IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2784 OF 2021

National Centre for the Performing Arts
A society registered under the Societies
Registration Act, 1860 and having its
registered office at 1st Floor, NCPA,
NCPA Marg, Nariman Point, Mumbai-400021. ...Petitioner

V/s.

1. Union of India through,
The Joint Secretary, Department of Revenue
Ministry of Finance having its office at
Aayakar Bhavan, Marine Lines, Mumbai-400 020.

2. Designated Committee, Mumbai (South)
Sabka Vishwas (Legacy Dispute Resolution) Scheme,
having its office at 13th Floor, Air India Building,
Nariman Point, Mumbai-400 021.

3. Assistant Commissioner of Goods
and Services Tax, Mumbai (South),
having its office at 13th Floor, Air India Building,
Nariman Point, Mumbai-400 021.

4. E-pay and Accounts Officer (e-PAO)
having its office at 5th Floor, Kendriya Sadan,
Opp. Police Commissionerate, CBD Belapur,
Navi Mumbai-400 614. ...Respondents

Mr. Chirag Shetty i/b Economic Laws Practice for the Petitioner.
Mr. Vijay Kantharia with Mr. Ram Ochani for Respondents No. 1 to 4.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE : 13 JANUARY, 2023

JUDGMENT : (PER ABHAY AHUJA, J.)

. By this Writ Petition, filed under Article 226 of the Constitution of India, the Petitioner is aggrieved by issuance of Form SVLDRS-3 dated 19 February 2020 by the Designated Committee making a demand of Rs. 37,67,015/- on the ground that the tax dues comprise of only duty amount and, therefore, only deposit of any stage is allowed under Section 124 (2) of the Finance Act, 2019 pertaining to the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("SVLDRS").

2. Petitioner is a public trust registered under the Societies Registration Act, 1860 and is a non profit institution registered under Service Tax Law since 12 August 2003 and is subsequently also registered under GST Law from 1 July 2017 and is engaged in providing various services such as holding entertainment events, renting out auditoriums, sponsorship etc., some of which services were/are liable to service tax/GST and some were exempt and some were partly taxable and partly exempt.

3. Pursuant to Excise Audit (EA 2000), audit of the records of the Petitioner for the financial years 2013-2014 to 2017-2018

(upto June 2017), conducted by the audit Group of the Service Tax Department during the month of November, 2018 and December, 2018, a Show Cause Notice dated 14 February 2019 was issued by the Principal Commissioner, CGST, Audit-I, Mumbai demanding a sum of Rs. 2,93,47,926/- as service tax for alleged wrong availment of CENVAT credit by the Petitioner alongwith applicable interest and penalty under Section 78 of Chapter V of the Finance Act, 1994.

4. After the issuance of the Show Cause Notice, Final Audit Report dated 5 July 2018 was issued to Petitioner by the Deputy Commissioner, CGST, Mumbai.

5. It is submitted that before issuance of Show Cause Notice, during the course of pre-Show Cause Notice consultations, Petitioner had already paid the amount of Rs. 1,49,35,618/- electronically. It is submitted that out of this amount, a sum of Rs. 1,09,06,948/- was the amount of tax and a sum of Rs. 40,28,670/- was interest. According to the Petitioner, the said amount of Rs. 40,28,670/- of interest was paid under protest and the balance amount was paid after accepting its liability to pay the service tax for wrong availment of CENVAT credit due to *bonafide* error.

6. While the Show Cause Notice was pending adjudication, Petitioner had already requested Respondent No.4 vide letter dated 26 November 2019 as well as to the Petitioner's jurisdictional Commissioner viz. Respondent No.3 vide letter dated 16 December 2019 to transfer the said sum of Rs. 40,28,670/- from Accounting Code 00441481 (i.e. Other Receipts (Interest)), to Accounting Code 00441480 (i.e. Tax Receipts) as the said amount was pending appropriation by the department as the Show Cause Notice was yet not adjudicated.

