

W.P.No.11601 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 30.10.2023

Coram

The Hon'ble Mr.Justice **KRISHNAN RAMASAMY**

W.P.No.11601 of 2021
and
W.M.P.No.12352 of 2021

M/s.RR Housing (India) Pvt.Ltd.,
RR Sal Complex, No.26, Amsa Layout,
Behind Shanmuga Theatre,
R.S.Puram,
Coimbatore-641 002.

...Petitioner

Vs.

1.The Designated Committee (SVLDRS),
GST Bhavan, 6/7, ATD Street,
Race Course Road,
Coimbatore-640 018.

2.The Superintendent of GST & Central Excise,
Coimbatore I A Range,
Room No.06, 1st Floor, Annex Building,
GST Bhavan, 6/7, ATD Street,
Race Course Road,
Coimbatore-640 018.

...Respondents



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Prayer:

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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent to consider the payment made by the petitioner dated 1.3.2021 as payment under SVLDRS Scheme and also direct the first respondent to issue discharge certificate in form SVLDRS 4 to the petitioner.

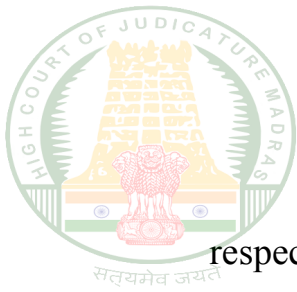
For Petitioner : Mr.G.Natarajan

For Respondents : Mr.Rajendran Raghavan,
Sr.Standing Counsel

ORDER

This Writ Petition has been filed, praying for issuance of a Writ of Mandamus, to direct the first respondent to consider the payment made by the petitioner dated 1.3.2021 as payment under SVLDRS Scheme and also direct the first respondent to issue discharge certificate in form SVLDRS 4 to the petitioner.

2. According to the petitioner, during Audit of Accounts of the petitioner, it was found that the petitioner had not paid service tax in



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respect of the residential flats constructed for the land owners in terms of a Joint Development Agreement and later, the petitioner paid a sum of Rs.44,29,032/- on 02.05.2019, which was not accepted by the Audit Officers, which culminated into issuance of a show cause notice, dated 3.9.2019 proposing to demand Service Tax at Rs.70,82,343/- along with interest and penalty. The said show cause notice also proposed to appropriate the amount of Rs.44,29,032 which was already paid by the petitioner. Thereafter, the Joint Commissioner of GST and Central Excise, Coimbatore, vide Order-in-Original No.09/2019-JC dated 22.11.2019, confirmed the entire demand of Service Tax proposed in the show cause notice.

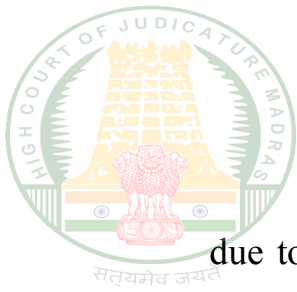
3. While so, the Union Budget presented a Scheme, viz., Sabka Vishwas Legacy Dispute Resolution Scheme, 2019 (in short, SVLDR Scheme) was introduced to settle the disputes relating to legacy laws, viz., Service tax, Central Excise Duty, etc., which are pending at various levels, by filing a declaration in Form SVLDRS-1 in the electronic portal. The petitioner opted to file a declaration under SVLDRS Scheme in



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respect of the Service Tax dispute and settle the same and accordingly filed declaration, upon which, the Designated Committee, after verifying form SVLDRS-1 filed by the petitioner, issued Form SVLDRS-3 on 13.2.2020. As per the Scheme, the petitioner is liable to pay Rs.14,98,835.20 on or before 14.03.2020. In the mean time, the Government, considering the pandemic situation, has extended the time limit for making payment under the Scheme upto 30.06.2020. However, the petitioner could not pay the tax dues on or before 30.06.2020 due to financial crisis faced by them on account of lock down owing to pandemic situation.

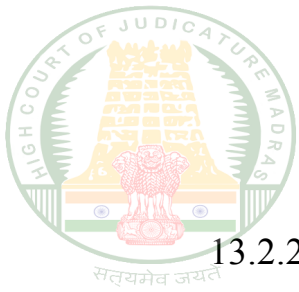
4. In the meantime, the Hon'ble Supreme Court, in its *Suo Motu* W.P.No.3/2020, vide order dated 23.3.2020, has extended the period of limitation in all proceedings, irrespective of limitation prescribed under General or Special laws with effect from 15.2.2020 till further orders. Therefore, the petitioner, vide letter dated 30.6.2020 requested the Superintendent, SVLDRS Section to grant some more time to make payment of Rs.14,98,835.20 since they are facing major financial crunch



