

**2023 STPL(WEB) 7 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J. AND HON'BLE MR. JUSTICE VIRENDER
SINGH, JJ.)

M/S. PHOENIX UDYOG PVT. LTD.

Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

Respondents

CWP No . 5428 of 2022-Decided on 06-07-2023

Taxation, Central Excise

Central Excise – Non Payment due to glitch in server – Scheme to settle the petitioner dues under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 – Prayer to take the amount after expiry of Scheme – Held: Information of glitch in server first communicated, on 28th February, 2020, i.e. after the expiry of thirty days – Writ petition filed after more than two years - The futile attempt made by the learned counsel for the petitioner by putting forward the plea of restrictions imposed worldwide, on account of COVID-19 pandemic, is also not liable to be accepted. When, the other similarly situated declarants have made the payment online, then, accepting the said plea is not justifiable. No relief – Petition dismissed.

(Para 21, 22, 23, 24)

Advocate(s): For the petitioner: Mr. Vikrant Kackria and Ms. Anita, Advocates.

For the respondents: Mr. Balram Sharma, Deputy Solicitor General of India, for respondent No. 1. Mr. Vijay Kumar Arora, Senior Standing Counsel, for respondent No. 2.

JUDGMENT

Virender Singh, Judge-Petitioner-M/s. Phoenix Udyog Pvt. Ltd. has filed the instant writ petition, under Article 226 of the Constitution of India, for the following substantive reliefs:

“(a) Issue writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to open the portal or take the amount by any other means and settle the petitioner dues under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

(b) Issue direction to the respondents not to dismiss the application under the scheme of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 for non-payment of the challan deposit under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.”

2. The case of the petitioner is that the petitioner- Company is engaged in manufacture of excisable goods. The petitioner was regularly filing its Central Excise Returns, but, due to the financial hardship, the petitioner-Company could not deposit the Central Excise Duty. There was no suppression on the value of the figures of manufacture and clearance in the Central Excise Returns filed by them. As on 1st July, 2017, the petitioner-Company was having the liability in the shape of Central Excise Duty to the tune of Rs. 32,26,613/-.

3. In the year 2019, a scheme, namely Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, has been launched by the respondents, wherein, the pending cases could be settled by paying an amount equal to 50% of the tax amount. This Scheme was announced by the Finance Minister in the Union Budget for the year 2019-20. The budget proposal was enacted in Chapter-V of the Finance Act, 2019. The said Scheme was launched as “one time measure” for liquidation of past disputes of Central Excise, as well as, Service Tax.

4. The petitioner-Company has also highlighted the salient features of the Scheme and pleaded that the petitioner- Company had applied for settlement, under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Consequently, SVLDRS-1 (Annexure P-2) was issued on 26th December, 2019. Thereafter, the Designated Committee has issued SVLDRS-2 (Annexure P-3) in favour of the petitioner-Company. In compliance of the SVLDRS-2, the petitioner- Company has submitted SVLDRS-2A (Annexure P-4) on 20th January, 2020, upon which, the Department has issued SVLDRS-3 (Annexure P-5) on 28th January, 2020, wherein the petitioner was directed to deposit a sum of Rs. 10,90,646/-. After receiving SVLDRS-3 on 28th January, 2020, the petitioner tried to generate online challan, but, due to technical error, the portal was unable to generate the challan. When, the efforts were made to generate the challan, the following message was flashed on the website:

“There is something wrong while processing the request please contact our support team.”

5. Although, the said problem is stated to have been resolved on 28th February, 2020, but, when the petitioner- Company again tried to generate the challan, they received a message that period of 30 days for making the deposit had already expired. The petitioner-Company tried to contact the Support Team, but, due to network congestion, the same could not be contacted. In this regard, e-mail, dated 28th February, 2020 (Annexure P-6), was also forwarded to the Helpdesk. A letter was also written to Joint Commissioner, Goods and Service Tax Department, on 4th March, 2020, but, no response has been received by the petitioner-Company, in this regard. The matter has also been taken up with the Joint Commissioner, Goods and Service Tax Department, Shimla, on 16th March, 2020, but, no response was received by the petitioner-Company.

6. It is the further case of the petitioner-Company that on account of the restrictions imposed worldwide, during the lockdown period, in the wake of COVID-19 pandemic, the petitioner-Company has suffered losses and the entire business activities came to stand still.

7. According to the petitioner, the limitation period has been extended by the Hon’ble Supreme Court, in view of the COVID-19 pandemic, as such, the relief, as sought in the writ petition, has been prayed.

8. When put to notice, the respondents have filed the reply, wherein, it has been submitted that the petitioner had applied under the category of ‘Arrears’ of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, on 26th December, 2019, to settle the pending demand of Central Excise Duty, amounting to Rs. 32,26,613/-. After verification, SVLDRS-3 for a sum of Rs. 10,90,646 was issued, on 28th January, 2020, to the petitioner-Company, under Section 127 of the Finance Act of 2019 read with Rule 6 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019.

9. As per the provisions of Section 127 (5) of the Finance Act, 2019, the petitioner-Company was required to pay the outstanding tax dues electronically, within thirty days from the date of issuance of SVLDRS-3. However, the petitioner-Company has failed to pay the amount estimated by the Designated Committee and made effort to put the blame on technical issues. The said Scheme was extended up to 30th June, 2020 vide Notification, dated 14th May, 2020, but, the petitioner-Company again failed to discharge the tax dues, even after the extension of the last date to deposit the dues to resolve the case.

10. Elaborating their stand, it is the case of the respondents that the other applicants have made the payment through the same portal and no technical issues were faced by them and moreover, the petitioner-Company has not contacted the Helpdesk to resolve its issues.

