

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.05.2023

+ **W.P.(C) 3624/2021**

**CARPET EXPORT PROMOTION
COUNCIL**

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Raman Kapur, Senior Advocate with Mr
Varun Kapur, Advocate.

For the Respondents : Mr Vivek Goyal, CGSC with Mr Abhishek
Khanna, Mr Gokul Sharma and Ms Aneeta
Goyal, Advocates.
Mr Harpreet Singh, Senior Standing
Counsel for R-2 with Ms Suhani Mathur,
Advocate.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India impugning the decision of the concerned authority to reject the petitioner's application under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereafter '**the SVLDR Scheme**'). The petitioner had filed the said application online in the prescribed format – Form SVLDRS-I. The said application was rejected and the ground for rejection along with the remarks were communicated

online. The petitioner's application was rejected on the ground of "ineligibility" with the remarks, "incomplete and selective declaration".

2. According to the respondents, the designated authority had, on examination of the petitioner's application, noticed the following:

2.1 The petitioner had wrongly availed cess amounting to ₹3,16,946/- in TRAN-1. The petitioner had reversed the said amount on 31.03.2019 but the interest amounting to ₹83,231/- along with penalty was recoverable from the petitioner;

2.2 The petitioner had deposited the service tax amount of ₹92,385/, which was found due on ST-3 reconciliation but had not deposited the interest and penalty;

2.3 The petitioner had wrongly availed the Cenvat Credit amounting to ₹8,05,654/- on services relating to rent a cab, medical insurance, and hotel accommodation, which was deposited by the petitioner but the interest and penalty remained outstanding; and

2.4 The petitioner had wrongfully availed the Cenvat Credit amounting to ₹82,81,915/- on exempted income under Rule 6(3) of the Cenvat Credit Rules, 2004. The petitioner had deposited the said amount but the applicable interest and penalty was outstanding.

3. According to the respondents, the petitioner's declaration submitted under the SVLDR Scheme covered the aforesaid liabilities

but the amount shown by the petitioner under columns relating to duty details and pre-deposit of duties was erroneously reflected as ₹82,81,915/-. According to the respondents, the amount of duty mentioned in the petitioner's application ought to have included an amount of ₹3,16,946/- on account of wrongful availment of cess; an amount of ₹92,385/- of service tax deposited on reconciliation of ST-3 returns; and an amount of ₹8,05,654/- on account of wrongful availment of the Cenvat Credit.

4. In view of the above, the principal question to be addressed is whether the rejection of the petitioner's application on the ground that the amount mentioned under the duty details and the amount of duty deposited did not include the three amounts as mentioned above, is justified.

Factual context

5. The petitioner is a company set up under Section 25 of the Companies Act, 1956 by the Ministry of Textiles, Government of India, *inter alia*, with the object of promoting export of Indian handmade woolen and silk carpets, draggers, rugs etc.

6. The accounts of the petitioner were subjected to a service tax audit for the period 2013-14 to June 2017, by the respondents. During the course of the audit, certain objections were raised. This included the objection regarding wrongful availment of the Cenvat Credit on exempted income being the grants-in-aid received from the Ministry of Commerce and the Ministry of Textiles. According to respondent no.2,

the proportionate amount of the Cenvat Credit amounting to ₹82,81,915/- was required to be reversed. In addition, the respondents also found that the petitioner had wrongly availed cesses amounting to ₹3,16,946/-, which were reversed but the interest and penalty amounting to ₹83,231/- remained outstanding. In addition, respondent no.2 also found that the petitioner had short-paid service tax to the extent of ₹92,385/-. The same was deposited but the interest and penalty on the said amount remained outstanding. Further, the petitioner had also availed the Cenvat Credit amounting to ₹8,05,654/- on rent a cab, medical insurance and hotel accommodation. The same had been reversed but interest and penalty remained outstanding.

7. On 07.06.2019, respondent no.2 sent a letter calling upon the petitioner to deposit ₹83,231/- as interest in respect of the wrongful availment of cess; ₹36,250/-, as interest on the short payment of service tax; ₹6,52,133/- as interest on the wrongful availment of the Cenvat Credit on services relating to rent a cab, medical insurance and hotel accommodation; and interest amounting to ₹50,85,903/-, on account of interest on the Cenvat Credit availed on exempted income.

