Darshan Patil

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

WRIT PETITION NO. 659 OF 2023

Fork Media Pvt. Ltd.]
Having office at Suraj Prakash]
Building, 201, 86 Shankar]
Ghanekar Marg, Prabhadevi,]
Mumbai – 400020]
Through its Authorized Representative]
Mr. Samar Verma] …Petitioner

VERSUS

1. **Union of India**,]
represented by the Secretary,]
Department of Revenue,]
Ministry of Finance, North Block,]
New Delhi – 110 001]

2. **Central Board of Indirect**]
Taxes and Customs]
Department of Revenue,]
Ministry of Finance, North Block]
New Delhi – 110 001]

3. **Assistant Commissioner**]
CGST & C. Ex., Mumbai Central,]
GST Building, 115 M. K. Road,]
Churchgate, Mumbai – 400020]

4. **Sabka Vishwas Designated**]
Committee]
GST Building, 115 M. K. Road,]
Churchgate, Mumbai – 400020]

5. **Additional Assistant Director**,]
DGGI, Mumbai Zonal Unit,]
N.T.C. House, III Floor, 15 N.M. Road]

Ballard Estate, Mumbai – 400001] …Respondents

APPEARANCES-

Mr Bharat Raichandani, a/w Adv Jasmine Dixit i/b UBR Legal Advocates, for Petitioner.

Mr J B Mishra, a/w Mr Abhishek Mishra, for Respondents 1 to 4.

CORAM : M.S.Sonak & Jitendra Jain, JJ.

RESERVED ON : 03 December 2024

PRONOUNCED ON : 09 December 2024

JUDGMENT (*Per MS Sonak J*):-

1. Heard learned counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The petitioner challenges the impugned order (SVLDRS FORM 3) dated 27 January 2022 on the ground that it requires the petitioner to pay an additional amount of Rs.1,25,23,051/-. The petitioner contends that under the provision Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("**SVLDRS**"), after making proper calculations and accounting for the amounts already paid by the petitioner, the petitioner was entitled to the benefit under the scheme, without payment of this additional amount of Rs.1,25,23,051/-. Hence, this petition.

4. Mr Raichandani referred us to the Scheme contained in Chapter V of the Finance Act, 1994 and stressed on Section

124(2) which provides that the relief available to a declarant under the Scheme should be calculated under sub-section 1 and the same shall be subject to the condition that any amount paid as pre-deposit at any stage of the appellate proceedings under the indirect text 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 pre-deposit 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.

5. Mr Raichandani submitted in the present case, admittedly, the enquiry or investigation commenced on 11 December 2018. He referred us to the impugned order in which it is stated that the enquiry/investigations are still ongoing. He then submitted that the petitioner paid Rs.3,27,81,964/- through the CENVAT account vide returns filed on 31 December 2019. He, therefore, submitted that since this amount was paid after the commencement of the enquiry/investigation, which enquiry/investigation is still ongoing, this amount was entitled to be accounted for or deducted in terms of Section 124(2) for determining the total amount payable (if at all) under the Scheme by the petitioner. On this ground, he submitted that the impugned order should be appropriately modified and the demand for payment of the additional amount of Rs.1,25,23,051/- should be quashed and set aside.

6. Mr Raichandani referred to specific GST Act and Rules provisions to support his contentions. He also referred to a set

of Frequently Asked Questions (FAQs) and the answers to the same to support his contentions. He submitted that this was a clear case of miscalculations and misconstruction, and therefore, this Court should interfere with the impugned order and quash the excess demand.

7. Mr Raichandani submitted that the object of such Schemes was to give a quietus and bring about a settlement. He, therefore, submitted that the provisions of such a Scheme should not be construed pedantically but liberally. He submitted that the matter was remanded on the first occasion only to determine whether the declaration of the petitioner vis-a-vis claim of CENVAT credit of Rs.3,28,49,069/- as a pre-deposit, in addition to the cash deposit of Rs.1,11,25,000/- was acceptable. He submitted that based on such limited remand, the respondents were not justified in making the impugned order, holding that this amount of Rs.3,27,81,964/- was not deductible under Section 124(2) of the Scheme.

8. For all the above reasons, Mr Raichandani submitted that the impugned order and the additional demand contained therein be set aside and the reliefs prayed for by the petitioner in this petition be granted in their entirety.

9. Mr Mishra learned counsel for the respondents submitted that the petitioner made a serious misstatement in the Declaration Form (SVLDRS 1). The claim therein was false, which was repeated in this petition. He, therefore, submitted that the equitable jurisdiction of this Court should not be exercised favouring the petitioner.

10. Without prejudice, Mr Mishra submitted that the petitioner, despite opportunities, failed to produce invoices,

documents, and ledgers regarding the alleged debt of CENVAT credit to the extent of Rs.3,27,81,964/-. He submitted that the return filing date cannot be taken as the date of actual debit, availment and utilisation of the credit. He submitted that even the returns were filed after three years, and a false case is tried to be portrayed as if the date of filing of the return corresponds to the date of actual debits or utilisation of credits. Accordingly, he submitted that there is no error in the impugned order or the demand content therein that should warrant interference by this Court.

11. Mr Mishra submitted that the petition involves disputed calculations and the ascertainment of precise dates on which the CENVAT credit was availed and utilised. He also submitted that the petitioner suppressed material documents and did not produce such documents despite requests and opportunities. He concluded that the amount determined is entirely consistent with the Scheme's sections.

12. Mr Mishra submitted that this Court's order dated 28 January 2021 in Writ Petition (L) No. 3135 of 2020 clarifies that the determination was set aside for failure of natural justice. The matter was remanded by leaving all contentions of all parties open. He, therefore, submitted that the argument about limited remand is incorrect. In any event, he submitted that the respondents had not travelled beyond the remand order.

13. For all the above reasons, Mr Mishra submitted that this petition should be dismissed.

14. The rival contentions now fall for our determination.

15. On 11 December 2018, an Intelligence Officer visited the petitioner's premises. DGGI Mumbai issued a summons dated 06 February 2019, requiring the petitioner to submit documents regarding service tax liability for the period April 2016 to June 2017. At the time of the officer's visit, the petitioner admitted a service tax liability of approximately Rs.8 Crores and sought some time to discharge this liability. In the meantime, the SVLDRS entered force.

16. Therefore, the petitioner filed an electronic declaration vide FORM SVLDRS 1 on 30 December 2019. It declared tax dues of approximately Rs.8 Crores for the disputed period. In the declaration, under the column “pre-deposit/any other deposit”, the petitioner included the figure of Rs.4,39,74,069/-. According to the petitioner, this figure comprised a cash deposit of Rs.1,11,25,000/- and an input credit of Rs.3,27,81,964/- (by debiting the CENVAT credit account).

17. On 31 December 2019, the petitioner submitted that the STR-3 return for the period 2016-17 (including the disputed period) was filed, 1162 days after the due date of 25 October 2016. The petitioner referred to the STR-3 return and submitted that payment of more than Rs.3,27,81,964/—was made using CENVAT credit on 31 December 2019, the date the return was filed.

18. As was correctly pointed out by Mr Mishra, if the return was filed on 31 December 2019 and petitioner contends the CENVAT credit amounting to Rs.3,27,81,964/- was used on that day to make payment, the petitioner could not have declared before the said date in SVLDRS 1 FORM that a pre-deposit of Rs.4,39,74,069/- included Rs.3,27,81,964/- by

debiting the CENVAT credit account. This amount was not utilised on the petitioner's own showing by the said date. The respondents may have disputed the utilisation on 31 December 2019, but the petitioner must come up with a clear and definite stance. The petitioner is not expected to blow hot and cold simply because this may appear convenient.

19. Another circumstance which supports Mr Mishra's contention is the letter dated 1 February 2019 (Exhibit-B of the petition) filed on 6 February 2019, where the petitioner itself stated that payment of Rs.3,27,81,964/- being Input Credit utilised was made. If that be so, then the petitioner's contention that CENVAT Credit was utilised on the date of filing the return, i.e. 31 December 2019 is incorrect. We have addressed this issue because the petitioner has taken self-contradictory stands when caught on the wrong foot.

