

2024:BHC-OS:8589-DB



Sayyed

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.828 OF 2021

Sitec Labs Limited, formerly known as
Sitec Labs Private Limited, a company
incorporated under the Companies Act, 1956
and having its registered office at
Unit No. SB-901 & SB-902, Empire Tower
Building, Gut No. 31, Cloud City Campus,
Thane-Belapur Road, Airoli,
Navi Mumbai - 400 708.

..Petitioner

Versus

1. **The Union of India**
through the Secretary,
Ministry of Finance,
Department of Revenue,
128-A/North Block,
New Delhi – 110 001.
2. **Central Board of Indirect Taxes and
Customs**, Department of Revenue,
North Block, Central Secretariat,
New Delhi – 110 001.
3. **The Designated Committee**,
Belapur Commissionerate,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.
4. **The Deputy Commissioner**,
CGST & Central Excise,
Belapur Commissionerate,
Division-IV, 6th Floor,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.

..Respondents

Mr. Sriram Sridharan for the Petitioner.

Mr. Siddharth Chandrashekhar for the Respondents.

**CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.**

DATED : 11th JUNE 2024

ORAL JUDGMENT :- (Per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. By consent of the parties taken up for final hearing at the admission stage.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner challenges letters dated 9th November 2020 and 5th January 2021 issued by Respondent No.4-Deputy Commissioner, CGST & Central Excise, Belapur, Navi Mumbai whereby Respondent No.4 has informed the Petitioner that the application under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (“**SVLDRS**”) cannot be processed since the Petitioner has failed to make the payment of the amount mentioned in SVLDRS-3 form and, therefore, the Petitioner is directed to make the payment of the demand raised vide Order-In-Original (“**O-I-O**”) dated 9th February 2017 and issued on 21st June 2017.

3. The Petitioner is engaged in the business of providing technical testing and analysis certification services. Pursuant to the show cause notice issued in the year 2015, an O-I-O came to be passed on 9th February 2017 raising a demand notice of Rs.64,20,907/-. The said O-I-O was challenged before this Court in Writ Petition No.1530 of 2019.

4. While the aforesaid writ petition was pending, Respondent No.1 introduced the SVLDRS. The object of the scheme was to give an opportunity to the assesseees to pay up the demand and reduce litigation. On 31st December 2019, the Petitioner filed a declaration in form SVLDRS-1 to avail the benefit of the scheme. As a pre-condition for availing the benefit of the scheme, the Petitioner also withdrew the above referred Writ Petition No.1530 of 2019.

5. On 25th February 2020, Respondent No.3 issued Form SVLDRS-3 informing the Petitioner to make payment of Rs.25,68,362.50/- within 30 days to avail the benefit of the scheme. On 26th March 2020, Petitioner generated challan for making the said payment and after the said challan was generated on the portal of the Respondents, the Petitioner was directed to another portal for making the payment. However, a technical error appeared and, therefore, Petitioner was not able to make the payment. The date for making the payment was thereafter extended by the Respondents upto 30th June 2020 by the Taxation and Other Laws (Relaxation of Amendment of Certain Provisions) Act, 2020. The Petitioner informed the Respondents about the said error. On 9th November 2020, Respondent No.3 informed the Petitioner that since they have not made payment, their application cannot be processed further.

6. It is on the aforesaid backdrop that the Petitioner is before us today.

7. The Petitioner submits that it had generated the challan on the portal within 30 days of the issue of Form SVLDRS-3 and further clicked the “make payment” option, but an error was shown on the screen and, therefore, they could not make the payment within 30 days from the date of issue of Form SVLDRS-3. The Petitioner relied upon averments made in paragraphs 18 to 28 of the petition to submit that they had brought this error due to technical glitch to the notice of the Respondents. The Petitioner submits that since non-payment cannot be attributed to them on account of technical glitch on the portal of the Respondents, the Petitioner cannot be denied the benefit of the SVLDR scheme more so looking at the objective for which the said scheme was introduced, that is, to reduce the litigation. The Petitioner further submitted that on similar facts the Co-ordinate Bench of this Court in the case of *Jai Sai Ram Mech & Tech India P Ltd. vs. Union of India*¹ and *Innovative Antares Pvt. Ltd. vs. Union of India*² has granted relief to the applicants. The Petitioner, therefore, prayed that the Respondents be directed to accept payment of Rs.25,68,362.50/- to be made by the Petitioner as per SVLDRS-3 and to issue the SVLDRS-4 certificate.

1 2024 (4) TMI 236

2 2023 (74) G.S.T.L. 226 (Bom.)

8. Per contra, the counsel for the Respondents submitted that since the payment has not been made within prescribed time the Petitioner cannot avail the benefit of the SVLDR scheme. To support their stand, the Respondents further relied upon the decision of the Supreme Court in the case of *M/s. Yashi Constructions vs. Union of India & Ors.*³ and the decision of Coordinate Bench of this Court in the case of *Hakim Abbas Lakdawala vs. Union of India & Ors.*⁴ and prayed for dismissal of the petition.

9. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the petition.

10. Admittedly, the SVLDRS-3 was issued by Respondent No.3 on 25th February 2020 calling upon the Petitioner to make payment of Rs.25,68,362.50/- within 30 days. The Petitioner generated a challan on the portal of the Respondents on 26th March 2020 which is within 30 days and again on 30th June 2020, but on account of technical glitch on the portal of the Respondents, the Petitioner could not make the payment. The averments to this effect has been made by the Petitioner in paragraphs 18 to 28 of the petition and admittedly same has not been denied by the Respondents in their reply. Furthermore in a letter issued by Ministry of Finance dated 14th July 2020 addressed to the Principal

3 Special Leave to Appeal (C) No.2070 of 2022

4 Writ Petition No.780 of 2022

Chief Commissioner, the Respondents have admitted that due to many difficulties various declarants could not make the payment and avail the benefit of the scheme. Judicial note of the said technical glitches is also taken by the Co-ordinate Bench of this Court in the case of *Jai Sai Ram Mech & Tech India P Ltd.* (supra) and *Innovative Antares Pvt. Ltd.* (supra).

11. It is also important to note paragraph 22 of the Affidavit-in-Reply of the Respondent No.4 affirmed on 29th October 2021 which reads thus:-

“22. With reference to statements made in Paragraph No. 33 D2, I say that the information was sought verbally and the report was sent by this office that the Petitioner is willing to make the payment. The survey regarding details of declarants under SVLDRS Scheme who was willing to pay dues as per SVLDRS-3 after due date 30.06.2020 has been conducted vide Circular F.No.267/65/2020-CX-8 dated 14.07.2020 issued by Respondent No.2. The analysis after the receipt of data has to be done on the higher level and if any decision would be taken in this matter, the same would be applicable to all taxpayers of the taxable territory irrespective of whether they are major or small declarants. So, there is no point of violation of Article 14 in this matter as benefits if any would have been extended to all declarants, who could not made the payment by 30.06.2020.”

[emphasis supplied]

12. The Respondents having not rebutted the averments made by the Petitioner in paragraphs 18 to 28 which states that on account of technical glitch, the Petitioner could not make the payment and a grievance was raised by the Petitioner with the Respondents on this count and the admitted fact, as stated in paragraph 22 of the affidavit-in-reply that Petitioner is willing to make payment, in our view the

Petitioner should not be denied the benefit of the SVLDRS when no fault can be attributed to the Petitioner.

13. The Petitioner is justified in relying upon the decision of the Co-ordinate Bench of this Court in the case of *Jai Sai Ram Mech & Tech India P. Ltd.* (supra) and *Innovative Antares Pvt. Ltd.* (supra) wherein on identical facts situation this Court had permitted declarant to make the payment and avail the benefit of SVLDR scheme. We do not find any reason for taking a different view.

14. The decision of the Supreme Court relied upon by the Respondents in the case of *M/s. Yashi Constructions* (supra) has been considered by the Co-ordinate Bench of this Court in the case of *Jai Sai Ram Mech & Tech India P. Ltd.* (supra). The decision of the Supreme Court is further distinguishable since the facts before the Supreme Court was not a case where the payment could not be made on account of technical glitch on the portal of the Respondents. Therefore, the said decision is distinguishable on facts. Similarly the decision in the case of *Hakim Abbas Lakdawala* (supra) was a case where the declarant could not make payment due to financial constraints and, therefore, this Court did not permit the declarant to avail the benefit of the scheme. In the case at hand as noted above, the payment could not be made on account of technical glitch on the portal of the Respondents. Therefore, even this decision cannot be of any assistance to the Respondents. In view of above, we pass the following order:-

ORDER

- (i) Rule is made absolute in terms of the prayer clauses (a) and (c) which reads thus:-

“(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India to quash and set aside letter dated 9.11.2020 (Exhibit 'A') issued by the office of Respondent No. 4 through the Superintendent, CGST & Central Excise, Range-V, Division-IV, Belapur and letter dated 5.1.2021 issued by the Respondent No. 4;

(c) that this Hon'ble Court be pleased to direct the Respondents to allow the Petitioner to make payment either in the system or offline against Form SVLDRS-3 dated 25.2.2020 issued by Respondent No. 3 and also direct Respondents to issue discharge certificate in Form SVLDRS-4 under the Scheme;”

- (ii) The Respondents are directed to accept the payment of Rs.25,68,362.50/- to be made by the Petitioner within four weeks from the date of uploading of this order.
- (iii) Thereafter Respondents are directed to issue SVLDRS-4 certificate within a period of four weeks from the date of the Petitioner having made the payment.

15. Rule is made absolute in above terms. No order as to costs.

[JITENDRA JAIN, J.]

[K. R. SHRIRAM, J.]