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

\+ W.P.(C) 7350/2020

BHAWNA MALHOTRA ..... Petitioner
Through: Mr. Rajesh Jain, Advocate with Mr.Ram Kumar Sharma, Mr.Virag Tiwari and Mr.Ramashish, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr.Avnish Singh, Advocate for R-1/UOI.
Mr.Harpreet Singh, Sr. Standing Counsel for R-2.

% Date of Decision: 02nd November, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 21st August, 2020 passed by respondent no.2 pursuant to this Court's order dated 5th August, 2020 in W.P (C) 4912/2020. Petitioner prays for reading down Section 128 of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short 'SVLDRS') in the interest of justice and equity and to hold that any clerical or arithmetical error made by an applicant in SVLDRS-1 also

falls within the ambit of said Section. Petitioner further prays for a direction to the respondent Committee to allow it to rectify the declaration dated 30th December, 2019 and consider it as one filed under the *'litigation'* category instead of *'voluntary disclosure'* category and grant consequential benefits.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Mr. Rajesh Jain, learned counsel for the petitioner states that the respondent has rejected the petitioner's rectification application on the ground that Section 128 confers limited powers upon the designated committee and it is not empowered to rectify errors committed by the petitioner/applicant/ declarant/assessee.

3. He emphasises that the error in the present case was a 'clerical' error that was apparent on the face of the record and the designated committee was statutorily obliged to rectify the same. He states that if the rectification is carried out, no undue benefit would accrue to the petitioner.

4. He submits that Section 154 of the Customs Act, 1962, which is *pari materia* to Section 128 of SVLDRS, has been held by Courts to include in its sweep the errors committed by the importer/declarant. In support of his submission, he relies upon judgment of the Madras High Court in ***CC Chennai Vs. Volvo India (P) Ltd., 2019 (365) ELT 802 (Mad.)*** wherein it has been held as under:-

> *"9. In Hero Cycles v. Union of India reported in 2009 (240) E.L.T. 490 (Born.), the Bombay High Court, held that the mere fact that there was an inadvertent error, on the part of the importer, in not claiming benefit of exemption notification, cannot result in denial of the said benefit. Bombay High Court held that a duty is cast on the authorities, to assess the goods and impose duty, in accordance with law. Bombay High Court also held that, duty cannot be*

demanded, if it is otherwise not payable. Said Court has held that once there is a power to assess, there is a corresponding duty, to assess, in accordance with law. Against this order, the Revenue preferred an appeal before the Hon'ble Apex Court, and that the same was rejected in Union of India v. Hero Cycles reported in 2010 (252) E.L.T. A103 (S.C.).

10. In the case on hand, from the material on records, we could see that apparently, there was a error, on the part of the supplier, who has inadvertently charged SEK 199450 (Rs. 11,36,865/-), whereas, the actual freight incurred was only SEK 19945 (Rs. 1,13,686.50). Even the supplier has admitted the mistake and they have given a credit note, for the difference involved. Appraiser, who was present in the personal hearing, before the Original Authority, has shown that the split values appearing in the invoice, and admitted that there could have been a mistake in the assessment, due to the wrong figures given by the 1st respondent, and placing on record the above, the Commissioner (Appeals) has observed that excess amount of duty, has been collected, on account of wrong freight amount, being included in CIF value. But the Commissioner (Appeals), has rejected the appeal, by observing that it is premature. CESTAT, Chennai, while allowing further appeal, filed by the 1st respondent, held that the assessing authority, shall allow the 1 st respondent to correct the error in the Bill of Entry, under Section 154 of the Act and seek for consequential refund."

5. Consequently, according to him, there is no reason to exclude the mistake of the declarant/assessee/applicant from the ambit of Section 128.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 2.

6. *Per contra*, Mr. Harpreet Singh, learned senior standing counsel for respondent no.2 states that it is the petitioner who has committed a mistake in the declaration form under the SVLDRS by filing it under the category of *"voluntary disclosure"* instead of *"litigation"* category. According to him, the declaration form is very clear and there is no scope for committing any

mistake. He contends that the petitioner has been reckless in filing the declaration form and she cannot now seek to reopen the proceedings for her own benefit.

7. He further submits that the scope of Section 128 pertains to powers of modification / rectification of an order passed by the designated committee and that too to correct an arithmetical or a clerical error apparent on the face of record only.

8. Mr. Harpreet Singh, learned senior standing counsel for respondent no. 2 emphasises that the mistake in the present case has been committed by the petitioner and there is no rectification possible in such a case as it does not fall within the ambit of Section 128. He submits that the scope of rectification under Section 128 is limited and the designated committee cannot travel beyond the assigned rules and extend any undue benefit to any assessee under the Scheme.