8. The petitioner responded to the said letter by a letter dated 26.06.2019. The petitioner referred to a meeting with the Additional Commissioner, CGST and claimed that there was a consensus that if the petitioner deposited the excess cess, shortfall in payment of service tax, and wrongful availment of the Cenvat Credit before 31.03.2019, the interest and penalty relating to the same would be waived. Insofar as the non-reversal of the Cenvat Credit on exempted receipt is concerned, the

petitioner contended that the grant-in-aid was for general purpose and had no relation with the services received. The petitioner did not agree with the Revenue's contention that the Cenvat Credit proportionate to the grant received from the Government was required to be reversed. Notwithstanding the same, the petitioner stated that it had decided not to litigate the said issue and pay the demand raised. The petitioner's letter also alluded to the meeting with the Additional Commissioner, CGST and his agreement that if the amount was paid before 31.03.2019, the Department would waive the interest and penalty.

9. Apparently, respondent no.2 did not agree to the contents of the petitioner's letter dated 26.06.2019 and sent a letter dated 01.08.2019 calling upon the petitioner to calculate the interest as per Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 and deposit the same. Respondent no.2 sent another letter dated 23.09.2019 referring to its earlier letter dated 01.08.2019 and requesting the petitioner to look into the matter and make the deposit within seven days of the receipt of the said letter.

10. In the meantime, the Parliament enacted the Finance Act (No.2) of 2019 (hereafter '**the Act**'), which came into effect from 01.04.2019. Sections 120 to 135 of Chapter V of the Act contain provisions regarding the SVLDR Scheme. By virtue of Section 120(1) of the Act, the said scheme was called the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Section 120(2) of the Act provided that the SVLDR Scheme would come into effect from the date notified by the Central Government. The SVLDR Scheme came into effect from 01.09.2019.

11. The petitioner responded to the letters dated 01.08.2019 and 23.09.2019 sent by the respondents by stating that the petitioner intended to submit an application under the SVLDR Scheme for waiver of interest and penalty and requesting the respondents to hold all action until the order was passed under the SVLDR Scheme.

Analysis

12. The only question to be considered is whether the designated authority was justified in rejecting the petitioner's application on the ground that the amount of ₹82,81,915/-, as mentioned by the petitioner, did not cover the entire details of the duty and the amount deposited by the petitioner.

13. At this stage, it would be relevant to consider the legislative intent in introducing the SVLDR Scheme. The Ministry of Finance's Press Release dated 22.08.2019 explains the objective of the SVLDR Scheme in the following words:

“The objective of the Scheme is to free as large a segment of the taxpayers from the legacy taxes as possible, the relief given thereunder is substantial. The Scheme is especially tailored to free the large number of small taxpayers of their pending disputes with the tax administration. Government urges the taxpayers and all concerned to avail the Sabka Vishwas - Legacy Dispute Resolution Scheme, 2019 and make a new beginning.”

14. The Finance Minister of India, in her speech in the Parliament while presenting the Union Budget for the year 2019-2020, had expressed concern regarding the huge backlog of pending litigation from the pre-GST (Goods and Service Tax) regime. She had stated that

more than ₹3.75 lakh crore was blocked in litigation relating to indirect taxes, which required to be resolved for businesses to move on. The objective of the SVLDR Scheme was to enable a quick closure of pending litigation centering around indirect taxes. It was considered expedient to enact the SVLDR Scheme to enable businesses to continue under the GST regime without any baggage of prior litigation or disputes regarding indirect taxes. Section 122 of the Act enumerated twenty-nine separate enactments, which were covered under the SVLDR Scheme. In addition, the Central Government was also empowered to include, by a notification in the official gazette, any other enactment under the SVLDR Scheme.

15. Section 123 of the Act defines the expression “tax dues” in wide terms. The tax dues include dues that are quantified in show cause notices; that are quantified in cases where inquiry or audit is pending; that are in arrears; and dues as voluntarily disclosed by the declarant.

16. Section 124 of the Act sets out the relief as available under the SVLDR Scheme. In terms of Section 124(1)(a) of the Act, where the tax dues are relatable to show cause notices or one or more appeals arising out of the show cause notices, which were pending as on 30.06.2019; the SVLDR Scheme entailed a relief of 70% of the tax dues where the amount of duty was ₹50 lacs or less, and a relief of 50% of the tax dues where the amount of duty was more than ₹50 lacs. In cases where the tax dues were relatable to a show cause notice for late fee or penalty, the SVLDR Scheme entailed relief of waiver of the entire amount of late fee and penalty.

