

(2023) 03 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 183 Of 2021

Deelight Fortune Private Limited

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 21-03-2023

Acts Referred:

Service Tax Rules, 1994 — Rule 6(1)
Finance Act, 1994 — Section 65(105)(zzzz), 75, 77, 78A, 8A, 85, 86, 105, 107(3)
Service Tax Voluntary Compliance Encouragement Scheme, 2013 — Section 106(1),
106(2), 107(4), 121(c), 121(o), 122, 123(a)(i), 123(c)

Citation : (2023) 03 BOM CK 0067

Hon'ble Judges : Nitin Jamdar, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : Shriram Sridharan, J.B.Mishra, Sangeeta Yadav, Ashutosh Mishra

Final Decision : Allowed

Judgement

Abhay Ahuja, J

1. Petitioner has filed this Petition being aggrieved by the rejection of its application to settle its dispute under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short the "Scheme") as enacted in Chapter V of the Finance (No.2) Act, 2019 (for short the "said Act").

2 Brief facts are that the Petitioner, a company incorporated under the Companies Act, 1956 had given its commercial premises on leave and license basis to tenants from time to time. Vide Finance Act, 2010, Section 65(105) (zzzz) of the Finance Act, 1994, was amended wherein renting of property was made taxable with effect from 1 June 2007. Petitioner had applied and obtained Service Tax Registration from 16 June 2011 under the category of 'Renting of Immovable Property Service'. It is Petitioner's case that it did not pay service tax to Service Tax Authority under the belief that mere letting out was not a service. However, due to the purported uncertainties about the legal provisions with respect to the levy of service tax during the period, the Petitioner raised invoices

on the licensee for service tax which the licensee paid to the Petitioner from time to time.

3 Service Tax Voluntary Compliance Encouragement Scheme, 2013 (for short the "VCES") was introduced by Chapter VI of the Finance Act, 2013. Pursuant to Section 106(1) of the VCES, a person could declare his tax dues for the period 1 October 2007 to 31 December 2012 and upon payment of service tax, there would be immunity from interest and penalty.

4 Petitioner filed Form VCES-1 on 2 July 2013 wherein the Petitioner showed an amount of Rs.3,41,82,926/- as service tax liability for the period October 2007 to March 2011. It is the case of Petitioner that although service tax on renting out of immovable property was effective from 1 June 2007, the period from 1 June 2007 to 30 September 2007 was outside the VCES as the said Scheme covered the period only from 1 October 2007. It is submitted that the amount of rent and tax relating to the period from 1 June 2007 to 30 September 2007 was erroneously shown by the Petitioner as tax dues for the period 1 October 2007 to 31 March 2008 in the declaration dated 2 July 2013 made by the Petitioner.

5 That on account of the above error, tax liability of Rs.31,25,815/- relating to the period from 1 June 2007 to 30 September 2007 was also erroneously included in the declaration, under VCES.

6 The Designated Authority, (VCES-Cell), Service Tax, Mumbai issued Form VCES-2 dated 8 July 2013 acknowledging the receipt of declaration filed by Petitioner under Form VCES-1 pursuant to which Petitioner was required to deposit 50% of the tax dues by 31 December 2013. It is submitted that the Petitioner did not make payment of 50% of the declared dues by 31 December 2013 under the belief that the said payment could be made by 31 December 2014 along with interest from 1 July 2014 in view of proviso to Section 107(4) of the VCES. That the Petitioner believed that 50% of the said amount needed to be paid by 31 December 2013 only if interest from 1 July 2014 was to be avoided.

7 As Petitioner failed to deposit 50% of the tax dues by 31 December 2013, the benefit of the VCES was denied. By a letter dated 4 March 2014 the Deputy Commissioner (Anti Evasion), ST-I, intimated the Petitioner that the VCES conditions had not been fulfilled by the Petitioner and directed the Petitioner to pay the entire amount declared under the VCES.

8 It is submitted that Petitioner paid the amount of service tax of Rs.3,10,57,111/- except the amount of Rs.31,25,815/- declared under the scheme. That the said payment was made by the Petitioner on various dates during the period from 4 February 2014 to 27 March 2014. That, thereafter, the bank accounts of the Petitioner were attached for recovery of the dues declared under the VCES and in order to have the recovery / attachment lifted, the Petitioner paid the amount of Rs.31,25,815/- under protest. It is submitted on behalf of Petitioner that the said amount was paid along with interest from 1 January 2014 to the date of payment.

