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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8100 OF 2021

Reliance Infrastructure Limited

....Petitioner

V/s.

The Union of India and Ors.

...Respondents

Mr. V. Nankani, Senior Advocate a/w Mr. Prakash Shah and Mr. Jas Sanghavi
i/b PDS Legal for Petitioner.

Mr. Pradeep Jetly, Senior Advocate a/w Mr. Jitendra Mishra, Mr. Sham
Walve and Ms. Sangeeta Yadav for Respondents.

CORAM : K.R. SHRIRAM &

A.S. DOCTOR, JJ.

DATED : 11th AUGUST 2022

P.C. :

1. Petitioner, prior to 30th June 2017 was duly registered under the erstwhile Service Tax Rules, 1994. Upon introduction of Goods and Service Tax (GST) with effect from 1st July 2017 petitioner got duly registered under the Central Goods and Services Tax Act, 2017, Maharashtra Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017 for the State of Maharashtra.

2. Petitioner has approached this court in view of the refusal on the part of respondents to issue discharge certificate in respect of tax dues covered by the declaration in Form 1 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS). It is petitioner's case that they have paid the amount indicated in accordance with the SVLDRS within the permitted time but still the discharge certificate is not being issued.

3. Petitioner had not paid the service tax for the period October 2011 to June 2017. The Director General of Central Excise Investigation issued show cause notice dated 19th April 2017 calling upon petitioner to show cause as to why service tax of Rs.5,78,30,230/- should not be demanded and recovered from petitioner under Section 73(1) of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017 (the CGST Act) for the period 1st January 2017 to 30th June 2017 with interest thereon under Section 75 of the Finance Act, 1994. This is the subject matter of the petition. There is also reference to another Show Cause Notice of even date for the period October 2011 to December 2016 demanding a sum of Rs.46,20,65,214/- which is not the subject matter of this petition as tax dues arising out of the said show cause notice had been paid in full and respondents have also issued discharge certificate under Section 127(8) of SVLDRS.

4. When the SVLDRS was introduced with effect from 1st September 2019 under the Finance (2) Act, 2019 petitioner decided to avail of the scheme with regard to the Show Cause Notice dated 19th April 2017 which is the subject matter of this petition. Petitioner filed declaration dated 24th December 2019 in Form No.1. After considering petitioner's declaration, the Designated Committee, viz., Respondent No.4, issued SVLDRS Form No.3 dated 5th March 2020 wherein it determined amount of Rs.2,89,15,115/- as the estimated amount payable. This amount was equal to the amount declared by petitioner.

5. Petitioner at that time was facing severe liquidity crunch. To petitioner's credit there was balance in the electronic cash ledger maintained by petitioner under the CGST Act. Petitioner decided to utilize a sum of Rs.2,89,15,115/- from its electronic cash ledger to discharge the estimated amount determined as payable by petitioner as per SVLDRS Form No.3 issued by Respondent No.4. Petitioner made enquiry with the help desk as to whether petitioner could utilize the amount available in the electronic cash ledger to discharge its liability under the SVLDRS. But petitioner received auto text message stating that they have to approach their respective Commissioner for Non SVLDRS challan because the method of payment proposed by petitioner was not the usual method prescribed. Notwithstanding this in view of severe cash crunch petitioner paid a sum of Rs.2,89,15,115/- from the electronic cash ledger. The intimation of payment made voluntarily against the show cause notice/investigation towards service tax SVLDRS for the period January 2017 to June 2017 is annexed to the petition. The fact that petitioner has paid this amount using non prescribed method is not disputed. Respondents acknowledge that petitioner has made this payment but according to respondents and Mr.Mishra, Section 127 (5) of the Finance Act, 2019 prescribed the method in which the payment is to be made and it says that the payment shall be made electronically through internet banking within a period of thirty days from the date of issue of statement by the designated committee. It is also not in dispute that petitioner has made payment under its own chosen

method within the prescribed period of thirty days. Mr. Mishra submitted that the scheme did not provide for any other mode of payment except electronically through internet banking and therefore petitioner cannot avail of the benefit of having paid within the prescribed thirty days. Mr. Mishra also submitted that when Section 127 (5) of the Finance Act, 2019 is the law prescribing the manner in which the payment is to be made and the scheme did not provide for any other mode of payment then the benefit could be availed only if payment is made in such manner prescribed and the provisions and its rigours cannot be circumvented. Mr. Mishra also submitted that petitioner cannot claim as a matter of concession but has to strictly comply with what is prescribed in the Finance Act, 2019. Mr. Mishra further submitted that Circular No.1070/3/2019 CX dated 24th June 2019 provides for procedure for making E-payment and that has to be strictly followed.