17. Section 125(1) of the Act sets out the persons eligible to apply under the SVLDR Scheme. A plain reading of Section 125(1) of the Act indicates that all persons, except those who were expressly excluded under the said Section, were eligible to apply.

18. Section 125(2) of the Act provides that the declaration would be made in an electronic form as may be prescribed.

19. Section 126(1) of the Act prescribes that the designated committee would verify the correctness of the declaration made in the said manner as may be prescribed. Section 127 of the Act expressly provides that where the amount estimated to be payable by the declarant is equal to the amount payable as estimated by the designated committee, the designated committee would issue a statement indicating the amount payable by the declarant. However, in cases where the amount payable as estimated by the designated committee exceeded the amount declared by the declarant, the designated committee was required to communicate the estimated amount payable by the taxpayer within thirty days of the receipt of the declaration. Sub-section (3) of Section 127 of the Act expressly provided that the designated committee shall give an opportunity of being heard to the declarant if he so desires before issuing the statement of the amount payable by the declarant. Section 127 of the Act is relevant and is reproduced for ready reference:

“127. Issue of statement by designated committee.—(1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic

form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.

(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration.

(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant:

Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.

(4) After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.

(5) The declarant shall pay electronically through internet banking, the amount payable as indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.

(6) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

(7) Where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the designated committee, in such manner as may be prescribed, along with the proof of payment referred to in sub-section (5).

(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof.”

20. It is apparent from the above that the procedure as contemplated under Section 127 of the Act conformed to the principles of natural justice and included an opportunity of affording the declarant an opportunity to be heard where there was a difference in the amount as computed by the declarant and the designated committee.

21. The Central Government also framed the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (hereafter ‘**the Rules**’) in exercise of powers under Section 132 of the Act. The said Rules were notified on 21.08.2019. Rule 6 of the Rules contained provisions regarding verification of the declaration by the designated committee. Rule 6 of the Rules is set out below:

“6. Verification by designated committee and issue of estimate, etc.- (1) The declaration made under section 125, except when it relates to a case of voluntary disclosure of an amount of duty, shall be verified by the designated committee based on the particulars furnished by the declarant as well as the records available with the Department.

(2) The statement under sub-sections (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 SVLDRS-3 setting forth therein the particulars of the amount payable:

Provided that no such statement shall be issued in a case where the amount payable, as determined by the designated committee is nil and there is no appeal pending in a High Court or the Supreme Court.

(3) Where the amount estimated to be payable by the declarant exceeds the amount declared by the declarant, then, the designated committee shall issue electronically, within thirty days of the date of receipt of the declaration under sub-rule (1) of rule 3, in Form SVLDRS-2, an estimate of the amount payable by the declarant along with a notice of opportunity for personal hearing.

(4) If the declarant wants to indicate agreement or disagreement with the estimate referred to in sub-rule (3) or wants to make written submissions or waive personal hearing or seek an adjournment, he shall file electronically Form SVLDRS-2A indicating the same:

Provided that if no such agreement or disagreement is indicated till the date of personal hearing and the declarant does not appear before the designated committee for personal hearing, the committee shall decide the matter based on available records.

(5) On receipt of a request for an adjournment under sub-rule (4), the designated committee may grant the same electronically in Form SVLDRS-2B:

Provided if the declarant does not appear before the designated committee for personal hearing after adjournment, the committee shall decide the matter based on available records.

(6) Within thirty days of the date of issue of Form SVLDRS-3, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or *suo motu* by issuing electronically a revised Form SVLDRS-3.”

22. It is clear that Rule 6(3) of the Rules also mandated that an opportunity to be heard be afforded to the declarant in case the amount of duty estimated by the declarant fell short of the estimate made by the designated committee.

23. In this case, the petitioner was neither issued any notice nor afforded any opportunity to be heard by the designated committee before its application was rejected. The rejection of the petitioner’s application was communicated online and the only reason stated for

rejection discernable from the remarks is: “*incomplete and selective declaration*”.