9 It is submitted that, since the attachment was not lifted despite the payment, Petitioner filed a Writ Petition (L) No.2139 of 2016 in this Court and vide order dated 8 August 2016 this Court allowed the Petition filed by the Petitioner and set aside the attachment.

10 Thereafter, a show cause notice dated 17 April 2017 was issued to the Petitioner demanding interest amounting to Rs.2,78,90,766/- on the delayed payment of service tax under Section 75 of the Finance Act, 1994. It was stated in the show cause notice that since the Petitioner had failed to pay the minimum 50% of the declared tax dues on or before 31 December 2013 as required under the provisions of Section 107(3) of the Finance Act, 1994, therefore, there was a clear breach of the VCES, 2013 by the Petitioner. The Petitioner filed reply to the show cause notice vide letter dated 29 May 2017 refuting the allegations and contending that no tax dues were payable as tax of Rs.3,10,57,111/- was already paid on 30 June 2014.

11 On 25 June 2018, the Commissioner, CGST & CX, Mumbai South passed an Order-in-Original confirming the entire demand of interest proposed in the show cause notice and dropped the personal penalty under Section 78A on the Director of the Petitioner.

12 Being aggrieved by the Order-in-Original, Petitioner filed an Appeal before the Appellate Tribunal and as on the date of the Petition, it is stated that the Appeal was pending before the Appellate Tribunal.

13 Around August 2019, the Finance (No.2) Act, 2019 introduced the SVLDR scheme for settlement of legacy disputes relating to central excise and service tax matters on payment of certain specified percentage of tax dues by the declarants.

14 Mr. Sridharan, learned Counsel for Petitioner would submit that the Petitioner filed two applications under the SVLDR scheme seeking to settle the disputes : the first one arising out of the show cause notice dated 17 April 2017. The first application dated 15 November 2019 was filed under the category 'Litigation - Appeal pending' under Section 123(a)(i) of the said Act. The said application came to be rejected by the Designated Committee on 19 December 2019.

15 Petitioner did not challenge the said rejection then but filed another application dated 27 December 2019 under the category 'Amount in Arrears' under Section 123(c) of the said Act. The Petitioner filed its written submissions dated 27 December 2019 before the Designated Committee. The Designated Committee issued a show cause notice dated 30 January 2020 proposing to reject the Petitioner's application on the ground that as per Section 122 of the said Act, the amnesty Scheme is applicable only to enactments specified under Section 122 and that the VCES was not one of the enactments specified under Section 122. That, the Order-in-Original dated 25 June 2018 being an order of rejection of VCES declaration, the same was not covered within the scope of the definition of "order" under Section 121(o) of the said Act.

16 Personal hearing was granted to Petitioner on 3 February 2020 and on 6 February 2020. It is claimed that Petitioner appeared before the Designated Committee on 3 February 2020 and submitted that the VCES covers "tax dues" under the Finance Act, 1994 which is one of the enactments notified under Section 122, and therefore, the application was maintainable. The Petitioner also made further written submissions in support of its contentions.

17 The said second application came to be rejected by the Respondent no.2 Designated Committee on 6 February 2020 primarily on the ground that the VCES is not a part of the Finance Act, 1994 and the Finance Act 2013 which brought in VCES is not one of the enactments specified under Section 122 of the SVLDR Scheme. Apart from that, it was stated that since no duty payment was pending under any of the Indirect Tax Enactments, the case of Petitioner did not fall under the Arrears category of the SVLDR Scheme.

18 Aggrieved by the rejection of the second Form SVLDRS-1 on 6 February 2020 Petitioner has filed this Petition seeking the following reliefs :

(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or Mandamus or any other appropriate writ, direction or order, quashing and setting aside order of the Designated Committee made under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 thereby directing the Respondents, to treat the application filed by the Petitioners under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as valid application.

(b) that this Hon'ble Court be pleased to treat the application filed by the Petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 valid and accept the payment already made as sufficient compliance of the scheme and direct the Respondents to issue Discharge certificate in Form SVLDRS-4.

(c) that in the alternate this Hon'ble Court be pleased to accept the application No. LD1511190000229 in Form SVLDRS-1 dated 15.11.2019 filed under the category 'Appeal Pending' and direct the Respondents to issue Discharge certificate in Form SVLDRS-4 in such application.

19 Mr. Sridharan, learned Counsel for the Petitioner submits that the main issue is whether the amounts demanded against the Petitioner are dues under the Finance Act, 1994 or not.

