

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO. 848 OF 2020

Jai Sai Ram Mech & Tech India P Ltd .. Petitioner
Versus
Union of India & Ors. .. Respondents

Ms. Deepali Kamble for the Petitioner
Mr. Sham Walve a/w Mr. Sangeet Yadav for the Respondents

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : FEBURARY 12, 2021

ORAL JUDGMENT AND ORDER (Per Ujjal Bhuyan, J)

Heard Ms. Deepali Kamble, learned counsel for the petitioner and Mr. Sham Walve, learned counsel along with Mr. Yadav learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 02.01.2020 passed by the respondents rejecting the declaration of the petitioner dated 8.12.2019 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly “the scheme” hereinafter) and further seeks a direction to the respondents to reconsider the said declaration and thereafter grant the relief(s) to the petitioner.

3. Petitioner is a private limited company engaged in the business of providing construction services to its customers. Being a service

provider, it was registered as such under the Finance Act, 1994.

4. Respondent No. 3 initiated an enquiry against the petitioner for alleged short payment of service tax for the period from April 2012 to June 2017. It is submitted that in the course of the enquiry, statement of the director of the petitioner Mr. Surajpal Singh was recorded before the respondents on 09.04.2019 wherein he admitted service tax liability of the petitioner to the extent of Rs. 40 to Rs. 45 lakhs (approximately) for the aforesaid period.

5. When the scheme was introduced by the Finance (No. 2) Act, 2019, Petitioner submitted declaration thereunder under the category of "investigation, enquiry or audit" with further sub-categorisation of "investigation by commissionerate". In the declaration, petitioner disclosed the quantum of service tax liability at Rs. 43,37,865.00 further stating that it had made pre-deposit of Rs. 18,26,253.00.

6. However, by order dated 02.01.2020, the said declaration of the petitioner was rejected on the ground of ineligibility with the remark that the amount of service tax liability of the petitioner was not quantified before 30.06.2019 which is the cutoff date under the scheme.

7. Aggrieved, the present writ petition has been filed seeking the relief(s) as indicated above.

8. Respondents have filed reply affidavit. Stand taken in the reply affidavit is that as per statement on record dated 09.04.2019,

petitioner had agreed to produce financial documents for the period from 2013-14 to 2017-18 by 22.04.2019 but failed to submit the same before the investigating authority. Therefore, as per section 125(1)(e) of the Finance (No. 2) Act, 2019, since the amount of duty involved had not been quantified on or before 30.06.2019, petitioner was not eligible to avail benefit under the scheme. As such, the designated committee was justified in rejecting such declaration of the petitioner.

9. When this matter was heard on 27.01.2021, we had passed the following order:-

"2. Petitioner had filed declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under the category of "investigation, enquiry or audit". The declaration has been rejected by the Designated Committee on the ground that that amount of tax dues was not quantified on or before 30th June, 2019.

3. Learned counsel for the petitioner submits that Director of the petitioner Shri. Surajpal Singh had got his statement recorded before the respondents on 9th April, 2019, wherein he admitted the service tax dues to the extent of Rs. 40 to Rs. 45 lakhs. Thus the tax dues were quantified on or before 30th June, 2019.

4. However, this document is not on record.

5. Learned counsel for the petitioner may file additional affidavit enclosing therewith a copy of the said statement furnishing copy to learned counsel for the respondents."

10. Thereafter learned counsel for the petitioner has filed the additional affidavit bringing on record the statement recorded on 09.04.2019 as well as copy of show-cause notice issued to the petitioner subsequently on 26.06.2020.

11. Submissions made by learned counsel for the parties are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary. However, the submissions so made have received the due consideration of the Court.

12. Issue raised in the present writ petition i.e. eligibility of the petitioner or maintainability of his declaration to avail the benefits of the scheme under the category of investigation, enquiry or audit on the ground that the service tax dues of the petitioner for the related period was not quantified on or before 30th June, 2019 is no longer *res-integra*.

13. In **Thought Blurb Vs. Union of India, 2020-TIOL-1813-HC-MUM-ST**, this court faced with a similar issue referred to the provisions of the Finance (No.2) Act, 2019 and to the circular dated 27th August, 2019 of the Central Board of Indirect Taxes and Customs (briefly “the Board” hereinafter) whereafter it was held as under :-

“47. Reverting back to the circular dated 27th August, 2019 of the Board, it is seen that certain clarifications were issued on various issues in the context of the scheme and the rules made thereunder. As per paragraph 10(g) of the said circular, the following issue was clarified in the context of the various provisions of the Finance (No.2) Act 2019 and the Rules made thereunder :-

Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the scheme. Section 2(r) defines “quantified” as a written communication of the amount of duty

payable under the indirect tax enactment. It is clarified that such written communication will include a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc.

48. Thus as per the above clarification, written communication in terms of section 121(r) will include a letter intimating duty demand or duty liability admitted by the person during enquiry, investigation or audit etc. This has been also explained in the form of frequently asked questions (FAQs) prepared by the department on 24th December, 2019.

49. Reverting back to the facts of the present case, we find that on the one hand there is a letter of respondent No.3 to the petitioner quantifying the service tax liability for the period 1st April, 2016 to 31st March, 2017 at Rs.47,44,937.00 which quantification is before the cut off date of 30th June, 2019 and on the other hand for the second period i.e. from 1st April, 2017 to 30th June, 2017 there is a letter dated 18th June, 2019 of the petitioner addressed to respondent No.3 admitting service tax liability for an amount of Rs.10,74,011.00 which again is before the cut off date of 30th June, 2019. Thus, petitioner's tax dues were quantified on or before 30th June, 2019.

50. In that view of the matter, we have no hesitation to hold that petitioner was eligible to file the application (declaration) as per the scheme under the category of enquiry or investigation or audit whose tax dues stood quantified on or before 30th June, 2019.”

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14. Subsequently, in **M/s G.R.Palle Electricals Vs. Union of India, 2020-TIOL-2031-HC-MUM-ST**, this court held as follows:-

“27. We have already noticed that proprietor of the petitioner in his statement recorded on 11.01.2018 by the investigating authority admitted the service tax liability of Rs.60 lakhs (approximately) to be outstanding for the period from 2015-2016 to June, 2017. This was corroborated by the departmental authority in the letter dated 24.01.2018 which we have already noted and discussed. Therefore, present is a case where there is acknowledgment by the petitioner of the duty liability as well as by the department in its communication to the petitioner. Thus, it can be said that in the case of the petitioner the amount of duty involved had been quantified on or before 30.06.2019. In such circumstances, rejection of the application (declaration) of the petitioner on the ground of being ineligible with the remark that investigation was still going on and the duty amount was pending for quantification would not be justified.

28. This position has also been explained by the department itself in the form of frequently asked questions (FAQs). Question Nos.3 and 45 and the answers provided thereto are relevant and those are reproduced hereunder :-

“Q3. If an enquiry or investigation or audit has started but the tax dues have not been quantified whether the person is eligible to opt for the Scheme?

Ans. No. If an audit, enquiry or investigation has started, and the amount of duty/duty payable has not been quantified on or before 30th June, 2019, the person shall not be eligible to opt for the Scheme under the enquiry or investigation or audit category. ‘Quantified’ means a written communication of the

amount of duty payable under the indirect tax enactment [Section 121(r)]. Such written communication will include a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc. [Para 10(g) of Circular No 1071/4/2019-CX dated 27th August, 2019].”

* * * *

“Q45. With respect to cases under enquiry, investigation or audit what is meant by ‘written communication’ quantifying demand ?

Ans. Written communication will include a letter intimating duty/tax demand or duty/tax liability admitted by the person during enquiry, investigation or audit or audit report etc.”

15. Finally in **Saksham Facility Private Limited Vs. Union of India, 2020-TIOL-2108-HC-MUM-ST**, where a similar issue had cropped up, this court reiterated the above position and held as under :-

“22.3. Clause (g) of paragraph 10 makes it abundantly clear that cases under an enquiry, investigation or audit where the duty demand had been quantified on or before 30.06.2019 would be eligible under the scheme. The word “quantified” has been defined under the scheme as a written communication of the amount of duty payable under the indirect tax enactment. In such circumstances, Board clarified that such written communication would include a letter intimating duty demand or duty liability admitted by the person during enquiry, investigation or audit etc.

23. Reverting back to the facts of the present case we find that there is clear admission /

acknowledgment by the petitioner about the service tax liability. The acknowledgment is dated 27.06.2019 i.e., before 30.06.2019 both in the form of letter by the petitioner as well as statement of its Director, Shri. Sanjay R. Shirke. In fact, on a pointed query by the Senior Intelligence Officer as to whether petitioner accepted and admitted the revised service tax liability of Rs.2,47,32,456.00, the Director in his statement had clearly admitted and accepted the said amount as the service tax liability for the period from 2015-16 upto June, 2017 with further clarification that an amount of Rs.1,20,60,000.00 was already paid.

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26. Following the above it is evident that the word 'quantified' under the scheme would mean a written communication of the amount of duty payable which will include a letter intimating duty demand or duty liability admitted by the person concerned during enquiry, investigation or audit or audit report and not necessarily the amount crystalized following adjudication. Thus, petitioner was eligible to file the declaration in terms of the scheme under the category of enquiry or investigation or audit as its service tax dues stood quantified before 30.06.2019."

16. From the above it is evident that all that would be required for being eligible under the above category is a written communication which will mean a written communication of the amount of duty payable including a letter intimating duty demand or duty liability admitted by the person concerned during inquiry, investigation or audit. For eligibility under the scheme, the quantification need not be on completion of investigation by issuing show-cause notice or the amount that may be

determined upon adjudication.

17. In so far the present case is concerned, we find that Mr. Surajpal Singh, director of the petitioner had made a statement before Mr. D.B. Shetty, Superintendent (Prev.) CGST & C.Ex., Plaghar Commissionerate on 09.04.2019. The statement was recorded under the provisions of sections 70 and 174 of the Central Goods and Services Tax Act, 2017 read with section 14 of the Central Excise Act, 1944 and section 83 of the Finance Act, 1994. Question No. 7 put to the director by the Superintendent was as to what was the service tax liability of the petitioner for the period under consideration and when petitioner was going to discharge the said liability. In response, the director stated that though he did not have the exact figure of liabilities at that point of time but he admitted that the net service tax liability for the period under consideration would be Rs. 40 to Rs. 45 lakhs subject to verification of books of accounts which liability he undertook to pay as per the time line given in his answer. We also find that upon conclusion of investigation, Commissionerate of CGST and Central Excise, Palghar had issued a show-cause cum demand notice to the petitioner on 26.06.2020 wherein reference was made to the said statement of Mr. Surajpal Singh recorded on 09.04.2019 and his admission that net service tax liability for the period under consideration would be approximately Rs. 40 to 45 lakhs.

18. The admission of the petitioner of net service liability of Rs. 40 to 45 lakhs broadly corresponds to the figure disclosed by the petitioner in the declaration i.e Rs. 43,37,865.00. In this connection, we may refer to

our decision in case of **Sabareesh Pallikere Vs. Jurisdictional Designated Committee, Thane Commissionerate (Civil Writ Petition (St) No. 5510 of 2020 decided on 11.02.2021)** wherein we have held as under:-