7. It is also submitted that vide letter dated 16 December 2019, the Respondent No.4-E-Pay and Accounts Officer (e-PAO) requested Petitioner to take up the matter with the Jurisdictional Commissioner. That by letter dated 2 January 2020, the Respondent No.3-Assistant Commissioner of GST, Mumbai (South) requested Petitioner to inform the reason for change of accounting code, which was purported by explanation by Petitioner vide letter dated 13 February 2020.

8. While the Show Cause Notice and the request above by the Petitioner were pending, the Government notified the SVLDR Scheme with effect from 1 November 2019 in terms of Chapter V of the Finance Act (No.2), 2019, to provide an amnesty under legacy taxes, in particular Central Excise Duty and the Service Tax, which were subsumed in GST. Under the scheme tax payers

could file online declaration for resolution of past disputes, initially from 1 September 2019 to 31 December 2019, which was later extended to 15 January 2020.

9. The statement of objects and reasons of the said Scheme are set out as under:-

> *" STATEMENT OF OBJECTS AND REASONS*
> *The Scheme is a one time measure for liquidation of past disputes of Central Excise and Service Tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The Scheme shall be enforced by the Central Government from a date to be notified. It provides that eligible persons shall declare the tax due and pay the same in accordance with the provisions of the Scheme. It further provides for certain immunities including penalty interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 to those persons who pay the declared tax dues."*

10. The relevant Sections of the Finance Act, 2019 which deal with SVLDRS are also set out as under:-

> *"Chapter V of the Finance dealing with the SVLDR Scheme, inter alia, provides for the relief available under the Scheme, declaration to be made under the Scheme, verification of declaration by Designated Committee, issue of statement by Designated Committee, rectification of errors, issue of Discharge Certificate by Designated Committee, power to make rules, power to issue orders, instructions, etc. The relevant sections of the Scheme are quoted as under:—*
> *124 : -Relief available under Scheme:—*

(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 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.

125. Declaration under Scheme.

(1) 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 a 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.
126. Verification of declaration by designated committee.
(1) The designated committee shall verify the correctness of the declaration made by the declarant under section 124 in such manner as may be prescribed:
Provided that no such verification shall be made in case where a voluntary disclosure of an amount of duty has been made by the declarant.
(2) The composition and functioning of the designated committee shall be such as may be prescribed.
127. Issue of statement by designated committee.
(1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.
(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration.
(3) After the issue of the estimate under subsection (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant:
Provided that on sufficient cause being shown by the

declarant, only one adjournment may be granted by the designated committee.

(4) After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.

(5) The declarant shall pay electronically through internet banking, the amount payable as indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.

(6) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

(7) Where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the designated committee, in such manner as may be prescribed, along with the proof of payment referred to in sub-section (5).

(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof.

128. Rectification of errors.

Within thirty days of the date of issue of a statement

indicating the amount payable by the declarant, the designated committee may modify its order only to correct an arithmetical error or clerical error which is apparent on the face of record, on such error being pointed out by the declarant or suo motu, by the designated committee.

129. Issue of discharge certificate to be conclusive of matter and time period.

(1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and-

(a) the declarant shall not be liable to pay any further duty interest, or penalty with respect to the matter and time period covered in the declaration;

(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;

(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

(2) Notwithstanding anything contained in subsection (1),—

(a) no person being a party in appeal, application, revision or reference shall contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the discharge certificate under this scheme;

(b) the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice,-

(i) for the same matter for a subsequent time period; or

(ii) for a different matter for the same time period;

(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the

applicable indirect tax enactment shall be instituted.
130. Power to make rules.
(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.
(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
(a) the form in which a declaration may be made and the manner in which such declaration may be verified;
(b) the manner of constitution of the designated committee and its rules of procedure an d functioning;
(c) the form and manner of estimation of amount payable by the declarant and the procedure relating thereto;
(d) the form and manner of making the payment by the declarant and the intimation regarding the withdrawal of appeal;
(e) the form and manner of the discharge certificate which may be granted to the declarant;
(f) the manner in which the instructions may be issued and published;
(g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.
(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity

of anything previously done under that rule.
132. Power to issue orders, instructions etc.
(1) The Central Board of Indirect Taxes and Customs may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of this Scheme, and such authorities, and all other persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions:
Provided that no such orders, instructions or directions shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.
(2) Without prejudice to the generality of the foregoing power, the Central Board of Indirect Taxes and Customs may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may if the said Board is of opinion that it is necessary in the public interest so to do, be publish ed in the prescribed manner.

