

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

WRIT PETITION (L) NO.806 OF 2020

1. Suyog Telematics Limited
41, Suyog Industrial Estate, 1st floor,
LBS Marg, Vikhroli West,
Mumbai – 400 083. Petitioner

Versus

1. Union of India
(Represented by the Secretary)
Department of Revenue
Ministry of Finance
North Block, New Delhi 110 001.
2. The Ministry of Finance
The Secretary (Revenue)
Customs & Indirect Taxes
North Block, New Delhi 110001.
3. Commissioner
Sab Ka Vishwas Committee,
16th floor, Satara Plaza Sector – 11B,
Vashi, Navi Mumbai.
4. Deputy Commissioner
Sab Ka Vishwas Committee
16th floor, Satara Plaza Sector-11B,
Vashi, Navi Mumbai
5. The Superintendent
Sab Ka Vishwas Committee
16th floor, Satara Plaza Sector – 11B,
Vashi, Navi Mumbai ... Respondents

Ms.Deepali Kamble for the Petitioner

Mr.P.S.Jetly, Sr.Advocate a/w Ms.Maya Majumdar for the
Respondents

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

RESERVED ON: APRIL 06, 2022

PRONOUNCED ON: JUNE 17, 2022

JUDGEMENT : (PER : S.V.GANGAPURWALA, J.)

1. Rule. Rule made returnable forthwith. By consent of parties, Writ Petition is heard finally.

2. The Petitioner is challenging the SVLDRS-3 issued to it on the ground that the same is issued without deducting the eligible CENVAT amount. The Petitioner claims to be a Company registered as Service provider engaged in business relating to renting of immovable properties.

3. It is the case of the Petitioner that the Petitioner was issued show cause notice dated 22.10.2012 for the period from 2007-08 to 2010-11 demanding service tax of Rs.1,34,23,438/- and CENVAT Credit claimed of Rs.10,30,002/-. The second show cause was issued to the Petitioner on 15.01.2013 for the period from 2011-12 demanding service tax of Rs.1,01,69,641/- and CENVAT Credit claimed of Rs.61,04,079/-. Both the show cause notices were adjudicated by common adjudication order

dated 24.03.2017 whereby the authority in the first show cause notice allowed the CENVAT of Rs.2,99,229/- and disallowed CENVAT of Rs.7,30,773/- and in the second show cause notice allowed CENVAT of Rs.1,58,040/- and disallowed CENVAT of Rs.59,46,039/-. The Petitioner challenged the said order by filing the Appeal before the Commissioner. The said Appeal is dismissed being time barred.

4. The Petitioner with a view to put an end to litigation sought to avail benefit under the Sab Ka Vishwas Dispute Resolution Scheme 2019. Eventually, the Petitioner filed a declaration in form of SVLDRS-1. The Petitioner declared Rs.2,98,12,622/- as the amount of tax dues. The personal hearing was conducted by the Designated Committee. The Petitioner also submitted written submissions on the eligibility of CENVAT but the Respondents did not accept the Petitioner's case with regard to CENVAT and issued SVLDRS-3 for Rs.1,27,25,397/-.

5. The learned counsel for the Petitioner submits that in para 10(g) of the circular dated 27.08.2019, it is clarified that any amount of CENVAT credit in dispute, the

Designated Committee shall deduct the same while issuing the SVLDR3-3. The same is further confirmed vide FAQ dated 24.12.2019. The learned counsel states that the Respondents have failed to consider the said clarification issued by the Government. The SVLDRS-3 is issued without deduction of the CENVAT amount. Hence, is not sustainable. According to the learned counsel, the rejection is contrary to the purpose of the scheme. It is submitted that the CENVAT credit are the credits provided for the tax paid while purchasing raw material. The term “verify the correctness” in section 126 of the Finance Act, 2019 and Rule 6 of the (Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 cannot be stretched to mean that the Designated Committee can embark upon an adjudication regarding the entitlement or otherwise of the declarant. The learned counsel relies upon the judgment of the Division Bench in case of M/s.Jagadish Advertising v. Designated Committee, Sabka Vishwas (Legacy Dispute Resolution) Scheme, Bangalore and Others dated 19.08.2020.

6. The learned counsel also relies upon the judgment of the Division Bench of Karnataka in the case of H.M. Infratech Pvt. Ltd. vs. Designated Committee Sabka

Vishwas (LDRS), Bangalore reported in 2021 (49) G.S.T.L. 282 (Kar.). In the said case, the directions were given to consider the pre-deposit made. Similarly, the Petitioner has relied upon the judgment of the Division Bench of this court in the case of Morde Foods Pvt. Ltd. And another vs. Union of India and others dated 08.03.2021 in Writ Petition (ST) No.3880 of 2020. The learned counsel further relies upon circular dated 27.08.2019 Clause 10(c) wherein it is clarified that in certain matters, tax may have been paid by utilising the input credit, and the matter is under dispute. In such cases, the tax already paid through input credit shall be adjusted by the Designated Committee at the time of determination of the final amount paid under the Scheme.

