CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51064 of 2021 [SM]

[Arising out of Order-in-Appeal No. 200(SM)/ST/JPR/2021 dated 07.06.2021 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Swastik Construction **...Appellant**
D-12, Devnagar,
Tonk Road, Jaipur,
Rajasthan - 302015

VERSUS

Commissioner of Central Excise
& CGST, Jaipur I **...Respondent**
NCR Building,
Statue Circle, C-Scheme,
Jaipur, Rajasthan - 302005

APPEARANCE:

Shri Bipin Garg & Ms. J. Kainaat, Advocates for the Appellant
Shri Gopi Raman, Authorised Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 16.12.2022
DATE OF DECISION: **23.01.2023**

FINAL ORDER No. 50076/2023

DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 200/2021 dated 03.06.2021, vide which the order rejecting refund claim of Rs.6,59,022/- has been upheld. The facts in brief relevant for the present adjudication are as follows:

1.1 That the appellant is a service tax registrant under erstwhile service tax law. The appellant filed a refund claim on 30.06.2020 for Rs.6,59,022/- on the ground that while applying for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (herein after referred as SVLDRS) under 'Voluntary Disclosure' category, they had deposited excess amount which has become refundable after settlement of tax liability. A declaration dated 31.12.2019 was filed under the said category by disclosing the tax liability of Rs.32,03,701/- for the period of April, 2014 to March, 2017. Pursuant thereto, the SVLDRS-4 dated 02.03.2020 towards full and final settlement of the tax dues under SVLDRS was issued in favour of the appellant. The aforesaid amount of Rs.6,59,022/- was paid by appellant vide three separate challans dated 16.12.2019 and 23.12.2019 and 23.12.2019 and as such was over and above the amount of Rs.32.03,701/-.

1.2 Accordingly, the refund claim in question was filed. The department observed that the appellant had requested for the reduction of the amount of Rs.6,59,022/- from the declared value of taxable services but the designated committee after considering the relevant material, under Section 125 of Finance Act of 2019 read with Circular No. 1071/4/2019-CX.8 dated 27.08.2019 determined the tax liability of Rs.32,03,701/- which amount was subsequently paid by the appellant. Accordingly, vide Show Cause Notice No. 302 dated 20.07.2020, the refund claim was proposed to be rejected with a proposal, further said amount to be credited into Consumer Welfare Funds. The said proposal was initially confirmed vide Order-in-Original bearing No. 05/2020 dated 08.09.2020. The appeal thereof has been rejected. Still being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Bipin Garg and Ms. Kainaat, learned Counsels for the appellant and Shri Gopi Raman, Authorized Representative for the department.

3. It is submitted on behalf of the appellant that the appellant had made a voluntary disclosure under SVLDRS and at the time of issuance of SVLDRS-1 Form itself, the appellant raised the objection that the amount of Rs.6,59,022/- was to be deducted while issuing the statement indicating the amount payable by the declarant in terms of Section 124 (No.2) of 2019 (SVLDRS Act). Despite being objected, the Designated Authority still calculated an amount of Rs.32,03,701/- towards the payable amount by the appellant which stands fully paid. Otherwise also, under the scheme the payment had to be a onetime payment. It is submitted that because of the said reasons amount of Rs.6,59,022/- is in excess of the payable liability of the declarant as estimated by the department. The department had no authority to retain the excess payment and was liable to refund the same. Resultantly, the order of rejection of refund is not sustainable.

3.1 Learned Counsel further submitted that the provisions invoked by the adjudicating authority to deny the refund are not applicable to the circumstances of the present case, for the reason that the amount is not covered under the proviso to Section 124 (2) of SVLDRS Act. Learned Counsel has relied upon the decision of the Hon'ble High Court, Delhi in the case of **B-Earth and Spire India Pvt. Ltd. Vs. Union of India and Ors. reported as 2022-TIOL-**

965-HC-DEL-ST, wherein it has been held that "total amount of duty" as mentioned in clause (d) of Section 123 of the 2019 Act, could only mean the outstanding duty which is payable after adjusting the amount of tax liability already discharged/paid by the declarant. The order under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned DR has submitted that the appellant filed an application under Section 125 (1) of SVLDRS Scheme i.e. Voluntary Disclosure by the appellant was made. The Designated Authority accepted the same and issued the discharge certificate vide SVLDRS-4 Form under Section 127 of the Act of 2019. Post that the question of refund does not at all arise. Emphasis has been laid upon findings in Para 5.2 of the Order-in-Appeal. Otherwise also, the refund of any pre-deposit or other deposit already paid is prohibited under Section 130(2) of Finance Act, 2019 as has rightly been appreciated in Para 6 of the order under challenge. Resultantly, the appeal is alleged to has no legs to stand upon. Accordingly, the same is prayed to be dismissed.

5. Having heard the rival contentions and perusing the records.

6. I observe that the grievance of appellant is that the tax dues which were already paid by the appellant have not been adjusted by the designated authority. To appreciate the said grievance, it is foremost necessary to peruse the objective and the procedure under SVLDRS Scheme. I observe that the objective of scheme is two fold:

(1) It was introduced as a onetime measure for liquidation of past disputes of central excise and service tax.

(2) To provide an opportunity of voluntary disclosure to non-compliant tax payers.

7. The benefits as available under the scheme are observed as follows:

(i) It provides total waiver of interest and penalty.

(ii) Provides for immunity from prosecution.

(iii) Relief of 70% from the duty demand in the pending cases if it is Rs. 50 Lakhs or less and 50% relief, if the amount in the matter pending under adjudication is more than Rs.50 Lakhs,

(iv) The same relief was available for the cases under investigation and audit where the duty involved was quantified on or before 30.06.2019.

