



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 5423/2021

M/s Sonjoli Construction Co., The Proprietor Mr. Mahesh Aggrawal Aged About 62 Years, R/o House Number 61, Abhay Garh Scheme, Air Force, Jodhpur 342001 (St Regn. No. Aaup0408Nsd001).

-----Petitioner

Versus

1. Union Of India, (Ministry Of Finance) Legal Cell, C-286, Prashant Vihar, Delhi-85.
2. Cgst Office, Vidhyadhar Nagar Marg, Sector 10, Vidhyadhar Nagar, Jaipur 302023.
3. The Joint Commissioner, Office Commissioner Cgst And Excise Duty Commissionerate, Jodhpur, Plot Number G-105, Street Number 5, Near Diesel Road, Laxmimal Singhvi Marg, New Industrial Area, Basni, Jodhpur 342003.

-----Respondents

For Petitioner(s)	:	Mr. Gajendra Panwar.
For Respondent(s)	:	Mr. Rajvendra Saraswat.

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE CHANDRA KUMAR SONGARA**

Order

24/08/2022

1. The petitioner herein is a proprietorship firm registered under the GST. A scheme under the title of 'Sabka Vikas Legacy Dispute Resolution Scheme, 2019 (hereinafter referred to as 'the SVLDR Scheme') for voluntary disclosure was floated by the respondents. The petitioner claims to have opted for the said Scheme and submitted an application dated 30.12.2019 and along therewith, he also deposited the due service tax to the tune of Rs.10,74,702/- by way of voluntary disclosure. The said



application of the petitioner under Section 129(2)(c) of the Finance Act, 2019 has been rejected vide order dated 12.10.2020 issued by the Joint Commissioner, CGST and Excise Duty Commissionerate, Jodhpur which is assailed in this writ petition.

2. Learned counsel Shri Gajendra Panwar representing the petitioner submitted that the petitioner was entitled to apply under the SVLDR Scheme and he filed the timely application and deposited the due tax amount under the said Scheme. However, application filed by the petitioner has been rejected only on an erroneous ground that audit had been initiated and hence, the petitioner was not entitled to the benefit of the SVLDR Scheme. Shri Panwar submitted that the enquiry notice under Section 125(1)(i) of the GST Act as referred to in the order dated 12.10.2020 was issued after the cut-off date i.e. 30.06.2019 and as such, the same was time barred and could not be used as a ground to deprive the petitioner from taking benefit of the Voluntary Disclosure Scheme.

3. Shri Rajvendra Saraswat, Advocate representing the respondent department, submitted that the notice for initiation of enquiry was issued to the petitioner on 26.12.2019 and the petitioner had been requested to provide the documents for conducting audit of the firm and thus, the enquiry having been initiated, the petitioner was precluded from applying under the SVLDR Scheme.

However, Shri Saraswat is not in a position to dispute the fact that the last date stipulated for initiating the investigation or audit making the applicant ineligible to apply under the Disclosure



Scheme was 30.06.2019. It is not disputed that the notice for providing documents to conduct audit was issued to the petitioner well after 30.06.2019 to be specific on 26.12.2019.

4. Thus, viewed in light of the following observations made by the Hon'ble Bombay High Court in the case of **UCC Infrastructure Pvt. Ltd. vs. Union of India & Ors. (Writ Petition No.574/2022) decided on 31.01.2022:**

