

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 19<sup>TH</sup> DAY OF JANUARY 2024 / 29TH POUSHA, 1945

WP(C) NO. 20999 OF 2022

PETITIONER/S:

COACH INDIA  
REPRESENTED BY PARTNER, NISAM IIND FLOOR, FORT STREET  
BUILDING, EAST FORT JUNCTION, THRISSUR, PIN - 680005  
BY ADVS.  
P.RAGHUNATHAN  
PREMJIT NAGENDRAN

RESPONDENT/S:

- 1 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE  
CHEMBUKKAVU RANGE, THRISSUR DIVISION, S.T. NAGAR,  
THRISSUR, PIN - 680001
- 2 ASSISTANT COMMISSIONER CENTRAL TAX AND CENTRAL EXCISE  
THRISSUR DIVISION, S.T. NAGAR, THRISSUR, PIN - 680001
- 3 MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE, NEW DELHI, REPRESENTED BY  
SECRETARY, PIN - 110001
- 4 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (ERSTWHILE  
CENTRAL BOARD OF EXCISE AND CUSTOMS)  
MINISTRY OF FINANCE, NEW DELHI , REPRESENTED BY  
CHAIRMAN, PIN - 110001  
BY ADV SUNIL.J

OTHER PRESENT:

SREELAL N. WARRIER-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
19.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

**Dated this the 19<sup>th</sup> day of January, 2024**

The petitioner is running a 'coaching centre'. Various courses are conducted for the students to appear in competitive examinations, like Medical entrance, Engineering entrance etc. The petitioner did not remit the service tax for the relevant year(s), though the petitioner services come within the meaning of 'commercial training and coaching service'.

2.The show cause notice dated 13.06.2018 was issued to the petitioner, directing the petitioner to show cause why service tax, Cess etc., as indicated in the show cause notice should not be levied and demanded from the petitioner.

3.After the GST regime was put in place, to reduce the tax litigation in respect of indirect taxes, Government came out with notification No.5 of 2019, dated 21.08.2019 and framed rules governing the Scheme as "SUBKA VISHWAS" [Legacy Dispute Resolution] Scheme Rules, 2019. Under Rule 3, an applicant is required to file a Declaration in Form No. SVLDRS-1 wherein the applicant / declarant would be required

to quantify the amount payable under the Scheme. Such declaration thereafter would be verified by Designated Committee constituted under Rule 5 of the Rules, and thereafter, as per statement prepared under Section 127(1) and (4) is specifying amount payable by declarant would be issued electronically in Form SVLDRS-3 within a period of sixty days from the date of receipt of the declaration as per Rule 6. After the designated committee specifies the amount payable by the declarant, the declarant is required to pay the amount specified electronically within 30 days from the date of issuance of Form SVLDRS-3.

4.Rule 3, 6 and 7 of the “ SUBKA VISHWAS” [Legacy Dispute Resolution] Scheme Rules, 2019 read as under:----

“Rule 3: Form of declaration under section 125: [1]: The declaration under section 125 shall be made electronically at <https://cbisgst.gov.in> in Form SVLDRS-1 by declarant, on or before the 31st December, 2019:

[2]:..... ..

Rule 6: Verification by designated committee and issue of estimates etc.: [1] The declaration made under section 125 except when it relates to a case of voluntary disclosure...

[2]: The statement under sub-section [1] and [4] of section 127, as the case may be, shall be issued by the designated committee electronically, within a period of sixty days from the date of receipt of the declaration under sub-rule [1] of rule [3] in Form SVLDR- 3 setting forth therein the particulars of the amount payable:

[3]:... [6]: .....

Rule 7:Form and manner of making the Every shall declarant pay payment:- 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.”