9. He further submits that the provisions of an amnesty scheme have to be interpreted strictly and, in support of his submission he places reliance upon the judgment of the High Court of Jharkhand in the case of ***Manpreet Engineering & Const. Co. Vs. Union of India, 2016 (44) S.T.R. 384 (Jhar.)*** wherein it has been held as under:-

> *"(VI) These aspects of the matter have been properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur while passing the order dated 7th April, 2014. It ought to be kept in mind that whenever such voluntary disclosure scheme is floated, further leniency should not be given by the Court to the declarant apart from what has been provided under the scheme, otherwise, there will be no end of liberal approach. Moreover, payment of tax has a direct nexus with the budget of the country. There are fixed dates for payment of taxes. Realisation of taxes after due date is a matter of policy decision of the Union of*

India. Hence, this court will not extend the period for the payment of tax dues unless the scheme in question gives that liberty to the declarant."

10. He lastly states that there is no bar on filing multiple declarations by any declarant/assessee under the SVLDRS. He points out that the designated committee had issued a statement in the form of SVLDRS-3 dated 03rd January, 2020 and there was ample time with the declarant/assessee to file a fresh application under the *"litigation category"* covering the demand arising out of the show cause notice dated 24th October, 2018, as the last date to file declarations under the Scheme was extended by the Government till 15th January, 2020. The relevant portion of the counter affidavit is reproduced hereinbelow:-

"*.....In fact, had the petitioner filed a second declaration under the 'litigation' he would have got the benefits under the scheme which he is now trying to seek.*"

COURT'S REASONING

AN ERROR/MISTAKE APPARENT ON THE FACE OF RECORD MEANS A PATENT, MANIFEST AND SELF-EVIDENT ERROR WHICH DOES NOT REQUIRE ELABORATE DISCUSSION OF EVIDENCE OR ARGUMENT TO ESTABLISH IT. IN THE PRESENT CASE, THE PETITIONER'S MISTAKE IS A PROCEDURAL/CLERICAL ERROR THAT IS APPARENT ON THE FACE OF THE RECORD AND IT IS OF AN INADVERTENT NATURE NOT DELIBERATELY MADE TO CLAIM ANY UNDUE BENEFIT.

11. Having heard learned counsel for the parties, this Court is of the view that it is essential to first outline the scope and ambit of Section 128 of the SVLDRS. Section 128 reads as under :-

*"**Rectification of errors.***

***128.** Within thirty days of the date of issue of a statement indicating the amount payable by the declarant, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or suo motu, by the designated committee."*

12. From the aforesaid Section, it is apparent that the designated committee can modify its order to correct an arithmetical error or clerical error which is apparent on the face of record. An error/mistake apparent on the face of record means a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it. [See ***Asstt. Commr., Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd., 2008 (230) E.L.T. 385 (S.C.)***].

13. The admitted case is that the petitioner was eligible to make a declaration under SVLDRS. In fact, in pursuance to the show cause notice dated 24th October, 2018, the petitioner had filed the declaration dated 30th December, 2019. It is not disputed that at the time of filing the declaration, the said show cause notice was pending.

14. In the counter affidavit filed on behalf of respondent no.2, it has been admitted that the petitioner would have been entitled to the benefits of the Scheme if the declaration had been filed under the correct category i.e. *'litigation'*. Accordingly, the petitioner was bound to file her declaration under the *'litigation'* category. However, she filed her declaration under the wrong category i.e. *'voluntary disclosure'*. The petitioner realised the aforesaid error after issuance of Form SVLDRS-3 dated 03rd January, 2020 by respondent no.2 and made a representation dated 29th January, 2020 to

the Assistant Commissioner, SVLDRS seeking rectification i.e. within the prescribed time of 30 days under Section 128 of SVLDRS. It is pertinent to mention that if a declarant/assessee/applicant claimed relief in the category of *'litigation'* and tax dues was Rs. 50,00,000/- or less – as actually entitled in the present case – then she would be entitled to relief of 70% of the tax dues. However, if the declarant/assessee/ applicant filed the declaration under *'voluntary disclosure'* category – as petitioner did in the present case – then no relief with respect to the tax dues was available. Consequently, the petitioner by making a declaration under *'voluntary disclosure'* category instead of *'litigation'* category stood to gain nothing.

15. In view of the aforesaid facts, this Court is of the opinion that the petitioner's mistake is not only a procedural/clerical error that is apparent on the face of the record but is also of an inadvertent nature not deliberately made to claim an undue benefit which the party was otherwise not entitled.

SECTION 128 DOES NOT STATE THAT AN ERROR/MISTAKE APPARENT ON THE FACE OF THE RECORD THAT CAN BE RECTIFIED HAS TO BE COMMITTED BY THE DESIGNATED COMMITTEE ONLY. IF THE NARROW APPROACH ADOPTED BY THE RESPONDENT NO.2 IS ACCEPTED, IT WOULD DEFEAT THE VERY PURPOSE OF SVLDRS.

16. Section 128 of SVLDRS does not state that an error/mistake apparent on the face of the record that can be rectified is of the designated committee alone. This Court is also of the view that an error/mistake apparent on the face of the record by the declarant/assessee/applicant would also fall within the scope and ambit of Section 128 of SVLDRS.

17. Further, if the error/mistake committed by the declarant/assessee/ applicant while filing the form is not rectified, it is bound to result in a

mistake/error in the decision/order passed by the designated committee. Consequently, an error committed by the assessee, which inevitably leads to an error in the order of the designated committee, can be rectified by the designated committee under Section 128 of SVLDRS.

