

(2022) 10 GUJ CK 0085

In the Gujarat High Court

Case No : R/Special Civil Application No. 12366 Of 2021

M/S L G Chaudhary

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Sabka Vishwas [Legacy Dispute Resolution] Scheme Rules, 2019 — Rule 6, 7

Finance Act, 2019 — Section 125, 126, 127

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 — Section 127<, 127(5)/

li>Finance Act, 1994 — Section 73(1), 75, 77(1), 78

Citation : (2022) 10 GUJ CK 0085

Hon'ble Judges : N.V.Anjaria, J;Bhargav D. Karia, J

Bench : Division Bench

Advocate : Anand Nainawati, Priyank P Lodha

Final Decision : Allowed

Judgement

Bhargav D. Karia, J

1. Heard learned advocate Mr. Anand Nainavati for the petitioner and learned advocate Mr. Priyank Lodha for the respondent Nos. 2 and 3.

2. Rule returnable forthwith. Learned advocate Mr. Priyank Lodha waives service of notice of rule on behalf of the respondent-authority.

3. This petition pertains to non-grant of option to pay the amount determined by respondent No.2-Designated Committee formed under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [for short 'the Scheme'] through online facility.

4. The petitioner has further prayed to quash and set aside the order in-original dated 04.01.2021 passed by the respondent No.3-Joint Commissioner, Central GST and Central Excise and letter dated 23.02.2021 issued by respondent No.4, Superintendent, Central GST and Central Excise.

5. Brief facts of the case are as under:

5.1 The petitioner is a partnership firm engaged in Government road construction work and also registered with Service Tax Department under the category of Industrial and Commercial Construction and Transportation of Goods by road.

5.2 The petitioner was subjected to investigation by the respondent Nos. 3 and 4 in respect of the transactions carried out by it from the period 2011-12 to 2014-15 for alleged evasion of service tax and violation of various provisions of Finance Act, 1994 and the Rules made there under.

5.3 A show-cause notice dated 03.01.2017 was issued by the respondent Nos. 3 and 4.

5.4 During the pendency of the proceedings pursuant to the show-cause notice, Finance Act (No.2), 2019 was enacted containing the Scheme for resolution of the pending disputes with the Central Excise Department. The Scheme provided a one-time window w.e.f. 01.09.2019 to eligible persons to declare their tax dues and pay the same as per the provisions of Chapter-V of the Finance Act (No.2),2019.

5.5 The petitioner filed declaration in Form SVLDRS-1 on 25.12.2019 under section 125 of the Finance Act vide online application under the category of Litigation-SCN involving pending duty. The petitioner in the said declaration self-assessed its liability at Rs. 38,64,255.50/- and indicated a pre-deposit of Rs. 9,65,658/-.

5.6 Respondent No.2-the Designated Committee under the Scheme issued Form SVLDRS-2 on 21.02.2020 in terms of section 127 of the Scheme seeking clarifications. The petitioner thereafter filed Form SVLDRS-2A and appeared in-person before respondent No.2 on 28.02.2020 explaining working of pre-deposit made by the petitioner.

5.7 Respondent No.2 issued Form SVLDRS-3 on 16.03.2020 under section 127 of the Scheme read with Rule 6 of the Sabka Vishwas [Legacy Dispute Resolution] Scheme Rules, 2019 (briefly "Rules") to the petitioner with an estimated amount of Rs. 38,64,255.50/- as payable.

5.8 According to section 127(5) of the Scheme read with Rule 7 of the Rules, the petitioner ought to have paid the amount determined as per Form SVLDRS-3 within thirty days i.e. on or before 16.04.2020, however, due to onset of Covid-19 Pandemic and lock-down starting from March 25,2020 the petitioner could not deposit the amount.

5.9 Respondent No.5-Central Board of Indirect Tax & Customs , Department of Revenue [For short 'the Board'] announced the relief amid pandemic and nationwide lockdown and extended statutory dates for compliance and payments to 30.06.2020 for payment of dues under the Scheme as per the Taxation and other Laws (Relaxation of Certain Provisions) Ordinance,2020 dated 31.03.2020.

5.10 The Board thereafter on 29.05.2020 amended the earlier circular No.

1071/4/2019-CX.8 dated 27.08.2019 wherein various time limits were prescribed and time limit for electronic payment of tax dues determined in Form SVLDRS was also extended upto 30.06.2020.

