NCN No. 2023:DHC:3731-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 19 May 2023**
Judgment pronounced on :29 May 2023

\+ W.P.(C) 3739/2020 & CM APPL. 13407/2020

IDEAL BROADCASTING INDIA PVT. LTD ..... Petitioner

Through: Ms. Kavita Jha, Mr. Shammi Kapoor, Mr. Vishal Kumar and Ms. Prachi Jain, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Harpreet Singh, Senior Standing counsel with Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advs. for R-2 & 3
Mr. Harish Vaidyanathan Shankar, CGSC, Mr. Srish Kumar Mishra and Mr. Alexander Mathai Paikaday, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The petitioner is invoking the writ jurisdiction of this Court second time under Article 226 & 227 of the Constitution of India. The petitioner is a company incorporated under the provisions of Companies Act, 1956 and engaged in the business of providing hardware support and services in the areas of broadcasting and telecommunication, both terrestrial and satellite, which primarily includes supplying the broadcast equipment, catering to required system integration for the same and other aspects of incidental design, consultancy and support services.

GENESIS-FIRST ROUND OF DISPUTE

2. Briefly stated, the petitioner was assessed to service tax *inter-alia* in relation to commission income received from outside India and vide order dated 14.06.2019 passed by respondent no.3/ Commissioner (Appeal), Central Tax GST, Delhi-1. The petitioner was imposed a total demand of Rs. 1,00,89,786/- along with interest and penalty of Rs. 1,00,89,786/-. Needless to state the petitioner had a statutory right to file appeal within a period of two months from the date of receipt of the order (received on 19.06.2019) under Section 85(3A) of the Finance Act, 1994 ("the Act") which was to expire on 18.08.2019. However, in the meanwhile on 05.07.2019 the Hon'ble Finance Minister announced the Sabka Vishwas (Legacy Dispute Resolution)[1] Scheme Rules, 2019 during the Budget Speech of 2019-2020 and later on the Finance Bill 2019-2020 received assent of the

[1] SVLDR Scheme

President on 01.08.2019, and the SVLDR Scheme was eventually made operational vide Notification No. 4/2019 CE-NT on 21.08.2019 effective w.e.f. 01.09.2019.

3. Initially, the grievance of the petitioner company was that the benefit of the Scheme was confined to all of such cases where the appeal was pending or had been decided prior 30.06.2019 (read 01.07.2019, as modified vide para (iv) of Circular dated 12.12.2019) and although the petitioner company was desirous of availing the benefit under the SVLDR Scheme, an appeal was filed on 16.08.2019; but the SVLDR Scheme excluded such category of cases where no appeal was pending before the 'cut off date' although the said appeal was statutorily available by the end date i.e. 30.06.20119 (read 01.07.2019, as modified vide para (iv) of Circular dated 12.12.2019).

4. Aggrieved, the petitioner filed Writ Petition (C) No. 11001/2019 titled as **Ideal Broadcasting India Pvt. Ltd. v. Union of India & Ors.,** and suffice to state that an order dated 16.10.2019 was passed directing that the respondents should seriously examine the issue of extending the benefit of the Scheme to the petitioner company, which had filed the statutory appeal after the "cut off date". Respondent no. 2 in their follow up action issued the Circular No. 1073/06/2019CX dated 29.10.2019 that *inter alia* allowed the declarant to file declaration under the Scheme who had filed appeal post 30.06.2019 (read 01.07.2019), subject to furnishing an undertaking with the department that the appeal shall be withdrawn.

As the grievances of the petitioner were addressed, the said Writ Petition was disposed of vide order dated 03.12.2019. It is an admitted fact that the petitioner company withdrew the appeal in terms of Circular dated 29.10.2019 vide order reference no. 06/ST/DLH/2020 dated 27.01.2020 although prior thereto it had submitted Form SVLDRS-1 dated 30.12.2019 declaring total "tax dues" to the tune of Rs. 17,37,932/- under "litigation" category, as it was canvassed that its case was not covered under the definition of "amounts in arrears" since it had filed appeal post 01.07.2019 and before the expiry of the period of time for filing appeal.

