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

Date of decision: 22nd February, 2021

\+ W.P.(C) 2408/2021

KARAN SINGH ..... Petitioner

Through: Mr. R. S. Sharma, Adv.

versus

DESIGNATED COMMITTEE SABKA VISHWAS LEGACY DISPUTE RESOLUTION SCHEME AND ANOTHER ..... Respondent

Through: Ms. Sonu Bhatnagar, Sr. Standing Counsel with Ms. Venus Mehrotra, Ms. Anushree Narain and Mr. Vaibhav Joshi, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA (Oral):

CM APPL. 7007/2021

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

W.P.(C) 2408/2021 & CM APPL. 7008/2021

3. The Petitioner, aggrieved with the rejection of its declaration under the amnesty scheme - Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [*hereinafter referred to as '**SVLDRS**'*] for settlement of the service tax

dues, by way of the instant petition under Article 226 of the Constitution of India, seeks direction to the respondents to issue discharge certificate under SVLDRS. Besides, relief is also sought for quashing the Demand-cum-Show Cause Notice No. 61/2019-20 dated 20th March, 2020 issued by Respondent No. 2 in respect of the period in dispute [*hereinafter referred to as* ***'SCN'***].

4. Briefly stated, the petitioner, being proprietor of M/S. Syona Spa, is in the business of providing health club and fitness centre services. An investigation was initiated by the Anti-Evasion Group-4, Central Excise and Service Tax Department, in respect of service tax dues for the period of 2014-15 to June 2017. Vide letter dated 10.05.2019, summons were issued to the Petitioner. In reaction thereto, Petitioner deposited service tax of Rs. 20,08,334/- vide challans dated 10.05.2019 and 14.05.2019. Thereafter, by way of letters dated 21.05.2019 and 18.06.2019, the Petitioner sent its response to the summons, submitting, *inter alia*, month-wise receipts of service tax. Petitioner claims that vide the afore-noted communication dated 18.06.2019, it has quantified the service tax payable for the period 2014-15 to June 2017 as Rs. 20,08, 334/- for the period 2014-15 to June 2017.

5. On 01.08.2019, the Government notified the SVLDRS vide Sections 120 to Section 134 of the Finance (No.2) Act, 2019.

6. The Petitioner sought to take benefit of SVLDRS and filed online declaration, under FORM SVLDRS-1 [ARN LD0912190001228] on 09.12.2019. Therein, against "Quantified Amount details", the Petitioner declared that duty/tax of Rs. 20,08,334/- was quantified, as declared by it in

its letter dated 18.06.2019. The said application/declaration under FORM SVLDRS-1 was rejected on the ground of ineligibility, with the remarks - "*Demand has neither been quantified nor has been communicated to the assessee*" and "*Submit SVLDRS-4 of main noticee*". In this backdrop, the present petition has been filed.

7. Mr. Sharma, counsel for the petitioner, submits that the decision of the authority is arbitrary and unreasonable as the petitioner's eligibility under SVLDRS has been wrongly assessed by ignoring the terms of the scheme. The Petitioner has applied for tax relief in accordance with the scheme, and in consonance with the prescribed SVLDRS Rules, 2019, which were issued vide Notification No. OS/2019 Central Excise-NT dated 21.08.2019. He also argues that Petitioner's eligibility to file the declaration under SVLDRS is clarified beyond doubt vide Paragraph 10(g) of the CBIC Circular No. 107114/2019- CX.8 dated 27.08.2019 wherein it has been stipulated that for eligibility under SVLDRS, the term "quantified" includes written communication by a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation etc. The petitioner had qualified the said amount in dispute by way of communication dated 18.06.2019, much before the 'relevant date' under SVLDRS i.e. 30.07.2019. This communication made the petitioner an eligible declarant under the scheme as the amount stood quantified on the 'relevant date'. Mr. Sharma also argues that the SCN *inter alia* captures the Petitioner's quantified service tax liability of Rs. 20,08,334/-. The SCN demands service tax of Rs. 20,09,277/- under forward charge and Rs. 12,922/- under reverse charge. The nominal difference of Rs. 943/- in forward charge service tax amount quantified by

the Petitioner (Rs. 20,08,334/-) and forward charge service tax amount in the SCN (Rs. 20,09,277/-) is due to the reason that the SCN has calculated service tax at the rate of 14.5 percent for entire month of November 2015 whereas service tax rate for 01.11.2015 to 14.11.2015 was 14 percent and for 15.11.2015 to 30.11.2015 it was 14.5 percent.

8. Ms. Sonu Bhatnagar, senior standing counsel for the revenue, on the other hand, submits that the understanding of the petitioner is incorrect, considering the fact that in terms of SVLDRS, the quantification can only be by department and not by the taxpayer. She further submits that in terms of SVLDRS, the settlement amount has to be worked out in relation to the amount quantified. In case the interpretation sought to be given by the petitioner is accepted, then the entire scheme would be unworkable. In this regard, she refers to section 125(1)(e) of the Finance Act.

9. We have given due consideration to the rival contentions of the parties.

10. Petitioner filed a declaration on the premise that its case is covered under Section 125(1) (e) of the Finance Act, which reads as under:

> *"125(1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:*
> *(a) to (d) .....*
> *(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019."*

11. This court had an occasion to examine the concept of 'quantification' under SVLDRS in ***Chaque Jour HR Services Pvt. Ltd. v. UOI & Anr.***, 2020

[42] G.S.T.L. 24, and therefore it would be appropriate to extract the relevant portion from the said judgment, as under:

> *"13. The 'tax dues' are defined in Section 123(c) of the Finance Act, 2019, as under:*
>
> > *"123. For the purposes of the Scheme, "**tax dues" means**-*
> >
> > *.....*
> >
> > *(c) where an enquiry or investigation or audit is pending against the declarant, **the amount of duty payable** under any of the indirect tax enactment **which has been quantified on or before the 30th day of June, 2019**" [Emphasis Supplied]*
>
> *14. Section 121(r) defines "quantified" as mentioned hereunder:*
>
> > *"Section 121(r): "quantified", with its cognate expression, means a written communication of the **amount of duty payable under the indirect tax enactment**; [Emphasis Supplied]*
>
> *15. Further, tax relief is available in respect of tax dues as per Section 124(1)(d)(ii) which reads as under:*
>
> > *"124(1). Subject to the conditions specified in sub-section (2), the relief available to a declarant under this scheme shall be calculated as follows:-*
> >
> > *.....*
> >
> > *(d) Where **the tax dues are linked to an enquiry, investigation or audit** against the declarant and **the amount quantified** on or before the 30th of June, 2019 is-*
> >
> > *(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;*
> >
> > *(ii) more than rupees fifty lakhs, then, fifty percent, of the tax dues." [Emphasis Supplied]*
>
> *16. As per Section 123, in case of an enquiry or investigation or audit which is pending against the declarant, the amount of duty payable under any of the indirect tax enactments has to be quantified before 30th June, 2019. Section 125(1)(e) referred above, renders all such persons ineligible to make a declaration under the Scheme who have been subjected to an enquiry or*

investigation or audit and the amount involved has not been quantified on or before 30th June 2019. Thus, Section 125(1)(e) in a way compliments Section 123(c) of the Act and quantification of 'tax dues ' is imperative for a declarant to become eligible for applying under the scheme. The meaning of the word 'quantified' has been extended and broadened, obviously keeping in view the objective of the Scheme by way of Circulars dated 12th December, 2019 and 27th August, 2019. The relevant portions are extracted hereunder:

A) Circular dated 12th December, 2019

"2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No. 2) Act, 2019 and Rules made thereunder, as follows:

xxx xxx xxx

(v) For the purpose of eligibility under the Scheme in some of the categories such as litigation, audit/enquiry/ investigation etc., the relevant date is 30-6-2019. However, it may so happen that the facts of a case may change subsequently. For instance, in a case under audit/investigation/enquiry where the tax dues have been quantified on or before 30.6.2019, a show cause notice is issued after 30-6-2019. Similarly, a case, which was under appeal as on 30-6- 2019, may attain finality in view of appeal period being over etc. It is clarified that the eligibility with respect to a category in such cases shall be as it was on the relevant date i.e., 30-6-2019."

