

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20717 of 2022**

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M/S SK LIKPROOF PRIVATE LIMITED

Versus

UNION OF INDIA

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,3,4,5

MR ANIP A GANDHI(2268) for the Respondent(s) No. 5

MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2,3,4

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 09/02/2023****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

The petitioner is before this Court, seeking to challenge the action of respondent no.2 for not issuing Form SVLDRS 4 as per Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as "SVLDRS") as per provision of Section 127(8) of the Finance Act, 2019 and invoking thereby the provision of Section 79(1) (c) of the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax, Act, 2017

2. The petitioner engaged in the business of manpower recruitment agency, maintenance of repair service etc.

has its registered office at Vadodara. It was duly registered under service tax regime vide Service Tax No. AAUCS0863JLD001.

3. The order in original on 13.3.2019 issued by respondent no.4 directed the petitioner to pay the service tax amounting to Rs 3,60,502/- under Section 73 of the Finance Act, 1994 along with the applicable interest and penalty.

4. The petitioner filed an appeal before the Appellate authority where the final hearing was scheduled on 9.7.2019.

5. In the meantime Sabka vishwas scheme Rules, 2019, SVLDRS was notified through the Finance Act, 2019 as one time measure for liquidation of past disputes of Central Excise, Service Tax and other 26 indirect tax enactments.

6. The petitioner had wanted to avail the benefit of the scheme and therefore, it filed an application in form SVLDRS -1. On 21.1.2020, the petitioner received a notice under Section 127 wherein it was asked to submit the documents in respect to whether final hearing of appeal was held before 30.6.2019. On 11.2.2020 the petitioner was intimated that the personal hearing was scheduled on 14.2.2020 and on

12.2.2020, the petitioner was asked to pay the amount of Rs 81,050.60 for full and final settlement of tax dues under the Act. The Mandate form has also been generated through portal for the settlement of pending amount of Rs 81,050.60/-.

7. After six days of the issuance of the form SVLDRS-03, the payment was made of Rs 81,051/- through the cash credit account maintained with respondent no.5. It is averred by the petitioner that on 17.3.2020 when he did not receive the discharge certificate in Form, SVLDRS, the petitioner tried to find the reason and it was realised that the amount which had been duly debited could be re-credited in the account of the petitioner. This was via cash credit account maintained by the respondent no. 5. This was the time of Covid 19 pandemic when all businesses were shut down. The CBIC also extended the due date for payment till 30.6.2020 vide its notification dated 14.5.2020.

8. It is the say of the petitioner that once again the payment of service tax amounting to Rs 81,051/- has been made and by then the due date had elapsed. Thus the payment made twice due to technical glitch got credited in the account and the same had been recredited in the account of the petitioner. However, the petitioner since had made the payment under

SVLDRS, it was of the view that the matter is resolved and discharge certificate is needed to be issued. On 14.3.2022, the notice came to be issued by the respondent no. 4 under Section 79(1) (c) of the CGST Act in Form GST DRC 13 wherein respondent no. 5 was directed to pay liabilities in compliance with Section 79(1) (c) of the CGST/ GGST. Declaration in SVLDRS had been filed against order in appeal with respect to which the respondent no. 4 had issued the notice in Form GST DRC-13. According to the petitioner, it made the payment of Rs 7,68,675/- through RTGS.

8.1 The following are the prayers :

(a) Issue an appropriate, writ, order, or direction including a writ of mandamus to respondent no.2 (Designated Committee, SVLDRS) to issue Discharge Certificate in FORM SVLDRS-4 under the scheme.

(b) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction for refund of Rs 7,68,675 in respect of service tax amounting to Rs 2,52,351, interest amount to Rs 3,36,073 and penalty of Rs 1,80,251 /- paid by the petitioner due to coercive action of the respondents along with interest thereof;

(c) To issue orders, directions, writs or any other reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case in the interest of justice;

(d) *To award costs of and incidental to his application be paid by the respondents;*

9. Affidavit-in-reply has already come on the record contending therein that petitioner was already intimated by issuing the SVLDRS 3 by designated committee of the department that his case would fall under the litigation category hence, an amount of Rs 81,050.60/- is needed to be paid by the petitioner for full and final settlement of tax dues amounting to Rs3,60,502/- . The petitioner made the payment on 8.7.2020 after specified due date and therefore the certificate SVLDRS-4 was not issued. Recovery made by the respondent department and the non-issuance of SVLDRS-4 had resulted into this petition and refund of the amount. It is emphatically urged that the petitioner never informed the then SVLDRS committee about his recreditance on account of there being any technical glitch and it was on account of the bank not the department. The due date being 8.7.2020, the payment ought to have been made successfully by 8.7.2020 or any date thereafter. The condition of the SVLDRS Rules 2019 since then was not met, the SVLDRS 4 was not issued and it was appropriate on the part of the respondent department to initiate the recovery proceedings to recover the demand

which was not disputed otherwise by the petitioner. Reliance is placed on the decision of **M/s Yashi Contructions Vs Union of India decided on 18.2.2022** in Special Leave to Appeal No. 2070 of 2022 and urged that once extended time period for making the payment was over on 30.6.2020, the department could not have permitted to accept the first of amount under the scheme.