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due to pandemic and lock down. However, the second respondent, vide proceedings dated 18.2.2021, directed the petitioner to pay the entire amount demanded along with penalty which works out to Rs.1,08,29,431/-. According to the petitioner, they paid Rs.14,98,836/- on 01.03.2021 as determined under Form SVLDRS-3 through regular challan, as SVLDR Scheme portal was closed after 30.06.2020 and intimated the same to the first respondent about the said payment vide letter dated 02.03.2021. However, the second respondent vide impugned proceedings dated 2.3.2021, directed the petitioner to pay the entire arrears confirmed vide Order-in-Original dated 22.11.2019. Hence the Writ Petition.

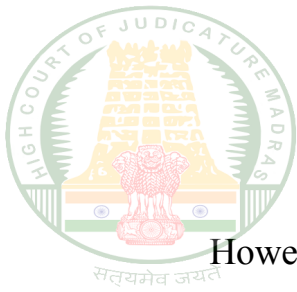
5. A counter affidavit has been filed on behalf of the respondents, wherein, it is stated that the SVLDR Scheme provided full waiver of interest and penalty when the payments are made as determined by the Designated Committee set up for scrutinizing the declaration filed under SVLDR Scheme within the stipulated time of 30 days from the date of Form SVLDRS-3. In the present case, Form SVLDRS-3 was issued on



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13.2.2020 and the due payment as per the Scheme is on or before 15.3.2020, but the petitioner failed to pay the dues and repeatedly requesting for time and the final extension of the scheme lapsed on 30.06.2020 and statutorily there was no scope for further reference or consideration for extension. As there was no statutory provision to make any payment under the scheme beyond the stipulated period, the request made by the petitioner, cannot be entertained. Therefore, since the petitioner failed to avail the benefit of SVLDR Scheme in time, the petitioner is liable to pay the entire arrears of tax with penalty. With these averments, the respondents sought for dismissal of the writ petition.

6. Mr.G.Natarajan, learned counsel for the petitioner would submit that pursuant to the introduction of SVLDR Scheme, the petitioner has availed the benefit by filing declaration vide Form SVLDRS-1 and the Designated Committee also issued Form SVLDRS-3, as per which, the petitioner was liable to pay Rs.14,98,835.20 on or before 14.3.2020. Later, considering the pandemic situation, the Government extended the time limit for making payment under the scheme till 30.06.2020.



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However, due to financial crisis suffered by the petitioner due to lock down owing to pandemic, the petitioner could not make the payment. He

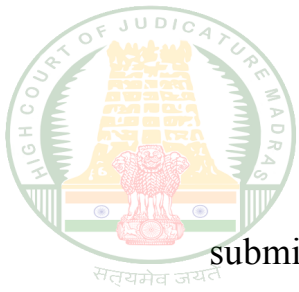
would contend that the Hon'ble Supreme Court in its *suo motu* Writ Petition (Civil) No.3/2020, vide order, dated 23.3.2020, has held that the period of limitation in all proceedings irrespective of limitation prescribed under General or Special laws, whether condonable or not, shall stand extended with effect from 15.3.2020 till further orders. He would also submit that subsequently, the Hon'ble Supreme Court in Civil Appeal No.4085 of 2020 vide order dated 17.12.2020, held that the period of limitation which was extended earlier vide order dated 30.06.2020 is still operative. Therefore, the learned counsel would point out that since the petitioner has already filed a declaration under SVLDR Scheme and obtained Form SVLDRS-3, however due to financial crunch suffered by the petitioner owing to pandemic situation, failed to make the payment of quantified tax arrears in time and despite requesting to grant time, the 2nd respondent, by the impugned order, dated 18.2.2021, directed the petitioner to pay entire dues at Rs.1,08,29,431/-. He would further submit that on 01.03.2021, the petitioner made payment of arrears of tax



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at Rs.14,98,836/- determined under Form SVLDRS-3 by way of regular challan and intimated the same to the first respondent. However, the 2nd respondent vide order dated 02.03.2021, confirmed the order of the 1st respondent and directed the petitioner to pay the entire arrears of tax, which cannot be sustained and the petitioner cannot be deprived of the benefit of the SVLDR Scheme. Further, in support of his contentions, he would refer to the decisions of this Court in “*N.Sundarrarajan versus Union of India and others*” (W.A.No.2097 & 2098 of 2021, judgment dated 26.08.2021); “*M/s.N.S.Rathinam and sons Pvt.Ltd. Versus The Asst.Commissioner of GST and Central Excise, Dindigul and others*” (W.P.(Md)No.29269 of 2022, order dated 05.06.2023); “*M/s.Apnaa Projects Pvt.Ltd., versus Joint Commissioner of GST & Cetral Excise and others*” (W.P.Nos.19919 of 2020, etc., order dated 08.09.2022).

