



PRACHI
PRANESH
NANDIWADEKAR

Digitally signed
by PRACHI
PRANESH
NANDIWADEKAR
Date: 2024.12.06
11:21:15 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12845 OF 2023

Juice Electricals Pvt. Ltd.
A company incorporated under
Indian Companies Act, 1956 and
having its office at Gala No.1 to 3,
Laxmi Industrial Estate
Valiv village, Sativali road,
Vasai (East) District Palghar-401104

.. Petitioner

Versus

1. Union of India
Ministry of Finance, Department of Revenue
New Delhi.

2. The Commissioner of CGST & CX,
Palghar 5th floor, Plot C-24,
Sector-E, Bandra, Kurla Complex,
Mumbai-400051.

3. The Joint Commissioner of CGST & CX
Palghar 5th floor, Plot C-24,
Sector-E, Bandra, Kurla Complex,
Mumbai-400051.

4. The Deputy Commissioner of CGST & CX
Palghar 5th floor, Plot C-24,
Sector-E, Bandra, Kurla Complex,
Mumbai-400051.

.. Respondents

Mr. Prakash Shah a/w Mr. Mohit Rawal a/w Mr. Vikas Poojary i/b PDS
Legal for the Petitioners.

Mr. Jitendra Mishra a/w Ms. Sangeeta Yadav a/w Mr. Dhananjay
Deshmukh for the respondents.

***CORAM : M. S. Sonak &
Jitendra Jain, JJ.***

***RESERVED ON : 2 December 2024
PRONOUNCED ON : 6 December 2024***

JUDGMENT (Per Jitendra Jain J) :-

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge rejection of Declaration in Form SVLDRS-1 ARN LD3012190004307 dated 30 December 2019 filed by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDR Scheme).
2. The petitioner is engaged in the business of manufacture of electrical switches, regulators, sockets, plugs, holders, indicators, plates, surfaces boxes etc.
3. On 27 March 2017, a show cause notice was issued by the respondents *inter alia* seeking to confiscate the goods and impose penalty upon the petitioner under Rule 25 of the Central Excise Rules, 2002. Prior to that a search was conducted at the premises of the petitioner and goods worth Rs.10,06,82,932/- were seized. Second show cause notice was issued on 2 May 2019 seeking to demand Central Excise Duty for the period April 2015 to 2017-18.
4. Meanwhile Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was introduced by respondent no.1 for settling the disputes which were pending in litigation at various stages.

ppn

3

407.wp-12845.23 (j)(1).docx

5. On 11 October 2019, the petitioner filed a declaration in Form SVLDRS-1 for settling the dispute with regard to the show cause notice dated 2 May 2019. The said application was processed and final discharge certificate in Form SVLDRS – 4 was issued on 5 December 2019.

6. On 11 October 2019, the petitioner filed another declaration in Form SVLDRS-1 for settling the dispute with regard to another show cause notice dated 27 March 2017 which sought to confiscate the goods and impose penalty under Rule 25 of the Central Excise Rules. On 8 November 2019, the Designated Committee issued Form SVLDRS-2 calculating Nil duty payable. However, on 9 December 2019, the Designated Committee rejected the declaration filed on 11 October 2019 on the ground that the confiscation of the goods for which the show cause notice was issued is not covered under the Scheme.

7. On 30 December 2019, the petitioner once again filed a declaration in Form SVLDRS-1 with respect to the same show cause notice dated 27 March 2017 which came to be rejected on the ground that the redemption fine is not covered by the Scheme and therefore, the petitioner has challenged the said rejection in this writ petition.

8. Mr. Shah, learned counsel for the petitioner submits that whether the redemption fine is covered by the Scheme or not is concerned, same is no more *res integra* in the light of the decision of this Court in ***M/s. Esbee Electrotech LLP Vs. Union of India***¹. Learned counsel, therefore, submits that the petition be allowed in terms of prayer clauses (a) and (b).

1 2024 (7) TMI 1516

ppn

4

407.wp-12845.23 (j)(1).docx

9. Mr. Mishra, learned counsel for the respondents relying upon the decision of the Gujarat High Court in the case of *Synpol Products Pvt. Ltd. Vs. Union of India*² submits that the redemption fine forms part of the duty and, therefore, the amount payable under the Scheme should be calculated after adding the redemption fine to the excise duty demanded and since the petitioner has not done the same, the rejection of the declaration is justified. He fairly accepts that the said reason is not to be found in the rejection communication or in their reply.

10. We have heard the learned counsel for the petitioner and the respondents.

11. The ground on which the petitioner has been denied the benefit of the scheme is that redemption fine is not covered by the SVLDR Scheme.

12. With respect to the above issue, the Co-ordinate Bench of this Court, to which one of us was a party (Jitendra Jain, J.) has passed a detailed judgment holding that the redemption fine is akin to penalty and once the petitioner's application under SVLDR Scheme accepting the payment of excise duty is accepted, the declarant is immune from imposition of any redemption fine and, therefore the benefit of the scheme gets extended to the redemption fine also. The relevant paragraphs 3.5, 3.6 & 3.8 of the decision in the case of *M/s. Esbee Electrotech LLP (supra)* read as under:-

3.5 The benefit of SVLDR Scheme is available, if the applicant pays "tax dues" as per Section 124 of SVLDR Scheme. Section 123 defines "tax dues" for the purpose of the scheme to mean the "amount of duty" which is being disputed in the appeal. The phrase "amount of duty" is defined in Section 121 (d) to mean 'the amount of central excise duty, the service tax

2 2020 (374) E.L.T. 851

and the cess payable under the indirect tax enactment'. Therefore, on a conjoint reading of Sections 124, 123 and 121 (d) of SVLDR Scheme what is required to be paid for availing the benefit of the Scheme is the amount of certain percentage of the amount of excise duty and not the amount of redemption fine. Once the applicant pays the amount of excise duty as required under the Scheme, the applicant is not liable to pay any further duty, interest or penalty with respect to the matters covered in the declaration. Therefore, in our view, the reasons given by Respondents in the application for rejecting the application that Petitioner is required to pay the redemption fine is not borne out from any provisions of SVLDR Scheme.

3.6 *Once the applicant pays the amount of duty as per Scheme then Section 129 provides that the applicant shall not be liable to pay any further duty, interest or penalty with respect to the period covered in the declaration. Although in Section 129 (1) (a) of SVLDR Scheme redemption fine is per se not included, but the Central Board of Indirect Taxes and Customs issued flyers, wherein it is stated that the benefit under the Scheme would be total waiver of interest, penalty and fine. To the same effect, is the press note dated 22nd August 2019 issued by the Ministry of Finance, Government of India, wherein it is clarified that there would be no other liability of interest, fine or penalty if the dispute is resolved under the SVLDR Scheme. This issue had come up for consideration before the Allahabad High Court in **M/s. Jay Shree Industries (supra)** wherein on similar facts, the High Court clarified by analysing the meaning of duty, penalty and fine and came to a conclusion that redemption fine under Section 34 of the Central Excise Act is only a payment akin to penalty and, therefore, a declarant is entitled to the waiver of redemption fine under Section 129 of SVLDR Scheme. The very same issue also arose before the Gujarat High Court in **Synpol Products Pvt. Ltd. (supra)** and the High Court in paragraph 4.5 of the said decision recorded that the Revenue has accepted that waiver of fine is allowed under the Scheme although Section 129 (1) of the said Scheme does not refer to fine and the said stand of the Revenue is in line with the clarifications, press release and flyers issued by the Board. The Co-ordinate Bench of this Court in **HP Adhesives Limited (supra)** has also accepted the decisions Gujarat and Allahabad High Court mentioned above. Therefore, our view, the basis of rejection that waiver of redemption fine is not covered is required to be rejected.*

3.8 *The reliance placed by Respondents on paragraph 10 of the decision of the Gujarat High Court in **Synpol Products Pvt. Ltd. (supra)** to justify their rejections is not acceptable since the issue before us is interpretation of Section 121 (d) which defines "amount of duty" which is the phrase*

used in Section 123 which defines "tax dues", whereas the observations made in paragraph 10 of the Gujarat High Court is in connection with the definition of the phrase "amount in arrears" defined by Section 121 (c). In the instant case, the provisions of Section 121 (c) is not applicable since Petitioner No.1-Firm has filed an appeal which has not attained finality and, therefore, none of the clauses of Section 121 (c) of the Scheme applies to Petitioner's case. Therefore, on facts the observations in paragraph 10 of the Gujarat High Court is not applicable to the case before us.

13. The contention of Mr. Mishra relying on the last sentence of the paragraph 10 of the decision in the case *Synpol Products Pvt. Ltd. (supra)* cannot be accepted since that was not the basis on which the declaration was rejected by the respondents. It is also not stated in the reply filed by the respondents. The only ground on which the application was rejected was that the Scheme does not cover the redemption fine which as observed by us is contrary to the decision of this Court in the case of *M/s. Esbee Electrotech LLP (supra)*. It is settled position that the rejection order has to be tested on the touchstone of what is recorded in the said order and nothing can be added or subtracted therefrom or improvised either by way of reply (which in any case is not so in the present case) or by way of arguments. Therefore, this ground of rejection is bad in law.

14. We, therefore, propose to pass following order :-

ORDER

(i) The petition is allowed in terms of prayer clauses (a) and (b) which read as under :-

(a) this Hon'ble Court be pleased to issue Writ of Certiorari or any other appropriate writs, orders and direction under Article 226 of the Constitution of India calling for the records of the case and after examining the legality and validity be thereof be pleased to quash and set aside the purported rejection of Declaration in Form SVLDRS-1 ARN

ppn

7

407.wp-12845.23 (j)(1).docx

LD3012190004307 dated 30.12.2019 filed by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

(b) this Hon'ble Court be pleased to issue Writ of mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of India ordering and directing the respondents therein subordinates, servants and agents to forthwith accept the declaration Form SVLDRS-1 ARN LD3012190004307 dated 30.12.2029 filed by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and issue Form SVLDRS-3 or SVLDRS-4 as the case may be.

(ii) The respondents to intimate the petitioner of any amount, if any, payable as per the above declaration under the Scheme within a period of four weeks from the date of uploading this order;

(iii) The petitioner to make payment within a period of four weeks of the aforesaid communication and inform the respondents about the same.

(iv) The respondents to issue a final certificate under Section 127 of the Scheme within a period of four weeks from the date of receipt of the communication from the petitioner of payment having been made, if any.

15. This petition is disposed of in the above terms. No costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)