11. The respondents have also placed on record the documents, with a view to demonstrate that there was no technical glitch, as claimed by the petitioner-Company. The echallans of the different declarants, who had obtained the benefit of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, have also been annexed.

12. On all these submissions, a prayer has been made to dismiss the writ petition.

13. The petitioner-Company has filed the rejoinder, denying the allegations, which have been levelled by the respondents, against it.

14. By way of the present writ petition, the petitioner- Company wants to turn the clock back, as, it has been prayed that the respondents be directed to open the portal or accept the amount, by any other means, and settle the dues under the Scheme.

15. As per the documents annexed with the petition, the petitioner-Company was to deposit a sum of Rs. 10,90,646/-, as per the provisions of Section 127 of the Finance Act, 2019, within a period of thirty days from the date of issuance of such statement. Annexure P-5 is the statement under Section 127 of the Finance Act, 2019, read with Rule 6 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019. Admittedly, the petitioner-Company could not deposit the amount within a period of thirty days, on account of the alleged technical glitch. This statement was issued on 28th January, 2020. Meaning thereby, the amount, as mentioned in this document, was to be deposited within a period of thirty days, i.e., on or before 27th February, 2020.

16. The e-mail (Annexure P-6) pointing out the alleged technical glitch was made on 28th February, 2020, on 05.48 p.m. This e-mail was forwarded to the authorities, after the expiry of period, as per Section 127 (5) of the Finance Act, 2019.

17. There is nothing on the record to show that any efforts were made by the petitioner-Company to discharge the tax liability, under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, which was extended up to 30th June, 2020, vide Notification No. 1 of 2020, under Central Excise (NT), dated 14th May, 2020.

18. In these circumstances, the material question, which arises before this Court, is about the fact as to whether the time limit fixed under the Scheme can be extended by this Court, while exercising powers under Article 226 of the Constitution of India.

19. The Hon'ble Supreme Court in Petition for Special Leave to Appeal (C) No. 2070 of 2022, titled as M/s Yashi Constructions versus Union of India & Ors., has replied this question in negative. The operative portion of the judgment is reproduced, as under:

“In that view of the matter, the High Court has rightly refused to grant relief to the petitioner for extension of the period to make the deposit under the Scheme. It is a settled proposition of law that a person, who wants to avail the benefit of a particular Scheme has to abide by the terms and conditions of the Scheme scrupulously. If the time is extended not provided under the Scheme, it will tantamount to modifying the Scheme which is the prerogative of the Government.”

20. In another case, in Civil Appeal No. 8957 of 2022, titled as M/s. Shekhar Resorts Limited (Unit Hotel Orient Taj) versus Union of India, the Hon'ble Supreme Court has again elaborately discussed the applicability of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The operative para 8.1 of the judgment is reproduced, as under:

“8.1 Now so far as the observations made by the High Court to the effect that the High Court cannot, in exercise of powers under Article 226 of the Constitution of India extend the period under the Scheme, 2019, to some extent the High Court is right. The High Court while exercising the powers under Article 226 of the Constitution of India cannot extend the Scheme. However, in the present case it is not a case of extension of the Scheme by the High Court;

It is a case of taking remedial measures. It is not a case where the appellant did not make any application within the stipulated time under the Scheme. This is not a case where the Form No. 3 determining the settlement amount was not issued during the validity of the Scheme. It is not a case where the appellant deliberately did not deposit the settlement amount and/or there was any negligence on the part of the appellant in not depositing the settlement amount within the stipulated time. As observed hereinabove it is a case where the appellant was unable to make the payment due to the legal impediment and the bar to make the payment during the moratorium in view of the provisions of the IBC. In a given case it may happen that a person who has applied under the Scheme and who was supposed to make payment on or before 30.06.2020, became seriously ill on 29.06.2020 and there was nobody to look after his affairs and therefore he could not deposit the amount; such inability was beyond his control and thereafter, immediately on getting out of sickness he tried to deposit the amount and/or approached the Court – can the Court close its eyes and say that though there may be valid reasons and/or causes for that person's inability to make the payment, still no relief can be granted to him? There may be extra ordinary cases which are required to be considered on facts of each case. The Court are meant to do justice and cannot compel a person to do something which was impossible for him to do.”

21. If the facts and circumstances of the present case are seen in the light of the decisions of the Hon'ble Supreme Court, as reproduced hereinabove, the petitioner could not point out any legal impediment or bar to make the payment within the stipulated time. So far as the alleged technical glitch, as highlighted by the learned counsel for the petitioner, is concerned, when, the other similarly situated declarants have made the payment online, then, accepting the said plea is not justifiable.

22. Moreover, as per the case set up by the petitioner, the SVLDRS-3 was issued on 28th January, 2020. As per Section 127 (5) of the Finance Act, 2019, the petitioner- Company was required to pay the amount payable, as indicated in the statement issued by the Designated Committee, electronically, through internet banking, within a period of thirty days, from the date of issuance of such statement.

23. Admittedly, this amount has not been deposited within the stipulated time and the first communication, which was made by the petitioner with the authorities, was made on 28th February, 2020, i.e. after the expiry of thirty days.

24. Even otherwise, the present writ petition is also bad for delay and laches, as the intimation regarding the alleged technical glitch was made by the petitioner-Company, after the expiry of the statutory period, i.e. 28th February, 2020, and the present writ petition has been filed before this Court only on 21st July, 2022. The futile attempt made by the learned counsel for the petitioner-Company by putting forward the plea of restrictions imposed worldwide, on account of COVID-19 pandemic, is also not liable to be accepted.

25. Considering all these facts, especially the factual position of the present case, in the light of the decisions of the Hon'ble Supreme Court, as referred to above, the petitioner- Company is not entitled to any relief.

26. Consequently, the writ petition is dismissed, so also the pending miscellaneous applications, if any. No order as to costs.