7. On other hand, Mr.Rajendran Raghavan, learned Senior Standing counsel appearing for the respondents would submit that the petitioner has failed to make the payment on or before 30.06.2020 and therefore, cannot get the benefit of SVLDR Scheme. He would further

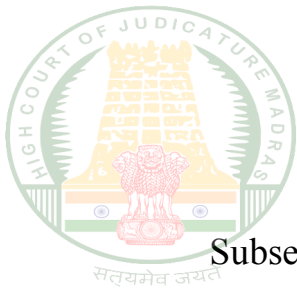


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submit that it is settled proposition of law that a person, who wants to avail the benefit of a particular scheme, has to abide by the terms and conditions of the scheme scrupulously. Further, he pointed out that as there was no statutory provision to make any payment under the scheme beyond the stipulated period, though the petitioner made payment by way of challan on 1.3.2021, the same could not be accepted and accordingly, the respondents have rightly rejected the request made by the petitioner, which requires no interference. Hence, he sought for dismissal of the Writ Petition.

8. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents and perused the entire materials placed on record.

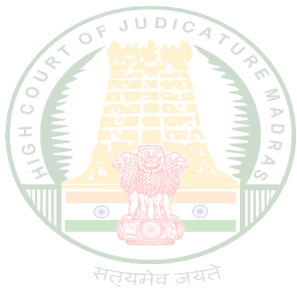
9. In the present case, it is clear that by virtue of the Finance Bill, 2019, the SVLDR scheme was declared. Thereafter, the respondent had issued Notification No.04/2019 dated 21.08.2019 stating that the Assesseees can avail the said scheme from 01.09.2019 to 31.12.2019.



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Subsequently, by virtue of Notification No.07/2019 dated 31.12.2019, the said period to avail the scheme was extended up to 15.01.2020. Pursuant to the same, the petitioner had availed the scheme before 15.01.2020 and filed Form SVLDRS 1. The said Form was accepted and further, the Form SVLDRS 3 was also issued by the respondent to the petitioner on 13.02.2020. However, due to the COVID pandemic situation, the petitioner had remitted the demanded tax amount only on 02.03.2021 through a regular challan. Thereafter, the respondent was supposed to issue Form SVLDRS 4 to discharge the entire liabilities towards tax under the said Scheme. However, the same was not issued.

10. The learned counsel for the respondent would fairly submit that the petitioner had availed the scheme within the prescribed time and hence, they had issued Form SVLDRS 3. However, though the intimation in Form SVLDRS 3 was issued on 13.02.2020, the demanded tax amount was paid only on 02.03.2021, which is beyond the prescribed time limit. Therefore, they are not in a position to issue Form SVLDRS 4 to the petitioner to discharge the tax liabilities.



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11. Further, the learned counsel would contend that the extension was granted only upto 14.03.2020 and hence, any payment made after the said period will not be considered or appropriated under the said scheme and the same would be appropriated only against the original tax due.

12. He would also submit that the scheme was originally brought in vide the Finance Bill, 2019 and by virtue of the said Finance Bill, the power was provided to the Central Government to issue notification with regard to the fixation of time limit to avail the said scheme and make payment. Due to the reason of COVID pandemic, the time limit for availing scheme was extended upto 15.01.2020 by virtue of Notification dated 31.12.2019. Thereafter, with regard to payment of tax under the said scheme, in terms of the intimation provided by the respondent to the petitioner, the said time limit was extended up to 31.12.2020 by virtue of the Notification No.450/61/2020.

13. Under these circumstances, since the Central Government was delegated with power to fix the time limit for availing the scheme and for

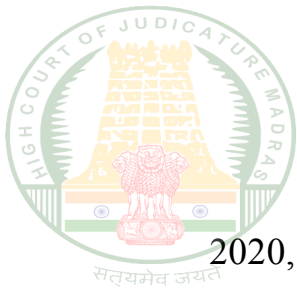


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making the payment, the Central Government came with the Notifications and provided time limit for the same and the said time limit was extended from time to time due to COVID pandemic situation. Even according to the petitioner, the said scheme was extended upto 30.09.2020 for making the payment by virtue of the Notification dated 27.06.2020.