"11. This Court in case of **M/s. New India Civil Erectors Private Limited** (supra) has considered identical facts and after advertent to various provisions of the said Scheme including Section 123(d), 124(1) (e), 125(1), 127(1)(f)(i) and the judgment of the Hon'ble Supreme Court in case of **Tata Engineering and Locomotive Company Limited v/s. State of Bihar, (2000) 5 SCC 346** held that if any enquiry or investigation or audit was initiated on or before 30th June, 2019, such a person would not be eligible to make declaration under the voluntary disclosure category. Logical corollary to this would be that an enquiry or investigation or audit post 30th June, 2019 would not act as a bar to the filing of declaration under the 'voluntary disclosure' category. In the facts of that case, the enquiry was initiated after 30th June, 2019. Considering these facts, this Court was of the opinion that the respondents were not justified in rejecting the declaration of the petitioner dated 26th December, 2019 on the ground that the petitioner was not eligible to file declaration under the category of 'voluntary disclosure' since enquiry was initiated against the petitioner on 19th December, 2019. This Court held that though under Section 125(1)(f) of the said Scheme does not mention the date 30th June, 2019 by simply saying that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration, the said provision if read and understood in the proper context would mean making of a voluntary disclosure after being subjected to an enquiry or investigation or audit on or before 30th June, 2019. Such a view if taken would be a reasonable construct, consistent with the objective of the scheme.

12. This Court also adverted to the judgment of this Court in case of **Thought Blurb v/s. Union of India, 2020 (10) TMI 1135** and was pleased to quash and set aside the order impugned in the said writ petition and remanded the matter back to the Authority for taking a fresh decision on the declaration filed by the petitioner therein treating the same



as a valid declaration under the 'voluntary disclosure' category and thereafter to grant the admissible relief to the petitioner after giving an opportunity of hearing.

13. The principles laid down by this Court in case of **M/s. New India Civil Erectors Private Limited** (supra) would apply to the facts of this case. We do not propose to take any different view in this matter.

14. In the facts of this case also the respondents had issued a summons only on 30th August, 2019 i.e. after 30th June, 2019 and thus summons issued after the cut-off date of 30th June, 2019 could not be the ground for declaring the application filed by the petitioner under SVLRDS-1 ineligible. In our view, the stand taken by the respondents is contrary to the principles of law laid down by this Court in case of **M/s. New India Civil Erectors Private Limited** (supra) and also contrary to the objectives, purposes and intent of the said Scheme introduced by the Central Government. The respondents would have been justified to declare the petitioner ineligible to file declaration under 'voluntary disclosure' category, if enquiry or investigation or audit would have been initiated on or before 30th June, 2019."

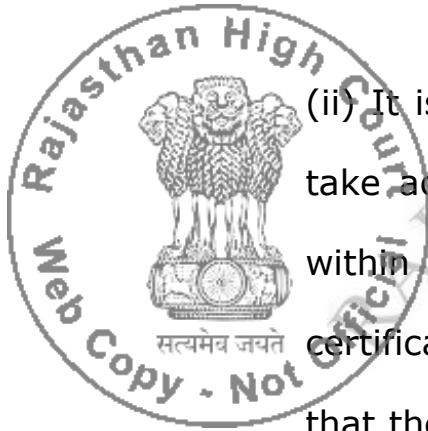
the action of the respondents in initiating the enquiry and denying the petitioner the opportunity to avail benefit under the SVLDR Scheme is absolutely illegal and unjustified.

5. Hence, the impugned order dated 12.10.2020 is hereby quashed and set aside. Consequently, it is directed that:

"(i) The Declaration Forms filed by the petitioners are restored to file and are remanded to the respondent no.3 for taking a fresh decision on these two declaration forms filed by the petitioner by treating the same as valid declarations under the 'voluntary disclosure' category and thereafter grant the admissible relief to the petitioner. The respondents shall grant an opportunity of personal hearing to the petitioner by issuing seven days clear notice before the date of proposed hearing. The petitioner shall remain present at the time of hearing before the respondent no.3, without fail.



The respondent no.3 shall pass a reasoned order, in accordance with the law within a period of eight weeks from the date of receipt of an authenticated copy of this judgment. The order that would be passed by the respondent no.3, shall be communicated to the petitioner within one week from the date of passing such order.



(ii) It is made clear that the respondents are empowered to take action under Section 129(2)(c) of the said Scheme, if within a period of one year of issuance of the discharge certificate against the petitioner, the respondent no.3 finds that the material particulars furnished in the declaration filed by the petitioner are found to be false.

The writ petition is allowed in these terms. Stay application is disposed of.

(CHANDRA KUMAR SONGARA),J

(SANDEEP MEHTA),J

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