

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 26TH DAY OF AUGUST 2020 / 4TH BHADRA, 1942

WP (C) .No.14135 OF 2020 (N)

PETITIONER:

HI-LITE PROJECTS PRIVATE LIMITED,
HI-LITE BUSINESS PARK, HILITE CITY,
3/1043A44, 3RD FLOOR, THONDAYAD BYPASS,
G A COLLEGE POST, KOZHIKODE-673 014.

BY ADVS.
SRI.M.P.SHAMEEM AHAMED
SRI.CYRIAC TOM

RESPONDENTS:

- 1 THE JOINT COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,
KOZHIKKODE COMMISSIONERATE,
MANANCHIRA, KOZHIKKODE-673 001.
- 2 THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE GENERAL OF GOODS AND SERVICE
TAX INTELLIGENCE, KOCHI ZONAL UNIT,
1ST FLOOR, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KOCHI-681 017.
- 3 UNION OF INDIA, (REPRESENTED BY SECRETARY,
FINANCE DEPARTMENT DELHI), DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI-110 001.
- 4 THE ADDITIONAL DIRECTOR,
DIRECTORATE GENERAL OF GOODS AND
SERVICE TAX INTELLIGENCE, KOCHI ZONAL UNIT,
1ST FLOOR, CENTRAL EXCISE BHAVAN,
KATHRIKKADAVU, KOCHI- 682 017.

IMPLEADED AS ADDL. R4 AS PER ORDER DATED 20-08-2020
IN I.A. 01/2020

R1-R2 BY SREELAL N. WARRIER, SC.
R3 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
GOVERNMENT PLEADER SMT. K.M. RASHMI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

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Dated this the 26th day of August, 2020

The petitioner, who is a service tax assessee, seeks to direct the first respondent to accept Exts.P15 to P17 declarations filed by the petitioner and to grant the benefit of SVLDR Scheme in respect of the tax arrears disclosed in Exts. P1 to P3 returns and Ext.P3A revised statement.

2. The petitioner-Company is engaged in the construction of residential and commercial projects in Kerala. Petitioner is a registered assessee of service tax. From 2016-'17 onwards, the petitioner could not file returns and pay service tax promptly within the stipulated time. The petitioner states that nevertheless all transactions were duly recorded in their books of accounts. The petitioner belatedly filed returns for the period from April 2016 to June 2017. Ext.P1 is the relevant page of ST-3 return filed for the period

APR-SEP, 2016. Ext.P2 relates to the period OCT 2016 - MAR 2017. Ext.P3 is for APR-JUNE 2017. As Ext.P3 contained certain calculation mistakes, the petitioner filed Ext.P3A revised statement.

3. Petitioner states that after filing Exts.P1 to P3A, the second respondent initiated investigation by issuing Ext.P4 letter dated 07.9.2017. Ext. P5 summons dated 19.09.2017 was also served on the petitioner. The petitioner appeared before the second respondent along with all requested statements and accounts. The second respondent made a detailed scrutiny. The petitioner categorically admitted that the outstanding service tax liability for the period up to June 2017 is around ₹300 lakhs out of which the petitioner had already paid ₹138 lakhs. According to the petitioner, the returns filed by the petitioner were never disputed and the petitioner admitted the liability for the respective return period. In fact, there was a pending tax liability of ₹71,92,116/- at the time of filing Ext.P1. The petitioner was clearing the said liability as

and when cash flow improved. The entire balance tax was paid over a period of time.

4. Now the third respondent has launched Sabka Vikas (Legacy Dispute Resolution) Scheme 2019 (SVLDR Scheme). The Scheme is for settling tax arrears of the assesseees. The Scheme provides for different types of tax reliefs. Various categories of declarants under SVLDR scheme for the purpose of tax reliefs, are 'litigation', 'arrears of tax', 'enquiry and investigation' and 'voluntary disclosure'. In the case of voluntary disclosure a person who has not filed any return nor paid any taxes can voluntarily disclose his tax liability to the department. 'Arrears of tax' category covers those cases where return is filed, but tax not paid. The Scheme provides for substantial tax reliefs including 100% waiver of penalty and interest.

5. The petitioner therefore filed Exts.P15 to P17 declarations under the Scheme. The first respondent, as per Ext.P18 letter, rejected the declarations stating that as per

Section 125 (1) (e) of the Finance Act, 2019, a person who has been subjected to an enquiry or investigation or audit, and the amount of duty involved in the said enquiry or investigation or audit, is not quantified on or before 30.6.2019, is ineligible for making a declaration under the Scheme.

6. The second respondent stated that investigation against the petitioners company is being conducted by the second respondent for the period from 2014 onwards and the tax dues have neither been quantified nor the department has received any written communication from the declarant regarding tax liability. The petitioner challenges Ext.P18 and seeks to direct the first respondent to accept Exts.P15 to P17 declarations and grant the petitioner the benefit of the SVLDR Scheme in respect of tax arrears disclosed in Exts.P1, P2, P3 and P3A.