SECOND ROUND OF THE LITIGATION

5. In the aforesaid background, the petitioner company has now approached this Court second time stating that on filing of SVLDRS-1 on 30.12.2019, the respondents issued Form SVLDRS-2, dated 13.03.2020 objecting to the classification of "tax dues" adopted by the petitioner under "litigation" category and thereby sought to classify the same under the "arrears category"; and after affording opportunity of hearing, passed the impugned directions or order declaring Form SVLDRS-3 dated 18.05.2020 which is assailed for being not only in violation of Section 127(4) read with Rule 6(2) of the SVLDR Scheme Rules as well as clarifications issued in terms of Question No. 6 of **Frequently Asked Questions**[2], but also on the grounds of the same being arbitrary, unreasonable and *ultra vires* to Article 14 of the

[2] FAQ

Constitution of India for incorrectly classifying the 'tax dues' as "amount in arrear" as opposed to "litigation" category. In other words, the grievance of the petitioner is that though the respondents subsequently extended the validity of the Scheme, in terms of Notification No. 07/2019 CE-NT dated 31.12.2019, from 31.12.2019 to 15.01.2020, and it had claimed declaration in Form SVLDRS-1 dated 30.12.2019, under "litigation" category, seeking rebate up to 50% of the "tax dues". The respondents have wrongly by misconstruing the provisions of the Scheme have allowed lesser rebate-slab by treating the case of the petitioner under the "litigation" category and the tax dues have been quantified at Rs. 41,30,697/-. The impugned order dated 18.05.2019 has been assailed in the present writ petition *inter-alia* on the grounds:

> "(a) that respondent has classified the 'tax dues' provided by Circular dated 29.10.2019 arbitrarily under the "arrears category" disregarding the fact that the petitioner was forced to withdraw its appeal as a pre-condition for filing declaration under the Scheme; and
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> (b) that the Circular dated 29.10.2019 has failed to clarify the category under which their "tax dues" would fall and that in the absence of any such clarification, it is not open to the respondent to classify the "tax dues" of the petitioner under "arrears category" as that would amount to conferring benefit by one hand while taking it away from the other hand; and
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> (c) that although the recourse to the SVDRL Scheme was optional and not mandatory, the arbitrary classification of the tax dues has resulted in extinguishing the right of the petitioner to file an appeal and leaving it remedy-less under the law thereby imposing the Scheme upon it oppressively; and
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> (d) that FAQs vide Q. No. 6 notified by the respondents providing for declaration to be filed in "arrears category" where duty/tax liability had accrued prior to 30.05.2019 but appeal was filed on or

after 01.07.2019, was harsh, unfair and contrary to the objectives of the Scheme; and

(e) that impugned direction/decision failed to appreciate that in the event the declaration is rejected, it ceased the right of the petitioner to file appeal; and that since the petitioner had filed an appeal before the introduction of the SVLDRS, its case was liable to be treated at par with those who were similarly placed till 01.07.2019."

6. Hence, the petitioner has sought the following reliefs:

> "a. Status quo may be maintained with respect to the declaration filed by the Petitioner under the Scheme till pendency of the present writ petition;
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> b. To issue appropriate direction to the Respondent to accept the payment of "tax dues" post 30.06.2020, in the event the Petition is not decided before such date;
>
> c. Without prejudice, to issue appropriate direction to the Respondent to re-compute the "tax dues" under "arrears" category, in the event it is held that the Petitioner is liable to pay "tax dues" under "arrears" category;"

7. Respondents no. 2 and 3 have filed a short affidavit of Dr. Prem Verma, Commissioner CGST Delhi (East) and needless to state the impugned declaration Form SVLDRS-3 dated 18.05.2020 is claimed to have been lawfully passed and it is deposed that the Department has already issued SVLDRS-4 (Discharge Certificate) dated 03.07.2020 to the petitioner. It is deposed that as per paragraph 2 (vi) of the Circular No. 29.10.2019, the petitioner was made eligible to file a declaration subject to withdrawing the appeal and that once the appeal had been withdrawn, payment of dues raised by its authority attained "finality"

as there was no pending litigation; and that it was categorically stipulated that the declaration would have to be filed under the "arrear" category as explained vide FAQ No. 6, and therefore, the Department on behalf of respondents no. 2 and 3 pray for dismissal of the present petition.