18. This Court is also of the view that if the narrow approach adopted by the respondent no.2 is accepted, the same would defeat the very intent and purpose of SVLDRS. This Court in ***Seventh Plane Networks Private Limited vs. Union of India & Ors. W.P.(C) 3934/2020*** has held as under:-

> *"18. This Court is further of the opinion that a liberal interpretation has to be given to the SVLDRS, 2019 and the circulars issued by Central Board of Indirect Taxes and Customs as their intent is to unload the baggage relating to legacy disputes under the Central Excise and Service Tax and to allow the businesses to make a fresh beginning."*

19. The judgment in ***Manpreet Engineering & Const. Co.*** (supra) has no relevance to the facts of the present case in so far as the assessee therein had not complied with provisions of the Scheme in so far as it had not paid the taxes within the stipulated time and was thus disqualified to avail benefits thereunder. However, in the present case it is not the case of the respondent no.2 that the petitioner is disqualified from availing benefits under the SVLDRS.

THE STAND OF THE RESPONDENT NO. 2 THAT THERE IS NO BAR ON FILING OF MULTIPLE DECLARATIONS BY ANY ASSESSEE IS MISCONCEIVED ON FACTS AND UNTENABLE IN LAW.

20. The stand of the respondent no. 2 that there is no bar on filing of multiple declarations by any assessee is misconceived on facts and untenable in law. Firstly, SVLDRS does not provide for resubmitting an

application under the said Scheme. Secondly, for a declaration under *'litigation'* category, *'voluntary disclosure'* category, being mutually exclusive, is ruled out. Thirdly, any fresh declaration after issuance of SVLDRS-3 on 03rd January, 2020 would end up in a chaotic situation as then there would be two SVLDRS-3!

21. Also no useful purpose would be served by making the petitioner to file repeated declarations when the petitioner had already sought for necessary rectification in the first declaration filed by her.

THE ISSUES RAISED IN THE PRESENT WRIT PETITION ARE NO LONGER RES INTEGRA AS THE GAUHATI HIGH COURT HAS ALLOWED A SIMILAR PETITION IN M/S. URBAN SYSTEMS VS. UNION OF INDIA AND 4 ORS., 2020 (9) TMI 121

22. This Court is of the view that the issues raised in the present writ petition are no longer *res integra* as the Gauhati High Court in similar facts in ***M/s. Urban Systems Vs. Union of India and 4 Ors., 2020 (9) TMI 121***, has allowed a writ petition and held as under:-

> *"7. In the circumstance, we are required to look into the matter from the perspective as to whether by not mentioning the penalty in the Form SVLDRS-1, the petitioner had committed an incurable mistake so as to disentitle the petitioner from the benefits under the Scheme 2019 or the mistake that was made can be allowed to be correct. Apparently, a mistake made can be of two different types, one being a mistake based upon which a legal right is claimed so that the mistake made can be construed to be an act of misleading the authorities to claim a benefit which otherwise party is not entitled or the mistake made was more of inadvertent nature, which can also be terms as a callous mistake, which does not put the party making such mistake on an undue advantageous position so as to make them entitled to a benefit which they are otherwise not. A mistake that was deliberately made to claim an undue benefit which*

the party was otherwise not entitled, would definitely have to be construed to be an incurable mistake but at the same an inadvertent mistake which may also creep in due to an oversight or because of a callous attitude of the person making the claim but the ultimate result of such mistake would not accrue a benefit which he otherwise would not have been entitled can be accepted to be a curable mistake.

8. In the instant case, the mistake made by the petitioner was that the penalty imposed was stated to be zero whereas it is already on record that the respondent authorities had imposed a penalty of Rs.11,48,82,644..00 (Rupees Eleven Crore Forty Eight Lakhs Eight Two Thousand Six Hundred Forty Four). In our view the mistake made by the petitioner by not stating about the penalty imposed upon them in Form SVLDRS-1 cannot be said to be a mistake by which the petitioner claimed an undue benefit which they otherwise are not entitled under the law. When we look into the Scheme 2019, we do not find any provision which provides that a person upon whom a penalty is imposed would not be entitled to the benefit given under the scheme. Infact on the contrary the provision of the Scheme 2019 may be such that the benefit of exemption, may even be applicable to the amount of penalty imposed, in which event, the petitioner assessee may be more benefited and would be entitled to a greater exemption if the amount of penalty was mentioned rather than not mentioning the penalty.

9. In the aforesaid circumstance, it is an agreed position of the parties that the petitioner may make an application to the appropriate respondent authority to consider the claim of benefit under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 by allowing the petitioner to make necessary correction in the information provided as regards the earlier penalty imposed on them. It is further agreed that upon such application being made, the authorities would pass an appropriate order thereof as per their discretion."

RELIEF

23. Keeping in view the aforesaid, the impugned order is set aside and the respondent No.2 is directed to rectify the declaration dated 30th December,

2019 and consider it as one filed under the *'litigation'* category instead of *'voluntary disclosure'* and process the same in accordance with law within four weeks.

24. With the aforesaid direction, present writ petition stands disposed of.

25. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

NOVEMBER 02, 2020
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