

SVLDRS discharge certificate cannot be denied for delayed payment of tax which was recredited due to a technical glitch

The Hon'ble Ahmedabad High Court in *M/s. SK Likproof Private Limited v. Union of India [R/Special Civil Application No. 20717 of 2022 dated February 9, 2023]* has held that, when the deposit within the stipulated time period was made, technical glitch being the reason for the non-functioning of the bank's software would not hold the assessee liable or accountable for non-payment. Further held that, the denial of the Revenue Department for considering the case and the later recovery of an amount of INR 7,68,675/- must be reverted. Directed the Revenue Department to refund the said sum and issue discharge certificate.

Facts:

M/s. SK Likproof Private Limited ("**the Petitioner**") is engaged in the business of manpower recruitment agency, maintenance of repair service etc. at Vadodara. The Revenue Department ("**the Respondent**") passed the Order- in-Original on March 13, 2019 ("**the OIO**"), directing the Petitioner to pay Service Tax amounting to INR 3,60,502/- under Section 73 of the Finance Act, 1994 ("**the Finance Act**") along with the applicable interest and penalty. An appeal was filed before the Appellate Authority wherein the final hearing was scheduled on July 9, 2019. Meanwhile, SVLDRS was notified through the Finance Act and therefore, the Petitioner had filed an application in **Form SVLDRS -1**.

The Petitioner received a notice under Section 127 of the Finance Act on January 21, 2020 wherein, it was asked to submit the documents w.r.t. final hearing of appeal. On February 11, 2020, the Petitioner was intimated that the personal hearing was scheduled on February 14, 2020 and subsequently on February 12, 2020, the Petitioner was asked to pay the amount of INR 81,050.60/- for full and final settlement of tax dues under the Finance Act and the Mandate form was also generated for the same.

After six days of the issuance of the **Form SVLDRS 03**, the payment of INR 81,051/- was made through the cash credit account of the Petitioner however, the discharge certificate in **Form SVLDRS-4** was not received and the amount which had been duly debited was re-credited in the account of the Petitioner. Thereafter, the Petitioner once again made the payment of Service Tax amounting to INR 81,051/- after the due date had elapsed. Thus, the payment was made twice due to technical glitch but the discharge certificate was still not issued. Further, on March 14, 2022, the notice was issued by the Respondent under Section 79(1)(c) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") in **Form GST DRC-13** wherein bank was directed to pay liabilities in compliance with Section 79(1)(c) of the CGST Act and the payment of INR 7,68,675/- was made.

Issue:

Whether the Petitioner is entitled to refund of Service Tax amounting to INR 7,68,675/- which was paid by it due to the coercive action of the Respondent along with interest thereof?

Held:

The Hon'ble Ahmedabad High Court in ***R/Special Civil Application No. 20717 of 2022*** held as under:

- Noted that, the statement under Section 127 of the Finance Act in SVLDRS form was issued intimating the Petitioner to make payment of INR 81,050.60/- as full and final settlement under the SVLDRS scheme and the amount was needed to be paid electronically through internet banking.
- Observed that, the Petitioner made the payment through NEFT of INR 81,051/- within six days from the date of SVLDRS-3, however, due to technical glitches, the amount could not be debited and got re-credited in its account.

- Relied on the judgment of Hon'ble Supreme Court in *M/s. Shekhar Resorts Limited v. Union of India [Civil Appeal No. 8957 of 2022 dated January 5, 2023]* wherein, it was held that no party shall be left remediless and that the assessee cannot be punished for not doing something which was impossible for it to do and stated that, the Petitioner who was not under the fault when amount could not get deposited with the bank and was re-credited after having once gone to the bank, to deny it the benefit only because there were technical glitches about which it could not have done anything, would amount to leaving the Petitioner remediless which is impermissible under the law.
- Held that, when the deposit within the stipulated time period is not disputed by the Respondent and the technical glitch being the reason for the non-functioning of the bank's software would not hold the Petitioner liable or accountable for non-payment.
- Further held that, the denial of the Respondent for considering the case and the later recovery of the entire amount of INR 7,68,675/- on July 11, 2022 must be reverted/refunded to the Petitioner.
- Directed the Respondent to consider the payment made by the Petitioner of INR 81,051/- to appropriate the same towards the settlement dues under the SVLDRS and the discharge certificate to be issued in favour of the Petitioner.
- Further directed the Respondent to refund a sum of INR 7,68,675/- of Service Tax with interest within 8 weeks.

Relevant Provisions:

Section 127 of the Finance Act:

“(1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount

payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.

(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration.

(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant: Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.

(4) After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.

(5) The declarant shall pay electronically through internet banking, the amount payable as indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.

(6) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

(7) Where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant

shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the designated committee, in such manner as may be prescribed, along with the proof of payment referred to in sub-section (5).

(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof.”

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