5.The petitioner decided to avail the benefit under “SUBKA VISHWAS” [Legacy Dispute Resolution] Scheme Rules, 2019, therefore, the petitioner uploaded SVLDRS-1 on 14.01.2020. The petitioner had computed the amount payable under the Scheme as Rs. 13,895/-. The designated committee constituted under Rule 5 considered the petitioner’s Form SVLDRS-1 and issued SVLDRS-3 dated 19.02.2020 mentioning payable amount as Rs. 13,895/- under the Scheme by the petitioner. According to the petitioner, the petitioner noticed the said SVLDRS-3 on the CBIC website only on or around 15.06.2020 as no email or written communication was issued to the petitioner.

6.According to the petitioner, he had made attempts to make payment of the said amount of Rs. 13,895/- via online but due to technical glitches in the site, the petitioner could not succeed. The petitioner thereafter, contacted their Chartered Accountant and sought their assistance in making the remittance. The petitioner had transferred an amount of Rs.13,900/- to the bank account of the Chartered Accountant

on 29.06.2020, to enable him to make payment in pursuance to Ext.P2, SVLDRS-3. Last date for making payment was on 30.06.2020. It is the case of the petitioner that his Chartered Accountant also could not succeed in effecting payment and in the meantime the last date for payment ie;, 30.06.2020 ran out.

7.The learned counsel for the petitioner submitted that the petitioner thereafter visited the office of the 1<sup>st</sup> respondent and pointed out the said issue to the authorities concerned. The authorities informed the petitioner that due to the spread of Covid-19 pandemic, the time for making payment was likely to be extended. However, nothing was heard, and in the meantime, the 2<sup>nd</sup> respondent issued notice for personal hearing in show cause notice on 01.03.2021.

8.Petitioner once again approached the 1<sup>st</sup> respondent on 16.03.2021 and pointed out the facts and particulars regarding their inability to make payment within the time provided due to technical glitches and also brought to their attention the order of the Supreme Court extending – suo motu- time limit in the light of Covid Pandemic. Adjudication of the show cause

notice proceeded with by the 2<sup>nd</sup> respondent who finalised the order on 30.11.2021. As per the adjudication order, the petitioner is liable to make the payment of Rs. 13,44,668/- by way of service tax along with penalty under Section 78 and 77(2) of the Finance Act, 1994.

9.Learned counsel for the petitioner submits that the petitioner did not hear anything from the respondents after they filed SVLDRS-1 on 14.01.2020 and they could notice the SVLDRS-3 dated 19.02.2020 only on the website of the CBIC. Thereafter, they tried to make payment of the amount mentioned in the SVLDRS, however, they could not make the payment for the reason of 'technical glitches' in the site. It is therefore, submitted that the petitioner cannot be held responsible for 'technical glitches' in the site of the CBIC, which was the reason for the petitioner not able to make the meager payment of Rs.13,895/-. The petitioner was always willing to make the payment under the scheme. Petitioner should be granted an opportunity to make payment of the amount of Rs.13,895/- with interest and penalty as this court may deem it fit and proper. The adjudication order and the

penalty are wholly unwarranted and the same should be set aside.

10.Mr. Sreelal Warriar, learned Senior Standing Counsel for the respondents submitted that under the scheme everything was online, ie., uploading of SVLDRS-1, SVLDRS-3 and payment. The scheme is complete code. SVLDRS-3 was to be issued by the designated committee within 60 days from the date of receipt of declaration in SVLDRS-1, and after uploading of SVLDRS-3 within 60 days from the receipt of the SVLDRS-1, the payment as per SVLDRS-3 was to be made by the declarant within 30 days from the date of issue of the SVLDRS-3. Therefore, the contention of the learned counsel for the petitioner that no physical notice was served or issued does not warrant any serious consideration as no physical notice of uploading of SVLDRS-3 was contemplated in the scheme.