20. Under the Finance referred to above, the Central Government made Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules 2019 (the SVLDRS Rules), which was amended on 14 th May, 2020 and which amendment was published in the Gazette on 21st August, 2019. The relevant portions of the amended SVLDRS Rules are quoted as under:—

Rule-3. Form of declaration under section 125.-(1) The declaration under section 125 shall be made electronically at https://cbic-gst.gov.in in Form SVLDRS-1 by the declarant, on or before the 15 th January 2020.

(2) A separate declaration shall be filed for each case. Explanation.-For the purpose of this rule, a case means-
(a) a show cause notice, or one or more appeal arising out of such notice which is pending as on the 30th day of June, 2019; or
(b) an amount in arrears; or
(c) an enquiry or investigation or audit where the amount is quantified on or before the 30 th day of June, 2019; or (d) a voluntary disclosure.

Rule-4. Auto acknowledgment-On receipt of declaration, an auto acknowledgment bearing a unique reference number shall be generated by the system.

Rule-6. Verification by designated committee and issue of estimate, etc.-(1) The declaration made under section 125, except when it relates to a case of voluntary disclosure of an amount of duty shall be verified by the designated committee based on the particulars furnished by the declarant as well as the records available with the Department.
(2) The statement under sub-sections (1) and (4) of section 127, as the case may be, shall be issued by the designated committee electronically, on or before the 31 st day of May, 2020 in Form SVLDRS-3 setting forth therein the particulars of the amount payable:
Provided that no such statement shall be issued in a case where the amount payable, as determined by the designated committee is nil and there is no appeal pending in a High Court or the Supreme Court.
(3) Where the amount estimated to be payable by the declarant exceeds the amount declared by the declarant, then, the designated committee shall issue electronically, on or before the 1st day of May, 2020 in Form SVLDRS-2, an estimate of the amount payable by the declarant along with a notice of opportunity for personal hearing.
(4) If the declarant wants to indicate agreement or disagreement with the estimate referred to in sub-rule (3) or wants to make written submissions or waive

personal hearing or seek an adjournment, he shall file electronically Form SVLDRS-2A indicating the same:
Provided that if no such agreement or disagreement is indicated till the date of personal hearing and the declarant does not appear before the designated committee for personal hearing, the committee shall decide the matter based on available records.
(5) On receipt of a request for an adjournment under sub-rule (4), the designated committee may grant the same electronically in Form SVLDRS-2B:
Provided if the declarant does not appear before the designated committee for personal hearing after adjournment, the committee shall decide the matter based on available records.
(6) Within thirty days of the date of issue of Form SVLDRS-3, the designated committee may modify its order only to correct an arithmetical error or clerical error which is apparent on the face of record, on such error being pointed out by the declarant or suo motu by issuing electronically a revised Form SVLDRS-3.
Rule-7. Form and manner of making the payment.- Every declarant shall pay electronically the amount, as indicated in Form SVLDRS-3 issued by the designated committee, on or before the 30 th day of June, 2020.
Rule-8. Proof of withdrawal of appeal from High Court or Supreme Court.-Proof of withdrawal of appeal or writ petition or reference before a High Court or the Supreme Court, as the case may be, under sub-section (7) of section 127 shall be furnished electronically by the declarant.
Rule-9. Issue of discharge certificate.-The designated committee on being satisfied that the declarant has paid in full the amount as determined by it and indicated in Form SVLDRS-3, and on submission of proof of withdrawal of appeal or writ petition or reference referred to in rule 8, if any, shall issue electronically in Form SVLDRS-4 a discharge certificate under subsection (8) of section 127 within thirty days of the

said payment and submission of the said proof whichever is later:
Provided that in a case where Form SVLDRS-3 has not been issued by the designated committee by virtue of the proviso to sub-rule (2) of rule 6, the discharge certificate shall be issued within thirty days of the filing of declaration referred to in sub-rule (1) of rule 3.

