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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th December, 2025

Uploaded on: 18th December, 2025

\+ **W.P.(C) 12049/2023 & CM APPL. 47300/2023**

VARNER RETAIL SERVICES SOUTH ASIA PVT. LTD. .....Petitioner

Through: Mr. Sunil Agarwal, Mr. Utkarsh Tiwari, Mr. Anurag Dwivedi, Mr. Ashutosh Mohan Rastogi, Advs.

versus

ASSISTANT COMMISSIONER DIVISION - OKHLA, CENTRAL GOODS AND SERVICE TAX (DELHI SOUTH) & ORS. .....Respondents

Through: Mr. Aditya Singla, SSC CBIC with Ms. Arya Suresh Nair, Mr. Dhananjay Gautam & Mr. Akhil Sharma, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed challenging the impugned order dated 30th June, 2023 passed by the Assistant Commissioner Division- Okhla, Central Goods and Service Tax (Delhi South) *(hereinafter, 'the impugned order')* by which a demand of service tax to the tune of Rs. 46,86,276/- under Section 73(2) of the Finance Act, 1944, has been confirmed against the Petitioner, along with certain penalties under Section 76(1) and Section 77(2) of the Finance Act, 1944. The petition also challenges the order dated 2nd March, 2020 passed by the Designated Committee, Sabka Vikas Legacy

Dispute Resolution Scheme *(hereinafter, 'SVLDR Scheme')*

3. The petition has a history that deserves to be captured in the present order. During March to December, 2017 the Petitioner had filed certain refund applications under the CENVAT Credit Rules, 2004, for accumulated/ unutilised CENVAT credit. The credit being sought by the Petitioner was for the following period:

Sr. No.	**Period**	**Under Notification No.**	**Due Date for filing of Refund Claim (One Year from the receipt of consideration)**	**Date of Date of filing of Refund Claim**	**Claimed Amount (in 'Rs.')**
1	January 2016 to March 2016	27/2012	20.04.2017	29.03.2017	1,81,386/-
2	April 2016 to June 2016	27/2012	27.06.2017	17.04.2017	1,42,915/-
3	October 2016 to December 2016	27/2012	31.10.2017	13.07.2017	2,49,731/-
4.	January 2017 to March 2017	27/2012	19.04.2018	13.07.2017	1,51,468/-
5.	April 2017 to June 2017	27/2012	22.06.2018	19.12.2017	1,70,076/-
Total					**8,95,576/-**

4. The said CENVAT credits were rejected on 7th September, 2018 by the Department for the entire period.

5. A show cause notice dated 18th October, 2018 *(hereinafter, 'SCN-I')* was the issued to the Petitioner, raising a demand of service tax amounting to Rs. 33,64,946/-. The period covered in the said SCN-I was October, 2015 to

September, 2016. The said SCN-I was issued on the premise that the services rendered by the Petitioner do not qualify as '*export of services*'.

6. The Petitioner also challenged the Order in Original dated 7th September, 2018, before the Commissioner of Central Excise (Appeals) wherein it was held *vide* order dated 6th March, 2019 that the Petitioner's services cannot be treated as export of services as the Petitioner was held to be an intermediary. This order of the Commissioner of Central Excise (Appeals) was challenged before CESTAT and the prayer before CESTAT was to quash the demand and to allow the refund claim of Rs. 8,95,576/-.

7. In the meantime, the Government announced the SVLDR Scheme on 1st September, 2019. The Petitioner, wishing to take advantage of the said Scheme, filed an application in respect of SCN-I under the Scheme. In respect of the said first application, the Department accepted the application of the Petitioner on 31st December, 2019, and relief of Rs. 23,55,462/- was granted to the Petitioner.

8. In the meantime, a second SCN was issued on 19th December, 2019 *(hereinafter, 'SCN-II')* for the following two periods:

- October, 2016 to March, 2017;
- April, 2017 to June, 2017.

9. The Petitioner then filed another application under the SVLDR Scheme with regard to SCN-II. This was, however, rejected by the impugned order dated 2nd March, 2020 on the following grounds:

> *"The impugned SCN has been issued on 18.12.2019 (which is beyond the stipulated date prescribed in the Scheme) and is pending for adjudication."*

10. In the meantime, SCN-II also got adjudicated *vide* the impugned order

dated 30th June, 2023 wherein the demand of Rs. 46,86,276/- along with interest and penalty has been confirmed against the Petitioner.

11. The case of the Petitioner is that the rejection of the application filed with respect to SCN-II under the SVLDR Scheme is incorrect, inasmuch as, as per Mr. Aggrawal, though the cut off date under the scheme is 30th June, 2019 and the SCN-II was issued on 19th December, 2019, the said SCN-II was merely a continuation of SCN-I itself. According to ld. Counsel, SCN-II was not a fresh proceeding since it arose out of the same first SCN-I wherein the entire refund which was claimed by the Petitioner was captured in SCN-I.

12. It is his further submission that under the CBIC CIRCULAR NO. 1074/07/2019-CX dated 12th December, 2019, the applications filed under the SVLDR Scheme post 1st July, 2019 could also be entertained. In this regard, reliance is placed upon Clause 2 paragraph (v) and paragraph (viii) of the said circular dated 12th December, 2019. It is also his submission that since the refund claim was for the entire period but the Department chose to divide the same into two SCNs, the Petitioner cannot be deprived of the benefit of the SVLDR Scheme.