11.The petitioner's 30 days got expired on 18.03.2020. However, the date for making the payment was extended up to 31.03.2020, and thereafter up to 30.06.2020 as per the Supreme Court order. But the petitioner did not make the

payment. There is no proof of 'technical glitches' which prevented the petitioner from making the payment of Rs. 13,895/-. As the petitioner failed to make the payment, the show cause notice was issued and adjudication has taken place. The petitioner instead of filing the appeal has approached this court invoking the writ jurisdiction. The writ petition is not maintainable against the order of adjudication. The petitioner may file the appeal, if he is aggrieved by the order of adjudication.

12.The learned counsel for the revenue has placed reliance on the order in the case of ***Yashi Constructions v. Union of India and Others [2022 SCC OnLine SC 723]***, in support of the submission that, if the declarant failed to deposit the amount as per SVLDRS-3 within 30 days time period prescribed in the scheme, no relief should be granted to such declarant and the limitation period to make deposit under the scheme should not be extended.

13.I have considered the submissions advanced.

The "SUBKA VISHWAS" [Legacy Dispute Resolution] Scheme Rules, 2019, is self contained code. The SVLDRS-1



was to be uploaded online and SVLDRS-3 was also to be uploaded online within 60 days from the date of receipt of the SVLDRS-1. A declarant was required to make payment online within 30 days from the date of uploading of SVLDRS-3.

14. Petitioner knew the provision as he had chosen to take benefit of the scheme by uploading SVLDRS-1. He knew that within 60 days from the date of uploading of SVLDRS-1, SVLDRS-3 would be uploaded and he would be required to make the payment within 30 days from the said date. Therefore, I am of the view that the petitioner's contention that he could notice the SVLDRS-3 only on the website of the CBIC on or around 15.6.2020, and thereafter, he tried to make the payment but he failed for 'technical glitches' is not convincing. The petitioner's allegation that there were 'technical glitches' is not supported by any cogent and credible evidence. The petitioner ought to have made the payment within 30 days from 19.02.2020 or till the extended time, which he failed to do so.

15. Once the petitioner failed to comply with the provisions of the scheme, which is a complete code in itself,

this court would not like to extend the limitation for making the payment under the scheme in exercise of its jurisdiction under Article 226 of the Constitution of India.

16. In an identical matter, the Supreme Court has dismissed the Special Leave petition against an order of the jurisdictional High Court refusing to extend the time under the scheme for making payment as per SVLDRS-3. In ***Yashi Construction (supra)***, the short order of the Supreme Court reads as under:-

- “1. It is an admitted fact that the petitioner did not deposit the amount under the Scheme within the time limit provided under the Scheme, i.e., within 30 days.
2. In that view of the matter, the High Court has rightly refused to grant relief to the petitioner for extension of the period to make the deposit under the Scheme. It is a settled proposition 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. If the time is extended not provided under the Scheme, it will tantamount to modifying the Scheme which is the prerogative of the Government.
3. Hence, the Special Leave Petition stands dismissed.
4. Pending application(s), if any, shall stand disposed of.”

In view thereof, the present writ petition is dismissed. The petitioner, however, may approach the appellate authority against the adjudication order, if he is so advised.

**Sd/-**  
**DINESH KUMAR SINGH**  
**JUDGE**

SJ

APPENDIX OF WP(C) 20999/2022

**PETITIONER EXHIBITS**

<b>Exhibit-P-1</b>	<b>PHOTOCOPY OF FORM NO. SVLDRS 1 DATED 14.01.2020</b>
<b>Exhibit-P-2</b>	<b>PHOTOCOPY OF FORM NO. SVLDRS-3 DATED 19.02.2020</b>
<b>Exhibit-P-3</b>	<b>PHOTOCOPY OF COUNTERFOIL DATED 29.06.2020</b>
<b>Exhibit-P-4</b>	<b>PHOTOCOPY OF CASH VOUCHER DATED 29.06.2020</b>
<b>Exhibit-P-5</b>	<b>PHOTOCOPY OF REQUEST LETTER TO R1 DATED 16.03.2021</b>
<b>Exhibit-P-6</b>	<b>PHOTOCOPY OF ORDER PASSED BY R2 DATED 30.112021</b>