5.11 The petitioner tried to make the payment through NEFT determined in Form SVLDRS-3 on 30.06.2020, however, due to some technical glitch from the end of the receiving bank, the payment was returned to the petitioner. The petitioner again attempted to make payment on 02.07.2020 and 03.07.2020, however, it could not be completed due to technical issues.

5.12 The petitioner, thereafter, by letter dated 09.11.2020 informed the respondents about the fact that the petitioner tried to make payment at various instances, but the same could not be completed due to technical issues and requested the respondents-authority to allow the petitioner to make the payment through a demand draft so as to conclude the matter.

5.13 Respondent No.3 meanwhile called upon the petitioner by letter dated 16.12.2020 in respect of show-cause notice dated 03.01.2017. The petitioner intimated the respondent No.3 vide letter dated 29.12.2020 that the petitioner has already filed a declaration under the Scheme and the attempt of the petitioner to make the payment was not successful. The petitioner again requested respondent No.3 to allow it to make payment of the dues determined in Form SVLDRS-3 through demand draft.

5.14 However, respondent No.3 by the impugned order dated 04.01.2021 adjudicated show-cause notice dated 03.01.2017 raising total demand of Rs. 1,87,36,448/- under proviso to section 73(1) along with interest and penalty under sections 75, 77(1) and 78 of the Finance Act, 1994.

5.15 Respondent No.4 on 23.02.2021 issued notice for recovery of the dues as per the order dated 04.01.2021. The petitioner, thereafter, by letter dated 01.04.2021 informed the respondent No.2 to allow the petitioner to make payment in respect of SVLDRS-3 considering the instructions dated 17.03.2021 issued by the Board whereby the Chief Commissioners of CGST were directed to forward all reference of grant of manual process of declaration to the Board and the same can be processed manually by the concerned designated Committee subject to certain conditions.

5.16 The petitioner again by letter dated 02.04.2021 informed respondent No.5-Board about the filing of declaration by the petitioner under the Scheme and issuance of Form SVLDRS-3 determining the amount of Rs. 38,64,256/- which could not be paid by the petitioner due to technical issues. The petitioner also contended that the Hon'ble Supreme Court by order dated 08.03.2021 passed in suo motu Writ Petition (Civil) No. 3 of 2020 has directed that while computing the period of limitation, the period from 15.03.2020 to 14.03.2021 to be excluded. The petitioner being aggrieved by not permitting it to make the payment as per Form SVLDRS-3 has preferred this petition.

6. Learned advocate Mr. Nainavati for the petitioner submitted that it is apparent from the bank statement of the petitioner that the petitioner tried to make the payment of Rs. 38,64,256/- on 30.06.2020 but was returned in the bank account of the petitioner with Yes Bank on 03.07.2020.

6.1 It was submitted that the petitioner has already made pre-deposit of Rs. 9,65,656/- at the time of making the application in Form SVLDRS-1 and the petitioner was required to pay Rs. 38,64,256/- as per from SVLDRS-3 but the same could not be paid due to technical glitch from the receiving bank and the payment was returned and thereafter, the respondent authorities did not permit the petitioner for payment of the amount determined by the respondent No.2- Designated Committee for resolution of the dispute.

6.2 It was submitted that as per the provision of the Scheme, the petitioner has preferred the application being eligible to avail the benefit under the Scheme in Form SVLDRS-1 and after verification of the declaration by the respondent No.2- Designated Committee under section 126 of the Finance Act, statement was issued by the Designated Committee under section 127 indicating the amount payable by the petitioner. Learned advocate Mr. Nainavati invited the attention of the Court to the provisions of section 127(5) which stipulates that the payment has to be made electronically through internet banking with regard to the amount payable as indicated in the statement issued by the Designated Committee within thirty days from the date of issue of such statement. It was pointed out that the petitioner could not make the payment due to Covid-19 Pandemic situation prevailing in the month of March 2020 and pursuant to the date extended by the Board upto 30.06.2020, the petitioner has already tried to make payment on 30.06.2020 which was returned by the receiving bank. It was therefore, submitted that the bank account of the petitioner has already been debited but the same was not accepted by the receiving bank and was returned. It was therefore, submitted that there is no failure on the part of the petitioner to make the payment within the time.

