

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20455 of 2023

(Arising out of Order-in-Appeal No.MLR-EXCUS-000-APP-AS-081-2022-23 dated 15.03.2023 passed by the Commissioner of Central GST & Central Excise (Appeals), Belagavi)

M/s. Dynamic Infratech

Prop. Shri Deeraj

116/3B-2, First Floor, Municipal Building
Main Road Kundapura,
Udupi-576 201.

Appellant(s)

VERSUS

**Commissioner of Central Tax-
Mangalore Central Tax,**

7th Floor, Trade Centre, Bunts Hostel Road,
Mangalore - 575 003.
Dakshina Kannada

Respondent(s)

APPEARANCE:

Mr. Jatin. A Chirstopher, Chartered Accountant for the Appellant

Mr. Neeraj Kumar, Supt. Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 21576 /2025

DATE OF HEARING: 08.05.2025

DATE OF DECISION: 24.09.2025

PER : R. BHAGYA DEVI

Briefly the facts are that the appellant M/s. Dynamic Infratech who is a service provider had availed the benefit of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS) and filed Form-1 in terms of Section 125 of Finance Act, 2019. They had declared and admitted service tax liability of Rs.29,18,974/- and Form-3 was issued accordingly. However, the appellant failed to pay the service tax dues before the last date which was on 30.06.2020. The Revenue vide letter dated

01.12.2020 called for details of worksheet of their liability which received no response. Accordingly, the department based on the available records by invoking extended period of limitation confirmed the demand of Rs.29,18,974/- for the period April 2015 to June 2017. Aggrieved by this order, appellant is in appeal before us.

2. The learned counsel submits that the impugned order is illegal and not sustainable and should not have been remanded for relooking into the entire case, in view of the fact that the show-cause notice was issued purely based on our SVLDRS statement and there is nothing on record to show that the liability could be fastened on them. Moreover, the demand itself cannot be sustained because the show-cause notice was issued on 30.12.2020 for the period April 2015 to June 2017 as there is nothing on record to show that they had mis-declared or suppressed any facts.

3. The learned Authorised Representative (AR) for the Revenue reiterating the findings of the Commissioner (A) in the impugned order submits that since the appellant himself had admitted the liability by filing SVLDRS-1 and having not adhered to the scheme by paying the dues that were to be paid by them on or before 30.06.2020. Hence, the impugned order needs to be sustained.

4. Heard both sides. The Commissioner (A) in the impugned order has observed as follows:

9."The appellant further argued that the OIO has been issued without establishing the Point of Taxation Rules. In this regard, I find that the appellant has submitted the copies of Balance Sheet, Profit and Loss Account and Form 26AS before the Adjudicating authority before issuance of OIO but the adjudicating authority failed to verify the classification of service activity, proper quantification of taxable amount involved for rendering service activities, applicability of Point of Taxation Rules, Cum-tax benefit if required after verification of bills/invoices/service agreement

etc. I find that the adjudicating authority has not passed a speaking order after verification of all the required aspects as mentioned above. Therefore, I find that a detailed verification is required in this regard.

10. Thus prima-facie, I find that, the Adjudicating Authority has not passed a speaking order based on the factual verification. Therefore, in the interest of justice, detailed verification of the relevant evidences and fact finding is necessary for quantifying the correct service tax liability. Since the appellant was disqualified to avail the benefit of the SVLDRS, and had already admitted his liability, there should have been a thorough investigation and verification of all the records rather than merely confirming the admitted liability by the appellant in SVLDRS Form-1. Therefore, I find that, the case is required to be remanded back to the Original Adjudicating Authority

11. In view of this, I find that it is necessary to remand this case back to the Original Adjudicating Authority for De-novo Adjudication keeping the all options open. The Appellant shall submit all the relevant documents such as copy of Balance Sheets, P&L statements, copy of 26AS, income tax returns, VAT returns, copy of relevant ledgers, copy of Bills/invoices, copy of all the work orders, etc. to the Adjudicating Authority within one month of the receipt of this order to establish their claim. The Adjudicating Authority thereafter shall pass the reasonable order after following principles of natural justice”.

Accordingly, he remands the issue to the Original Authority for passing a speaking and justifiable order.

5. We need to now examine the provisions of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS) issued under Chapter 5 of the Finance Act, 2019. The relevant provisions are reproduced below:

125(1)(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;

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.

126: (1) The designated committee shall verify the correctness of the declaration made by the declarant under section 125 in such manner as may be prescribed:

Provided that no such verification shall be made in case where a voluntary disclosure of an amount of duty has been made by the declarant

127. (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

.....

(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.

129. (7) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and –

(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;

(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;

(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

(2) Notwithstanding anything contained in sub-section (1).-

(c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.”

In view of the above provisions of the SVLDR Scheme on non-payment of the declared service tax liability by a person who has voluntarily disclosed, the Revenue should have proceeded under the regular course of demand as available as per the provisions under the service tax laws. However, we find that the show-cause notice has been issued purely on the basis of voluntary disclosure (form-1) made by the appellant under the SVLDR Scheme without referring to any services rendered by him or to any documents to determine the value and service tax amount. The Original Authority also has confirmed the demand purely based on the declaration filed by the appellant under the SVLDR Scheme. Though the Original Authority notes the fact that the jurisdictional Assistant Commissioner vide letter dated 28.07.2020 had informed that the appellant had paid the dues along with interest for the period 01.04.2015 to 30.06.2017 with the remark that the amounts declared in the application for SVLDRS were not part of this demand, does not examine it further. Since, the period mentioned in the form-1

of SVLDRS is also for the period 01.04.2015 to 30.06.2017, it was necessary for the adjudicating authority to refer to the services rendered by the appellant with regard to the above demands. As rightly observed by the Commissioner (Appeals) no investigation or documents or evidences were placed on record to establish the liability on the appellant. At this juncture, we find that this remand by the Commissioner (A) to establish the demand after factual verification and to pass a speaking order is equivalent to redrafting of the show-cause notice, thus, implying the remand is beyond the scope of the show-cause notice, which is impermissible as per law.

6. The Supreme Court in similar circumstances in the case of **Commissioner of Central Excise Versus Gas Authority of India Ltd. 2008 (232) E.L.T. 7 (S.C.) dated 13-11-2007** observed as follows :

"7. As repeatedly held by this Court, show cause notice is the foundation of the Demand under Central Excise Act and if the show cause notice in the present case itself proceeds on the basis that the product in question is a by-product and not a final product, then, in that event, we need not answer the larger question of law framed hereinabove. On this short point, we are in agreement with the view expressed by the Tribunal that nowhere in the show cause notice it has been alleged by the Department that Lean Gas is a final product. Ultimately, an assessee is required to reply to the show cause notice and if the allegation proceeds on the basis that Lean Gas is a by-product, then there is no question of the assessee disputing that statement made in the show cause notice".

Therefore, as rightly observed by the Commissioner (A), even though documents were placed before the authorities concerned, the original authority confirmed the demand only based on the SVLDRS Form-1 filed by the appellant, which is non-existence as per Clause 2(c) of Section 129 of the SVLDR Scheme. Moreover, having observed that the original authority has not passed a speaking order and the show-cause notice itself is issued only based on SVLDRS-1, the authorities cannot be given an

opportunity to make good a wrong show-cause notice. Therefore, we do not find any reason to uphold the impugned order, accordingly the same is set aside.

Appeal is allowed.

(Order was pronounced in Open Court on 24.09.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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