IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.989 OF 2020

M/s. New India Civil Erectors Private Limited … Petitioner
Vs.
Union of India and others … Respondents

Mr. Bharat Raichandani i/b. UBR Legal for Petitioner.
Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. J. B. Mishra for Respondents.

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

Reserved on : FEBRUARY 04, 2021
Pronounced on: MARCH 12, 2021

Judgment and Order : (*Per Ujjal Bhuyan, J.*)

Heard Mr. Bharat Raichandani, learned counsel for the petitioner and Mr. Pradeep Jetly, learned senior counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 29.01.2020 passed by the designated committee i.e., respondent No.4 rejecting the declaration of the petitioner dated 26.12.2019 under the *Sabka Vishwas* (Legacy Dispute Resolution) Scheme, 2019 and further seeks a direction to the said respondent to reconsider the declaration of the petitioner under the said scheme and grant the admissible relief(s) to the petitioner.

3. Petitioner is a private limited company incorporated under the Companies Act, 1956 having its registered office at Mittal Tower, Nariman Point, Mumbai. Petitioner is engaged in the business of executing civil, mechanical and construction contracts for its clients. Being a service provider, it was registered as such under the Finance Act, 1994.

4. Petitioner has stated that it did not receive legitimate payments for construction of Bina refinery from Bharat Oman Limited with whom it had entered into a service contract during the period 2008-10. Consequently, petitioner was not able to discharge its service tax liability for the period from 01.04.2015 to 30.06.2017.

5. Summons dated 19.12.2019 was issued to the petitioner by the office of Principal Commissioner of Central GST, Mumbai South Commissionerate. The summons was issued under section 70 of the Central Goods and Services Tax Act, 2017 (briefly 'the CGST Act' hereinafter). Petitioner was informed that an enquiry against it was being carried out. Summoning authority had reasons to believe that petitioner was in possession of facts / information / documents / records material to the above enquiry. Therefore, petitioner was asked to comply with the summons and furnish the information and documents as per the schedule to the summons.

6. On 19.12.2019, statements of Shri. Sanjay P. Ahire, Accountant and Shri. Kishan Chand Agarwal, Legal Consultant of the petitioner were recorded before the Superintendent, Anti-Evasion, Group 8 in the office of Mumbai South Commissionerate. In their statements, they admitted that service tax of Rs.94,26,823.00 for the period from 2015-16 upto 30.06.2017 was payable by the petitioner with interest and penalty.

7. In the meanwhile, central government introduced the *Sabka Vishwas* (Legacy Dispute Resolution) Scheme, 2019 (briefly 'the scheme' hereinafter) *vide* the Finance (No.2) Act, 2019. Objective of the scheme was to bring to an end pending litigations pertaining to service tax and central excise which stood subsumed with the goods and services tax (GST), in the process granting considerable relief to the declarants subject to eligibility.

8. Petitioner filed declaration in the prescribed form under the scheme on 26.12.2019. Petitioner declared an amount of Rs.92,13,450.00 as service tax dues for the period from 01.04.2015 to 30.06.2017. The declaration was made under the category of voluntary disclosure.

9. However, *vide* email dated 29.01.2020, respondent No.4 rejected the declaration of the petitioner on the ground of ineligibility. As per the accompanying remarks, Deputy Commissioner (Anti-Evasion) had informed that enquiry against the petitioner was initiated on 19.12.2019 whereafter petitioner had filed declaration on 26.12.2019. Since the declaration was made after initiation of enquiry, it was held that petitioner was not eligible to file declaration under the category of voluntary disclosure and accordingly the declaration was rejected in terms of section 125(1)(f) of the Finance (No.2) Act, 2019.

10. After the declaration of the petitioner was rejected, petitioner received several letters from respondent No.3 seeking to re-open the enquiry against the petitioner leading to issuance of summons dated 07.02.2020 under section 70 of the CGST Act.

11. Though petitioner represented before respondent No.4 on 06.03.2020 and 09.03.2020 explaining its eligibility, petitioner did not receive any favourable response. On the contrary, respondent No.2 started taking coercive measures including attachment of bank account of the petitioner.

12. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

13. Respondents have filed a common affidavit through Shri. Vinod Nautiyal, Assistant Commissioner of CGST and Central Excise, Mumbai South Commissionerate. Stand taken in the affidavit is that specific

intelligence input was received by the Anti-Evasion Officer, CGST, Mumbai South regarding non-payment of service tax by the petitioner. Acting on the basis of such intelligence input, premises of the petitioner was visited by officials working in the Mumbai South Commissionerate on 19.12.2019. This was followed by summons dated 19.12.2019.

14. Shri. Sanjay P. Ahire, Accountant and Shri. Kishan Chand Agarwal, Legal Consultant appeared before the Superintendent, Anti-Evasion on 19.12.2019 on behalf of the petitioner whereafter their statements were recorded under section 14 of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 and section 70 of the CGST Act. In their statement, the two officials admitted service tax liability of the petitioner of Rs.94,26,823.00 for the period from 01.04.2015 to 30.06.2017 payable along with interest and penalty.

15. Petitioner's declaration under the scheme was rejected on 29.01.2020 on the ground that petitioner had filed the declaration after initiation of enquiry. Therefore, petitioner was not eligible to file declaration under the category of voluntary disclosure in terms of section 125(1)(f) of the Finance (No.2) