



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14519 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA sd/-

and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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ULTRATECH CEMENT LTD.

Versus

UNION OF INDIA & ORS.

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Appearance:

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
ADVOCATE NOTICE SERVED for the Respondent(s) No. 4
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 2,3
NOTICE SERVED for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 27/09/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)



1. Rule. Learned advocate Ms.Hetvi Sacheti waives service of Rule on behalf of respondent Nos.2 and 3.

2. By way of this petition, under Article 226 of the Constitution of India, the petitioner has challenged the rejection of declaration in Form SVLDRS-1 filed by the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short "SVLDRS") by the respondent on the ground that the petitioner was not eligible to avail the Scheme as there is no quantification of Rs.20,72,31,044/- stated by the petitioner in the Form for proposed such levy in the show cause notice.

3. The brief facts of the case are that the respondent authority issued show cause notice on 25.02.2019 proposing to impose penalty under Rule 15(1) and Rule 15A of the Cenvat Credit Rules, 2004 for alleged wrong taking and distribution of ineligible cenvat credit of service tax paid under reverse charge mechanism on Goods Transport Agency service relating to freight for outward transportation of goods.

4. When the SVLDRS was introduced with effect from 05.07.2019, the petitioner filed a declaration in Form SVLDRS-1 on 31.12.2019 under the Scheme. The respondent No.4 Deputy Commissioner of SVLDRS, CGST sent an e-mail dated



13.03.2020 to the employee of the petitioner that since show cause notice dated 25.02.2019 did not quantify the amount of penalty, the declaration was liable to be treated as void.

5. Respondent No.2- The Designated Committee (SVLDRS) without providing any effective opportunity of hearing, rejected the declaration filed by the petitioner on 18.03.2020.

6. The petitioner however received a hard copy of the personal hearing notice by post, fixing the personal hearing on 17.03.2020.

7. The petitioner therefore, by letter dated 20.03.2020 requested the respondent No.4 for adjournment of personal hearing in the matter.

8. By e-mail dated 19.05.2020, the petitioner requested respondent No.4 to accept the declaration filed by the petitioner on the ground that the declaration is in respect of show cause notice proposing to impose penalty was covered within the ambit of SVLDRS and mere mention of penalty amount would not render the declaration ineligible.

9. The petitioner by another letter dated 23.06.2020 requested the respondent No.4 to accept the SVLDRS-1 filed by



the petitioner and to issue discharge Certificate in Form SVLDRS-4.

10. Respondent No.4 on 26.06.2020 informed the petitioner that the declaration filed by the petitioner has been rejected.

11. The petitioner by letter dated 09.07.2020 requested for personal hearing before the respondent No.4, which was rejected by the respondent No.4 by letter dated 23.07.2020 on the ground that as the declaration filed by the petitioner is already rejected on 18.03.2020, the request cannot be accepted.

12. The petitioner being aggrieved by the same, preferred this petition.

13. Learned advocate Mr.Anand Nainawati for the petitioner has submitted that as per the provisions of the SVLDRS, the petitioner being eligible, has filed SVLDRS-1 as show cause notice is issued for levy of the penalty.

14. Learned advocate Mr.Anand Nainawati for the petitioner has invited attention of this Court to the frequently asked questions more particularly Question No.1 under the SVLDRS, 2019 issued by the respondents. Attention was invited to the



Question Nos.1 and 48, which are reproduced hereinbelow :

“Q1. Who is eligible to file declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019?

Ans. Any person falling under the following categories is eligible, subject to other conditions, to file a declaration under the Scheme:

(a) Who has a show cause notice (SCN) for demand of duty/tax or one or more pending appeals arising out of such notice where the final hearing has not taken place as on 30.06.2019.

(b) Who has been issued SCN for penalty and late fee only and where the final hearing has not taken place as on 30.06.2019.

(c) Who has recoverable arrears pending.

(d) Who has cases under investigation and audit where the duty/tax involved has been quantified and communicated to him or admitted by him in a statement on or before 30th June, 2019.

(e) Who wants to make a voluntary disclosure,

Q48. With respect to penalty/late fee matters, whether only SCNs for late fee or penalty are covered under this Scheme or also such cases under appellate proceedings?

Ans. The Scheme is applicable to any SCN for penalty/late fee, irrespective of whether it is under adjudication or appeal.”

Referring to the above answers, it was submitted that the case of the petitioner would fall within the eligible cases to be covered by the scheme and the respondent authorities were not justified in rejecting the declaration of the petitioner on the ground that the petitioner was not eligible for the benefit of



the scheme as the amount of penalty was nowhere quantified or proposed in the show cause notice.

15. Reference was also made by the learned advocate for the petitioner to the impugned show cause notice, in which, the amount of proposed penalty is quantified in Para-12, to point out that the reason given by the respondent No.2 to reject the declaration of the petitioner is contrary to the record.

16. On the other hand, learned advocate Ms.Hetvi Sacheti for the respondent authorities has submitted that the application of the petitioner is not merely rejected on the ground of not being qualified in terms of the provisions of Section 125 of the Finance (No.2) Act, 2019 but, the application was rejected on the ground that the declaration filed by the petitioner was incorrect to the effect that the amount of penalty had been declared Rs.20,72,31,044/- and the application was filed under the category of ‘SCN pending adjudication’. It was submitted that pendency of the show cause notice was for the purpose of adjudication for imposing the penalty and thus, the show cause notice has not been adjudicated, no penalty was imposed on the petitioner and therefore, mentioning the amount of penalty in the declaration has rendered the declaration incorrect and the petitioner is therefore ineligible for the purpose of benefit of the scheme.



17. It was further submitted by learned advocate Ms.Hetvi Sacheti that the discharge Certificate in Form SVLDRS-4 was to be issued in case where the amount payable was zero. However, these provisions would be applicable only in cases where a correct declaration has been filed as per the provisions of the scheme. It was submitted that in the facts of the present case, the petitioner had filed an incorrect declaration and therefore, the same was required to be rejected and accordingly, the Form SVLDRS-4 was not issued on the basis of such incorrect declaration.

18. It was further submitted by learned advocate Ms.Hetvi Sacheti that the petitioner was called upon to appear on 17.03.2020; however, the petitioner did not appear for personal hearing on the scheduled date and time and accordingly, respondent No.2 – Designated Committee rejected the declaration of the petitioner as it was found to be incorrect.

19. Learned advocate Ms.Hetvi Sacheti therefore submitted that no interference should be made in the impugned order passed by the respondent rejecting the declaration on the ground that show cause notice nowhere quantified the amount of penalty as the same was yet to be adjudicated upon.



20. Having heard the learned advocates for the respective parties and considering the submissions made, it is not in dispute that the show cause notice was pending adjudication when the scheme was introduced as on 30.06.2019, which was cut-off date as per the SVLDRS. The show cause notice was for the levy of penalty amounting to Rs.20,72,31,044/-, as stated in Para-12 of the show cause notice dated 25.02.2019.

21. In view of the frequently asked question Nos.1 and 48 as referred hereinabove, we are of the opinion that the scheme is applicable to any show cause notice for penalty/late fee, irrespective of whether it is under adjudication or appeal. The case of the petitioner therefore would squarely fall in the eligible cases and merely because the petitioner has shown the amount of proposed penalty mentioned in the show cause notice would not make the declaration made by the petitioner as eligible under the Scheme.

22. In view of the above, the petition succeeds and accordingly allowed. The impugned order dated 18.03.2020 passed by respondent No.2 is hereby quashed and set aside. The matter is remanded back to the respondent authorities to adjudicate the Form SVLDRS-1 in accordance with law as it is not in dispute that the show cause notice for penalty was pending adjudication as on 30.06.2019.



The respondent authorities are directed to issue Form SVLDRS-4 as per the provisions of the Scheme within a period of 12 weeks from the date of receipt of copy of this order. Rule is made absolute to the aforesaid extent. No order as to costs.

sd/-
(BHARGAV D. KARIA, J)

sd/-
(MAUNA M. BHATT,J)

DIPTI PATEL