7. The respondents 1 and 2 contested the writ petition filing statement. The respondents 1 and 2 stated that the Directorate of GST intelligence, Kochi Zonal Unit has initiated

investigation against the petitioner for non-payment of service tax during the period October 2014 to June 2017 and contraventions of the provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 with an intent to evade payment of service tax, the details of which are discernible from Ext.P20 show cause notice. The Designated Authority while processing the Exts.P15 to P17-SVLDRS.1 declarations under the Scheme and considering the eligibility of the petitioner, had discovered the existence of the pending investigation being carried out by the Directorate of the GST Intelligence in respect of the liability for the period covered by Exts.P15 to P17 declarations.

8. The respondents 1 and 2 stated that the Designated Committee had considered the petitioner's declarations and found them non-acceptable under the Scheme. The Designated Committee could not have found the petitioner to be eligible to make a declaration under the Scheme in view of section 125 of the Finance Act. There is no

illegality or irregularity in the Designated Committee issuing Ext.P18 communication rejecting the declarations of the petitioner, contended the standing counsel appearing for the respondents 1 and 2.

9. I have heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents.

10. The SVLDR Scheme has been introduced by the Government of India as an endeavour to unload the baggage relating to the legacy taxes that have been subsumed under GST and allow business to make a new beginning and focus on GST. Dispute Resolution and Amnesty are the two components of the SVLDR 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. The Scheme is incorporated in chapter V of the Finance Act, 2019.

11. Section 125 states as to who are all the persons eligible to make a declaration under the Scheme. Section 125 Reads as follows:

“125.(I) All persons shall be eligible to make a declaration under this Scheme except the following, namely:-

(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;

(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;

(c) who have been issued to show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;

(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(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;

(f) a person making a voluntary

disclosure,--

(i) after being subjected to any enquiry or investigation or audit; or

(ii) having filed a return under the indirect tax enactment, wherein he 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.

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.”

12. The contention of the respondents is that the petitioner has filed the declarations after being subjected to an enquiry/ investigation/audit and hence he is not eligible to make declarations and avail the benefits of the Scheme. Paragraph 10(b) of Ext.P19 circular dated 27.08.2019 issued by the Government of India, Central Board of Taxes and Customs, would show that the Scheme is not available to an applicant who has been issued a show cause notice relating to refund or erroneous refund. It has potential to lead to an

interpretation that such persons will not be able to opt for the Scheme for any other dispute as well, since the restriction is on “the person” in place of “the case”.

13. The Government of India has clarified that the exception from eligibility is for “the case” and not “the person”. That means, if a person has been issued a show cause notice for refund/erroneous refund and at the same time, he also has other outstanding disputes which are covered under the Scheme, then he will be eligible to file a declaration for other cases. Paragraph 10(g) of the Scheme reads as follows:

“10(g). Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the Scheme. Section 2(r) defines “quantified” as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that such written communication will include a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc.”

The term “quantified” would therefore include duty liability admitted by the person during enquiry, investigation or audit or audit report.

14. The legacy dispute sought to be resolved by the petitioner relates to three periods namely April-September 2016, October'16-March'17 and April-June 2017. The petitioner had filed returns for these periods on 21.06.2017, 28.09.2017 and 31.10.2017 respectively, as per Exts.P1 to P3. It seems that tax was in arrears for periods anterior thereto also. The respondents initiated verification of accounts for the period from 2012-13, only on 07.09.2017, after the petitioner filed Ext.P1 return. Exhibit P18 letter dated 16.12.2019 by which the petitioner's declarations under SVLDR Scheme were rejected also states that the rejection is due to the fact that investigation against the petitioner-Company is being conducted by the Directorate General of GST Intelligence for the period from 2014 onwards.

15. As per the Scheme, as clarified in Ext.P19 circular,

if a person has been issued a show cause notice and at the same time he also has other outstanding disputes which are covered under the Scheme, then he will be eligible to file declaration for other cases. Therefore, it is clear that any investigation pertaining to the period from 2014 to 2016 by the authorities should not affect the declarations made by the petitioner in respect of the period from April, 2016 onwards. The contention of the respondents is that the investigation pertains to the period 2016–17 also and the respondents are yet to quantify and communicate the amount due.

16. In this regard, Para 10(g) of Ext.P19 circular is relevant. The quantification as defined under section 2(r) would include duty liability admitted by the person during enquiry, investigation or audit. The petitioner had declared the service tax dues even before verification proceedings were initiated on 07.09.2017. Therefore the amounts admitted by the petitioner in Exts.P1 to P3, as revised by Ext.P3A, have to be taken as the quantified amount due from the petitioner for

the purpose of testing the eligibility of the petitioner for availing the benefit of SVLDR Scheme under Section 125 of the Finance Act, 2019.