11. From the above, we find that as a one time measure for liquidation of past disputes of Central Excise and Service Tax, the SVLDR Scheme has been issued by the Central Government. The SVLDR Scheme has also been issued to ensure disclosure of unpaid taxes by an eligible person. This appears to have been necessitated as the levy of Central Excise and Service Tax has now been subsumed in the new GST Regime. From a reading of the statement of object and reasons, it is quite evident that the scheme conceived as a one time measure, has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand. Both are equally important : amicable resolution of tax disputes and interest of revenue. As an incentive, those making the declaration and paying the declared tax verified as determined in terms of the scheme would be entitled to certain benefits in the form waiver of interest, fine, penalty and immunity from prosecution. This is the broad picture the concerned authorities are to keep in mind while dealing with a claim under the scheme.

12. Petitioner filed its online declaration in Form SVLDRS-1 on 27 December 2019 declaring nil amount as payable against the Service Tax of Rs. 2,93,47,926/- demanded in the Show Cause Notice. This was based on the following computation as per the Show Cause Notice and the provision of Section 124 (1) (a) and 124 (2) of SVLDRS:

> *" Service Tax demanded in the SCN Rs. 2,93,47,926/-*
> ***Less:***
> *50% Relief (of aforesaid Service Tax)*
> ***u/s 124(1)(a) of SVLDRS (-)Rs. 1,46,73,963/-***
> *(a-b) Rs. 1,46,73,963/-*
> ***Less:***
> *Relief of '**any amount paid as deposit during audit' u/s 124(2) of SVLDRS***
> *'Tax Receipts' of Rs. 1,09,06,948/- paid under Accounting code 00441480*
> ***Plus***
> *'Other Receipts (Interest)' of Rs. 40,28,670/- Paid under Accounting Code 00441481 (-) Rs.1,49,35,618/-*
> ***Amount payable under SVLDRS by Petitioner Rs. NIL****
> *(*In terms of the proviso to section 124 (2) of SVLDRS, as this amount is negative, no amount is payable by the Petitioner under SVLDRS, nor is the Petitioner entitled to refund of this excess amount of Rs. 2,61,655/-, paid by it during the Audit i.e. before issuance of SCN)"*

13. The Designated Committee formed under SVLDRS to scrutinize the declaration filed by the Petitioner issued SVLDRS-2 to Petitioner containing the following remarks:-

"Amount of predeposit is Rs.10906948, rest amount is interest payment which cannot be adjusted against tax dues"

14. The Designated Committee computed an amount of Rs. 37,67,015/- as payable by Petitioner, thereby deducting the deduction of Rs. 40,28,670/- paid by the Petitioner under Accounting Code 00441481 (i.e. 'Other Receipts (Interest)').

15. Petitioner filed Form SVLDRS-2A on 17 February 2020 with the Designated Committee explaining as to why Petitioner was entitled to the deduction of Rs. 40,28,670/- paid by Petitioner under Accounting Code 00441481 (i.e. 'Other Receipts (Interest)') under Section 124(2) of SVLDRS and that if such deduction is allowed, Petitioner is not required to pay the sum of Rs. 37,67,015/- estimated by the Designated Committee as payable by Petitioner and Petitioner also sought a personal hearing before the Designated Committee.