20 Mr. Sridharan would submit that VCES is an amnesty / settlement scheme and does not contain any charging Sections imposing / levying tax upon a tax payer. He would submit that the charging Sections for the levy of service tax is contained only in the Finance Act, 1994. In the present case, the demand has been made against Petitioner under this Act. The show cause notice dated 17 April 2017 clearly invokes Sections 75 and 77 of the Finance Act, 1994. Similarly, the Order-in-Original dated 25 June 2018 clearly confirms the demand by applying Sections 75 and 77 of the Finance Act, 1994. Learned Counsel would submit that, therefore, the present matter is covered by one of the enactments

specified in Section 122 of the said Act i.e. the Finance Act, 1994.

21 Learned Counsel would further submit that this Court in a catena of decisions has held that the Scheme is a beneficial provision which is to be interpreted liberally. That, the purpose of the Scheme is to encourage the settlement and closure of legacy tax matters and the interpretation should be to forward that objective. He would submit that the terms of the Scheme should be construed liberally to include even cases involving only interest and penalty and to interpret otherwise would lead to unintended scenarios. Learned Counsel would submit that a tax payer who has paid the tax amount under protest so as to reduce interest liability would be rendered worse off than a tax payer who has paid no tax at all, which cannot be the intention of the SVLDR Scheme.

22 Mr. Sridharan would submit that, therefore, the rejection of Petitioner's application is illegal and liable to be set aside. Learned Counsel urges this Court to direct the Designated Authority to accept Petitioner's application under the SVLDR Scheme and direct the Respondent no.2 to issue Discharge Certificate.

23 Mr. Mishra, learned Counsel for the Respondents, relies upon the reply dated 2 August 2022 and opposes the reliefs sought.

24 We have heard Mr. Sridharan, learned Counsel for the Petitioner and Mr. Mishra, learned Counsel for the Respondents and with their able assistance we have perused the papers and proceedings and considered the rival contentions.

25 It is not in dispute that the application dated 27 December 2019 has been rejected on 6 February 2020 on the ground that the VCES has not been referred to or mentioned as one of the enactments under Section 122 of the said Act to which the amnesty scheme is applicable.

26 The grounds of ineligibility as set out in the remarks column is usefully quoted as under :

"1. The definition of arrears under Section 121(c) covers the case.

Reason for disagreement : Section 122 clearly says that scheme applies only to enactments specified therein. VCES 2013 is not an enactment specified therein. Further the order is defined under Section 121(o) which talks about order of determination under indirect tax enactments in relation to show cause notice issued under such indirect tax enactments. VCES 2013 is not an indirect tax enactment specified under Section 122. Therefore the order passed by the authority with reference to VCES is beyond the scope of the scheme. Moreover as agreed by you in personal hearing, the amount of duties stands paid by you, therefore as on the date of filing of declaration there is no amount of duty which is pending recovery under indirect tax enactments, for this reason also your case does not fall under arrears category.

2. VCES scheme is part and parcel of Finance Act, 1994 and for this proposition you had relied upon Para 18 of Hon'ble Madras High Court judgment in the case

of Narasimha Mills Pvt. Ltd.

Reasons for disagreement : The judgment of the Hon'ble High Court only says that VCES is part and parcel of Finance Act, 2013 in view of Section 105 of Finance Act, 2013, in view of the fact that words and phrases not defined in Finance Act, 2013 will have the same meaning as assigned in them in the Finance Act or Rules made there under. This means that for the purpose of implementation of VCES 2013, the provisions of Finance Act, 1994 will be adopted. However, that does not mean that VCES 2013 becomes part of Finance Act, 1994. What Hon'ble High Court had meant and stated was that provisions of Finance Act, 1994 will apply to the proceedings under VCES 2013. Therefore, it cannot be said that VCES 2013 becomes part and parcel of Finance Act, 1994."

27 It emerges that the primary reason for disagreement is that Section 122 does not refer to VCES 2013 enactment and therefore, the order passed by the authority with reference to VCES is beyond the scope of the SVLDR Scheme. It has also been observed that the amount of duties having been paid, there is no duty pending recovery under the indirect tax enactments.

28 With respect to the applicability of Finance Act, 1994 being part of the VCES, the Designated Committee has observed that the reliance on the decision of the Madras High Court in the case of Narsimha Mills Private Limited vs. Commr. Of C. Ex. (Appeals), Coimbatore 2015 (39) S.T.R. 795 (Mad.) cannot be used to say that VCES 2013 has become part and parcel of Finance Act, 1994 as the reference in the 2013 Act to the 1994 Act is for the purpose of definition of words and phrases not defined in the Finance Act, 2013 only and not for adoption of the provisions of the Finance Act, 1994.

