

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7292 of 2020**

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HITECH PROJECTS PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 2,3

MR ANKIT SHAH(6371) for the Respondent(s) No. 1,4

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 06/07/2020

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

“[A] Your Lordships be pleased to issue a Writ of Certiorari or any other appropriate Writ, direction or order, quashing and setting aside order of the Designated Authority (Respondent no.3) in form of SVLDRS-3 (Annexure-A) made under Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 thereby directing the Respondents, their servants and agents to treat the declarations / applications filed by the petitioners under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 valid and accept the payment already made as sufficient compliance of the scheme

and further direct them to issue discharge certificate.

[B] Your Lordships be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, direction or order, to the respondents, their servants and agents to accept the declarations filed by the Petitioners, and further directing the Respondents to accept the payment already made as sufficient compliance of the scheme and also direct to give personal hearing and consider the case afresh and issue discharge certificates under Section 127(8) of the Finance Act, 2019.

[C] Pending hearing and final disposal of the present petition, Your Lordship may be pleased to direct the Respondent no.3 to consider the submission made by the Petitioners and give personal hearing or through virtual platform and thereafter issue Form SVLDRS-3 afresh.

[E] An ex-parte ad-interim relief in terms of prayer "B" above may kindly be granted."

2 The facts giving rise to this writ application may be summarized as under:

2.1 The writ applicant No.1 is a company engaged in the work of civil construction since 1996-97. It appears from the materials on the record that a show cause notice No.V.38/15-54/OA/2016 dated 02.05.2016 was served upon the writ applicants calling upon them to show cause as to why the Central Excise duty amounting to Rs.27,57,942/- for the period between April, 2011 and 31.12.2015 should not be recovered under Section 11A(4) of

the Central Excise Act, 1944. In other words, the writ applicants were called upon to show cause as to why the RMC falling under the Central Excise Tariff Heading 38245010 should not be demanded and recovered with interest. The writ applicants were also called upon to show cause as to why the excisable goods valued at Rs.15,05,92,859/- should not be confiscated under Rule 25(2) of the Central Excise Rules, 2002 and why the penalty under Rule 25(1) Rules, 2002 read with Section 11AC(1)(c) of the Act, 1944 should not be imposed.

2.2 The above referred show cause notice also proposed to impose penalty on one of the partners of the firm viz. Shri Tejas Dalal under Rule 26 of the Rules.

3 We need not go into any further details about the proceedings which came to be initiated by the Department against the writ applicants in the year 2016 as we are of the view that this litigation can be put to an end by appropriate directions to the respondents.

4 We may only observe that the show cause notice referred to above ultimately came to be adjudicated and an order in original dated 13.04.2017 was passed by the Assistant Commissioner, Central Excise, Division-V, Ahmedabad confirming the demand of duty amounting to Rs.27,57,942/- under Section 11A(4) of the Act, 1944 with interest under Section 11AA of the said Act. The record further reveals that the adjudicating authority imposed redemption fine of Rs.5,00,000/- in lieu of the confiscation of the excisable goods valued at Rs.15,05,92,859/-

manufactured and consumed by the writ applicants under Section 34 of the Act, 1944.

5 It appears that the order in original referred to above came to be challenged by the writ applicants by two separate appeals. It is the case of the writ applicants that they deposited Rs.2,06,855/- as a pre-deposit equivalent to 7.5% of the total demand of the duty. The details in this regard has been furnished in the memo of the writ application. The same reads thus:

Sr. No.	Challan Nos. & Date	Amount (Rs.)
1	01693 Dated 30.6.2018	80,485/-
2	00663 Dated 05.7.2017	1,03,355/-
3	00664 Dated 05.7.2017	23,015/-
	Total	2,06,855/-

6 It appears that Mr. Dalal against whom the show cause notice was issued in his capacity as one of the partners also made a pre-deposit of Rs.37,500/- by way of three challans from the account of the company as a condition precedent for filing the appeal before the first appellate authority.

7 The first appellate authority by its order dated 30.01.2018 upheld the entire order in original and dismissed both the appeals.

8 The writ applicants being dissatisfied with the order passed by the first appellate authority dismissing both the appeals preferred two separate appeals before the appellate Tribunal. The two appeals filed before the Tribunal are still pending as on date for final adjudication. The details of the pre-deposit made by the writ applicant No.1 company for the purpose of filing the two appeals before the appellate Tribunal is as under:

Sr. No.	Challan Nos. & Date	Amount (Rs.)
1	00021 dated 18.04.2018	100/-
2	00022 dated 18.04.2018	7,673/-
3	00023 dated 18.04.2018	34,453/-
4	00024 dated 18.04.2018	26,828/-
	Total	69,054/-

9 It appears that in the Union Budget for the Financial Year 2019-20 presented in the Parliament on 5th July, 2019, a Scheme for resolving pending disputes with regard to the statutes like the Central Excise Act, the Service Tax Laws, etc., (which stood repealed with effect from 1.7.2017 in view of GST Laws having been brought into force) came to be introduced. This Scheme is known as the “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019”.

