



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

WRIT PETITION NO. 1468 OF 2021

Shri Arjun Amarjeet Rampal ...Petitioner
V/s.
Union of India and Ors. ...Respondents

Mr. Bharat Raichandani with Mr. Rishab Jain i/b UBR Legal
Advocates for Petitioner.
Mr. Siddharth Chandrashekar for Respondents No. 3 to 7.
Mr. Kush M. Lahankar for Respondent No.8.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 30 MARCH, 2023

PC :

. Being aggrieved by the failure of the Respondent-Authorities to regenerate a challan/mandate form with respect to the payments to be made by Petitioner pursuant to Form SVLDRS-3 vide ARN No.L280220SV301419 issued by Respondents No. 4 and 5 on 23 February 2020, Petitioner has preferred this petition.

2 Petitioner is *inter alia* engaged in providing professional services as film artist, as brand ambassador, for special and personal appearance for advertisement and stage shows and was registered as service provider under the provisions of the Finance Act, 1994.

3 In the year 2018, Anti Evasion Officers had issued summons to the Petitioner in response to which Petitioner had furnished certain documents for the period April 2016 to June 2017. Thereafter, pursuant to certain calculation sheets it was demonstrated that Petitioner had paid Rs. 54,67,432/- vide challans and Rs. 3,43,865/- from CENVAT credit account. Petitioner had quantified the amount of service tax payable for the said period to Rs. 67,27,500/-. Petitioner submitted that out of the tax liability only balance of Rs. 9,16,203/- was payable. Petitioner's statement with respect to this liability was recorded on 5 February 2019 during the course of investigation.

4 On 1 September 2019, the Central Government introduced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("SVLDR Scheme") to bring an end to pending litigation under the indirect tax regime. Petitioner took advantage of this scheme and filed SVLDRS-1 on 30 December 2019 for the period April 2016 to June 2017 declaring Rs. 9,16,203/- as tax dues. As noted above on 23 February 2020, Form SVLDRS-3 was issued to Petitioner directing payment of Rs. 2,74,860/- to avail the benefit under the scheme. In compliance thereof Petitioner generated mandate form (Challan) from the Central Board of Indirect Taxes and Customs (CBIC) portal. Petitioner could not visit the bank to make the payment due to the nationwide lockdown in view of Covid-19 Pandemic. Thereafter, reminder letters dated 8 June

2020 and 11 June 2020 were sent by Respondent No.7-The Superintendent of Investigation team, CGST, informing Petitioner that due date for payment of tax dues shown in SVLDRS-3 had been extended and Petitioner was required to pay the said amount by 30 June 2020. Petitioner thereafter again tried to generate the challan from the CBIC portal to make the payment. However, payment vide Real Time Gross Settlement (RTGS) dated 22 June 2020 was initially accepted but the same was reversed and refunded to the Petitioner's account. Thereafter, Petitioner once again tried to generate new challan from the CBIC website, but was unsuccessful. Vide letter dated 7 July 2020, Petitioner communicated the same to the Respondents No. 4 and 5-Dy. Commissioner, CGST and Joint Commissioner, CGST and requested for regeneration of the challan.

5 On 13 July 2020, Petitioner received a phone call from the office of Respondent No.3-The Commissioner, CGST and was informed that a renewed challan can be generated from the office of Respondent No.3, if Petitioner is willing to make the payment, which statedly the Petitioner confirmed. However, it is submitted that since the Petitioner did not receive any regenerated challan, vide email dated 6 September 2020, he inquired about the status of payment reversed by the Respondent No.8-Bank. On 14 September 2020, Respondent No.7-Superintendent of Investigation team informed the Petitioner by email that date for

payment was not extended by the Government.

6 Mr. Raichandani, learned Counsel for the Petitioner would submit that the Petitioner had exchanged extensive correspondence with the Respondent Authorities with respect to the reversal and vide communication dated 31 March 2021 and 3 April 2021, Respondent No. 8-Bank has informed the Petitioner that the amount paid to the Government was reversed due to expiry of challan. Learned Counsel would submit that for no fault of the Petitioner the benefit of the scheme is being denied due to a technical error which occurred due to expiry of challan and despite efforts made by the Petitioner in this regard to make payment pursuant to SVLDRS-3.

7 Learned Counsel draws the attention of this Court to the decision of the Hon'ble Supreme Court in the case of *Shekhar Resorts Ltd (Unit Hotel Orient Taj) Vs. Union of India and Ors.*¹ and decision of this Court in the case of *Innovative Antares Pvt. Ltd. Vs. Union of India*² in support of his contention.