29 For the sake of convenience, Section 122 of the said Act is set out as under :

"122

This Scheme shall be applicable to the following enactments, namely :-

(a) the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder; (b) the following Act, namely:-

(i) the Agricultural Produce Cess Act, 1940;

(ii) the Coffee Act, 1942;

(iii) the Mica Mines Labour Welfare Fund Act, 1946;

(iv) the Rubber Act, 1947;

(v) the Salt Cess Act, 1953;

(vi) the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;

(vii) the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(viii) the Mineral Products (Additional Duties of Excise and Customs) Act, 1958;

(ix) the Sugar (Special Excise Duty) Act, 1959;

(x) the Textiles Committee Act, 1963;

(xi) the Produce Cess Act, 1966;

(xii) the Limestone and Dolomite Miners Labour Welfare Fund Act, 1972;

(xiii) the Coal Mines (Conservation and Development) Act, 1974;

(xiv) the Oil Industry (Development) Act, 1974;

(xv) The Tobacco Cess Act, 1975;

(xvi) The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976;

(xvii) the Bidi Workers Welfare Cess Act, 1976;

(xviii) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;

(xix) the Sugar Cess Act, 1982;

(xx) the Jute Manufacturers Cess Act, 1983;

(xxi) the Agricultural and Processed Food Products Export Cess Act, 1985;

(xxii) the Species Cess Act, 1986;

(xxiii) the Finance Act, 2004;

(xxiv) the Finance Act, 2007;

(xxv) the Finance Act, 2015;

(xxvi) the Finance Act, 2016;

(c) any other Act, as the Central Government may, by notification in the Official Gazette, specify."

(emphasis supplied)

30 As can be seen, the Finance Act, 1994 finds mention in the aforesaid Section to which the SVLDR Scheme is made applicable.

31 The Designated Authority has cited the decision of the Madras High Court in the case of Narsimha Mills Private Limited vs. Commr. Of C. Ex. (Appeals), Coimbatore (supra).

32 We have carefully considered the decision in the case of Narsimha Mills Private Limited vs. Commr. Of C. Ex. (Appeals), Coimbatore (supra) and observe that relying upon the decision of the Punjab & Haryana High Court in the case of M/s. Barnala Builders & Property Consultant vs. The Deputy Commissioner of Central Excise & Service Tax, Dera Bhassi and Others 2014 (35) S.T.R. 65 (P&H)

the Madras High Court had observed that as VCES under which Petitioner therein had applied, was part and parcel of Finance Act, 1994 by virtue of Finance Act 2013, the orders passed under VCES were appealable. Paragraphs 10 and 11 of the said decision are usefully quoted as under :

"10. The main contention raised on behalf of the respondents is that VCES scheme does not have a statutory provision for filing Appeal against the order of rejection of declaration under Section 106(2) passed by the designated authority and that the appeal preferred by the petitioner under Section 85 of the Act, 1994 would not lie since the said provision provides appeal only as against the orders passed by the adjudicating authority and in the present case, the 2nd respondent who passed rejection order, cannot be construed as an Adjudicating authority, but only as a designated authority.

11. In similar circumstances, the Punjab and Haryana High Court, in its decision in M/s.Barnala Builders's case, (cited supra), has categorically held that the order passed under VCES is appealable. It has been held so as under:

" The impugned order, in our considered opinion, is appealable, under Section 86 of the Indian Finance Act, 1994, particularly as the scheme under which the petitioner has applied, is part and parcel of the aforesaid Finance Act, by virtue of the Indian Finance Act, 2013. Faced with this situation, counsel for the petitioner has pressed into service circular, dated 08.08.2013, issued by the Central Board of Excise and Customs, stating that such an order is not appealable.

We are unable to accept correctness of instructions issued by the Central Board of Excise and Customs, for the simple reason that after incorporation of the Service Tax Voluntary Compliance Encouragement Scheme into the Finance Act, all other provisions of the Act except to the extent specifically excluded, apply to proceedings under the scheme. The impugned order passed by the Deputy Commissioner of Central Excise and Service Tax would necessarily be appealable under Section 86 of the Indian Finance Act, 1994....."

(emphasis supplied)

33 We have also had an occasion to peruse the decision of the Punjab and Haryana High Court in the case of M/s. Barnala Builders & Property Consultant vs. The Deputy Commissioner of Central Excise & Service Tax, Dera Bhassi and Others (supra) and observe that the Punjab and Haryana High Court has opined that VCES is incorporated in the Indian Finance Act, 1994 by virtue of Indian Finance Act, 2013 and all other provisions of the said Act would apply except to the extent specifically excluded.