6.3 In support of his submissions learned advocate Mr. Nainavati referred to and relied upon the following decisions: M/s. Jai Guru Cables vs. The Principal Chief Commissioner of GST and Central Excise, The Additional Commissioner/Member of Designated Committee, The Deputy Commissioner/Member of Designated Committee, the Assistant Commissioner, The Superintendent reported in 2022(4) TMI 935:

"15.The scheme is intended to allow chronic defaulters to pay the amount and buy peace. The delay in payment on account of technical glitches cannot come in the way of the petitioner to settle the dispute. I am therefore inclined to allow this writ petition. For the same reason I am not able to accede to the views of this Court in W.P.No.5409 of 2021 (Covenant Insurance Surveyors and Loss Assessors Private Limited, Chennai Vs. The Designated Committee, Chennai and another) dated 30.11.2021. Under these circumstances, I am of the view that there is no justification in not accepting the declaration of the petitioner under

the scheme or in not accepting the payment by the petitioner belatedly. I therefore direct the respondents to accept the payment from the petitioner, if the amount has not been paid or collected from the petitioner already, within a period of 30 days from the date of receipt of a copy of this order and bring a closure in true spirit of the Sabka Vishwas Scheme.

Agroha Electronics Vs. Union of India, New Delhi, Additional Commissioner, Central Goods and Service Tax, Rajasthan reported in 2021(3) TMI 1319 After hearing learned counsel for the parties and perusing the material available on record, this Court deems it fit that in the given facts and circumstances that the petitioner is a bona fide businessman and is prepared to pay the amount in question in accordance with the scheme along with interest for the period which he has defaulted in scheme and looking into the extreme pandemic conditions of COVID and the death of petitioner's father, this is a fit case for invocation of the powers under Article 226 of the Constitution of India.

In view of the above, the present writ petition is allowed and the respondents are directed to accept the amount as specified in SLVDRS-3 Form No.L280120SV301549 dated 28.01.2020 and give the petitioner benefit of Sabka Vishwas Scheme. The amount stipulated to be paid on or before 30.06.2020 shall be accompanied by interest at the rate of 9% per annum till the date the amount is paid. The compliance of this order shall be made by the petitioner within a period of three weeks from today. Thought Blurb vs. Union of India and ors reported in 2020 (10) TMI 1135:

"52. We have one more reason to take such a view. As has rightly been declared by the Hon'ble Finance Minister and what is clearly deducible from the statement of object and reasons, the scheme is a one time measure for liquidation of past disputes of central excise and service tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. Therefore the focus is to unload this baggage of pre-GST regime and allow business to move ahead. We are thus in complete agreement with the views expressed by the Delhi High Court in Vaishali Sharma Vs. Union of India, MANU/DE/1529/2020 that a liberal interpretation has to be given to the scheme as its intent is to unload the baggage relating to legacy disputes under central excise and service tax and to allow the business to make a fresh beginning." Vaishali Sharma vs. Union of India and ors reported in 2020 (8) TMI 81

"9. In the opinion of this Court, a liberal interpretation has to be given to the Scheme as its intent is to unload the baggage relating to legacy disputes under the Central Excise and Service Tax and to allow the businesses to make a fresh beginning."

6.4 Learned advocate Mr. Nainavati also submitted that the petitioner is ready and willing to pay the interest @ 9% per annum on the outstanding dues of Rs.

38,64,256/- from 30.06.2020 till the date of actual payment to compensate the loss to the revenue.

7. On the other hand, learned advocate Mr. Priyank Lodha for the respondent-authorities submitted that the petitioner has wrongly stated that the petitioner tried to make the payment on 30.06.2020 which was returned due to technical glitch. It was further submitted that the payment gateway stood closed for the Scheme after 30.06.2020 and there was no technical glitch as alleged by the petitioner.

7.1 Learned advocate Mr. Lodha submitted that the petitioner was aware to make payment as per the SVLDRS-3 since 16.03.2020 and there is no reason shown by the petitioner to wait till the last date of making payment on 30.06.2020.

7.2 It was further pointed out that as per the tax payers manual for SVLDRS, placed on the website of the Board explains the manner of generation of challan and payment methods with screenshots. Chapter VII of the manual explains the procedure for challan generation and Chapter VIII for the said manual explains the payment methods which clearly mentioned that net banking facility is not available for making payment of the SVLDRS Scheme, 2019. It was submitted that the petitioner was required to generate the challan and thereafter make the payment as per the procedure explained in the tax payer manual for the Scheme, but the petitioner did not follow such procedure.