8. Suffice to state that a short rejoinder was filed on behalf of the petitioner and denying the correctness of the assertions made in the short affidavit filed on behalf of the respondents, the petitioner has reiterated and re-affirmed its assertions in the writ petition.

ANALYSIS & DECISION:

9. We have given our thoughtful consideration to the contentions urged by both the counsels and have also carefully perused the documents enclosed by the petitioner. At the outset, we find that the present writ petition is bereft of any merits. The reasons are not far to seek. The SVLDR Scheme was introduced by the respondent no.2 issuing Circular No. 1071/4/2019-CX.8 dated 27.08.2019 laying down the broad objectives behind the notification of the Scheme as well as clarifying certain issues thereunder, which are reproduced as under:

> "2. As may be appreciated, this Scheme is a bold endeavor to unload the baggage relating to the legacy taxes viz. Central Excise and Service Tax that have been subsumed under GST and allow business to make a new beginning, and focus on GST. Therefore, it is incumbent upon all officers and staff of CBIC to partner with the trade and industry to make this Scheme a grand success.
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> 3. Dispute resolution and amnesty are the two components of this Scheme. The dispute resolution component is aimed at liquidating the legacy cases locked up in litigation at various forums whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to

pay the tax dues. As may be seen, this Scheme offers substantial relief to the taxpayers and others who may potentially avail it. Moreover, the Scheme also focuses on the small taxpayers as would be evident from the fact that the extent of relief provided is higher in respect of cases involving lesser duty (smaller taxpayers can generally be expected to face disputes involving relatively lower duty amounts."

10. Before we advert to the rival contentions on merits, it would be expedient to refer to the relevant extract of the provisions of the SVLDR Scheme, as incorporated in Chapter V of the Finance Act, 2019 which prescribed the eligibility conditions to avail the benefit under the Scheme, which reads as under:

> **"125.(1)** All persons shall be eligible to make a declaration under this Scheme except the following, namely:—
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> (a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;
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> (b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;
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> (c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;
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> (d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;
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> (e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;
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> (f) a person making a voluntary disclosure, —
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> (i) after being subjected to any enquiry or investigation or audit; or
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> (ii) having filed a return under the indirect tax enactment, wherein has indicated an amount of duty as payable, but has not paid it;

(g) who have filed an application in the Settlement Commission for settlement of a case;

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944".

11. A careful perusal of the aforesaid provision would show that the Scheme made all persons eligible to file declaration where there was pending no litigation in respect of any duty/tax dues before the 'cut off date' i.e., 01.07.2019. Section 123 of the Scheme provides for the meaning of the term "tax dues" and the relevant extract of which is reproduced hereunder:

"123. For the purposes of the Scheme, "tax dues" means—
(a) where—
(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;
(ii) …….;
(b) ……
(e) where an amount in arrears relating to the declarant is due, the amount in arrears".

12. Again, a careful perusal of the aforesaid definition of the term "tax dues" clearly envisages that there must have been some amount of duty quantifiable and outstanding against an assessee as on the "cut off date" and the aforesaid definition also covered the term "amount in arrears" within its ambit. Now, the term "amount in arrears" is defined under the Scheme as under:

"121 (c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of –

(i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
(ii) an order in appeal relating to the declarant attaining finality; or
(iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it".

13. In terms of Section 124 of the Scheme, the same provides for relief available to a declarant, as under:

"124. (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows: —
(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June,2019, and if the amount of duty is,—
(i) rupees fifty lakhs or less, then, seventy percent. of the tax dues;
(ii) more than rupees fifty lakhs, then, fifty per cent of the tax dues;
(b) ……
(c) where the tax dues are relatable to an amount in arrears and,—
(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. of the tax dues;(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;……..".