"22. In so far the present case is concerned, we may refer to the first statement of the petitioner recorded on 06.07.2018. In this statement, he categorically admitted that the total service tax liability of the petitioner for the period 2013-14 to 2017-18 (upto June, 2017) would be around Rs.1.93 crores. While petitioner did not give the exact figure of total service tax dues, he nonetheless admitted such dues to be around Rs.1.93 crores which was subsequently enhanced in his statement dated 25.09.2019 to Rs.2,08,29,640.00. From a conjoint reading of section 121(r) of the Finance (No.2) Act, 2019, circular of the Board dated 27.08.2019 and answers to question Nos. 3 and 45 of the Frequently Asked Questions, a view can legitimately be taken that the requirement under the scheme is admission of tax liability by the declarant during inquiry, investigation or audit report. It is not necessary that the figures on such admission should have mathematical precision or should be exactly the same as the subsequent quantification by the authorities in the form of show-cause notice etc. post 30.06.2019. The object of the scheme is to encourage persons to go for settlement who had bonafidely declared outstanding tax dues prior to the cut off date of 30.06.2019. The fact that there could be discrepancy in the figure of tax dues admitted by the person concerned prior to 30.06.2019 and subsequently quantified by the departmental authorities would not be material to determine eligibility in terms of the scheme under the category of inquiry, investigation or audit. What is relevant is admission of tax dues or duty liability by the declarant before the cut off date. Of course the figure or quantum admitted must have some resemblance to the actual dues. In our view, petitioner had fulfilled the said requirement and therefore he was eligible to make the declaration in terms of the scheme under the aforesaid category. Rejection of his declaration therefore on the ground of ineligibility is not justified.

19. That apart, in **Thought Blurb** (*supra*) we have held that when there is a provision for granting personal hearing in a case where the declarant disputes the estimated amount, it would be in complete defiance of logic and contrary to the very object of the scheme to reject a

declaration on the ground of being ineligible without giving a chance to the declarant to explain as to why its declaration should be accepted and relief under the scheme be extended to him. It was held as under :-

“51. We have already discussed that under sub sections (2) and (3) of section 127 in a case where the amount estimated by the Designated Committee exceeds the amount declared by the declarant, then an intimation has to be given to the declarant in the specified form about the estimate determined by the Designated Committee which is required to be paid by the declarant. However, before insisting on payment of the excess amount or the higher amount the Designated Committee is required to give an opportunity of hearing to the declarant. In a situation when the amount estimated by the Designated Committee is in excess of the amount declared by the declarant an opportunity of hearing is required to be given by the Designated Committee to the declarant, then it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject an application (declaration) on the ground of being ineligible without giving a chance to the declarant to explain as to why his application (declaration) should be accepted and relief under the scheme should be extended to him. Summary rejection of an application without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice. Rejection of application (declaration) will lead to adverse civil consequences for the declarant as he would have to face the consequences of enquiry or investigation or audit. As has been held by us in ***Capgemini Technology Services India Limited (supra)*** it is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be complied with. Non-compliance to the principles of natural justice would impeach the decision making process rendering the decision invalid in law.”

20. Thus, on a thorough consideration of the matter, we set aside the order dated 02.01.2020 and remand the matter back to the respondents (designated authority) to consider the declaration of the petitioner dated 08.12.2019 afresh as a valid declaration in terms of the scheme under the category of investigation, inquiry and audit and thereafter grant the

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consequential relief(s) to the petitioner. While doing so, respondent No.1 shall provide an opportunity of hearing to the petitioner and thereafter pass a speaking order with due communication to the petitioner.

21. The above exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

22. At this stage, Mr. Walve, learned counsel for the respondents submits on instructions that respondents are facing some technical difficulty in accessing the portal of the scheme since the scheme had come to an end by 30.06.2020.

23. Without expressing any opinion, we are of the view that such technical issue can be and should be sorted out by the respondents if necessary by taking up with the higher authority.

24. Writ petition is accordingly allowed to the above extent. However, there shall be no order as to cost.

MILIND N. JADHAV, J

UJJAL BHUYAN, J