

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF DECEMBER 2020**

**BEFORE**

**THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD**

**WRIT PETITION No.8254/2020 (T RES)**

**BETWEEN :**

M/S PIERIAN SERVICES PVT. LTD  
NO.979, 19<sup>TH</sup> MAIN, 13<sup>TH</sup> CROSS  
BANASHANKARI II STAGE, BENGALURU-560070  
(REPRESENTED BY MR.GURUNATH N KANATHUR  
DIRECTOR, AGED ABOUT 54 YEARS  
S/O. H NARASIMHA MURTHY)

... PETITIONER

(BY SRI.RAGHURAMAN. V, ADVOCATE)

**AND :**

1. DESIGNATED COMMITTEE  
SABKA VISHWAS (LEGACY DISPUTE RESOLUTION)  
SCHEME, BMTc BUILDING, BANASHANKARI  
BENGALURU-560070  
(REPRESENTED BY PRINCIPAL COMMISSIONER  
OF CENTRAL TAX AND GST, BENGALURU WEST  
COMMISSIONERATE)
2. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
NORTH BLOCK  
NEW DELHI-110 001
3. UNION OF INDIA  
MINISTRY OF FINANCE

REPRESENTED BY SECRETARY  
NORTH BLOCK, NEW DELHI-110001

... RESPONDENTS

(BY SRI.JEEVAN J NEERALGI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH STATEMENT ISSUED BY THE R-1 IN FORM SVLDRS-2 DATED 11.02.2020 ENCLOSED AS ANNEXURE-A FOR THE REASONS STATED IN THE GROUNDS AND ETC.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner has filed this writ petition for quashing Statements issued by the Designated Committee-SVLDR Scheme, the first respondent, in Form No. SVLDRS-2 [Annexure-A] and in Form No. SVLDRS-3 [Annexure-B] with a direction to the respondents to issue Discharge Certificate in terms of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ('SVLDR Scheme').

2. Sri. Raghuraman V, learned Counsel for the petitioner submits that the petitioner is initially issued with Show Cause Notice dated 29.12.2014 for a certain tax

demand indicating *inter alia* that the petitioner had paid service tax in a sum of Rs.1,60,00,000/-. After a subsequent audit, the Report dated 08.04.2015 is filed wherein, it is recorded that the petitioner has paid a total service tax for the relevant period in a sum of Rs.2,52,46,749/-. After the aforesaid report dated 08.04.2015, the Order-in-original dated 27.09.2018 is issued calling upon the petitioner to pay a total sum of Rs.1,77,06,985/-. In this original Order dated 27.09.2018, there is no discussion about the tax paid as there was no dispute about the same. The petitioner, being aggrieved by this Order-in-original dated 27.09.2018, has filed appropriate appeal before the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT'). However for the purposes of SVLDR Scheme these circumstances show that there is quantification of the liability in a sum of Rs.1,177,06,985/- and payment of tax in a sum of Rs.2,52,46,749/- (including a sum of Rs.92,33,857/- after

the Show Cause Notice dated 29.12.2014) as on 30.06.2019, the relevant date under the Scheme.

3. Sri. Raghuraman. V further submits that during the pendency of the above appeal before the CESTAT, the petitioner, being entitled to file declaration under the SVLDR Scheme, has filed the declaration in the prescribed Format as per Annexure – Q. The petitioner is issued with SVLDRS-2 indicating that the pre-deposit/other deposit of duty by the petitioner would only be in a sum of Rs.27,66,646/- and therefore, the petitioner would have to pay a sum of Rs.60,86,846/- after the “Tax Relief”. The statement in SVLDRS -2, as well as SVLDRS-3, does not consider the actual deposit/ payment of duty as service tax which is undisputed and is as recorded in the Audit Report 08.04.2015. The petitioner in the declaration as per Annexure-Q has indicated payment/ deposit of duty in a sum of Rs.92,33,857/- as against now indicated Rs.27,66,646/-

because that would be the difference between the amounts mentioned in the Show Cause Notice dated 29.12.2014 and the Audit Report dated 08.04.2015. There is no justification for issuance of the impugned Form No.SVLDRS-2 and Form No.SVLDRS-3 as there could be no dispute about the deposit of duty.

4. Sri. Raghuraman. V taking this Court through the Scheme and the obligation on the part of the authorities under Rule 6 of the SVLDR Scheme submits that the Designated Committee, the first respondent, in the case of a declaration as filed by the petitioner, will have to verify the records before issuing confirmation in SVLDRS-3. If only the Designated Committee had verified their records, the impugned SVLDRS Forms could not have been issued calling upon the petitioner to pay a sum of Rs.60,86,846/- and thus, restricting the Tax Relief that the petitioner would justifiably

be entitled to in terms of the Scheme. Therefore, the petitioner would be entitled for the relief/s as prayed for.

5. Sri. Jeevan J Neeralgi, learned Counsel for the respondents on the other hand, submits that the petitioner in its appeal memorandum before the CESTAT has unequivocally stated in Column No.14 of the appeal memorandum that the tax deposited is only in a sum of Rs.27,66,646/- and this is considered by the Designated Committee in issuing the impugned SVLDRS Forms. The petitioner having admitted that only a sum of Rs.27,66,646/- is paid as Tax, which would qualify as Pre-Deposit/ other Duty Paid under the SVLDR Scheme, cannot renege on the same and contend having paid a higher deposit relying upon either the Show Cause Notice dated 29.12.2014 or the original Order dated 27.09.2018 or the audit Report dated 08.04.2015.