10 The main objective of the above referred Scheme is to liquidate the legacy cases of the Central Excise and Service Tax that are subsumed in the GST and are pending in litigation before the various forums. Under the Scheme, amnesty is allowed by offering an opportunity to the tax payers to pay the outstanding tax and get cleared of any other consequences under the law.

11 It appears from the materials on record that the writ applicants herein thought fit to avail the benefit of the said Scheme referred to above and in the process filed two separate declarations under Section 125 of the said Act read with Rule 3 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as, "Rules"). The two declarations were made in Form SVLDRS-1. The dispute cropped up from this stage onwards.

12 It appears that the application preferred by the writ applicants seeking to avail the benefit of the Scheme was held to be not maintainable on the premise that the case involves the confiscation of goods and imposition of redemption fine and Section 129 of the Finance (No.2) Act, 2019 does not grant any relief from the confiscation or redemption fine.

13 In the aforesaid context, the writ applicants were called upon to appear for personal hearing on 26.12.2019 before the Additional Commissioner CGST, Ahmedabad South vide letter dated 20.12.2019.

14 Mr. Dhaval Shah, the learned counsel appearing for the writ applicants, vehemently submitted that his clients were not able to appear before the concerned authority on 07.05.2020 as at the relevant point of time there was a complete lock-down on account of the COVID-19 pandemic and the office of the writ applicants was also closed. Mr. Dhaval Shah, submitted that even the office of the concerned respondent before whom the hearing was to take place on 07.05.2020 was closed. Mr. Shah further pointed out that despite such a situation prevailing at the relevant point of time the Principal Commissioner CGST, Ahmedabad South proceeded to issue the Form SVLDRS-3. Mr. Shah would submit that if an opportunity of hearing would have been given, then his clients would have been in a position to bring it to the notice of the authority that the necessary payment had already been made for the purpose of availing the benefit of the Scheme as a condition precedent.

15 Mr. Shah, the learned counsel appearing for the writ applicants in such circumstances pray that the impugned order in the Form SVLDRS-3 (Annexure-A) to this writ application be quashed and set aside and the respondents may be directed to give an opportunity of hearing to the writ applicants and take a fresh decision in accordance with law.

16 On the other hand, this writ application has been vehemently opposed by Mr. Ankit Shah, the learned Standing Counsel, appearing for the respondents. Mr. Shah straightaway invited the attention of this Court to the

necessary averments made in the affidavit in reply filed on behalf of respondent Nos.1 to 4 respectively duly affirmed by the Principal Commissioner of Central GST, Ahmedabad-South. Mr. Shah invited the attention of this Court to the averments made in paras 15 to 19, which read as under:

“15 With regards to the total deposit of Rs.8,92,195/- (Rs.6,16,286/- +Rs.2,75,909/-) as claimed by the petitioner is concerned, it is observed that the petitioner neither claimed before the adjudicating authority that they had paid an amount of Rs. 6,16,286/- towards the demand as proposed in the SCN dated 02.05.2016 nor the said amount was appropriated by the adjudicating authority in their order dated 31.03.2017. Likewise, the challans of Rs. 2,75,909/- also could not be correlated to the said demand. Therefore, the petitioner was offered the opportunity of personal hearing to represent themselves, however, they have failed to produce any document which indicates that the aforesaid amount claimed by them are paid towards their liability created by the Show Cause Notice or Order-in-Original.

16 The declaration filed by the Petitioner No.1 was held to be void on the grounds that the case includes confiscation of goods and imposition of redemption fine and Section 129 of the Finance (No.2) Act, 2019 does not grant relief from confiscation or redemption fine. The Petitioner No. 1 was called upon to appear for personal hearing on 26.12.2019 in the matter. The declaration of Shri Tejas Dalal, was also not entertained on the grounds that being co-noticee, unless the main noticee settles the issue.

17 The Petitioner has made reference of the High Court of Gujarat Interim Order dated 24.12.2019 in respect of SCA No. 21744 of 2019 in case of M/s Synpol Products Pvt. Ltd. & Others under which benefit granted to even those declarants who have not approached this court, subject to the declarants filing an undertaking before the Designated Committee. Accordingly, the Petitioner filed an undertaking as directed by the High Court on 26.12.2019. However, Interim Order dated 24.12.2019 of the High Court of Gujarat was not accepted by the department and filed SLP before the Hon'ble Supreme Court of India, which is allotted Diary No. 10287 of 2020. The case is still pending for decision before the Apex Court.

