

GAHC010075812020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 2264/2020

1:M/S URBAN SYSTEMS

A PARTNERSHIP FIRM HAVING THEIR PRINCIPAL PLACE OF BUSINESS AT
HOUSE NO. 15, SR BORA ROAD, LACHIT NAGAR, BYE LANE 2, ULUBARI,
GUWAHATI, ASSAM AND REP. BY THEIR PARTNER SRI SUMAN
CHAKRABORTY S/O- SRI SITESH K CHAKRABORTY

VERSUS

1:THE UNION OF INDIA AND 4 ORS

REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF FINANCE,
DEPTT OF REVENUE CENTRAL BOARD OF INDIRECT TAXES AND
CUSTOMS, NORTH BLOCK, NEW DELHI- 110001

2:THE COMMISIONER OF CENTRAL EXCISE AND SERVICE TAX

GUWAHATI DIVISION
GS ROAD
GUWAHATI- 781005

3:THE JOINT COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX

(MEMBER DESIGNATED COMMITTEE UNDER SVLDR SCHEME 2019)GS
ROAD
GUWAHATI- 781005

4:THE ASSTT COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX

(MEMBER DESIGNATED COMMITTEE UNDER SVLDR SCHEME 2019)
GS ROAD
GUWAHATI- 78100

Advocate for the Petitioner : MR. D SARAF

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 28-08-2020

Heard Mr. D. Saraf, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned counsel for the CGC for the respondent authorities.

2. The petitioner Urban Systems is an assessee under the Finance Act, 1994 as regards their liability to pay service tax. Without going into the detailed facts, it would be suffice to take note of that for the period 2013-2017, the petitioner had provided taxable services to its customers but failed to file returns in respect thereof & also the required amount of service tax was not paid by them.

3. The respondent authorities introduced the scheme of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short Scheme 2019) under Chapter-V of the Finance Act, 1994. As provided in Section 124(1)(e) read with section 123(d) of Scheme 2019, amongst the various other reliefs that are available, an assessee is also entitled to voluntarily disclose their tax dues if no returns have been filed by the assessee in order to get the relief from payment of interest & penalties.

4. It is the claim of the petitioner that they came within the purview of relief provided in Section 124(1)(e). Section 125(1)(a) to (h) of the Finance Act, 1994 provides that all persons shall be eligible to a declaration under the Scheme 2019 except for such persons who come within the purview of sub-clauses (a) to (h). It is an admitted position of the parties that the petitioner does not come within the purview of the exceptions provided in sub clauses (a) to (h) of Section 125, meaning thereby that petitioners are otherwise eligible to make a declaration under Scheme 2019.

5. In order to claim benefit under Scheme 2019, the claimants are required to submit the Form SVLDRS – 1. The relevant columns in the Form SVLDRS – 1 pertaining to making voluntary disclosures can be found in clause 9.4. The petitioners while submitting the Form

SVLDRS – 1 made an inadvertent mistake by stating the duty payable by them in clause 9.1 instead of clause 9.4. Because of such inadvertent mistake made by the petitioner while making the entries in Form SVLDRS – 1, the respondent authorities had rejected the claim of the petitioner under Scheme 2019 on the ground that no SCN/demand was issued to the petitioner.

6. In the circumstance, the only issue before the Court would be whether the claim of the petitioner for the benefit under Scheme 2019 would stand rejected as because of the aforesaid mistake of not mentioning the penalty or a different view can also be taken in the matter. Admittedly the Finance Act, 1994 wherein, Scheme 2019 has been incorporated does not provide for any provision for re-submitting an application claiming the benefit under the scheme.

7. In the circumstance, we are required to look into the matter from the perspective as to whether by not mentioning the dues payable in clause 9.4 and instead mentioning it in clause 9.1 of 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 corrected. 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 a party is not entitled or the mistake made was more of inadvertent nature, which can also be termed to be a callous mistake, which does not give the party making such mistake the benefit of 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 time an inadvertent mistake which may 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 they had stated in clause 9.1 about the undisclosed dues instead of stating it in clause 9.4. By stating the required information in clause 9.1 instead of clause 9.4 it cannot be said that by making the

mistake, the petitioner had claimed an undue benefit which they are otherwise are not entitled under the law.

9. In the aforesaid circumstance, it is an agreed position of the parties that the petitioner may make an application to the appropriate respondent authorities 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.

10. In view of such agreement, this writ petition stands disposed of by requiring the petitioner to submit an application before the respondent authorities for the correction to be made in the information provided in the Form SVLDRS-1 as regards the disclosure of the dues from them and upon such application being made, the respondent authorities would pass a reasoned speaking order thereon. The requirement of submitting application be made within a period of 15 days from obtaining the certified copy of the order and upon receiving of the application, the respondent authorities shall pass an order on the same within a period of 2 months from the date of receipt of the application.

11. It is further provided that the earlier observation in this order as regards the benefit under Section 124(1) (e) shall not limit the claim of the petitioner to a benefit under that provision alone and if the petitioner is entitled to any other benefit, the petitioner is at liberty to make such claim.

Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant