



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

WRIT PETITION NO.3138 OF 2022

Evershine Enterprises ...Petitioner
Versus
Union of India
Thr. Secretary Ministry of Finance & Ors. ...Respondents

Mr. Bharat Raichandani, Bhagrati Sahu i/b. Prabhakar Shetty
for Petitioner.

Mr. P.C. Cardozo, a/w Mamta Omle for Respondent No.3.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 3 November 2025

ORAL JUDGMENT (Per M.S. Sonak, J.):-

1. Heard learned counsel for the parties.
2. We issue Rule in this Petition and make the Rule returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The Petitioner seeks to quash the statement issued by the Respondents to form SVLDRS-3 dated 26 December 2019 (Exh.A) primarily on the ground that the amounts already recovered from the Petitioner or the amounts predeposited by the Petitioner were not adjusted in determining the amount which the Petitioner has been called upon to pay under

SVLDRS-3.

4. On 13 June 2013, the Petitioner was served with a show-cause notice cum demand notice proposing to demand service tax of Rs.2,25,31,804/- for the period from 2008-2009 to 2011-2012. The Petitioner responded on 9 December 2013 in which he pointed out that the major portion of the demand had already been remitted before the issuance of the show-cause notice. After this, the Petitioner was issued another show-cause notice-cum-demand notice dated 28 March 2014, this time demanding service tax of Rs.17,04,400/- along with interest and penalty for the period 1 April 2012 to 31 March 2013.

5. On 27 March 2018, the 3rd Respondent made the Order-in-Original confirming the demands proposed in show-cause notices dated 13 June 2013 and 28 March 2014. The Petitioner contends that its submissions regarding the amounts already paid or predeposited amounts were not considered.

6. The Petitioner appealed the Order-in-Original dated 27 March 2018 on 4 July 2018. While the Appeal was pending, 'The Sabka Vishwas' (Legacy Dispute Resolution) Scheme, 2019 i.e. Chapter V of the Finance Act, 2019 entered forced vide notification dated 21 August 2019.

7. The Petitioner on 27 November 2019 applied under SVLDRS by pointing out that its Appeal was pending before the CESTAT.

8. On 9 December 2019, the Petitioner wrote to the Respondents about the details of service tax payment of Rs.1,89,28,966/- along with an affidavit of payment of service tax challans.

9. On 11 December 2019, the Petitioner was called upon to attend personal hearing on 16 December 2019. This intimation remarks that the amount of predeposits claimed by the Petitioner is not co-relatable with the records available in the office and therefore, the Petitioner, has to produce original copies of the challans at the time of hearing scheduled on 16 December 2019.

10. The Petitioner has placed on record communication of 16 December 2019 along with details of challans based upon which the Petitioner claims to have paid the amounts towards service tax for the relevant period.

11. On 26 December 2019, the Respondents issued impugned SVLDRS-3 (Exhibit-A) calling upon the Petitioner to pay 50% of the amount determined as due from the Petitioner i.e. Rs.1,12,65,902/-.

12. Mr. Raichandani, learned counsel for the Petitioner took us to the SVLDRS-3 and stressed upon Section 124(2) of the Finance Act in which this scheme is contained. Section 124(2) provides that the relief calculated under sub-section (1) shall be subject to the condition that any amount paid as predeposit at any stage of the appellate proceedings under the indirect tax enactment or as a deposit during inquiry,

investigation or audit, shall be deducted while issuing the statement indicating the amount payable by the declarant. The proviso clarifies that if the amount of predeposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

13. Accordingly, Mr Raichandani submitted that impugned SVLDRS-3 form warrants interference because the same ignores the predeposits made by the Petitioner and also the amounts recovered from the Petitioner during the course of investigations. He pointed out that even the show-cause notice issued to the Petitioner acknowledges the recoveries of an amount to the extent of approximately Rs.80 Lakhs or thereabout. He submitted that the Petitioner's responses have been grossly misconstrued and taken as admissions of the final amounts payable under the Scheme.

14. Ms. Cardozo contests Mr. Raichandani's submissions. She pointed out that the Petitioner had admitted to the service tax liability of Rs.2,25,31,804/- vide several documents and correspondence. She pointed out that full opportunity was granted to the Petitioner to produce challans. She pointed out how, by the communication of 9 December 2019, challans of only Rs.11 Lakhs were produced. She pointed out that the term of the scheme is finite and the scheme ended on 15 January 2020. She submitted that there are no provisions to extend the term of such scheme. She

submitted that no challans were produced evidencing predeposits or recoveries and in any event, there was no obligation for considering the documents belatedly produced. For all these reasons, including primarily the correspondences, which, according to Ms. Cardozo, show admissions on the Petitioner's part, the Petitioner is not entitled to any reliefs as sought for in this Petition.

15. We have considered the rival contentions and also perused the record. Upon evaluation of the contentions on the record, we are satisfied that in this case, the challans produced by the Petitioner on 9 December 2019 and 16 December 2019 were required to be considered by the authorities before issuing impugned SVLDRS-3.

16. Admittedly, the scheme ended on 15 January 2020. The Respondents, by intimation of 11 December 2019, had called the Petitioner for personal hearing on 16 December 2019. By communications of 9 December 2019 and 16 December 2019, challans were produced by the Petitioner with regard to claims of payment or recoveries. The impugned SVLDRS-3 rolled out only on 26 December 2019. On a perusal of the impugned SVLDRS-3 and the determination made therein, it is apparent that the challans or the documents produced by the Petitioner on 9 December 2019 and 16 December 2019, though within the timelines allowed by the Respondents themselves to the Petitioner, having not been taken into account or even examined.

17. While we appreciate Ms. Cardozo's contention that challans and the documents produced by the Petitioner in installments cannot be taken at their face value, we think that such documents were at least required to be examined for what they purport to be. Such documents, which are in the form of challans, could not have been simply ignored. Such documents needed to be examined and verified. The documents indeed establish predeposits or recoveries during the course of investigation, inquiry, etc., then, such amounts prima facie, would warrant deduction when issuing the statement indicating the amount payable by the declarant in terms of Section 124(2) of the Finance Act, 2019.

18. The consideration of the above challans/documents was necessary in this case because even the show-cause notice-cum-demand-notice dated 13 June 2013, issued to the Petitioner makes a reference to service tax amounting to Rs.80,95,307/- being "appropriated as the said amount recovered from the Assessee during the course of investigation".

19. For reference of convenience, we transcribe paragraph 10(i) and (ii) of the show-cause notice dated 13 June 2013 below:-

"10. Now therefore, M/s. Evershine Enterprises are required to Show Cause within 30 days of receipt of this notice to the Commissioner, Service Tax, Mumbai-II, having his office at 4th floor, New Central excise, Building, 115, M.K. Road, Opposite Church gate Railway Station, Mumbai-400 020 as to why:-

(1) Service Tax amounting Rs. 80,95,307/- (Rupees Eighty

lakhs Ninety Five thousand and Three hundred seven only, Including Ed. Cess and Secondary Higher Education Cess, as detailed in para 4.1 above) for the Financial Year 2008-09 to 2011-12 should not be demanded and recovered from them in terms of the proviso to Section 73(1) of the Finance Act, 1994, invoking the extended period of time;

- (ii) Service Tax amounting Rs. 80,95,307/- (Rupees Eighty lakhs Ninety Five thousand and Three hundred seven only) should not be appropriated as the said amount recovered from the assessee during the course of investigation.”

20. The above quoted portion of the show-cause-cum-demand notice dated 13 June 2013, at least prima facie, suggest that an amount of Rs.80,95,307/- was recovered from the Assessee during the course of investigations. The show-cause notice only refers to appropriation of this recovered amount towards service tax liabilities referred to in paragraph 10.

21. At this stage, we are not recording any firm findings either on the aspect of recoveries during investigations or predeposits for which the Petitioner relies upon the challans furnished on 9 December 2019 and 16 December 2019. All that we say is that these aspects were required to be considered by the concerned Respondents when determining the amount in Form SVLDRS-3 issued on 26 December 2019. This material, in the form of the allegations in the Respondents’ own show-cause notice and the challans furnished by the Petitioner within the time prescribed constituted vital material that needed to be examined and verified before issuing Form SVLDRS-3.

