

Self-assessment of tax liability during Audit before June 30, 2019 can be consider as 'Quantification' under SVLDR Scheme, 2019

The Hon'ble Madras High Court ("**the High Court**") in the case of *M/s. Win Power Engineering Pvt. Ltd. v. The Designated Committee (W.P. No. 11785 of 2020) dated November 30, 2022* held that benefit under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("**the SVLDR Scheme**") could not be denied on the ground that the quantification required to be done under the SVLDR Scheme is actually the self-assessment done during the duration of Audit.

Facts:

M/s. Win Power Engineering Pvt. Ltd. ("**the Petitioner**") filed the Writ Petition before the Hon'ble High Court against the rejection order passed by the Designated Committee ("**the Respondent**") in respect of the application filed by the Petitioner under the SVLDR Scheme.

At this juncture, it is important to understand the SVLDR Scheme and its structure. The SVLDR Scheme was brought into force by the Finance Act, 2019 with effect from September 01, 2019, with the objective of reducing litigation and disputes relating to legacy taxes namely, Central Excise and Service Tax so that taxpayers could focus on GST. The SVLDRS Scheme provided taxpayers relief in payment of disputed tax amounts ranging from 70% (of the tax amount) to 40%. It also provided for full waiver of interest and penalty.

Under the SVLDR Scheme, taxpayers must declare an amount of duty payable in a written communication. The said process is termed as 'quantification' under Section 121 (r) of the SVLDR Scheme.

In terms of Section 123 (c) of the SVLDR Scheme, the quantification of amount must be done on or before June 30, 2019 ("**the Last Date**") in case, where any enquiry or investigation or audit is pending against the taxpayer who wish to seek the benefit of the SVLDR Scheme.

The dispute resolution and amnesty granted is subject to conditions mentioned under Section 125 of the SVLDR Scheme.

In the present case, the tax authorities commenced the audit of the Petitioner for the period of April 2015 to June 2017 on September 25, 2018. During the Audit, the Petitioner, on its own, by written communication dated October 24, 2018, expressed the liability of services tax dues amounting to Rs. 1,98,86,089/- for the period of April 2017 to June 2017.

Pursuant to the Audit, the Commissioner of GST and Central Excise ("**the Authority**") issued a demand cum Show Cause Notice ("**the SCN**") dated February 26, 2020 and raised a demand of Rs. 2,98,27,857/- for the period of March 2016 to June 2017. However, for the period of April 2017 to June 2017 the demand of Rs. 1,94,86,715/- was raised, which was near to the tax dues which were disclosed by the Petitioner.

During the Audit, the Petitioner filed first application under the SVLDR Scheme, which was rejected on the ground that the quantification was not done prior to the last date. However, the Petitioner contended that since the written communication dated October 24, 2018, had quantified the tax dues prior to June 30, 2019, therefore, rejection of application was not valid on the aforementioned ground. The Petitioner also relied on Circular No. 1071/4/2019-CX.8, dated August 27, 2019 ("**the Circular**"), issued by the Central Board of Indirect Taxes and Customs ("**CBIC**") which clarified that a written communication by the taxpayer would amount to quantification for the purpose of Section 2(r) of the SVLDR Scheme.

The revenue on the other side argued that even if the amount assessed by the Petitioner is to be considered as amount calculated before the last date, such self assessment cannot be termed as quantification because self the assessment of the tax by the Petitioner was only for the period of April 2017 to June 2017, whereas the Audit was for the duration of period from April 2015 to June 2017. Therefore, the tax liability disclosed by the Petitioner is partial and hence cannot be considered as quantification of tax dues.

Hence, the Petitioner filed a Writ Petition before the High Court challenging the order of rejecting the applications under the SVLDR Scheme as mentioned above.

Issue:

Whether the written communication by the Petitioner during the Audit can be considered as a valid quantification under the SVLDR Scheme?

Held:

The High Court held as under:

- The Petitioner vide written communication dated October 24, 2018, has quantified the tax dues for the period of April 2017 to June 2017 before the completion of audit. Therefore, it can be said that the quantification was done before the last date. Further, as per the Circular the written communication was considered as valid for the purpose of quantification of tax/dues.
- The amount of Rs. 1,98,86,089/- declared by the Petitioner as tax dues for the period of April 2017 to June 2017 would be considered as 'quantified' as per provision of the SVLDR Scheme and benefit of the Scheme was to be made available for such period.
- For the balance of period, the department was directed to take action as per the provisions of law.
- The High Court allowed the appeal and directed the Authority to accept the declaration filed under the SVLDR Scheme for tax dues and tax determined by the Petitioner as payable for the period of April 2017 to June 2017 as per letter dated October 24, 2018 and settle the case by issuing discharge certificate as per provisions of the SVLDR Scheme.

Relevant Provisions:

Section 121 (r) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

“quantified”, with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment;

Section 123 (c) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

123. For the purposes of the Scheme, “tax dues” means—

(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;

Section 125 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

(1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—

(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019.

(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;

(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;

(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;

(f) a person making a voluntary disclosure,—

- (i) after being subjected to any enquiry or investigation or audit; or*
- (ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;*
- (g) who have filed an application in the Settlement Commission for settlement of a case;*
- (h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944*

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