17. The Sub ka Vikas (Legacy Dispute Resolution) Scheme, 2019 has been formulated by the central government with a bold endeavour 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. The SVLDR Scheme focuses on small taxpayers as also corporate entities. The Scheme also contemplates voluntary disclosure by the assesseees. The Scheme takes in its ambit almost all pending disputes including call book cases, except for few categories.

18. The Paragraph 8 of Ext.P9 Circular, would indicate that while framing the Scheme, the respondents were not oblivious of the fact that in cases of voluntary disclosure, no verification will be carried out by the department and therefore

in the eventuality the declarant seeks the opportunity of being heard, the decision would be taken only after giving him this opportunity. A provision is also made to reopen the cases of voluntary declarations within one year of issue of a Discharge Certificate, if subsequently any material particular is found to be false. The interest of the revenue is amply protected under the Scheme. In such circumstances, the respondents are duty-bound to take a liberal approach in entertaining applications/ declarations under the Scheme, 2019.

19. For all the above reasons, the respondents are directed to consider Exts. P15 to P17 declarations made by the petitioner under the SVLDR scheme 2019. Ext.P18 letter dated 16.12. 2019 of the Joint Commissioner is set aside. The respondents are directed to place the afore declarations made by the petitioner before the Designated Committee. The Designated Committee is directed to decide the petitioner's applications/declarations after giving an opportunity of hearing to the petitioner.

20. If pursuant to the directions contained in this judgement, the respondents issue Discharge Certificates to the petitioner, then in that event, it is made clear that the respondents will be at liberty to reopen the declarations made by the petitioner within one year of issue of such Discharge Certificates, if subsequently any material particular provided by the petitioner is found to be false.

The Writ Petition is disposed as above.

Sd/-
N. NAGARESH, JUDGE

aks/07.09.2020

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 COPY OF THE RELEVANT PAGE (1ST PAGE) OF THE ST-3 RETURN FILED FOR THE PERIOD APRIL 2016 TO SEPT 2016
- EXHIBIT P2 COPY OF THE RELEVANT PAGE (1ST PAGE) OF THE ST-3 RETURN FILED FOR THE PERIOD SEPT 2016 TO MARCH 2017
- EXHIBIT P3 COPY OF THE RELEVANT PAGE (1ST PAGE) OF THE ST-3 RETURN FILED FOR THE PERIOD APRIL 2017 TO JUNE 2017
- EXHIBIT P4 COPY OF REVISED STATEMENT DATED 23.05.23018 FILED FOR THE PERIOD APRIL 2017 TO JUNE 2017
- EXHIBIT P5 COPY OF SUMMONS DATED 19.09.2017 BY THE 2ND RESPONDENT
- EXHIBIT P6 A COPY OF THE STATEMENT RECORDED FROM THE PETITIONER 1.11.2017
- EXHIBIT P7 DETAILS OF PAYMENT OF TAX ARREARS FOR THE PERIOD APRIL 2016 TO SEPTEMBER 2016
- EXHIBIT P8 STATEMENT SHOWING DETAILS OF PAYMENT OF TAX ARREARS OF INR 1,71,48,525 FOR THE RETURN PERIOD OCTOBER 2016 TO MARCH 2017
- EXHIBIT P9 STATEMENT SHOWING DETAILS OF PAYMENT OF TAX ARREARS OF INR 58,55,472 FOR THE PERIOD APRIL 2017 TO JUNE 2017
- EXHIBIT P10 COPY OF SUMMONS DATED 29.10.2019
- EXHIBIT P11 COPY OF STATEMENT RECORDED ON 31.10.2019
- EXHIBIT P12 COPY OF SUMMONS DATED 01.11.2019
- EXHIBIT P13 COPY OF STATEMENT RECORDED ON 04.11.2019

EXHIBIT P14	COPY OF CHAPTER V OF FINANCE ACT 2019
EXHIBIT P15	TYPED COPY OF DECLARATION FILED FOR APRIL 2016 TO SEPT 2016 ALONG WITH PRINTOUT FROM THE SVLDR PORTAL AND THE ACKNOWLEDGMENT
EXHIBIT P16	TYPED COPY OF DECLARATION FILED FOR OCTOBER 2016 TO MARCH 2017 ALONG WITH PRINTOUT FROM THE SVLDR PORTAL AND THE ACKNOWLEDGMENT
EXHIBIT P17	TYPED COPY OF DECLARATION FILED FOR APRIL 2017 TO JUNE 2017 ALONG WITH PRINTOUT FROM THE SVLDR PORTAL AND THE ACKNOWLEDGMENT
EXHIBIT P18	COPY OF THE LETTER DATED 16.12.2019 ISSUED BY 1ST AND EXHIBIT P17 DECLARATIONS
EXHIBIT P19	COPY OF CBIC CIRCULAR NO.1071/4/2019-CX.8 DATED 28.07.2019
EXHIBIT P20	COPY OF SVLDR RULES 2019
EXHIBIT P21	COPY OF THE SCN NO.9/2020-21 CST DATED 07.07.2020.