

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 964 of 2020 (M/S)

Patanjali Ayurved Ltd.

..... Petitioner

Versus

Commissioner of Central Excise & Service Tax & Anr.

..... Respondents

Present:

Mr. Priyadarshi Manish, the learned counsel with Mr. Ashwarya Sharma and Mr. M.S. Bisht, the learned counsel for the petitioner.

Mr. Shobhit Saharia, the learned counsel for the respondents.

Date of hearing and order : 09.09.2022

Sri S.K. Mishra, J.

Heard learned counsel for the parties.

2. By filing this writ petition, the petitioner-company has prayed for issuance of writ of certiorari for quashing the Form SVLDRS No. 3 L050320SV300423 dated 05.03.2020 issued by the respondents and also issue a writ of mandamus directing the respondents to issue fresh Form No. 3 and adjust the amount of Rs. 3,19,69,680/- towards deposit already made. In the alternative, the petitioner has also prayed to direct respondent no. 2 to refund the amount of Rs. 3,19,69,680/- with 18% interest per annum to him.

3. The short question that arises for determination in this writ petition is "whether the amount paid by the petitioner, under protest, towards interest, prior to issuance of show cause shall be considered as pre-deposit while disposing his application for waiver under 'Sabka Vikas (Legacy Dispute Resolution) Scheme,

2019' which was issued under Section 24 of the Finance Act.

4. The learned counsel for the petitioner would submit that a Division Bench of *Punjab and Haryana High Court at Chandigarh*, in the case of *Schlumberger Solutions Pvt. Ltd. vs. Commissioner Central GST & Ors. in CWP-6845-2020 on dated 30.11.2021* has already decided this question. The only difference is that in the earlier decided case of the Punjab and Haryana High Court, the pre-deposit also included a penalty in addition to interest.

5. We have carefully gone through the judgment and it is submitted by the learned counsel for the petitioner that no special leave petition has been preferred against this order by the Central GST Department to the Supreme Court. On the other hand, Mr. Shobhit Saharia, the learned counsel appearing for the respondents would submit that there are some technical issues in this case in view of the fact that Form no. 1, 2 and 3 are issued and are auto populated having life span of 30 days and by the time stay order was granted 30 days was over and, therefore, relief the petitioner has prayed cannot be granted. However, it is not disputed by the learned counsel for the respondents that originally scheme was of 31.03.2020 which was later on extended till 30.06.2020.

6. It is appropriate to take note of Section 124 of the Finance Act, 2019, which reads as follows: -

124. (1) Subject to the conditions specified in subsection (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 per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(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;

(iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—

(A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of the tax dues;

(d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is— (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant: Provided that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

7. Sub-section (2) of the aforesaid section is relevant for this case. It is noticed, on plain reading of the same, that the relief calculated under Sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appeal proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit shall be deducted when issuing the statement indicating the amount payable by the declarant. Thus, it is clear that statute itself do not make any distinction between payment of taxes,

interest thereon or any penalty in amount which has been deposited during enquiry, investigation or audit shall be deducted while issuing the statement and shall be adjusted while calculating relief to the declarant.

8. The High Court of Punjab and Haryana in the case of *Schlumberger Solutions Pvt. Ltd. (supra)* taking into consideration this provision has held as follows: -

"A bare reading of Section 124(2) reveals that the relief calculated under Section 124(1) is subject to the condition that any amount paid during the enquiry, investigation or audit has to be deducted when issuing the statement indicating the amount payable by the declarant. The bare provision talks of 'any amount paid', the same does not distinguish between the amounts paid under different heads. It clearly envisages two kinds of deductions firstly any pre-deposit made at any stage of appellate proceedings under the indirect tax enactment and secondly, any deposit made during enquiry, investigation or audit. Both these species of 'pre-deposit' need to be deducted while finalizing the computation.

Amount deposited by the petitioner falls in the second category. The provision only talks of amount irrespective of whether it has been paid as tax or interest or penalty. Thus, the view taken by the Designated Committee cannot be sustained. There is another side to the story. Had the petitioner remitted the entire amount paid by him towards tax, the respondents would have given

credit of entire amount and his interest liability would have been waived off as well. The petitioner cannot be punished for depositing the amount under different heads once the provision mandates to discount the amount paid during the investigation dehors the head it has been deposited under.

The present petition is allowed. Resultantly: (i) the comments of Designated Committee informs SVLDRS-2 and SVLDR-3 are quashed: (ii) Designated Committee is directed to re-consider the claim of the petitioner within two weeks from the receipt of certified copy of the order by adjusting amounts paid towards interest and penalty, in accordance with law and the petitioner is directed to make the payment within two weeks from the date Designated Committee issues SVLDRS-3.

9. This Court is of the opinion that the observation made by the Division Bench of Punjab and Haryana High Court is in tune of the provision of Sub-section (2) of Section 124 of the Finance Act, 2019. Hence, the writ petition merits consideration.

10. As far as the technical question raised by Mr. Shobhit Saharia, the learned counsel for the respondents is concerned, this Court is of the opinion that Section 124 of the Finance Act, 2019, is a benevolent provision. The Parliament in its wise discretion thought it proper to grant one time relief to

all tax payers under the GST Scheme so that disputes can be resolved amicably and restrictive parochial interpretation of the provisions should be avoided by the Courts and also by the Authorities so that objects of the beneficial scheme can be Achieved. Therefore, this Court, even though was informed that the Scheme has already come to its conclusion and the auto-populated form has already expired, the Court is inclined to allow the writ petition.

11. The writ petition is allowed. Resultantly, this Court direct that Form SVLDRS-3 is quashed and the Designated Committed to reconsider the claim of the petitioner within a period of three weeks from the date of receipt of certified copy of this order , after adjusting the amount paid towards interest to be specific RS. 3,19,69,680/- in accordance with law and the petitioner is also directed to make the payments, if any, within three weeks from the date Designated Committee issues SVLDRS-3.

12. There shall be no order as to costs.

(Sanjaya Kumar Mishra, J.)
(Grant certified copies as per Rules)