6. Mr. Mishra relied upon judgment of the Hon'ble Apex Court in ***Yashi Constructions vs. Union of India***¹ to submit that person who wants to avail the benefit of a particular scheme has to abide by the terms and conditions of the scheme scrupulously. In our view, the judgment is not applicable to the facts of this case because in that case petitioner did not deposit the amount under the SVLDRS within the time limit of 30 days. In SVLDRS the time cannot be extended by court.

1 2022 (58) G.S.T.L. 144 (S.C.)

7. We note that this circular dated 24th June 2019 has been issued prior to the Finance Act, 2019 came into force. There is no similar circular issued after the Finance Act, 2019 came into force. There is nothing to indicate what the definition of 'pay electronically or through internet banking'. Admittedly, the amount has been paid by electronic cash ledger maintained by petitioner under the CGST Act. Therefore, the fact that the Government of India has received the amount of Rs.2,89,15,115/- cannot be disputed. The fact that this amount has been paid on 30th June 2020 which was the last extended date also is not disputed. The only objection seems to be that it was not paid through the window provided for such payments. In our view, this is a Hyper Technical objection being taken by respondents and if due to the method of payment used by petitioner, Form No.4 cannot be auto generated, Respondent No. 4 can issue manually the Form No.4/ discharge certificate.

8. In *Sew Infrastructure Ltd. vs. Dir. General of GST Intelligence DGGI*², Telangana High Court had directed GST Department to set off refund that was due to petitioner therein from the Income Tax Department. In that case, petitioner was unable to discharge its liability under SVLDRS because of the Covid Pandemic situation and financial difficulties and the only way the petitioner could discharge its liability as per Form No. SVLDRS – 3 was by utilizing the Income Tax refund of Rs.34,65,92,330/- which it was held entitled to. The GST Department in this case relied upon Sub

² 2021 (51) G.S.T.L. 268 (Telangana)

Section (5) of Section 127 of the Finance Act, 2019 to show that the payment should only be made electronically through internet banking. The High Court held that petitioner shall be deemed to have made the payment determined under Form SVLDRS – 3 and the GST Department was directed to adjust with one that was due to petitioner from the Income Tax Department.

9. SVLDRS is a statutory scheme, that provides some reliefs to the assessee in varying degrees. There is force in the submission of Mr. Nankani that the scheme in question, being for the benefit of assesseees needs to be construed liberally to effectuate the purpose. There is no dispute that the SVLDRS Scheme was introduced by Finance (no.2) Act, 2019 and notified in the Gazette of India Extra-ordinary on 01.08.2019. SVLDRS was introduced by the Union of India to provide relief to tax payers in the form of both dispute resolution as well as amnesty. It was a one-time measure to free a large segment of tax payers from their pending disputes with the Tax Administration, unload the baggage and allow businesses to move on. It provides both dispute resolution and amnesty in regard to past disputes of Central Excise, Service Tax and several other Indirect Tax Enactments. It was a beneficial scheme, which is being narrowly interpreted by respondents instead of being liberally interpreted. Respondents should adopt a reasonable and pragmatic approach so that a declarant can avail the benefits of the scheme and a declarant like petitioner cannot be put in a worse off condition than he was before making declaration under the Scheme.

10. In *Capgemini Technology Services India Limited vs. The Union of India and ors.*³, a Division Bench of the Bombay High Court held:

"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."

(emphasis supplied)

In our view the SVLDRS has to be given a liberal interpretation and not a narrow interpretation, its intent being to unload the baggage relating to legacy disputes.

11. Here, petitioner has scrupulously abided by all the terms and conditions of the scheme. In the absence of any definition as to what amounts to "pay electronically through internet banking", in our view even payment made by electronic cash ledger maintained by petitioner under the CGST Act also amounts to payment through internet banking. In the words of the Hon'ble M.C. Chagla, J, in *The State of Bombay vs. Morarji Cooverji*⁴,

³ [MANU/MH/1428/2020 (DB)]

⁴ (1958) 61 BLR 318

a petitioner in order to get relief from the court in a Writ Petition must satisfy the court that making of the order will do justice and that justice lies on his side. In this case, we are satisfied that justice is on the side of petitioner and making of an order in favour of petitioner by accepting its submissions will do justice.

12. Respondent No.4 is directed to issue within four weeks discharge certificate in Form SVLDRS – 4 through electronic form and if it cannot then it be issued in physical form.

13. Petition disposed. No order as to costs.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)