

(2022) 01 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5942 Of 2021

M/S HI Tec Point Technologies (P) Ltd

APPELLANT

Vs

Union Of India Represented By Secretary And Others

RESPONDENT

Date of Decision : 06-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 — Rule 7
Finance Act, 2019 — Section 6, 7, 127(5)

Citation : (2022) 01 SHI CK 0021

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Abhimanyu Jhamba, Rajinder Thakur, Vijay Arora

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following substantive reliefs:-

â??A Issue a Writ, Order or Direction in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226/227 of the

Constitution of India directing the Respondents to accept the payment of taxes of Rs. 68,19,084/- declared by the Petitioner and accepted by the

respondents under the Sabkas Vishwas (Legacy Dispute Resolution) Scheme, 2019;

B. Direct the Respondents to permit the Petitioner to deposit the determined amount under the Sabka Vishwas (Legacy Dispute Resolution) Scheme,

2019 along with such rate of interest as may be directed by this Honâ??ble Court;

C. Directing the Respondents to consider the representation dated 29.06.2020,

25.09.2020, 29.12.2020, 25.03.2021, 05.06.2021 and 12.08.2021 made by the Petitioner addressed to the Respondents.â??

2. The Government of India launched a scheme called as â??Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short â??SVLDRS, 2019â??) as a one time measure for liquidation of legacy disputes of Central Excise and Service Tax.

3. The petitioner opted the scheme and filed a declaration dated 15.01.2020. In the declaration, the petitioner declared an amount of Rs.1,13,65,141/- under the category of â??arrears-appeal not filed or appeal having attained finalityâ?? in respect of order dated 15.01.2020 issued by the Joint Commissioner, CGST Commissionerate, Shimla.

4. The Designated Committee after verification of the aforesaid declaration issued Form SVLDRS-3 to the petitioner on 13.03.2020 whereby the petitioner was required to pay an amount of Rs.68,19,084.60/-. As per the SVLDRS-2019, the amount determined by the Designated Committee was required to be paid within 30 days from the date of issue of the Form, as is evident from Rule-7 which reads as under:-

â??Every declarant shall pay electronically the amount, as indicated in Form SVLDRS-3 issued by the designated committee, within a period of thirty days from the date of its issue.â??

5. However, the petitioner failed to pay the aforesaid amount within 30 days from the date of issue of notice and further did not pay the same within the extended due date on 30.06.2020.

6. The petitioner thereafter made a number of representations to the Office of the Commissioner for extension of time and payment of dues in installments. However, the petitioner was repeatedly informed that being time bound amnesty scheme, there was no provision under the SVLDRS, 2019 for extension of time after 30.06.2020.

7. Moreover, the petitioner was contacted by the department to ascertain its willingness to pay the tax dues by 30.09.2020, if the date is further extended. The petitioner even after the receipt of the letter dated 14.07.2020 did not show any willingness for the same.

8. The Range Officer accordingly initiated action for recovery of arrears vide letter dated 03.06.2021 and the instant petition was filed after more than

1 year and 3 months from the last date of payment of determined amount of tax under the SVLDRS, 2019.

9. Now, the moot question, in these circumstances, is whether the SVLDRS, 2019 can be made operational by the Court beyond the period for which it was formulated?

10. Learned counsel for the parties have placed reliance upon the various judgments rendered by various High Courts which are enumerated below:-

1. Case No: WP(C) 2862/2021, M/s Brahmaputra Tele Productions Pvt. Ltd. versus The Union of India and others.

2. S.B. Civil Writ Petition No. 10571/2020, Agroha Electronics versus Union of India and another.

3. D.B. Civil Writ Petition No. 6962/2021, M/s Akshay Dan Charan, A proprietorship Firm, through its Proprietor vs. Union of India and others.

