designated Authority in Form SVLDRS-3 by the respondents herein by mistake, as there was no scope for entertaining the application under Section 125(1)(f) which has been extracted above.

26. Section 124 contemplates the SVLDRS Scheme, the following reliefs are available to a declarant:-

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)Where the tax dues are relatable to a show cause notice or one or more	(b)where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount	(c)Where the tax dues are relatable to an amount in arrears and (i)the amount of duty is, rupees	(d)where the tax dues are linked to an enquiry, investigation or audit against the declarant and the	(e)where the tax dues are payable on account of a voluntary disclosure by

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:-				
appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty 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.	of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;	fifty lakhs or less, then, sixty per cent of the tax dues; (ii)the amount of duty is more than rupees fifty lakhs, then, sixty 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- (A)rupees fifty lakhs or less, then, sixty per cent of the tax dues: (B)amount indicated is more than rupees fifty lakhs, then, forty per cent of the tax dues:	amount quantified on or before the 30th day of Jun,e 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:	the declarant, then, no relief shall be available with respect to tax dues.

27. Only if the application/declaration in Form SVLDRS-1 was available to the petitioner, question of issuance of discharge certificate in Form

SVLDRS-4 would arise. Therefore, merely because Form SVLDRS-3 was issued to the petitioner on 07.01.2020 *ipso facto* would not mean that the petitioner was entitled to have the case settled under the provisions of the aforesaid Scheme.

28. Therefore, this Writ Petition is liable to be dismissed. The respondents are therefore directed to proceed with the adjudication of the Show Cause Notice on merits and in accordance with law.

29. This Writ Petition stands dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

02.01.2025

Index: Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

arb/jas

To

1.The Joint Commissioner of Service Tax (South),
6th Floor, MHU Complex,
692, Anna Salai,
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C.SARAVANAN, J.

arb/jas

Pre-delivery Order in
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02.01.2025