(v) In case of an amount in arrears, the relief offered is 60% of the confirmed duty amount if the same is Rs.50 Lakhs or less and it is 40% in other cases.

(vi) In cases of voluntary disclosure, the declarant will have to pay full amount of disclosed duty.

8. The scheme was providing, no doubt, the facility for adjustment of deposits of duty if already made and offering a full and final closure of proceedings in question except that in case of voluntary disclosure of liability there is provision to reopen a false declaration within a period of one year. The Finance Act, 2019 intends that the proceedings under the scheme shall not be treated as a precedent for past and future liabilities. It provides for the final decision to be communicated within 60 days of the application.

The act also prohibits the final decision without an opportunity of personal hearing in case of any disagreement.

9. I further observe that as per clause (d) of Section 123 of the Finance Act, 2019 which defines "tax dues", the amount to be paid as tax due by a voluntary declarant is the total amount of duty stated in the declaration. From Section 124(e), it is observed that where the tax dues are payable on account of voluntary disclosure by the declarant then no relief shall be available with respect to the tax dues.

10. It is an undisputed fact of the present case that the appellant herein has been a voluntary declarant. I observe that under the scheme when the tax payer files declaration, the same has to be filed in Form No. 1 i.e. SVLDRS-1, wherein lies an option about the categories as provided under the scheme i.e. either arrears or litigation or investigation/audit or voluntary disclosure. While filing that form, online, the applicant has to select the appropriate category along with the amount payable by him. After the said declaration is filed, the designated authority generates SVLDRS-1 reflecting the amount payable by the applicant/declarant. As per the scheme, if the tax payer does not agree with the amount estimated by the designated authority, he may challenge the same and the designated authority will issue an SVLDRS Form No.2, asking for the reasons for disagreement.

11. As already observed above, opportunity of personal hearing in case of disagreement is mandatory. The designated authority has

to issue a notice notifying the date of personal hearing. The scheme goes to the extent of providing facility of adjournment if desired by the applicant/tax payer in which case SVLDRS-2B is to be issued. The decision post said personal hearing is issued in the form of SVLDRS-3 Form and the amount mentioned in the said form is the amount payable as full and final settlement of the dues for the period in question. The declarant once made the deposit of the said amount that full and final discharge certificate in SVLDRS Form-4 is issued to the applicant.

12. I observe from the record of this appeal that this bench gave an opportunity to the appellant to submit Forms SVLDRS 1 to 4 so as to prove that he raised his disagreement before the designated authority but the appellant has filed SVLDRS-1, 3 and 4. SVLDRS-2/SVLDRS-2B has not been placed on record. It becomes clear that appellant has failed to prove its disagreement to the amount quantified as payable by the designated authority. The disagreement has been the main contention of appellant's argument, same stands totally unproved. Otherwise also, it being a case of voluntary disclosure, the appellant had to self assesse the payable amount in SVLDRS-1. The self declaration form has also not been produced by the appellant. Reflection of disagreement in SVLDRS-1 itself has no meaning in absence of SVLDRS-2/2B. Otherwise also department's stand is that said disagreement was examined in terms of Section 125 of the Act of 2019 read with Circular No. 1071/4/2019-CX.8 dated 27.08.2019 and thereafter the tax liability was estimated at Rs.32,03,701/-. In the

circumstances, the contention of the appellant is not at all acceptable.

13. Coming to the ground that the refund has been rejected in terms of Section 124(2) and 130 of Finance Act, 2019. The appellant though has submitted that amount in question/the amount of pre-deposit does not exceed the amount payable by the declarant, hence, proviso to sub-section (2) of Section 124 is wrongly been invoked by the adjudicating authorities. But it is observed that the amount payable by the declarant/appellant as indicated in the statement issued by the designated committee is Rs.32,03,701/-. The said amount stands paid by the appellant. Resultantly, the amount of Rs.6,59,022/- is nothing but a pre-deposit which is in excess of Rs. Rs.32,03,701/-, as such has rightly been held to be non-refundable by the adjudicating authority below. In addition to that Section 130 reads as follows:

> *130. (1) Any amount paid under this Scheme,-*
>
> *(a) shall not be paid through the input tax credit account under the indirect tax enactment or any other Act;*
>
> *(b) shall not be refundable under any circumstances;*
>
> *(c) shall not, under the indirect tax enactment or under any other Act,-*
>
> *(i) be taken as input tax credit; or*
>
> *(ii) entitle any person to take input tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.*
>
> *(2) In case any predeposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded.*

14. The perusal makes it clear that any amount paid under the scheme has been held non-refundable. The apparent objective of this section in view of above discussed scheme is that since the tax liability for the period in question is actually either 70% or 50% higher than the amount estimated as payable under the scheme, any deposit prior payment of such estimated amount is made non-refundable. In case of voluntary disclosure also it is an uncalculated amount as per tax payers' choice which is declared and paid by the appellant. The liability of tax payer in such case is much more than what used to be mentioned in SVLDRS-1 under Voluntary Disclosure. Hence, there is no applicability of article 265 of the Constitution of India as is impressed upon by the appellant. Form this point of view also, I do not find any justifiable reason for ordering refund of the amount which was paid over and above the payable amount as estimated by the designated committee.

15. In light of entire above discussion, I am in full agreement with the findings in Para 5.2 and Para 6 of the order under challenge. Resultantly, the order of Commissioner (Appeals) is hereby upheld. Appeal stands dismissed.

[Order pronounced in the open Court on **23.01.2023**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

HK