

CWP-6845-2020

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-6845-2020

Date of decision: 30.11.2021

Schlumberger Solutions Private Limited**... Petitioner****Versus****Commissioner Central GST and others****... Respondents****CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**Present: Mr. Amrinder Singh, Advocate
for the petitioner.Mr. Tajender K. Joshi, Advocate
for the respondents.

PANKAJ JAIN, J

The petitioner is an assessee for the purposes of service tax. Petitioner was subjected to audit by the authorities under Goods and Service Tax for the period 2013-14 to 2016-17. During the course of audit, certain objections were raised with respect to the petitioner availing cenvat credit on trading of goods. The petitioner paid an amount of Rs.2,29,61,536/- towards service tax. Apart from this, amounts of Rs.1,16,51,272/- and Rs.24,44,227/- were paid as interest and penalty respectively.

The petitioner was served with a show cause notice dated 12.04.2019 whereby further amount of Rs.9,86,53,074/- was sought to be recovered on account of cenvat credit. This amount included interest and penalty as well. Before the proceedings on the aforesaid show cause notice could proceed further, an amnesty scheme by way of Finance (No.2) Act, 2019 was introduced by the Central Government. The main objective of the scheme is to provide for the settlement of pending disputes related to indirect taxes. The petitioner being eligible under the said scheme availed the same by making declaration in Form SVLDRS-1. As per

the petitioner, his declaration was accepted though with a variation in the computation of amount payable. Designated Committee, i.e. respondent No.2 disagreeing with the petitioner's computation issued Form SVLDRS-2 on 28.01.2020 wherein the difference in the amount payable was calculated to be Rs.1,50,95,499. The computation given by Designated Committee in SVLDRS-2 reads as under:-

Tax Due (A)	Section	Tax Relief (%) (B)	Tax relief (A x B = C)	Deduction of amounts already paid (D)	Amount payment E = (C-D)
9,86,53,074	124(1)(a)(ii)	50%	4,93,26,537	2,29,61,536	2,63,65,001

The Form SVLDRS-2 also contained following remarks from Designated Committee:-

“The deposit amount indicated by the declarant also includes amounts paid towards interest and penalty. Duty, Interest & penalty are totally different terms under Indirect Tax laws. There are separate provisions for these which are invoked for different purposes. Accordingly, payment towards these are made under separate heads. Thus, payment made under one head cannot be transferred or adjusted against another head. The calculation table of the SVLDRS form-I also indicates that pre-deposit/any other deposit of duty is to be adjusted during calculation of tax dues less tax relief. Accordingly, payments made under the heads of interest and penalty are not included in deposit.”

The petitioner was provided opportunity of personal hearing on 07.02.2020. The submissions made by the petitioner in the personal hearing could not find favour with the Designated Committee and thereafter Form SVLDRS-3 dated 26.02.2020 was also issued reiterating the computation and remarks as mentioned in SVLDRS-2.

The petitioner by way of the present petition under Article 226 of the Constitution of India approached this Court challenging the computation made by Designated Committee.

Notice of motion was issued on 17.03.2020. Owing to outbreak of Covid-19, the said writ petition got adjourned. In the meantime, petitioner was called for personal hearing by respondent No.1-Commissioner, Central GST, Gurugram pursuant to show cause notice dated 12.04.2019. The petitioner informed respondent No.1 with respect to pendency of his application under amnesty scheme and the pendency of writ petition before this Court. However, respondent No.1 proceeded on with adjudication and passed order-in -original dated 23.03.2021. The petitioner in the present writ petition has now laid challenge to the rejection of his computation by the Designated Committee and the order in original dated 23.03.2021 passed by respondent No.1.

Respondents filed a reply reiterating the stand taken by the Designated Committee. The fate of the present writ petition depends upon the right of the petitioner to get deduction of deposits made prior to the issuance of show cause notice. In order to claim deduction of the deposits made prior to issuance of show cause notice, the petitioner has relied upon Section 124 of the Finance (No.2) Act, 2019. As per counsel for the petitioner, the amount deposited by the petitioner falls within the ambit of 'pre-deposit' and the petitioner is entitled to get the same deducted while issuing the statement indicating the amount payable at the time of declaration.

On the other hand, counsel for the respondents has vehemently argued that the amount deposited includes sums paid towards interest and penalty. Duty, interest and penalty being different terms under the indirect tax laws, payments made towards these heads cannot be transferred or adjusted against any other head. The amount paid under the head of tax can only be adjusted during

calculation of tax dues while granting relief under the amnesty scheme. Accordingly, payments made under the head of interest and penalty cannot be deducted.

Admittedly, the petitioner has deposited amounts of Rs.2,29,61,536/- and further sum of Rs.1,16,51,272/- on account of interest and Rs.34,44,227/- as penalty, even prior to issuance of show cause notice. The question that arises for adjudication is as to whether the petitioner is entitled for credit of amount deposited under the head of interest and penalty while quantifying the amount payable under the scheme.

Section 124 of the Finance Act provides for calculation of the relief available to the declarant and the same reads as follows:-

“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 rising 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 percent 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.”

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 de hors the head it has been deposited under.

The present petition is allowed. Resultantly: (i) the comments of Designated Committee informs SVLDRS-2 and SVLDRS-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.

Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed off.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

30.11.2021
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No