10. We have heard learned advocate Mr. Avinash Poddar and learned Senior Standing Counsel Mr. Nikunt Raval assisted by learned advocate Mr. Yash Shah.

11. Our attention is drawn to the decision of M/s Yashi Contructions (supra) on the part of the respondent whereas reliance is placed on the part of the petitioner on the decision of M/s. Shekhar Resorts Limited Vs Union of India and in Special Civil Application No. 12366 of 2021.

12. It is not in dispute that the petitioner had opted for SVLDRS scheme and was required as per the department to make the payment of Rs 81,051.60/- and the same was to be done within stipulated time period. It is for the designated committee to verify the eligibility of the declarant on

the basis of the record as per Section 127 of the Finance Act and Rule 6 of the SVLDRS Scheme Rules, and on such eligibility of the declarant based on the record available, the department and the designated committee would issue the statement under Section 127 of the Finance Act(in form SVLDRS 3) informing the declarant the amount payable.

13. Accordingly, the statement under Section 127 of the Finance Act 2019 in SVLDRS form was issued intimating the petitioner to make payment of Rs 81,050.60/- as full and final settlement under the SVLDRS scheme. It is further noted that the amount is needed to be paid electronically through internet banking by declaring it within a period of 30 days from the date of issuance of such statement.

14. The petitioner made the payment through NEFT of Rs 81,051/- within six days from the date of SVLDRS-3, however, due to technical glitches, the amount could not be debited and got re-credited in his account.

15. It is not in dispute that the petitioner as required under the law had made the payment twice. Both the times, it had twice been recredited in his

account and therefore, for the third time, it needed to make a payment and by then, the time limit prescribed had already been over.

16. We need to take note of the order in case of M/s Yashi Contructions (supra) in SLP No. 2070 of 2022 where the Apex Court while endorsing the refusal of the relief by the High Court for extension of period to make the deposit under the scheme, held that the settled proposition of law is that the person who wants to avail the benefit of a particular scheme has to abide by the terms and conditions of the scheme. If the time extended is not provided under the scheme, it will then tantamount to modifying the scheme which is the prerogative of the government. Here is not the case where any extension sought for not having been granted where request on the part of the petitioner would also not tantamount to modifying the scheme as he was never at fault. Twice when he made an attempt, he failed on account of technical glitch .

17. In the decision, this Court in the case of **M/s L. G. Chaudhary Vs. Union of India (Coram : Mr. N. V. Anjaria and Mr. Bhargav Karia J.J.)** dated **14.10.2022**, the Court having considered the submissions along the line of the pleadings of

respective parties noticed that the petitioner was required to make certain payment as determined and inform in SVLDRS 3 and the petitioner also tried to make payment through NEFT.

The relevant paras are as under :

“9. It also appears from the record that the petitioner could not generate the challan successfully for making the payment and after the advice of its Chartered Accountant, tried making payment through NEFT/RTGS out of abundance caution and to demonstrate the bona fide of the petitioner to make the payment as determined under the Scheme by respondent No.2 Designated Committee. In view of the various decisions cited by the petitioner as reproduced here-in-above, the bona fide attempt made by the petitioner to make the payment cannot be doubted and therefore, the substantive benefit of the Scheme cannot be denied to the petitioner on the ground of procedural technicalities more particularly, in time of Covid-19 Pandemic.

10.The basic object of the Scheme is to reduce litigation by allowing the eligible assessee to make the payment of the outstanding dues after availing the relief under the Scheme. As per the provisions of the Scheme, respondent No.2 has issued a statement as provided under section 127 of Chapter-V of the Finance Act (No.02) 2019 determining the amount payable by the petitioner under the Scheme. Therefore, in the given facts and circumstances, the petitioner

made bona fide attempt to make the payment as determined under the Scheme and is also prepared to pay the amount in question in accordance with the Scheme along with interest for the period for which the petitioner was not permitted to make payment by respondent authorities considering extreme Pandemic condition of Covid-19, we are of the opinion that this is a fit case for invocation of the powers under Article 226 of the Constitution of India.

11.The contention raised on behalf of the respondents relying upon the decision of the Apex Court in case of Yashi Constructions (supra) would not be applicable in the facts of the case as the petitioner made a bona fide attempt to make the payment within the stipulated time, however, due to technical issues the same was not credited in the account of the respondent and therefore the petitioner cannot be denied the benefit under the Scheme.”