B) Circular dated 27th August, 2019.

"4. The relief extended under this scheme is summed up, as follows:

(a) For all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved if it is Rs. 50 lakhs or less and 50% if it is more than Rs. 50 lakhs. The Same relief is available for cases under investigation and audit where the duty involved is quantified and communicated to the party or admitted by him in a statement on or before 30.06.2019."

10. Further, the following issues are clarified in the context of the various provisions of the Finance (No. 2) Act, 2019 and Rules made thereunder:

xxx xxx xxx

g) Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of W.P. (C) 3934/2020 Page 4 of 9 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****." [Emphasis Supplied]*

17. By virtue of the aforesaid circulars, the Respondents have clarified that the benefit of the Scheme can also be given to those cases where the duty involved is quantified by way of an admission made by the declarant in a statement made on or before 30th June, 2019. This admission can be during an enquiry, investigation or audit report etc. (…)"

12. It thus clearly emerges that in terms of the afore-noted provisions, the quantification of the amount has to be before 30th June, 2019. Moreover, in terms of Section 121(r) of the Act, the word 'quantified' has been defined to mean a written communication of the amount of duty payable under the indirect tax enactment. Further, Section 124(1)(d)(ii) provides that in respect of cases where the tax dues are linked to an enquiry, investigation or audit against the declarant, the relief shall be calculated on the amount quantified on or before the 30th day of June, 2019.

13. Having regard to the aforesaid provisions, the question that arises for our consideration is whether the communication dated 18th June, 2019 issued to the Superintendent, Anti Evasion Group-1, Central Excise & Service Tax,

can be considered to be as an admission of duty liability so as to render the petitioner eligible under the SVLDRS.

14. Petitioner's case falls within the ambit of 'enquiry or investigation', as the Petitioner was issued summons dated 10.05.2019 by the Anti-Evasion Group 4, Central Excise & Service Tax. In respect of such cases, by virtue of the aforesaid circulars, the Respondents have clarified that the benefit of SVLDRS can also be given to those cases where the duty involved is quantified before 30.06.2019.

15. Since quantification has co-relation and is interlinked with tax relief under the scheme, and the Petitioner has not made a voluntary disclosure, but has rather approached for settlement in respect of case under investigation, we find merit in the submission of the Revenue that unilateral quantification by the Petitioner by writing the letter/communication dated 18.06.2019 cannot render him eligible. It would only be an admission of service tax liability of that amount, and such admission in itself would not rendered the petitioner eligible under SVLDRS. The quantification in the instant case was understood to be done on the issuance of the SCN. Petitioner points out that in the communication dated 18.06.2019, in fact, one of the relied upon documents was the SCN. That is quite obvious as the petitioner has taken a stand that to the extent of the amount stated therein, he admits the liability. It, however, cannot mean that the amount stood quantified before the relevant cut-off date i.e. 30.06.2019. In the category of cases where investigation or audit was continuing as on the introduction of SVLDRS, the benefit of the scheme would be available to only such cases, where, during investigation, the department quantifies the amount and not

vice versa.

16. We have noticed that there is not much difference between the amounts as mentioned in the communication dated 18.06.2019 and the SCN issued by the department subsequent to the completion of investigation. However, in our opinion, that in itself cannot be a measure to interpret the concept of 'quantification'. The quantification of the amount in question, as defined under the relevant provisions noted above, and further clarified under the circulars noted above, can only mean to be a duty liability which has been determined by the department. In view of the above, since amount could not be said to have been 'quantified', the petitioner was not eligible, and therefore, the reasoning given by the respondent in rejecting the application does not call for any interference. Thus, the challenge to the SCN is also not maintainable as the petitioner still has its statutory remedies under the Act to impugn the same.

17. We do not find any merit in the present petition. Dismissed. Pending application also stands disposed of.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 22, 2021
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