4. W.P. (MD) No. 19314 of 2020, P. Sikkandar vs. The Government of India and another, Madras High Court.

5. Writ Tax No.328 of 2021, M/s Shekhar Resorts Limited vs. Union of India and others.

11. Adverting to the facts in Brahmaputra Tele's case (supra), it would be noticed that the judgment in the said case was not on the point of

extension of time under SVLDRS,2019, but was rendered in the peculiar facts and circumstances of the case, as is evident from paras 4 to 9 of the judgment which read as under:-

4. The admitted position is that the petitioner owes certain amount to the Government of India on account of settlement of certain dispute which

was resolved under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short, SVLDRS) vide Finance Act No. 2, 2019 under

which the petitioner is supposed to pay a sum of Rs. 12,36,844.40/- which the petitioner had agreed to pay by way of instalments, though it was

rejected by the authorities.

5. Be that as it may, the petitioner was to make payment by 1 July, 2020. Unfortunately, according to the petitioner, the Covid pandemic struck

because of which not only the petitioner's enterprise but also functioning of the many offices of the Government including of the Respondents had

been disrupted and, as such, the petitioner could not make the payment. Subsequently, however, when the opportunity came for the petitioner to make

payment, the authorities informed the petitioner that the portal for payment has been closed as the last date of payment had already expired on 1st

July, 2020. Accordingly, the petitioner approached the authorities for allowing him to pay the due amounts in instalments, which, however, did not elicit

any positive response from the authorities. Being aggrieved, the petitioner has approached this Court by filing this writ petition seeking a direction to

the authorities to accept the payment of the amount due in instalments.

6. As regards this, Mr. Keyal, learned Standing Counsel, GST has submitted that if the petitioner is willing to pay the aforesaid amount within 15 days,

perhaps, the matter can be sorted out. On the other hand, Ms. Hawelia, learned counsel for the petitioner, has prayed for a longer period as the

amount is substantial and sought for at least two months time.

7. In this regard, Mr. Keyal, learned Standing Counsel, GST has drawn attention of this Court also to the amount which according to him, the

petitioner-company actually owes to the authorities by referring to the letter dated 22.12.2019 of the petitioner where it has been mentioned that the

petitioner-company owes Rs. 3,90,69,385/- under the SVLDRS which could be paid in 48 equal instalments. On the other hand, Ms. Hawelia has

submitted that the aforesaid is the aggregate amount which relates to other financial years also and is not the amount for which the petitioner has filed

the present writ petition. She submits that as far as the present petition is concerned, the amount due is only Rs. 12,36,844.40/- as mentioned in

Mandate Form No. 3 under the SVLDRS which the petitioner is seeking to pay.

8. After hearing learned counsel for the parties, this Court is of the opinion that it may not necessary to dwell on the aggregate amount the petitioner is

supposed to pay, except the amount which the petitioner has admitted and willing to pay in this petition. As regards other liabilities, if any, it is a matter

to be considered by the authorities on its own merit in accordance with law. However, as far as the amount of Rs. 12,36,844.40/- is concerned which

is the subject matter of consideration in this petition, the petitioner shall pay the aforesaid admitted amount of Rs. 12,36,844.40/- within 45 days from

today. As regards the dues mentioned by Mr. Keyal, it is for the petitioner to approach the competent authority for payment and in instalments, if the

authorities agree.

9. It is made clear that till payment of the aforesaid amount of Rs.

12,36,844.40/- within the aforesaid 45 days, no coercive action shall be taken against the petitioner as regards the said amount.â??

12. Now, advertent to the judgment rendered by the Single Bench of the Rajasthan High Court in Agroha Electronicsâ??s case (supra), wherein time to deposit the amount was extended by the Court.