8 Mr. Chandrashekhar, learned Counsel for Respondent Authorities refers to and relies upon the affidavit in reply dated 6 April 2022. Learned Counsel for Revenue reiterates that Petitioner has failed to make the payment on or before 30 June

1 Civil Appeal No. 8957/2022 dated 5 January 2023

2 Writ Petition No. 2998 of 2021 dated 17 January 2023

2020 and therefore can not get the benefit of SVLDR Scheme. Learned Counsel refers to the decision of the Apex Court in the case of *M/s Yashi Constructions Vs. Union of India and Ors.*¹ and submits that it is settled proposition of law that a person, who wants to avail the benefit of a particular Scheme has to abide by the terms and conditions of the Scheme scrupulously. He submits that not only the time to make the payment has expired long back the Scheme is also over now. That the Court cannot defer the date for payment/modify the Scheme. This is a prerogative of Government.

9 We have heard Mr. Raichandani, learned Counsel for the Petitioner and also Mr. Chandrashekhar, learned Counsel for the Respondents No. 3 to 7 and Mr. Lahankar, learned Counsel for Respondent No.8 and perused the papers and proceedings and heard the rival contentions.

10 Above stated facts are not in dispute. The only issue that arises for our consideration is whether Petitioner can be denied benefit of SVLDR Scheme due to his inability to make payment of Rs.2,74,860/- pursuant to Form SVLDRS-3 in view of the expiry of the challan (mandate form) in the face of the fact that although the payment that was made vide RTGS dated 22 June 2020 was initially accepted but later on reversed and refunded to the Petitioner's bank account due to an expired challan.

1 Special Leave to Appeal (C) No. 2070/2022

11 The SVLDR Scheme is a Scheme that had been brought in by the Government put an end to legacy disputes in indirect tax matters which would benefit the tax payer, assesseees as well as the Revenue. The tax payers would have the benefit of ending the legacy disputes with the Revenue Authorities and the Revenue Authorities would in turn unlock the Revenues that were locked up in such disputes.

12 The Apex Court in the case of *M/s Shekhar Resorts Ltd. (supra)* had while considering a challenge under the SVLDR Scheme held that the Appellant therein cannot be punished for not doing something which was important for it to do. The following paragraphs of the said decision are usefully quoted as under:-

“8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the appellant cannot be punished for not doing something which was impossible for it to do. There was a legal impediment in the way of the appellant to make any payment during the moratorium. Even if the appellant wanted to deposit settlement amount within the stipulated period, it could not do so in view of the bar under the IBC as, during the moratorium, no payment could have been made. In that view of the matter, the appellant cannot be rendered remediless and should not be made to suffer due to a legal impediment which was the reason for it and/or not doing the act within the prescribed time.

8.1 Now so far as the observations made by the High

Court to the effect that the High Court cannot, in exercise of powers under Article 226 of the Constitution of India extend the period under the Scheme, 2019, to some extent the High Court is right. The High Court while exercising the powers under Article 226 of the Constitution of India cannot extend the Scheme. However, in the present case it is not a case of extension of the Scheme by the High Court; It is a case of taking remedial measures. It is not a case where the appellant did not make any application within the stipulated time under the Scheme. This is not a case where the Form No.3 determining the settlement amount was not issued during the validity of the Scheme. It is not a case where the appellant deliberately did not deposit the settlement amount and/or there was any negligence on the part of the appellant in not depositing the settlement amount within the stipulated time. As observed hereinabove it is a case where the appellant was unable to make the payment due to the legal impediment and the bar to make the payment during the period of moratorium in view of the provisions of the IBC. In a given case it may happen that a person who has applied under the Scheme and who was supposed to make payment on or before 30.06.2020, became seriously ill on 29.06.2020 and there was nobody to look after his affairs and therefore he could not deposit the amount; such inability was beyond his control and thereafter, immediately on getting out of sickness he tried to deposit the amount and/or approached the Court - can the Court close its eyes and say that though there may be valid reasons and/or causes for that person's inability to make the payment, still no relief can be granted to him? There may be extraordinary cases which are required to be considered on facts of each case. The Courts are meant to do justice and cannot compel a person to do something which was impossible for him to do.

8.2 *Now so far as the other ground given by the High*

Court, that the Designated Committees are not in existence, is concerned, it is required to be noted that the CBCE has issued a circular that in a case where the High Court/courts have passed an order setting aside the rejection of the claim under the Scheme after 30.06.2020, the applications can be processed manually. In many cases the High Courts have remanded the matter to the Designated Committees which consist of the officers of the Department and the applications thereafter are processed manually.

9. In view of the above, and under the circumstances and for the reasons stated above, as the appellant was not in a position to deposit the settlement amount at the relevant time, more particularly on or before 30.06.2020 due to legal impediment and the bar to make the payment of settlement amount in view of the moratorium under the IBC, and as it is found that the appellant was otherwise entitled to the benefit under the Scheme as the Form No.1 submitted by the appellant has been accepted, the Form No.3 determining the settlement amount has been issued, the High Court has erred in refusing to grant any relief to the appellant as prayed.”

13 The Apex Court holding as above allowed the appeal of the Appellant and setting aside the order of the High Court directed that the payment made by the Appellants therein be appropriated towards the settlement of dues under the SVLDR Scheme and the issue discharge certificate.

14 This Court in the case of *Innovative Antares Pvt. Ltd.* (*supra*) has also while considering the SVLDR Scheme extended the time to deposit in a case where the SVLDR Scheme having

been closed, the new challan was not issued to the Petitioner therein. Paragraphs 10 to 16 of the said decision are relevant and are usefully quoted as under:-

“10. As regards the eligibility of the Petitioner to avail the benefit of the Scheme of 2019 is concerned, the same is not in dispute. Form SVLDRS-3 was issued to the Petitioner. The fact that the period to deposit the amount was extended to 30 June 2020 is not in dispute. The Petitioner has placed on record the documents received from the Bank which shows that the Petitioner on 24 June 2020 had made payment of Rs. 7,69,317/- and the Petitioner has placed on record the Bank statement and RTGS slip acknowledgment of the Bank confirming the payment made out of which SMS was received from the Bank. In the reply affidavit, these facts have not been disputed.

11. In the case of M/s. L.G.Chaudhary (supra), the Division Bench of the High Court of Gujarat considered the identical situation where the Petitioner therein tried to make the payment through NEFT as per Form SVLDRS- 3 on 30 June 2020 and because of the technical problem on the part of the Bank, the payment was returned to the Petitioner. The Division Bench considered the law on the subject and the argument of the Respondents that the payment was not made within the time. The Court held that since the Petitioner therein made bona fide attempt to make payment within the stipulated time, the petition was allowed and the Respondents were directed to accept the payment. In exercise of a writ jurisdiction, the Division Bench directed that the payment should be made along with interest.

12. The second aspect is that the Respondents on 15 July 2020 by an e-mail called upon the Petitioner and

several other declarants that Form SVLDRS-3 was issued to them but payment is not made and whether the Petitioner is willing to pay the amount if opportunity is given. To which the Petitioner replied immediately next day stating that the Petitioner is ready to pay the amount. The Petitioner issued communications that the Petitioner is unable to pay under old challan as it was not allowed since the Scheme of 2019 having been closed but new challan was not issued to the Petitioner. There is no explanation or denial in the reply affidavit regarding the e-mail sent on 15 July 2020 calling upon the Petitioner and several other declarants to comply with Form SVLDRS-3, and non-issuance of new challan.

13. Considering these circumstances, we are of the opinion that indulgence as granted by the Division Bench of the High Court of Gujarat in the case of M/s. L.G. Chaudhary (supra) also needs to be extended to the case of Petitioner.

14. On the aspect of delay in filing the writ petition, the learned Counsel for the Petitioner submitted that the Petitioner attempted various occasions to pay the amount and it took some time to collect that documents from the Bank. Also on this aspect, since the Petitioner has relied upon the decision in the case of M/s. L.G. Chaudhary (supra) on the ground that the facts are identical, it has to be noted that in the case of L.G. Chaudhary (supra), the interest amount as stipulated at the rate of Rs. 9% per annum was directed to be paid. Considering the facts and circumstances of the present case, we are of the opinion that the interest at the rate of Rs. 6% per annum would be appropriate.

15. Therefore, following the decision in the case of M/s. L. G. Chaudhary (supra), we allow the petition and direct the Respondents to permit the Petitioner to pay the amount of Rs. 7,69,317/- under the Scheme of 2019

along with interest at the rate of Rs.6% per annum from 30 June 2020 till the date of payment. The Petitioner will deposit the amount with interest within four weeks from the date order is uploaded and thereafter the Respondents will take steps regarding issuance of necessary certificate within four weeks thereafter.

16. *The writ petition is disposed of in above terms.”*

15 Keeping in mind the aforesaid pronouncements of the Hon'ble Supreme Court in the case of *M/s Shekhar Resorts Ltd. (supra)* and this Court in the case of *Innovative Antares Pvt. Ltd. (supra)* and the objectives of the Scheme, we are of the view that in the facts of this case the Petitioner cannot be deprived of the benefit of the SVLDR Scheme merely on the basis of a technical issue of reversal of the amount paid by Petitioner prior to 30 June 2020 on the ground of expiry of challan for which clearly the Petitioner was not at fault. Therefore, the decision in the case of *M/s Yashi Constructions Vs. Union of India and Ors. (supra)* cited by the Counsel for the Revenue would not apply in the facts of this case.

16 We are, therefore, inclined to allow the Petition and direct the Respondent-Authorities to allow the Petitioner to pay the amount of Rs. 2,74,860/- under the SVLDR Scheme pursuant to the subject SVLDRS-3 and thereafter, issue the necessary discharge certificate under the said scheme.

17 Petition is allowed in the above terms.

18 Parties to bear their own costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)