20. The petitioner's changing stands on the payment date through the CENVAT Credit Ledger is reason enough not to interfere with the impugned determination. Such mindless but self-serving shifting was without realising they were being caught making untrue and false statements at every step. The advantage of speaking the truth is that one does not have to remember what was said in the past. A litigant with such an approach should not expect equitable relief by invoking extraordinary jurisdiction of this Court.

21. The verification clause in the declaration filed by the petitioner categorically certified that the information given was correct and that the amount of tax dues and other particulars shown therein were truly stated. The object of the Scheme is to allow coming clean on past non-compliances/violations/disputes, but that does not give

the declarant/petitioner to make incorrect statements in the declaration itself and take undue advantage of the Scheme.

22. Therefore, we agree with Mr Mishra's contention that the declaration itself was incorrect or not following the scheme's requirements. Now that some benefits have already been granted to the petitioner, we do not propose to interfere with the benefits already granted. However, for this reason, and upon examination of the petitioner's contentions on merits, we are satisfied no relief is due to the petitioner in the facts of the present case. But we add that this is not the only reason why no relief is due to the Petitioner.

23. The petitioner stresses on Section 124 of the scheme, which 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 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."

24. In terms of Section 124(2), the relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit 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 pre-deposit 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.

25. Therefore, the petitioner had to establish that the amount of Rs.3,27,81,964/- was indeed deposited or pre-deposited by the petitioner through the CENVAT credit account or otherwise post initiation of investigation on 11 December 2018 and/or post-06 February 2019. Before us, the petitioner sought to rely upon the belated return (filed almost 3 years from the due date) to contend that the date of filing of such return is the date of availment and utilisation of the credit. This argument cannot be accepted and was correctly rejected by the respondents.

26. Even the letter dated 01 February 2019 only states that the Input credit of Rs.3,27,81,964/- is utilised to pay service tax liability, but when exactly they have utilised is not specified. The letter is dated 1 February 2019 but filed on 6 February 2019, which only gives the impression that the petitioner wanted to bring it within the sweep of Section 124(2) of the Scheme.

27. Be that as it may**,** the said letter only records the discharge of liability by using Input Tax Credit without adverting to the exact date, which is the most crucial aspect to be decided in this petition. The main issue that must be considered in this petition is whether the CENVAT Credit of Rs.3,27,81,964/- was utilised during enquiry, investigation or

audit. If it is not used during enquiry, investigation or audit, then it would not get covered for relief under Section 124 Sub-section 2.

28. The case of the respondents' revenue in the impugned order in Para 10.3 is that on verification of the CENVAT Credit Ledger and ST-3 return, the CENVAT Credit was utilised for output service tax on the dates mentioned therein which are the dates all before 2018 i.e. 31 March 2016 to 30 June 2017. As per the impugned order, these dates are taken from the details of CENVAT Credit Ledger. It is these dates which the petitioner disputes before us. The only way for the petitioner to disprove these dates was to produce the CENVAT Credit Ledger or any other document to show that the CENVAT Credit was utilised not before 11 December 2018 or 06 February 2019 but after 11 December 2018.

29. Despite the Court raising this issue during the hearing, the petitioner could not produce or show any document to justify that the CENVAT Credit was used to discharge Output service tax liability after 11 December 2018. Even the respondents gave the Petitioner sufficient opportunity to prove this crucial aspect. The onus squarely lay on the petitioner, which the petitioner has miserably failed to discharge in the present case. Changing stances from time to time also does not help the petitioner's case.

30. Mr Raichandani referred to the CENVAT Credit Rules, which state that service tax must be paid by the 5th or 6th day of each month. There are rules for filing periodic returns. Mr Raichandani, however, submitted that the petitioner may have breached these Rules, but as long as a return was filed after

payment of the late fee, this circumstance could not be held against the petitioner. We cannot agree.

31. The circumstance that no timely returns were filed, coupled with the non-production of credit ledgers despite repeated opportunities, entitles the respondents to draw an adverse inference that there was availment and utilisation of credit before 06 February 2019. In exercising our summary and extraordinary jurisdiction, we cannot be expected to rove through the petitioner's accounts (which the Petitioner failed to produce) and then accept the petitioner's contention.