18 Further, as per Section 126 of the Finance (No. 2) Act, 2019 read with Rule 6(1) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 provide that the Designated Committee is required to verify the declaration on the basis of the particulars furnished by the applicant as well as the records available with the department. The Designated Committee found that the payment particulars in respect of the deposit of Rs. 8,27,382.91, as claimed by the petitioner, were not available in the department records and therefore, the Designated Committee had issued Form SVLDRS-2 under Finance (No.2) Act, 2019 on 28.04.2020 to the Petitioner whereby estimated amount payable was indicated of Rs. 8,27,382.91 and in terms of the provisions of Section 127(4) of the Finance (No. 2) Act, 2019, a personal hearing in the matter was fixed on 07.05.2020. In response, the petitioner filed the SVLDRS-2A on 6.5.2020 in

which submitted that they do not desire an adjournment which implies that they would attend the personal hearing scheduled on 7.5.2020. However, they did not appear before the Designated Committee on the scheduled date and time for a personal hearing.

19 The petitioner failed to appear for personal hearing on the scheduled date and time and then on the basis of available records, the Designated Committee issued Form SVLDRS-3 under Finance (No.2) Act, 2019 by complying all the provisions of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in which directed to the petitioner to pay estimated amount of Rs.8,27,382.91.”

17 According to Mr. Ankit Shah, there is nothing on record to indicate that the writ applicants have made the total deposit of Rs.8,92,195/- as asserted for the purpose of availing the benefit of the Scheme. He would submit that although an opportunity of personal hearing was given to the writ applicants, yet the same was not availed. The writ applicants failed to appear before the concerned authority.

18 The aforesaid stance of the respondents is rebutted by the writ applicants in the form of an affidavit in rejoinder. In para 9 of the affidavit in rejoinder, the following averments have been made:

“9 That the Petitioner was called for the personal hearing on 7.05.2020, which was the time, entire India was in complete lockdown situation and Petitioner’s office was completely closed. Even the Respondent

office must be closed during these days and therefore, there was no question of granting personal hearing on 7.05.2020. The Petitioner was conscious about the situation and therefore requested to grant personal / “e-hearing”. If the answering respondent wanted to complete the process in lockdown situation then fair opportunity of hearing should be granted to the Petitioner but they knew that no one will come for personal hearing and they can straight away decide the matter. If the answering respondent really wanted to decide fairly then they could have send email for the clarification that there is no facility available for the “e-hearing” but they kept the petitioner in dark and directly issue Form SVLDRS3. When the Hon’ble Courts and many Government offices were working on Virtual Platform, why can’t respondent office work on virtual platform and stick to personal hearing. As a matter of fact, instance of personal hearing is contrary to the direction issued by the Central Government during Lockdown period. This approach of the Respondent clearly shows how perverse attitude of the authorities just to frustrate the interest of the Petitioner.”

19 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the writ applicants could not be said to have got a fair opportunity of hearing before the concerned respondent. We are at one with Mr. Dhaval Shah, the learned counsel appearing for the writ applicants that the concerned respondent could not have fixed the personal hearing during the period of lockdown. We are of the view

that one opportunity should be given to the writ applicants to put forward their case before the concerned respondent in person.

20 We do not propose to go into the merits of the various issues raised as regards the claim to avail the benefit under the Scheme. We are of the view that all the relevant aspects of the matter should be explained by the writ applicants before the concerned respondent in person.

21 In the result, the impugned communication in Form SVLDRS-3 is hereby quashed and set aside. The matter is remitted to the respondent No.3 herein i.e. the Designated Committee, Ahmedabad-South for fresh hearing on the issues in question. The respondent No.3 shall fix a particular date of personal hearing and intimate the same in writing to the writ applicants. The writ applicants upon receipt of such intimation shall appear before the respondent No.3 and make their submissions. Thereafter, the respondent No.3 shall pass a fresh order in accordance with law.

21.1 Let this entire exercise be undertaken at the earliest and shall be completed in any case within a period of six weeks from the date of the receipt of the writ of this order. We are conscious of the fact that the time period to make the deposit of the requisite amount for the purpose of availing the benefit under The Scheme came to an end on 30.06.2020. The stance of the writ applicants is that they have made the requisite payment towards deposit, whereas,

the stance of the Department is that the amount has not been deposited. Ultimately, it is for the Department to verify from the records available with them as regards the amount deposited by the writ applicants way back in 2015-16. In the event ultimately if some amount has to be deposited, then despite the time limit having expired the Department shall accept the payment in view of the fact that this litigation was pending before this Court.

22 With the aforesaid directions, this writ application stands disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

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THE HIGH COURT
OF GUJARAT

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