13. However, a contrary view has been taken by a Division Bench of the same High Court in M/s Akshay Dan Charanâ??s case(supra) where the petitioner therein had challenged the recovery notice dated 14.08.2020 and claimed benefit of the SVLDRS, 2019 Scheme and the learned Division

Bench observed as under:-

â??The petitioner is a proprietary concern engaged in the businesses of providing construction services in respect of commercial/Industrial buildings

and civil structures etc., for which purpose, the petitioner has made registration under the Services Tax Regime. For the period of financial year 2008-

09 to 2011-12, the Service Tax Department was of the opinion that the petitioner was providing taxable services in the form of coal handling and

stacking, but on which the petitioner has not paid service tax. The demand of unpaid service tax amounting to Rs.28,11,443/- with interest was,

therefore, raised vide order-in-original passed on 10.11.2016. The petitionerâ??s appeal against the said order-in- original was dismissed on

30.07.2018.

The Government of India introduced an amnesty scheme under the name Sabka Viswas (Legacy Dispute Resolution Scheme, 2019), hereinafter

referred to as â??the schemeâ?? by way of enacting Chapter V of the Finance Act, 2019. The Rules for operation of the scheme were notified on

21.08.2019. Broadly stated, as per the scheme, the persons desirous of getting benefit under the said scheme had to deposit a portion of the tax with

the Government of India by cut-off date, upon which, the remaining tax would be waived.

It is undisputed that when the petitioner applied for the benefit of the scheme, the department conveyed the petitioner that in order to take advantage

thereof, the petitioner must pay a sum of Rs.10,40,177/-. This was communicated to the petitioner on 21.01.2020. Initially the payment had to be made

within certain time which was extended from time to time and the last extension

was upto 30.06.2020. After that no further extension has been given and the scheme came to an end. Admittedly, the petitioner did not deposit the amount in question till 30.06.2020.

The case of the petitioner is that on account of his personal ill health in the last few days of June 2020, he was totally indisposed and therefore could not make any payment. The petitioner has also set up a case that an attempt was made to make the payment physically, however, the system of the Department would not accept such payment and the petitioner could not make a payment through the portal of the Department.

Be that as it may, the petitioner missed the last date for making the deposit, upon which, the petitioner's application stood automatically dismissed in terms of the provisions of the scheme. The Department thereafter started recovery, upon which, the petitioner has filed this writ petition.

Having heard learned counsel for the parties and perused the documents on record, we find that as per the admitted facts, the payment had to be made latest by 30.06.2020. The petitioner has not raised any dispute about the computation of the sum payable calculated by the department and conveyed to him. There is no provision in the scheme for extending the time limit for making the payment. In fact, the scheme clearly envisages that upon termination of the said period, the scheme would come to an end. That being the position, on the grounds stated by the petitioner, an order for extension of the scheme cannot be granted.

14. Now, advertent to the judgment in P. Sikkandar's case (supra). It needs to be noticed that the order dated 08.01.2021 as passed earlier in that case, and strongly relied upon by the learned counsel for the petitioner herein, was subsequently recalled by the said Court (Madras High Court) vide subsequent order dated 30.03.2021 which reads as under:-

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st and 2nd respondents to extend the provisions Sections 6 & 7 of the taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 to the Finance (No.2) Act, 2019 so far as it relates to Chapter V-SVLDRS, 2019 relating to payment of estimated amount determined by the Designated Committee so that the petitioner company can pay the said amount on or before 30.12.2020 and consequently directing the respondent 1 to apply the provisions of

SVLDRS (Removal of difficulties) order 2020 dated 13.03.2020 to the state of Tamilnadu to maintain equality among the states, which faced COVID-

19 infection at large scale, enabling the petitioner to pay the estimated amount on or before 31.12.2020 or to file a fresh application in form SVLDRS-

1 on or before 31.12.2020 and the amount estimated by the Designated Committee shall be paid on or before 28.02.2021.

For Petitioner : Mr. IIangovan.S

For Respondents : Mr. M. Prabhu,

Junior Panel Standing Counsel.

ORDER

1. This writ petition has been listed under the caption â??for being mentionedâ? at the instance of the learned counsel standing counsel for the department.