24. It is relevant to note that there is no dispute that the petitioner had deposited the entire duty in respect of the four audit objections: the amount of ₹3,16,946/- on account of the alleged wrongful availment of cess; short payment of service tax of ₹92,385/- ascertained on reconciliation; wrongful availment of the Cenvat Credit amounting to ₹8,05,654/- on certain services – rent a cab, medical insurance and hotel accommodation; and alleged wrongful availment of the Cenvat Credit amounting to ₹82,81,915/- proportionate to exempted income. In terms of the SVLDR Scheme, the petitioner was entitled to waiver of the interest and penalty on deposit of the tax dues. Undisputedly, the petitioner had deposited the tax dues prior to 31.03.2019. Thus, there was no amount payable after the tax relief. There is no cavil that the application filed by the petitioner correctly disclosed that there was no amount of tax dues payable by it. The only controversy is that the petitioner had declared the duty amount as ₹82,81,915/- and had also indicated that the same amount had been deposited. The error on the part of the petitioner is that it did not include the duty amount, which related to the other three audit objections in the column of duty details and the duty paid. Clearly, this error was a curable one and did not affect the estimation of the amount payable after availing the benefit under the SVLDR Scheme. The petitioner had, in the course of proceedings prior to the SVLDR Scheme coming into force, paid the tax in respect of the said audit observations and had sought waiver of interest and penalty,

which it claimed, was acceded to by the concerned Additional Commissioner, CGST.

25. In *Thought Blurb v. Union of India & Ors.: 2020 SCC OnLine Bom 11719*, the Division Bench of the Bombay High Court had examined the legislative intent of the SVLDR Scheme and had held that the summary rejection of the application without affording the declarant an opportunity to be heard would violate the principles of natural justice. It is relevant to refer to the following extract from the said decision:

“50. We have already discussed that under sub-sections (2) and (3) of Section 127 in a case where the amount estimated by the Designated Committee exceeds the amount declared by the declarant, then an intimation has to be given to the declarant in the specified form about the estimate determined by the Designated Committee which is required to be paid by the declarant. However, before insisting on payment of the excess amount or the higher amount the Designated Committee is required to give an opportunity of hearing to the declarant. In a situation when the amount estimated by the Designated Committee is in excess of the amount declared by the declarant an opportunity of hearing is required to be given by the Designated Committee to the declarant, then it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject an application (declaration) on the ground of being ineligible without giving a chance to the declarant to explain as to why his application (declaration) should be accepted and relief under the scheme should be extended to him. Summary rejection of an application without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice. Rejection of application (declaration) will lead to adverse civil consequences for the declarant as he would have to face the consequences of enquiry or investigation or audit. As has been held by us in *Capgemini Technology Services India Limited* (supra) it is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be

complied with. Non-compliance to the principles of natural justice would impeach the decision-making process rendering the decision invalid in law.”

26. We concur with the aforesaid view. In the present case, the petitioner’s application has been rejected in violation of the principles of natural justice. As noted above, the petitioner had already deposited the tax dues. It had also made a request for waiver of interest and penalty prior to the SVLDR Scheme coming into force. On respondent no.2 pursuing the petitioner to pay the interest and penalty, it had unequivocally expressed its intention to apply under the SVLDR Scheme. It had subsequently done so. Concededly, in terms of the SVLDR Scheme, the petitioner would be entitled to the waiver of interest and penalty as it had paid the requisite tax prior to the stipulated date. There is no dispute that the amount as estimated to be payable – that is, tax dues less relief – is nil. It is also not disputed that the petitioner would not have benefited in any manner by not disclosing the aforestated amounts. In the given circumstances, we are of the view that rejection of the petitioner’s application is arbitrary and unreasonable and, thus, offends Article 14 of the Constitution of India.

27. As noted above, the legislative intent to enact the SVLDR Scheme was to include all taxpayers for offloading the baggage of disputes. All taxpayers, except those which were specifically excluded, were entitled to avail the benefit of the said Scheme. The SVLDR Scheme also covered cases where no disputes were pending and enabled the taxpayers to voluntarily pay taxes and avail amnesty under the SVLDR Scheme.

28. Given the nature of the SVLDR Scheme, the same is required to be interpreted liberally to further its object. In the aforesaid perspective, excluding a taxpayer merely because there were some obvious and not material errors in the quantum of the duty details filled in the form, although the correct amount of duty was deposited, would run contrary to the object of the SVLDR Scheme.

29. In view of the above, we consider it apposite to allow the present petition. The impugned order rejecting the petitioner's declaration under the SVLDR Scheme is set aside and the designated authority is directed to process the petitioner's declaration in accordance with the SVLDR Scheme as expeditiously as possible, and preferably within a period of eight weeks from today.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 22, 2023
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