16. A Personal hearing was granted to Petitioner on 19 February 2020 when Petitioner reiterated its stand. However, the Designated Committee did not accept Petitioner's arguments and issued Form SVLDRS-3 dated 19 February 2020 with a final amount payable by the Petitioner as Rs. 37,67,015/- on the basis that sum of Rs. 40,28,670/- paid by Petitioner was not eligible for deduction under Section 124(2) as in the opinion of the

Designated Committee, deduction under that Section is only allowable for payments of tax under Accounting Code No.00441480 for "Tax Receipts", which was a amount aggregating to Rs. 1,09,06,948/- and not for payments aggregating to Rs. 40,28,670/- made under the Accounting Code No. 00441481 for "Other Receipts (Interest)" from out of the total amount aggregating to Rs. 1,49,35,618/- paid by Petitioner before issuance of the Show Cause Notice.

17. Petitioner is aggrieved that despite the language in Section 124(2) of the Finance Act, 2019, which refers to "any amount paid" as deposit or pre-deposit to be deducted when issuing the statement indicating the amount payable by the declarant, the Designated Committee has gone ahead and not given credit for the amount of interest already paid by Petitioner prior to the issuance of Show Cause Notice by the department.

18. Learned Counsel refers to the following decisions in support of his contentions:-

1.Schlumberger Solutions Private Limited Vs. Commissioner Central GST and Others.[1]
2. M/s Vamsee Overseas Marine Private Limited Vs. The Commissioner of Service Tax, Designated Committee.[2]
3. Eureka Fabricators Pvt. Ltd., Vinod Rajendra Bakshi Director of Eureka Fabricators Pvt. Ltd. Vs. Union of India and Ors.[3]

1 2021(12) TMI 184-Punjab and Haryana High Court
2 2021(2) TMI 801- Madras High Court
3 2021(3) TMI 379- Bombay High Court

19. On the other hand, Mr. Kantharia, learned Counsel for the Respondents relies upon the reply dated 23 October 2020 in support of his contentions. Learned Counsel would submit that the amount of interest in respect of which deduction is sought by Petitioner does not form part of the service tax payments and therefore, the Designated Committee has rightly not considered the same while issuing Form-3. He draws the attention of this Court to Section 123(b) to submit that where a Show Cause Notice under any of the indirect tax enactment has been received by the declarant on or before 30 June 2019, then the amount of duty is stated to be payable by the declarant in the said notice. Learned Counsel submits that a plain reading of the aforesaid provision makes it clear that tax dues are the only amount of duty demanded under the pending Show Cause Notice and not interest. Section 123(b) is quoted as under:-

> *" 123. For the purposes of the Scheme, "tax dues" means-*
> *(a)…….*
> *…….*
> *…….*
> *(b)where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:*
> *……"*
>
> *(emphasis supplied)*

20. He also refers to Section 121(d) which defines amount of duty as under:-

"121. In this Scheme, unless the context otherwise requires,—
……..
…….
…….
(d) "amount of duty" means the amount of central excise duty, the service tax and the cess payable under the indirect tax enactment;"

21. Learned Counsel submits that Section 124(1)(a) also refers to tax dues and not to the interest that would be adjusted under the SVLDRS. Referring to Section 124(2), learned Counsel for the Respondents relies upon the following paragraphs of the Respondent's affidavit-in-reply, to make his point:-

"11. I say that the Tax dues, as explained above, is only duty demanded in show cause notice and does not include interest at all. The contention of the Petitioner to include the interest as paid under the head of duty is illogical and beyond the purview of the Scheme.

12. I further say and submit that as per Section 124 (2), the scheme allows adjustment of sums already paid as under:-

a. Amount paid as pre-deposit at any stage of appellate proceedings.
b. Deposit during inquiry, investigation or audit.

Hence, the elements for "pre-deposit and "deposit" has to be common i.e. it cannot be a situation that for the porpose of "pre-deposit", interest is not taken into account but while computing "deposit" one should include the interest component. From the construction of the clause above, it is apparent that legislature wanted to keep "pre-deposit" and "deposit" at the same footing and therefore the manner of computation of both needs to be identical. Accordingly, one need to appreciate the

manner of terms pre-deposit in the Scheme/Service tax law.