14. A careful perusal of the section 124(1) (a) & (c) would show that the reliefs under the Scheme is broadly classified as those falling under "litigation" category and the other falling under the "arrears" category. In the former category the amount of duty is disputed or is capable of being disputed and yet to be finalized, while in the latter category, amount of duty is not in dispute or has become final. On a conjoint reading of the aforesaid provisions, it is manifest that the SVLDR Scheme was extended to cover those category of cases where there was existing some degree of finality with regard to imposition of

duty/tax dues as on the "cut off date". This is fortified on plain reading and purport of the Circular dated 29.10.2019, the relevant extract of which is as under:-

> "(vi) Representations have also been received that the cases where appeals were filed after 30.06.2019 should also be allowed relief under the Scheme. It is stated that such cases are not covered *per se*. However, if a taxpayer withdraws the appeal and furnishes the undertaking to the department in terms of Para 2(viii) of Circular No. 1072/05/2019-CX dated 25.09.2019, they can file a declaration under the Scheme".

15. The respondents further clarified the issue by simultaneously issuing FAQ, in terms of vide Question No. 6, which reads as under:

> "Q6. What is the scope under the Scheme when adjudication order determining the duty/tax liability is passed and received prior to 30.06.2019, but the appeal is filed on or after 01.07.2019?
> Ans. Such a case is not eligible under the Litigation category. However, such a person may choose to withdraw the appeal, and furnish to the department an undertaking to not file any further appeal in the matter. In this case, he can make a declaration under the Arrears category".

16. In the light of the aforesaid provisions and clarifications brought out by the respondents, reverting to the instant matter, the SVLDR Scheme was notified on 21.08.2019 and brought into effect from 01.09.2019 did not *per se* apply to the petitioner who filed an appeal against the imposition of duty/tax subsequent to the "cut off date". The plea of the petitioner that such "cut off date" had placed it in no man's land and it was deprived of the benefit of the Scheme was addressed on interim orders passed in the earlier writ petition bearing W.P.(C) 11001/19 CM Application 4505/19 which led to the respondent No.2 issuing the aforementioned Circular No. 1073/06/19-

CX dated 29.10.2019. Consequent to which, the petitioner submitted a declaration SVLDRS-1 on 30.12.2019 with an undertaking to withdraw the appeal, which was eventually withdrawn on 27.01.2020.

17. To our mind, the plea by the learned counsel for the petitioner that it was not only forced to withdraw its appeal filed on 16.08.2019 based on Circular dated 29.10.2019 but also that the duty/tax dues were wrongly considered under "litigation" category does not cut much ice. The crux of the matter is that the petitioner chose to exercise the option of availing the benefit under the Scheme and on its own apparently took a well-informed decision to avail the benefit of the SVLDR Scheme by submitting an undertaking to withdraw the appeal but filed the declaration wrongly construing it under the "litigation" category. Having done so, the petitioner is estopped from raising a plea that it was forced to withdraw the appeal in order to avail the benefit under SVLDR Scheme and further estopped from challenging the consideration of its case in the "arrears" category. The petitioner was fully aware of the stand of the respondent no.2 in respect of duty/tax liabilities incurred and quantified prior to 30.06.2019 and was also aware of their stand in case the appeal was filed on or after 01.07.2019 and by virtue of Query No.6 of the FAQ, the petitioner chose to withdraw the appeal and furnished an undertaking to the Department not to file any appeal. The act of the petitioner in voluntarily withdrawing the appeal consequent to the notification dated 29.10.2019 resulted in the order dated 14.06.2019

attaining finality, and therefore, becoming 'amount in arrears' within the meaning and purport of Rule 121(c).