6. In rejoinder, Sri. Raghuraman. V submits that under the provisions of the earlier regime, the petitioner was only required to pay a pre-deposit of 10% of the disputed amount at the time of filing the appeal before the CESTAT. The petitioner, without mentioning all the details, has referred to two of the remittances made to demonstrate payment of such 10% to justify the required pre-deposit. The payment of Rs.2,52,46,749/- as Tax (including a sum of Rs.92,33,857/- after the Show Cause Notice dated 29.12.2014) is obvious from the Audit Report dated 08.04.2015, and the first respondent, enjoined in law to verify to its records, cannot take a technical approach to refuse tax relief, a right which is secured under the provisions of the SVLDR Scheme.

7. The dispute in the present writ petition, as is obvious from the respective pleadings, is on a short ground: whether in the facts and circumstances of the case could

there be a dispute on the Service Tax deposited by the petitioner, and if there cannot be any dispute in this regard, would the petitioner upon reading the provisions of Sections 123(a)(i) and 124(2) of SVLDR Scheme, be entitled to *Tax Relief* thereunder which would absolve the petitioner from paying further amounts. The remarks in the impugned Form No.SVLDRS-3 reads as follows:

*“Further in para 11.26 the Commissioner has discussed the request of the assessee regarding miscalculation of duty demand and held the same as unacceptable. At this stage the declarant wants the DC to requantify the tax amount. In the O-I-O dated 27.09.2018 at Para-3 page-5 table as well as in SCN dated 29.12.2014 (Para 2.5 page-3) the amount paid in cash and through CENVAT credit for the same period are shown to be Rs.1,00,02,249/- and Rs.60,10,643/- respectively and the short payment of tax of Rs.14509189/- was demanded and confirmed.*

*The Commissioner has consciously taken note of the Audit Para for the period October 2009 to March 2014, in the Para 2/3 of the O-I-O and has not acceded to the request of assessee. Further, he held that there is no miscalculation. Appeal against the Commissioner’s order in CESTAT is for entire tax confirmed in the O-I-O. There is no*

*reason as to why DC should consider perceived mistake in the O-I-O when there is none. Further, DC cannot go into the merits of the case pending before CESTAT, while deciding on SVLDRS matters. Committee proposes to re-confirm SVLDRS-2 estimate.”*

8. It is obvious from these remarks that the first respondent has relied upon the Order-in-original dated 27.09.2018 to arrive at the conclusion that the deposit of Service Tax by the petitioner is only in a sum of Rs.27,66,646/- and therefore, issuance of the impugned SVLDRS-2 and SVLDRS-3 would be justified. However, there is no serious dispute that the Order-in-original dated 27.09.2018 is a decision on the controversy between the petitioner and the revenue as of that date *viz.*, the liability to pay a sum of Rs.1,77,06,985/-, and there was neither any dispute about the tax paid nor a decision in that regard.

9. The Show Cause Notice dated 29.12.2014, with which the controversy between the petitioner and the revenue commences, records that a sum of Rs.1,60,00,000/- is paid

as Service Tax. In the subsequent Audit Report, the total tax paid for the relevant period is shown in a sum of Rs.2,52,46,749/-(Rs.1,96,86,575/- service tax paid in cash and Rs.55,60,174/- as service tax paid through CENVAT), and in the *Gist of Audit objections*, there is reference to the demand of service tax without taking into consideration tax paid through challans subsequent to filing of the returns. This difference (Rs.92,33,857/-) is because the petitioner has deposited further service tax through challans, which is considered in the Audit Report. Therefore, the petitioner in Form SVLDRS -1 has mentioned that a sum of Rs.92,33,857/- is paid. The explanation that the sum of Rs.92,33,857/- is the difference between the amount mentioned in the Show Cause Notice dated 29.12.2014 and the Order-in-original dated 27.09.2018 is rather incontrovertible, and in fact is not controverted.

10. The SVLDR Scheme contemplates “*Tax Relief*” as detailed in Section 124: Section 124(2) stipulates that the ‘Tax Relief’ shall be calculated subject to the condition that any deposit during enquiry or investigation or audit shall be deducted when issuing the statement indicating the amount payable by a declarant and subject to the condition that if the amount so paid exceeds the amount payable by the declarant as indicated in the statement, the declarant shall not be entitled to any relief. If it is undisputed that the petitioner has deposited a sum of that the petitioner has paid Rs.92,33,857/- after the audit and the petitioner is disputing the liability in a sum of R1,77,06,985/- in an appeal before the CESTAT. In the light of the provisions of Section 124 of the SVLDRS Scheme, the petitioner would be entitled Tax Relief subject deduction of Rs.92,33,857/-. However, the Tax relief is refused referring to the order-in-original which does not even refer to the deposit made by the petitioner after the Show Cause Notice dated 29.12.2014. The assertion on

behalf of the first respondent that the petitioner has itself declared that a sum of Rs.27,66,646/- in the appeal memorandum of appeal before the CESTAT cannot also be accepted in the view of the explanation offered by the learned counsel for the petitioner in Rejoinder and duty cast upon the first respondent Rule 6 of the SVLDRS Rules to verify the records. It is also undisputed that after SVLDRS-2 is issued, repeated representations have been made to bring out the aforesaid circumstances. These representations have not been considered and SVLDRS is issued. The right to Tax relief under the SVLDR Scheme is a substantial right, and until and unless a declarant is ineligible for tax relief, the benefit of such relief cannot be refused on technical grounds.

For the foregoing, the Writ Petition is allowed. The impugned Form No.SVLDRS-2 and Form No.SVLDRS-3 issued by the Designated Committee, SVLDRS are quashed and the first respondent is called upon to issue appropriate Discharge Certificate considering the undisputed deposit of

duty in a sum of Rs.2,52,46,749/- and the disputed claim of Rs.1,77,06,985/-.

The first respondent shall take appropriate measures to issue such Discharge Certificate in an expedited manner.

**SD/-  
JUDGE**

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