13. I say that the term pre-deposit has not been defined in the scheme. In terms of Section 121 (u), the words and expressions used in this scheme, but not defined shall be adopted. The said sub section is reproduced below:-

> *"all other words and expressions used in this Scheme, but not defined, shall have the same meaning as assigned to them in the indirect tax enactment and in case of any conflict between two or more such meanings in any indirect tax enactment, the meaning which is more congruent with the provisions of this Scheme shall be adopted".*

14. I say that the term pre-deposit has definite connotation in Central Excise Act, 1944. In this regard section 35F is reproduced below:-

> *"Deposit of certain percentage of duty demanded or penalty imposed before filling appeal-the Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal-*
>
> > *(i) Under sub-section (1) of section 35, unless the appellant has deposited seven and a half percent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank then the Principal Commissioner of Central Excise or Commissioner of Cental Excise.*
>
> *From the reading above, it is clear that pre-deposit is only with reference to duty amount and never includes any interest. Further section 35F is equally applicable to Finance Act, 1994 (Service Tax Act) in terms of Section 83 of Finance Act, 1994. Clearly when the term pre-deposit does not include interest*

at all for the purpose of filing appeal, it cannot include interest for the purpose of SVLDR scheme.

15. I further say and submit that when the Government in its wisdom is allowing waiver of entire interest payable in terms of Central Excise/Service Tax Act, it would be quite illogical to provide for deduction of interest paid from the principal amount of duty/tax required to be paid"

22. On this basis, learned Counsel submits that Petitioner has not made out any case for exercise of its extraordinary jurisdiction and prays that the Petition be dismissed.

23. We have heard Mr. Chirag Shetty, the learned Counsel for the Petitioner and Mr. Vijay Kantharia, learned Counsel for the Respondents and with their able assistance, we have perused the papers and proceedings in the matter and also considered the rival contentions.

24. The Punjab and Haryana High Court in the case of *Schlumberger Solutions Pvt. Ltd. (supra)* has while considering an almost identical fact situation has interpreted Section 124 (2) of the Finance Act as under:-

"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 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."

(emphasis supplied)

25. The Madras High Court in the case of *M/s Vamsee Overseas Marine Private Limited (supra)* has also while

interpreting Section 124(2) of the Finance Act, observed as under:-

> *"7. In the present case, the petitioner has, admittedly, remitted amounts of Rs.66.05 and Rs.16.58 lakhs as deposits even prior to the issuance of show cause notice. However, the petitioner has specifically demarcated the amount of Rs.66.05 lakhs as towards tax and Rs.16.58 lakhs as towards interest. Thus the respondent, while accepting the eligibility of the petitioner to the benefit of the Scheme, has proceeded to ignore the amount of Rs.16.58 lakhs, since the amount has been credited under the accounting head relevant for interest payments.*
>
> *8. Having heard learned counsel, I am of the view that this writ petition must be allowed for the following reasons:*
> *(i) Section 124(2) comes to the aid of the petitioner. It envisages two kinds of deductions: firstly, that any pre-deposit made at the stage of appellate proceedings under an indirect tax enactment be given credit to or secondly, any deposit made during enquiry, investigation or audit, be deducted when finalising the computation.*
> *(ii) In the present case, the amount was not remitted towards pre-deposit. It was remitted during investigation and even prior to issuance of show cause notice and thus is, in my view, covered by the second limb of Section 124(2).*
> *(iii)The rejection of the petitioner's computation is on the ground that the amount of Rs.16.58 lakhs accounted by the Department under a different accounting head. However, the fact that it has, in fact, been remitted and is available to the credit of the petitioner, is not denied. In such circumstances, the objection raised by the Revenue appears to be hyper-technical to say the least.*
> *(iv) Accounting methodology cannot, and must not dictate or stand in the way of substantive relief that is*

otherwise available to an assessee. Accounting standards and methods are only formulated to aid proper recording of transactions and have limited relevance in deciding upon a substantive issue, such as the present. Useful reference may be made to the judgment of the Supreme Court in Kedarnath Jute Mfg. Co. Ltd vs Commissioner Of Income Tax (82 ITR 363) to the effect that accounting entries are hardly relevant to arrive at the true nature of a transaction and will not be decisive or conclusive in deciding a substantive issue.