32. The findings recorded in the impugned order on the date of the petitioner has used CENVAT Credit for payment of output service tax liability have not been disproved by the petitioner. It is also important to note that in the Service Tax Return in Part-D dealing with service tax paid in cash and through CENVAT Credit, against every month, the assessee has shown in D-1 as having made payment in cash. Similarly, every month (2016-17), the petitioner in D-2 stated how much CENVAT Credit they had utilised to pay the service tax.

33. Insofar as cash payment is concerned, the petitioner and respondent accept that it was paid before 11 December 2018. Still, regarding CENVAT Credit from the return itself, the petitioner is now disputing the month and year in which the CENVAT Credit was used to make the payment. We may also point out that the bench raised a specific query to show any provision or precedent that states the date of the use of CENVAT Credit and how that is satisfied in the petitioner’s case.

34. The petitioner has not shown us any legal provision or document to prove that the CENVAT Credit was utilised after 2018. The easiest and only way for the petitioner was to produce the relevant documents, which would have dislodged the respondent's contention in the impugned order. Still, the petitioner has failed to do so. The findings in Paragraphs 10.3, 10.4 and 7 of the impugned order are based on the verification done by the authorities of the respondents based on the documents submitted by the petitioner and the said findings not having been disproved by the petitioner by proving contrary, we do not see any reason for this Court to interfere in the present proceedings. In para 10.4, respondents have categorically stated that these are admitted tax liabilities and not a pre-deposit consequence of the investigation.

35. The contention of the petitioner that dates in paragraph No.10.3 of the impugned order with respect to the debit in the CENVAT credit ledger is on the premise that the assessee is required to make the payment at the end of the month as per Rules 5, 6 and 7 and therefore, these dates cannot be treated as the date when the actual debit took place. In our view, in paragraph No.10.3 and 10.4, the respondents have categorically stated that these dates are based on verification of the CENVAT credit ledger. The petitioner did not produce before us any CENVAT credit ledger or any other document to show that these dates were wrong. Therefore, we cannot accept this submission of the petitioner.

36. The interpretation of Rules 5 and 6 of the Service Tax Rules also does not support the petitioner's case. The rules militate against the petitioner’s contention. Based on the rules, an adverse inference could be drawn against the

petitioner. The petitioner, having failed to produce or show any credible material, cannot now urge that the Petitioner may have breached the rules; still, since the petitioner has filed belated returns with a late fee, it should be presumed that the credit was availed and utilised on the filing date. The petitioner cannot expect some premium for having breached the rules.

37. No credible material supports the Petitioner's case about payment before 06 February 2019 or 11 December 2018. Factors like late filing of returns, ambiguity in the returns, and misstatements in the declaration add up and support the respondents' conclusion. Based on a cumulative consideration of all these factors, we do not think the respondents have erred in their calculations or misconstrued the Scheme's provisions.

38. The answers to the FAQ relied upon by Mr Raichandani do not assist the petitioner's case in any manner. The answer to question No. 46 only suggests that duty/tax already paid through input credit shall be adjusted by the designated committee when determining the final amount payable under the scheme. However, this is always subject to Section 124(2), which Mr Raichandani relies upon. Such answers to FAQs must be read in accordance with and after taking cognizance of the statutory provisions. Therefore, based on the answer to question No.46, no relief is due to the petitioner. The said FAQ does not deal with CENVAT credit adjustment date with which we are concerned. In any case, the Committee has given credit of input tax credit of Rs.3,27,81,964/- in para 10.7 to arrive at the figure on which relief is to be given. However, Q.46 does not say at what stage such reduction is to be given.

39. Thus, on cumulative consideration of materials on record, we are satisfied that this is not a case where any relief can be granted to the petitioner. The determination and approach of the Respondents is neither vitiated by any perversity nor unfairness. No legal provision is breached. The Petitioner's approach has not been candid or fair. The Petitioner shifts stances without much regard for the truth. The petitioner has failed to produce credible material to warrant intereference with the factual findings recorded in the impugned order.

40. Accordingly, this petition is liable to be dismissed and is hereby dismissed. The Rule is discharged without any cost order.

(Jitendra Jain, J) **(M. S. Sonak, J)**