2. Vide order dated 08.01.2021, I had allowed the writ petition filed by the petitioner herein. The petitioner herein had applied under Sabka Vishwas

(Legacy Dispute Resolution) Scheme (SVLDRS), 2019. The case was considered by the Designated Committee and he was asked to make certain

payment on or before 30.06.2020. The petitioner did not comply with the said condition. I had allowed the writ petition by granting extension of time by

seven more days. It is now brought to may notice by the learned standing counsel that as per Section 127(5) of the Finance Act, 2019, the payment

will have to be made under the said scheme as directed by the designated committee. That apart, Rule 7 of Sabka Vishwas (Legacy Dispute

Resolution) Scheme, 2019, states that every declarant shall pay electronically the amount as indicated in Form SVLDRS-4 issued by the designated

committee on or before 30.06.2020. Inasmuch as, these provisions were not taken note of by me, the order dated 08.01.2021, allowing W.P.(MD) No.

19314 of 2020 is suo motu recalled and the writ petition is dismissed. No costs.â??

15. Thus, the overwhelming view taken by the various High Courts is that time for availing of the benefit of the Scheme cannot be extended as a

matter of course, especially beyond the period it was promulgated.

16. We may, at this stage, also take note of the Division Bench judgment rendered by the Allahabad High Court in Writ Tax No. 328 of 2021 wherein

the Honâ??ble High Court clearly opined that the Scheme cannot be made operational by the Court going beyond the period for which it was

formulated only for one person or to relax any of the conditions enumerated in the Scheme. It will be apposite to refer to the relevant portion of the

judgment which reads as under:-

â??This writ petition has been filed to seek direction on the respondents for consideration of case of the petitioner under the scheme ""Sabka Vishwas

(Legacy Dispute Resolution) Scheme, 2019"" (for short ""Scheme of 2019"").

It is submitted by learned counsel for the petitioner that pursuant to the order passed by the NCLT and by operation of law, petitioner was unable to

make the payment under S.V.L.D.R.S. on or before 30th June, 2020 to take the benefit of Scheme of 2019. In fact, petitioner was restrained to make

the payment by operation of law and when he was in a position to make the payment subsequently, it was not to be accepted for consideration of a

case under the Scheme of 2019.

The learned counsel for the respondents has raised objection on the prayer made by the petitioner. It is submitted that the Scheme of 2019 was

operational till 30th June, 2020. The Committee is no more exist for consideration of the case and otherwise the payment, as envisaged under the

Scheme of 2019, was to be paid in terms of it. Admittedly, petitioner has failed to make the payment as per Scheme of 2019 within the time frame

and, accordingly, he is not entitle to the benefit of the scheme.

We have considered the rival submissions of the parties and perused the record.

To take certain benefit of service tax, the respondents came out with a scheme namely Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

One was required to make the payment under Scheme of 2019 within the time frame but the petitioner did not comply the mandate aforesaid. It may

be on account of the order passed by the N.C.L.T. or operation of law but the question would be as to whether this Court can issue a direction going

contrary to the Scheme of 2019. It is also when now the scheme is no more exist so as the committee to consider the case of the petitioner.

The scheme cannot be made operational by this Court going beyond the period for which it was formulated only for one person or to relax any of the

conditions enumerated in the scheme. It is also when the committee under the scheme no more exists. The prayer made in the writ petition cannot be

granted for consideration of a case of the petitioner for paying the service tax under the scheme.

We do not find reasons to accept the prayer made in the writ petition and accordingly, the writ petition fails and is dismissed.â??

17. In view of the aforesaid discussion, we are clearly of the view that the prayers made in this writ petition cannot be granted for consideration of the case of the petitioner for paying the service tax under the Scheme as the Court cannot make operational the SVLDRS, 2019, especially when the petitioner has approached this Court belatedly after 1 year and 3 months from the last date of payment of determined amount of tax under the SVLDRS, 2019.

18. Accordingly, we find no merit in this petition and the same fails and is dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stand disposed of.