7.3 It was submitted that the respondent-authorities have no power to extend the time limit for allowing the payment after 30.06.2020 and accordingly, the petitioner was not permitted to make the payment as determined by the respondent No.2 in Form SVLDRS-3.

7.4 It was pointed out that now the order in-original has been passed and the demand has been raised by respondent Nos. 3 and 4 and the petitioner has failed make the outstanding dues under the guise of availing the benefit under the Scheme.

7.5 It was submitted that the petitioner is not entitled to the benefit of the order dated 08.03.2021 passed by the Hon'ble Supreme Court in suo motu Writ Petition extending the time limit, more particularly, when the time limit, as per the Scheme is already over on 30.06.2021. Learned advocate Mr. Lodha invited attention of the Court to the order dated 18.02.2022 of the Hon'ble Apex Court in case of Yashi Constructions vs. Union of India wherein the Apex Court has held that the High Court has rightly refused to grant relief to the petitioner for extension of the period to make the deposit under the Scheme as it is settled position of law that a person who wants to avail the benefit of a particular Scheme has to abide by the terms and conditions of the Scheme scrupulously. The Apex Court has further held that if the time is extended not provided under the Scheme, it will tantamount to modifying the Scheme which is a prerogative of the Government. The Apex Court has therefore dismissed the SLP (C) No. 2070 of 2022 filed by the petitioner. It was therefore submitted that once the

extended time period for making payment was over on 30.06.2020, the petitioner cannot be permitted to deposit the amount under the Scheme because it would amount to modify the Scheme.

8. Having considered the submissions made by learned advocate for the respective parties, it is not in dispute that the petitioner was required to make the payment of Rs. 38,64,256/- as determined in Form SVLDRS-3 and the petitioner tried to make the payment through NEFT on 30.06.2020, however, the same was not accepted by the receiving bank and the payment was returned to the petitioner which is apparent from the bank statement produced on record.

9. It also appears from the record that the petitioner could not generate the challan successfully for making the payment and after the advice of its Chartered Accountant, tried making payment through NEFT/RTGS out of abundance caution and to demonstrate the bona fide of the petitioner to make the payment as determined under the Scheme by respondent No.2 Designated Committee. In view of the various decisions cited by the petitioner as reproduced here-in-above, the bona fide attempt made by the petitioner to make the payment cannot be doubted and therefore, the substantive benefit of the Scheme cannot be denied to the petitioner on the ground of procedural technicalities more particularly, in time of Covid-19 Pandemic.

10. The basic object of the Scheme is to reduce litigation by allowing the eligible assessee to make the payment of the outstanding dues after availing the relief under the Scheme. As per the provisions of the Scheme, respondent No.2 has issued a statement as provided under section 127 of Chapter-V of the Finance Act (No.02) 2019 determining the amount payable by the petitioner under the Scheme. Therefore, in the given facts and circumstances, the petitioner made bona fide attempt to make the payment as determined under the Scheme and is also prepared to pay the amount in question in accordance with the Scheme along with interest for the period for which the petitioner was not permitted to make payment by respondent authorities considering extreme Pandemic condition of Covid-19, we are of the opinion that this is a fit case for invocation of the powers under Article 226 of the Constitution of India.

11. The contention raised on behalf of the respondents relying upon the decision of the Apex Court in case of Yashi Constructions (supra) would not be applicable in the facts of the case as the petitioner made a bona fide attempt to make the payment within the stipulated time, however, due to technical issues the same was not credited in the account of the respondent and therefore the petitioner cannot be denied the benefit under the Scheme.

12. In view of the above, this petition is allowed and the respondent authorities are directed to accept the payment of Rs. 38,64,256/- as specified in SVLDRS-3 dated 16.03.2020 along with interest @ 9% per annum from 30.06.2020 till the date of payment and grant the benefit of the Scheme to the petitioner. The petitioner shall deposit the said amount with interest on or before 15.11.2022.

As a consequence, the impugned order in-original dated 04.01.2021 passed by respondent No.3 is quashed and set aside so as to grant benefit of the Scheme to the petitioner. Rule is made absolute to the aforesaid extent.