34 It is, therefore, clear from the above that VCES is part and parcel of the Finance Act, 1994, a statute which finds mention in Section 122 of the said Act. As can be seen from the facts of the case at hand, the Petitioner had obtained its Service Tax Registration under the Finance Act, 1994, the liability to pay service

tax arose under the Finance Act, 1994, the show cause notice dated 17 April 2017 demanding the interest amount of Rs.2,78,90,766/- was issued to Petitioner under Section 75 of the Finance Act, 1994, which clearly stated that Petitioner had failed to pay minimum 50% of the declared tax dues on or before 31 December 2013 as required under the provisions of Section 107(3) of the Finance Act, 1994. By way of illustration, paragraph 11 of the show cause notice is quoted as under :

"11. Now therefore, M/s. Cavim Properties Pvt. Ltd. having registered office at Mafatlal Centre, 8th , 12th, 12A Floor, Nariman Point, Mumbai 400 021, are hereby required to show cause to the Commissioner of Service Tax-I, Mumbai, having his office situated at 14th Floor, Air India Building, Nariman Point, Mumbai – 400 021 within 30 (thirty) days from the date of receipt of this Notice, as to why:

i. The Interest amounting to Rs.2,78,90,766/-(Rupees Two Crore Seventy Eight Lakhs Ninety Thousand Sixty Six only) on the delayed payment of service tax should not be demanded and recovered from them under Section 75 of the Act read with Rule 6(1) of Service Tax Rules 1994;

ii. Interest paid by the assessee amounting to Rs.28,44,914/- (Rupees Twenty Eight Lakhs Forty Four Thousand Nine Hundred Fourteen Only) should not be appropriated against interest demanded as aforesaid.

iii. Penalty under Section 77 of the Finance Act 1994 should not be imposed on them.

11.1 Mr. Deepak M. Shroff, Director of said M/s. Cavim Properties Pvt. Ltd. is hereby required to show cause to the Commissioner of Service Tax-I, Mumbai, within 30 (thirty) days from the date of receipt of this Notice, as to why the penalty under Section 78A should not be imposed on him"

35 There is, therefore, no doubt that the liability of the Petitioner had arisen under the Finance Act, 1994 which enactment finds mention under Section 122 of the said Act. Therefore, the ground for rejection of Petitioner's second application that the VCES does not find mention as an enactment under Section 122 would therefore not survive. In view of the above discussion, the finding of the Designated Committee on the basis of the decision of the Madras High Court in Narsimha Mills Private Limited vs. Commr. Of C. Ex. (Appeals), Coimbatore (supra) appears to be erroneous.

36 Coming to the observation of the Designated Authority that amount of duties having been paid, there is no duty pending recovery under the indirect tax enactments, we have already noted that in the facts of the case, the show cause notice demanding the interest amount was issued to Petitioner under Section 75 of the Finance Act, 1994 and which related to the service tax dues, which have admittedly been paid by Petitioner. Just because the Petitioner has paid the principal amount, it cannot be said that when a show cause notice has been

issued for interest on the said amount, that the Petitioner is not entitled to make a declaration under SVLDRS. The interest relates to the service tax amount and the SVLDR Scheme covers not only tax but also interest, penalty. Infact, Section 129 of the SVLDR Scheme which provides for discharge certificate makes the certificate conclusive inter alia with respect to the liability to pay any further duty, interest or penalty with respect to the matter and time period covered in the declaration. The demand for interest under the show cause was clearly with respect to the duty amounts which admittedly have been received by the department. Both the amounts of Rs.3,10,57,111/- as well as of Rs.31,25,815/- have been received by the Revenue. The Designated Authority ought to have considered the receipt of both these amounts while considering the application made by Petitioner. We agree with the submission of the learned Counsel for the Petitioner that the SVLDR Scheme is a scheme to encourage the settlement and closure of legacy tax matters and needs to be interpreted liberally to forward the objective.

37 Ergo, we are inclined to set aside the rejection dated 6 February 2020 by the Designated Authority.

38 The order of the Designated Authority dated 6 February 2020 under SVLDR Scheme rejecting Petitioner's SVLDRS-1 application dated 27 December 2019 is hereby quashed and set aside.

39 Respondent no.2 Designated Authority is directed to consider the Petitioner's SVLDRS-1 application dated 27 December 2019 afresh in the light of the above discussion within a period of four weeks from today and issue appropriate order / certificate.

40 Writ Petition stands allowed in the above terms. Parties to bear their own costs.