13. Mr. Singla, ld. Counsel, on the other hand, submits that Clause 2(viii) of the Circular dated 12th December, 2019 would only apply if the amount is quantified and the arrears are either pending consideration in an appeal or the appeal has attained finality or the Petitioner gives an assurance that further appeal would not be filed. However, in cases where the SCN itself is dated subsequent to the deadline under the SVLDR Scheme, the Scheme would not be applicable.

14. The Court has considered the matter. At the outset, upon a perusal of

the SVLDR Scheme, the following definition is relevant:

> *"123. For the purposes of the Scheme,* ***"tax dues"*** *means—*
> *(a) where—*
> *(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;*
> *(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:*
> *Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.*
>
> ***(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:***
> *Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;*
> *(c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019;*
>
> *(d) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;*

(e) where an amount in arrears relating to the declarant is due, the amount in arrears."

15. In the present case, the SCN-II is dated 19th December, 2019. However, the SVLDR Scheme itself prescribes the cut off date as 30th June, 2019. In the facts of this case, the initial enquiry which had taken place was in respect of the refund application which was filed by the Petitioner. The amount contained in SCN-I, which was proposed to be demanded from the Petitioner was not quantified as on 30th June, 2019. It is only in SCN-II that the amounts came to be quantified. The SCN-II mentions the details of the SCN-I in the following manner:

Name of the	M/s Varner Retail Services South Asia Private Limited
Address of the Assessee	A-94/3, Ground Floor, Okhla Industrial Area, Phase-II, Delhi-110020
STC Reg. No.	AADCV6426HSD002
Services for which assessee is registered	Business Auxiliary Service' as defined under Section 65(105)(zzb) of the Finance Act, 1994 and were made taxable w.e.f. 01.07.2003 and remained taxable w.e.f. 01.07.2012 in terms of Section 66B read with Section 68 of the Finance Act, 1994 as amended
Issue Involved in the previous SCN	Non-payment of Service Tax on taxable services provided by the assessee during the period i.e. from October 2015 to September 2016. Such taxable services provided by the assessee were not found as covered under "export of service" in terms of Rule 6A(1)(d) of the Services Tax Rules, 1994 read with Rule 9(c) of the Place of Provision of Services Rules, 2012
Details of previous SCN	In terms of Section 73 (1A) of the Finance Act, 1994 as amended read with Section 174 of the Central Excise and Services Tax Act, 2017, facts and allegations made in the previous Show Cause Notices shall form part & parcel of this statement of demand made for subsequent period i.e. October 2016 to December 2016, January 2017 to March 2017 and April 2017 to June 2017. The following Show-Cause-Notice was issued to demand Service Tax along with interest and with proposal to impose penalty:

S. No.	Period involved	SCN No. and date	Amount of Service Tax demand including Cess amount (Rs)	Competency	Status of the SCN's
1	October 2015 to September 2016 **(RUD-I)**	Demand-cum-Show-Cause-Notice issued vide C No DL-South/GST/Div-Okhla/R-76/Show-Cause-Notice-Varner/13/18-19 dt 18.10.2018	33,64,946	Deputy Commissioner	Pending for adjudication
Contravention		Section 66B, 67, 68, 70 of the Finance Act 1994 as amended read with Rule 6 & 7 of the Service Tax Rules, 1994 and further read with Section 119 of the Finance Act 2015 and Section 161 of the Finance Act 2016.			

16. The mere fact that the SCN-II makes a reference to SCN-I would not mean that the Petitioner would get a chance to apply under the SVLDR Scheme with respect to SCN-II as well, when admittedly SCN-II was issued subsequent to the SVLDR Scheme being launched and subsequent to the deadline which is mentioned in the Scheme. Further, the fact that SCN- I is one of the relied upon documents in SCN- II would also not help the Petitioner's case either.

17. In the opinion of this Court, SCN-II is not to be considered as a continuation of SCN-I or the refund proceedings. SCN-II stood on its own legs, as the demand was quantified in SCN-II resulting in the adjudication order dated 30th June, 2023. The rejection of the application pertaining to SCN-II under the SVLDR Scheme cannot, therefore, be faulted as the SCN-II itself was issued post the due date.

18. Further, the CBIC has also issued clarifications in the form of answers given to FAQs with respect to the SVLDR Scheme. In the said FAQs, Question No.1 reads as under:

"Q1. Who is eligible to file declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019?

Ans. Any person falling under the following categories is eligible, subject to other conditions, to file a declaration under the Scheme:

<u>(a) Who has a show cause notice (SCN) for demand of duty/tax or one or more pending appeals arising out of such notice where the final hearing has not taken place as on 30.06.2019.</u>

(b) Who has been issued SCN for penalty and late fee only and where the final hearing has not taken place as on 30.06.2019.
(c) Who has recoverable arrears pending.

(d) Who has cases under investigation and audit where the duty/tax involved has been quantified and communicated to him or admitted by him in a statement on or before 30th June, 2019.

(e) Who wants to make a voluntary disclosure."

19. Thus, the SCNs issued beyond the deadline prescribed in the Scheme itself cannot be considered for benefits under the Scheme. In the overall facts and circumstances, the benefit of this SVLDR Scheme cannot be extended to the Petitioner with respect to SCN–II.

20. However, considering the fact that the writ petition has remained pending before the Court since September, 2023, the Petitioner cannot be deprived of its remedies in accordance with law. Accordingly, the Petitioner is permitted to file an appeal against the impugned order dated 30th June, 2023, by 31st January, 2026.

21. If the said appeal is filed by 31st January, 2026, the appeal shall not be

dismissed on the ground of limitation and shall be adjudicated on merits.

22. The petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 16, 2025
dj/ss