7. Similarly, reliance is placed upon the Circular dated 25.05.2019, clause 2(iv) therein submits that the amount already paid as pre-deposit was also to be considered and clause 2 (viii) of the said Circular dated 25.09.2019 clarifies that “an amount in arrears” as the amount of duty recoverable on account of no appeal having been filed or the order in Appeal attained finality. It is clarified in the said clause that there may be situations where the tax payer does not want to file an Appeal even though the time period

to file Appeal is not over. It is clarified therein that in such case, the tax payer can file declaration under the Scheme. Similarly circular dated 12.12.2019 clause 2(ii) clarifies that section 124(2) provides for adjustment of any amount paid as pre-deposit at any stage of appellate proceedings or as deposit during enquiry, investigation or audit. The learned counsel also relies upon the frequently answered asked questions published under the scheme. Question no.46 and answered therein is as under:

“Q-46 I have already paid duty/tax by utilising the input credit, and the matter is under dispute. Will this duty/tax already paid through input credit be adjusted against my duty/tax liability calculated under the Scheme?”

Ans. Yes. In such cases, duty/tax already paid through input credit shall be adjusted by the Designated Committee at the time of determination of final amount payable under the Scheme.”

8. Mr.Jetly, the learned Senior Advocate for the Respondents contends that the Petitioner failed to produce any information to establish the fact that service tax liability has been discharged. The Petitioner had claimed exemption without referring to any notification or specific

exemption provisions. The Petitioner utilises the CENVAT credit of Rs.10,30,002/- for discharging the service tax liability. The Petitioner was asked to produce the documents, bills / invoices on the basis of which the Petitioner availed and utilised the CENVAT vide summons dated 21.09.2012 but the Petitioner failed to produce any document. The Petitioner availed the CENVAT credit of Rs.10,30,000/- without producing supporting documents and was disallowed. On going through the CENVAT documents, it was noticed that the list contained 50 invoices but only 31 invoices were provided. On verification of the invoices, it was found that the Petitioner was eligible to avail CENVAT credit amounting to Rs.2,99,229/- and balance CENVAT credit of Rs.7,30,773/- is not admissible.

9. The details in respect of exemption and CENVAT credit were denied due to non-production of supporting documents. The Petitioner had filed declaration under the category Arrears, sub category Appeal not filed or appeal having attained finality. The arrears is attributed to the order in original dated 24.03.2017. The said order in original was passed with reference to two show cause notices 1) dated 22.10.2012 for the period 2007-08 to

2010-11 and 2) show cause notice dated 15.01.2013 for the period 2011-12. The adjudicating authority issued common order in respect of both show cause notices dated 22.12.2012. From CENVAT credit of Rs.10,30,002/- claimed, Rs.2,99,229/- was allowed and Rs.7,30,773/- was disallowed and as regards show cause notice dated 15.01.2013 out of CENVAT credit of Rs.61,04,079/-, Rs.1,58,040/- was allowed and Rs.59,46,039/- was disallowed. The Petitioner's claim of adjusting CENVAT credit from the outstanding arrears is unreasonable and unjustified.

10. The amount required to be recovered from the Petitioner as an arrears due cannot be considered payment in any circumstances. The Petitioner was given personal hearing and opportunity and after considering all the aspects, SVLDRS-3 was issued. The same is legal and proper. In the present case, CENVAT credit allowed by the adjudicating authority has been adjusted against the confirmed demand, the calculation of tax dues and the tax relief is considered after deducting the alleged CENVAT credit. The learned Senior Advocate submits that no fault can be found in the SVLDRS-3 Form issued to the Petitioner.

11. Upon consideration of the contention of the parties, it appears that the substratum of the dispute is non consideration of the CENVAT credit claimed by the Petitioner. The entire CENVAT credit claimed by the Petitioner was not allowed by the adjudicating authority while passing the order in original. The Appeal filed against the said order was also dismissed on the ground of limitation. The stand of the Respondent is that the Petitioner never produced on record the documents to justify the claim of CENVAT credit. In the present case, it is not disputed that the Petitioner was given opportunity of hearing. Written submissions were also placed on record by the Petitioner. Judgments relied by the Petitioner are basically on the point that the amount of pre-deposit made has to be considered. There cannot be any dispute with the said proposition.

12. In the present case, the factum of the CENVAT credit as claimed by the Petitioner is in dispute. According to the department, Petitioner could not produce any document to justify the claim of the CENVAT credit i.e. dis-allowed by the adjudicating authority. No doubt Petitioner would be

entitled for the benefit of CENVAT credit. The Petitioner will have to justify the same by necessary documentary evidence. Once the CENVAT credit is disallowed, in absence of proof of it, it would be difficult for the court to conclude about the justification to claim the benefit of CENVAT credit.

13. In absence of the proof, of the Petitioner having paid the tax to which the Petitioner is entitled for the benefit of CENVAT, the documents would be necessary to come to the conclusion. It is not the case that the Petitioner was not accorded with the opportunity. The show cause notice were issued to the Petitioner giving the details. Claim of the Petitioner for CENVAT credit to a large extent was disallowed.

14. In view of disallowance, it is difficult to arrive at a conclusive finding that the Petitioner would be entitled for the entire CENVAT credit as claimed by the Petitioner so as to negate SVLDRS-3.

15. In the circular and or frequently answered questions relied by the Petitioners, it cannot be deduced that the claim of the Petitioner can be justified. The answer to FAQ no.46 as reproduced above only states that the tax / duty already

paid through input credit shall be adjusted by the designated committee at the time of determination of final amount payable under the scheme. However, in the present case, CENVAT credit claimed by the Petitioner is already disallowed by the adjudicating authority. The Appeal is also dismissed. The same has attained finality. Hence, Circular dated 27/08/2019 relied by the Petitioner would not apply.

16. In the light of the above, we do not find that the impugned order is bad in law. No relief can be granted to the Petitioner.

17. Rule is discharged.

18. Writ Petition stands dismissed. No costs.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)