18. This case of the petitioner is squarely covered by the decision where also the petitioner made bonafide attempt to make the payment within the stipulated time period. However, due to some technical issues, the amount was not credited in the account of the respondent.

19. In the case of **M/s Shekhar Resorts Ltd. Vs Union of India in Civil Appeal No. 8957 of 2022** , it was the case where the petitioner was asking to be considered under the scheme Sabka

Vishwas (Legacy Dispute Resolution) Scheme, 2019 . The Service Tax Department conducted investigations as to the evasion of service tax by the appellant and issued the show cause notices demanding the payment of service tax. The proceedings under the Insolvency and Bankruptcy Code (Amendment) Act, 2021 were initiated against the appellant company . The matter was admitted and the application filed by the Financial Creditors of the appellant under Section 7 of the IBC then initiated the process from 11.9.2018. The Corporate insolvency Dissolution process had commenced and the appellant was subjected to moratorium under Section 14 of the IPC. The scheme came to be introduced from 1.9.2019 under Section 125 of the Finance Act. The appellants sought to move through Resolution professional (RP) an application within the period prescribed under the scheme . It had issued the form and the last date for making the application under the scheme was 31.12.2019 . The form was issued within the prescribed time limit and the tax dues were computed by the appellant as per the Scheme 2019. The Form No. 3 was issued by the Designated Committee on 25.2.2020 determining the amount due and payable under the Scheme where the appellant was required to pay Rs 1,24,28,500/- . within a time period of 30 days as per the form no. 3.

20. In view of Covid 19 pandemic the time to make payment was extended by the Government upto 30.6.2020. The NCLT approved the Resolution plan of the successful Resolution applicant vide order dated 24.7.2020 and on approval of the Resolution Plan by the NCLT, the moratorium period came to an end, with the closure of insolvency procedure on 24.7.2020 .

21. The request was made by the applicant and expressed his willingness to make the full payment as ascertained by the Designated Committee in Form No. 3. It was denied by the Assistant Commissioner, on the ground that the same could not be paid before 30.6.2020 however, the same cannot be extended as the last date as per the scheme was 30.6.2020 . Consequently, the request was rejected. Being dissatisfied, petitioner had approached the High Court by way of Writ Tax application and the High Court dismissed the said petition on the ground that it cannot issue a direction contrary to the scheme and the reliefs sought for cannot be granted. As the Designated Committee under the Scheme is not existing, this was challenged before the Apex Court. The Apex Court by discussing at length the scheme as well as various decisions held that no

party shall be left remediless and whatever grievance the parties had raised before the Court of law needs to be examined on merits. It is further held that the appellant cannot be punished for not doing something which was impossible for him to do. There was a legal impediment in the way of the appellant to make payment during moratorium . Therefore even if the appellant wanted to deposit the settlement amount within the stipulated time period , it could not have been done due to the bar under the IBC. In such circumstances, the Appeal was allowed quashing the order of High Court and the Apex Court directed the payment of the amount which had been proved by the committee which was either to be appropriated towards the settlement dues under the SVLDRS 2019 with a further direction to issue the discharge certificate to the appellant .

22. Applying the ratio laid down by the Apex Court *mutandis mutandis* in the case of the present petitioner who was not under the fault when this amount could not get deposited with the bank and was recredited after having once gone to the bank, to deny him the benefit only because there were technical glitches about which it could not have done anything, would amount to leaving the petitioner remediless which is impermissible under the law

and this also since has been succinctly addressed by the Apex Court., following the decision in the case of M/s Shekhar Resorts Limited (supra) this petition is being allowed. We notice that the recovery of the entire amount from the petitioner by the respondent was on the basis of liability declared under the SVLDRS Scheme and the payment having not been made in time. When the deposit within the stipulated time period is not disputed by the respondent and the technical glitch being the reason of the software not functioning of the bank that would surely not hold the petitioner liable or accountable for non-payment. The payment as per the directions of the committee was needed to be made by 30.6.2020 which instead had been made on 8.7.2020. Not only the Court can be oblivious of the Covid 19 pandemic being at its peak during that period for generating the payment was something where there was no say of the petitioner. Therefore, not only the respondents denial for considering the case but later recovery of the entire amount of Rs 7,68,675/- on 11.7.2022 shall need to be reverted/refunded to the petitioner. Accordingly the petition is allowed.

23. The respondent no. 2 is directed to consider the payment made by the petitioner of Rs 81,051/- to appropriate the same towards the settlement dues

under the SVLDRS 2019 and the discharge certificate to be issued in favour of the petitioner and while so doing it is also directed to refund a sum of Rs 7,68,675/- with interest within a period of 8 weeks with consequential benefits.

(SONIA GOKANI, J)

(SANDEEP N. BHATT, J)

MARY VADAKKAN