18. To sum up, a comprehensive and harmonious interpretation of Section 123 (a) (1) read with Section 124(1) (a) of the Scheme leaves no scope for doubt that on withdrawal of the appeal filed post 01.07.2019 and on filing of declaration, its case was to be considered under the "arrears" category so much so that the petitioner even accepted the calculation computed by the Department and paid the payable amount as mentioned in the SVLDRS-3 without any demur or protest on the basis of which Discharge Certificate was issued on 03.07.2020. At the cost of repetition, once the pending litigation had been withdrawn, the demand of duty raised by the tax authorities attained "finality" and *a fortiori* fell under the definition of "amount in arrears" and the declaration was rightly considered under the "arrears" category. In other words, if the amount of duty claimed by the Department has not attained finality or has not been admitted by the declarant as recoverable from it, such case would have fallen under the "litigation" category whereas in the other situation where amount of duty has attained finality on account of appeal having been not filed before the expiry of the limitation period or the appellate order having attained finality or the amount of duty having been admitted by the declarant, that would fall under the "arrears" category. The plea by the learned counsel for the petitioner that it has been unduly prejudiced also does not hold water since it is borne out from the record that the

entire penalty imposed vide order dated 14.06.2019 was also wiped out.

19. In our view, support can be invited from a decision by the Bombay High Court in the case titled **UCN Cable Network (P) Ltd. v. Designated Committee**[3], wherein interpreting the aforesaid provisions of the SVLDR Scheme, the aspect of reliefs available under the litigation and arrears category were dealt with as under:

> "These clarifications show that it is also the view of the department that even those cases which are excluded from the Scheme as per section 125(1(a) may subsequently fall under the "arrears" category once the appeal is decided or adjudication order is passed and such order has attained finality or appeal period is over but no appeal is filed and other requirements under the Scheme are fulfilled. They further show that "amount in arrears" is the amount of duty recoverable, *inter alia*, on account of no appeal having been filed by the declarant against an adjudication order or an appellate order before the expiry of the limitation period for filing the appeal or the appellate order having attained finality. They also show that even mat case would be eligible for being processed under "arrears" category where the limitation period for filing of an appeal is not over but the taxpayer gives it in writing to the department that he would not file an appeal. They also show that even the cases where appeals have been filed after 30th June, 2019 are eligible under the Scheme per se, but on giving of requisite undertaking by the declarant to the department in terms of para 2(viii) of Circular No. 1072 dated 2S-9-2019. They further show that though a case wherein show cause notice has been issued on or after 30th June, 2019 is not covered under any of the categories of the Scheme, it would still become eligible under "arrears" category if other conditions of mat category are fulfilled, like adjudication of notice is done and limitation period for filing an appeal has expired and no appeal has been filed or the order in appeal has attained finality or the declarant has given the requisite undertaking. {paragraph 20}

[3] 2022 SCC OnLine Bom 263

20. Before finally drawing the curtains down on this petition, it would be pertinent to mention that this Court in the case of **Nidhi Gupta v. Union of India**[4]**,** had an occasion to examine the SVLDR Scheme, 2019 and in reference to Section 121(C) (i) & (ii) that defines the term "amount in arrears" as also the "amount of duty" which is recoverable, it was observed that the position has been explained vide Circular No. 1072/05/2019.CX dated 25.09.2019 vide clause (viii) that categorically enabled the tax payers to file declaration under the Scheme on giving an undertaking in writing to the Department that he would not file appeal, and suffice to state that the said Circular was held to be in consonance with Rule 3 of the Scheme-2019 floated under the Finance Act, 2019. Further, in an earlier decided case of this Court titled as **Karan Singh v. Designated Committee Sabka Vikas Legacy Dispute Resolution Scheme**[5], decided on 22.02.2021 it was held that in terms of Section 121 (r) of the Finance Act, 2019, the word "quantified" means a written communication of the amount of duty payable under indirect tax enactment and that a unilateral quantification by the petitioner does not render the assessee eligible to avail the benefit of the Scheme since it was the prerogative of the Department to quantify the amount and not the assessee.

21. In view of the aforesaid reasons, we find no merit in the present writ petition. The same is dismissed. No orders as to cost. The pending application also stands disposed of.

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[4] 2019 SCC OnLine Del 12396
[5] W.P. (C) 2408/2021

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

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