22. We have considered Ms. Cardozo's arguments regards admission. The documents she relied upon indeed indicated the Petitioner admitted to the liability of Rs.2,25,31,804/- towards service tax. However, such admission should not be construed as the Petitioner having waived its right to contend that the amounts paid by way of predeposit or the amounts recovered from the Petitioner during the course of investigation should not be adjusted when determining the amount payable under the SVLDRS. The correspondence on record shows that the Petitioner has been agitating this issue about the failure to make adjustments time and again.

23. For the above reasons, we are satisfied that the impugned SVLDRS-3 dated 26 December 2019, to the extent it calls upon the Petitioner to pay an amount of Rs.1,12,65,902/- warrants interference. This amount appears to have been determined without proper verification of the Petitioner's claims regarding predeposits and the amounts recovered during the course of investigations from the Petitioner. Thus, *prima facie*, in terms of Section 124(2) if upon verification, the claim of the Petitioner was found to be correct, then, such amounts, were required to be adjusted in determining the amount payable under the Scheme.

24. In the case of ***Code Engineers Pvt. Ltd. vs. Union of India***¹, the co-ordinate Bench of this Court comprising Ujjal Bhuyan (as his Lordship then was) and Abhay Ahuja, J. had the occasion to consider the provisions of The Sabka Vishwas

¹. 2021(46) G.S.T.L. 400 Bom

(Legacy Dispute Resolution) Scheme, 2019 in fact situation, quite similar to that in the present matter. The co-ordinate Bench observed that the crucial word appearing in Section 126(1) of the Finance Act finds its resonance in Rule 6(1) and that is the word “verify”. As per the Concise Oxford English Dictionary, Indian Edition, “verify” means to make sure or demonstrate that something is true, accurate or justified; swear to or support a statement by affidavit. Black’s Law Dictionary, Eighth Edition, has defined the word “verify” to mean- (1) to prove to be true; to confirm or establish the truth or truthfulness of; to authenticate, (2) to confirm or substantiate by oath or affidavit; to swear to the truth of.

25. The Co-ordinate Bench observed that it was a settled principle of interpretation that the words and expressions used in a legislation must take their colour from the context in which they appear for ascertaining the true meaning of words and expressions used in a legislation. It is therefore necessary that the legislation must be read or understood as a whole. The Co-ordinate Bench held that the central focus of the scheme is settlement of legacy disputes by offering incentives to the declarant, subject no doubt to the aspect of eligibility. The designated committee, therefore, has to perform its duty of verifying the correctness of the declaration keeping this central objective in mind. The verification required to be carried out by the designated committee is not an adjudicatory exercise or an appellate exercise. Therefore, the verification of a declaration by a designated committee

need not be confined to the show cause-cum-demand notice or the Order-in-Original. The mandate of the designated committee is to verify the correctness of the declaration based on the particulars furnished by the declarant as well as the records available with the department.

26. In this case, as noted above, we find that this crucial exercise of verification was not at all carried out insofar as the Petitioner's claim of predeposit or recovery of amounts during the course of investigations. The Petitioner, did produce some challans before the due dates and also relied upon the Respondent's own show-cause notice which suggests recovery of an amount approximately Rs.80 Lakhs during the course of investigations. All these materials indeed be verified in the context of the aims and objectives of the scheme as explained by the Co-ordinate Bench in the case of ***Code Engineers*** (supra).

27. For all the above reasons, we quash and set aside the impugned SVLDRS-3 Form to the extent it determines the amount payable by the Petitioner at Rs.1,12,65,902/- and direct the constitution of the designated committee to verify the Petitioner's claims in the context of predeposit and the amounts recovered in the course of investigations. For this, the designated committee, will have to verify the challans furnished by the Petitioner on 9 December 2019 and 16 December 2019. The designated committee must also consider the import of the statements in the show-cause notice dated 13 June 2013 transcribed above. This exercise

must be completed within three months from the date of uploading of this order. The designated committee must hear the Petitioner and decide on the issue of SVLDRS-3 afresh.

28. The Petition is allowed and the Rule is made absolute in the above terms.

29. We clarify that we have not accepted the Petitioner's contentions about predeposit or recovery during the course of investigations and therefore, all contentions in this regard are left open to be decided by the designated committee after verifying the documents and other material referred to hereinabove.

30. All concerned to act upon an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)