14. Therefore, it is clear that the provisions under the Finance Bill, with regard to the fixation of time limit for availing the scheme and with regard to the extension of time for making payment of tax, is directory in nature. If it is mandatory, there will not be any delegation with regard to the Central Government to fix the time limit for availing the scheme and payment of tax. Since there is delegation with regard to the Central Government, it will only be directory in nature and that is the reason why the Central Government depends upon the situation prevailing in the country and extended the time limit from time to time.

15. It would be pertinent to point out here that the Hon'ble Supreme Court, *suo motu*, vide order dated 23.03.2020 in W.P.No.3 of

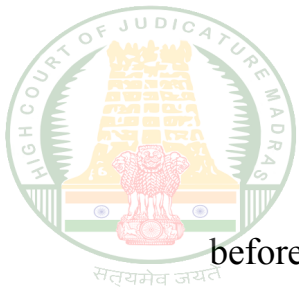


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2020, had extended the Mandatory provisions of limitation under various Acts due to the reason of COVID pandemic from 01.03.2020 to 28.02.2022. Pursuant to the same, the respondent had also extended the time limit by considering the COVID pandemic situation.

16. Further, there is no doubt that if the provisions are mandatory in nature, this Court normally will not interfere and pass orders against the said provisions. As far as if the provisions are directory in nature, certainly the prevailing situation and the inability of the petitioner due to the said pandemic would be the factors that have to be considered by this Court to pass an appropriate order. In the present case, no doubt that the petitioner had paid the amount on 02.03.2021 during the pandemic period. Therefore, under these circumstances, certainly, this Court can interfere and look into the grievances of the petitioner and if this Court is satisfied, this Court will consider the same and pass appropriate orders.

17. The judgement of the Hon'ble Supreme Court, dated 27.09.2023 in Special Civil Application No.844 of 2022, was also placed



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before this Court, wherein the order passed by the Division Bench of the High Court, rejecting the extension of time for making payment under the Scheme, was challenged. The said judgement dated 27.09.2023 was dismissed in the SLP stage itself without assigning any reasons. Further it is clear that no submission was made as to whether the provision is mandatory or directory before the Hon'ble Supreme Court and under the said circumstances only, the aforesaid dismissal order was passed. However, the said aspect was pressed before this Court.

18. The Hon'ble Supreme Court had extended the time limit up to 28.02.2022, even where the limitation was fixed under the mandatory laws. Further, as discussed above, there is no doubt that the provision of fixing time limit under the SVLDRS Scheme is directory in nature and that is the reason why the Department had extended the time limit for payment of tax amount under the SVLDRS Scheme by virtue of notifications. When that being the case, the Department is supposed to have extended the time at par with the order passed by the Hon'ble Supreme Court, where it had considered the difficulties faced by the



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public in mobilizing the money, filing the cases before the Courts, etc., and granted the time limit up to 28.02.2022. However, though the respondent-Department had considered and issued the notifications on 3 occasions, thereafter, they had neither considered the difficulties faced by the Assessee nor issued any notifications extending the time limit for making payment of tax under the scheme.

19. In the present case, the tax was paid by the petitioner on 02.03.2021 based on the Form SVLDRS-3 issued by the Department and the same was accepted by the respondent.

20. Therefore, taking into consideration of all these aspects, this Court is of the view that the amount, which was paid by the petitioner on 02.03.2021 shall be consider as the amount paid under the SVLDRS Scheme and hence, the Department is bound to issue the Form SVLDRS-4 with regard to the discharge of liabilities.

21. Under these circumstances, this Court is of the view that the application, filed on 13.02.2023 consequent to the payment made by the



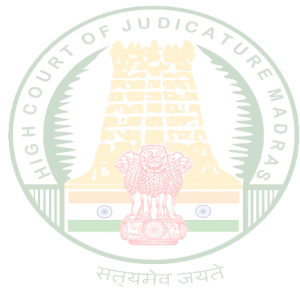
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petitioner, has to be accepted under the scheme by the respondent and in such view of the matter, this Court has no hesitation to direct the respondent to issue Form SVLDRS-4 to discharge the tax liabilities within a period of 30 days from the date of receipt of copy of this order.

22. Accordingly, the Writ Petition is allowed. The respondents are directed to accept the payment of Rs.14,98,836/- made by the petitioner under SVLDRS-3 on 01.03.2021. The petitioner is directed to pay interest at 15% p.a. on 14,98,836/- from 01.07.2020 till the date of payment, within a period of four weeks from the date of receipt of a copy of this order, failing which, the benefit granted under this order will automatically cease to operate. On such payment being made by the petitioner, the respondents are to issue discharge certificate to the petitioner. No costs.

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