(v) Moreover, the object of the scheme should not be lost sight of, as the scheme has itself been formulated for the smooth settlement of disputes. Interpretation of the provisions thereof should be to carry forward the object rather than to frustrate the same, giving rise to more litigation."

(emphasis supplied)

26. This Court in the case of *Eureka Fabricators Pvt. Ltd. (supra)* has while interpreting Section 124(2) in the context of the interest already deposited by Petitioner, observed as under:-

"13.7. In the present case petitioner has made pre-deposit of the following sums towards duty liability; viz; Rs.50,00,000.00 besides Rs.5,56,045.00 and Rs.18,00,000.00 towards interest. Further, petitioner has deposited a sum of Rs.55,56,045.00 under order dated 30.06.2020 passed by this Court in Writ Petition No.3510 of 2019 for reconsideration of the petitioner's case. The petitioner therefore has deposited the total sum of Rs. 1,29,12,090.00 with the respondents, though petitioner's deposit of Rs.55,56,045.00 on orders of the Court cannot be construed as a pre-deposit or a deposit under the scheme; therefore the proviso to sub-section (2) of section 124 would not be applicable or attracted to the said deposit. It is also settled preposition that an order of the Court can cause prejudice to none.

13.8. The deposit of duty and interest paid in terms of section 124(2) of the said Act is required to be reduced from the amount payable as tax dues under section 124(1)(a) of the the said Act. The deposit towards duty paid during investigation and during pendency of appeal proceedings in the form of pre-deposit in the present case may be appropriated and deducted from the tax dues after grant of relief under section 124(1)(a) of the said. We may also refer to the order dated 30.06.2020 which stated that on reconsideration of the petitioner's case in accordance with law, if any refund is to be given to the petitioner after deducting the applicable duty liability under the scheme, the same should be refunded within two weeks of the passing of the order.

18. The respondent No.3 i.e. the Designated Committee shall issue the discharge certificate in Form SVLDRS-4 to the petitioners in the above terms after giving due consideration to the amounts of Rs.50,00,000.00, Rs.5,17,877.00, Rs.18,00,000.00 deposited by the petitioner as pre-deposit and deposit; and Rs.55,56,045.00 deposited by the petitioner under order of this court within a period of 4 weeks from the receipt of a copy of this order. Respondents shall refund the sum of Rs.45,60,438.00 to the petitioner within a period of 4 weeks after issuance of the SVLDRS-4 forum."

(emphasis supplied)

27. It is not in dispute that the Petitioner has, prior to the issuance of the show cause notice, paid an amount of Rs.1,49,35,618/- electronically out of which a sum of Rs.1,09,06,948/- was deposited under the Accounting Code 00441480 as tax receipts and Rs.40,28,670/- was deposited

under Accounting Code 00441481 towards interest under other receipts. That, during the pendency of the show cause notice, Petitioner had also requested for change of Accounting Code in respect of the interest amount to the Accounting Code relevant to tax receipts which request was also pending when the SVLDR Scheme was notified pursuant to which the Petitioner filed a declaration in Form SVLDRS-1 to avail of the scheme. The Designated Committee has issued form SVLDRS-3 without adjusting the amount of interest as tax dues, the reason being that "any amount paid" referred to in Section 124(2) referred to the tax dues as contained in Section 123(b) of the Finance Act which refers to the amount of duty as defined in Section 121(d). No doubt, Section 123(b) defines tax dues that refers to a show cause notice to be the amount of duty stated to be payable by the declarant in the said notice and that amount of duty defined in Section 121(d) means the amount of central excise duty, service tax and the cess payable under the indirect tax enactment, however, in our view, any amount paid in Section 124(2) does not distinguish between amount paid under different heads. It envisages two kinds of deductions – any pre-deposit made at any stage of the appellate proceedings under the indirect tax enactment or any deposit made during enquiry, investigation or audit. Both these species need to be deducted while finalizing the computation. The provision only talks of an amount irrespective of whether it has been paid as tax or interest or

penalty. Infact, the Respondents in their affidavit have nowhere disputed this. The SVLDR Scheme is a beneficial legislation and as noted above, not only for liquidation of legacy disputes for the benefit of the tax payers but also for recovery of unpaid taxes: it is a scheme for amicable resolution of disputes and in the interest of revenue. The Statement of Objects and Reasons clearly provide that the declarant would be entitled to benefits in the form of waiver of interest, fine, penalty and also immunity from prosecution. Keeping in mind these objectives, failure to adjust interest paid by the Petitioner, in our view, appears to be hyper-technical and should not come in the way of implementation of schemes of this nature.

28 Petitioner cannot be deprived of the benefits of this scheme just because the amount of interest was deposited under Accounting Code 00441481 (Other Receipts (interest)) and not under 00441480 in respect of tax receipts which change of Accounting Code was pending with the Respondents Authorities at the time of filing of Form SVLDRS-1 by the Petitioner. Petitioner, cannot be penalized for depositing the amount under different head. Once the provision speaks of "any amount paid" without distinguishing between the heads of tax or between tax, interest or penalty, in our view, the provision mandates the deduction of the amounts deposited prior to issuance of the show cause notice. As rightly observed by the Madras High Court in

M/s Vamsee Overseas Marine Private Limited (supra) the object of the scheme should not be lost sight of, as the scheme has itself been formulated for the smooth settlement of disputes. The interpretation of the provisions thereof should be to carry forward the object rather than to frustrate the same giving rise to more litigation. In our view, had the Designated Committee taken a pragmatic view, more so, in the light of the law settled by atleast three High Courts, this litigation was clearly avoidable.

29 Therefore, the issue is not whether the elements of pre-deposit and deposit are common but the issue is whether interest component deposited by the Petitioner can be treated to be "any amount paid". With respect to submissions with regard to Section 121(u) of the Finance Act and Section 35F of the Central Excise Act are concerned, that in our view are not germane for the issue at hand, although there is no quarrel with the provisions as it is. With respect to the submission that since the government has allowed waiver of entire interest payable in terms of Central Excise / Service Tax Act it would be illogical to provide for deduction of interest paid from the principal amount of duty / tax required to be paid, as already observed above, the phrase "any amount paid" in Section 124(2) does not discriminate between the amount of tax, duty or interest or penalty and would include the same, considering the beneficent nature of the legislation.

30 In view of the above discussion and the law laid down by three High Courts of our country including this Court, where "any amount paid" in Section 124 (2) has been interpreted to include the amount of interest that has been paid by the declarant, we have no hesitation in holding that the Designated Committee ought to have given due credit of the sum of Rs. 40,28,670/- as interest deposited by Petitioner was prior to the issuance of the Show Cause Notice.

31 In this view of the matter, Form 3 issued by the Designated Committee cannot be sustained and deserves to be set aside. We accordingly set aside the Form 2 and Form 3 issued by the Designated Committee and direct the Designated Committee to consider the declaration in SVLDRS-1 dated 27 December 2019 filed by the Petitioner in the light of the aforesaid discussion and to issue a fresh SVLDRS-3, within a period of six weeks from the date of this order, after giving an opportunity of hearing to the Petitioner.

32 We make it clear that we have not expressed any opinion on the rival contentions of the parties with respect to the merits of the matter.

33 Petition stands allowed in the above terms. Parties to bear their own costs.

(ABHAY AHUJA, J.) (NITIN JAMDAR, J.)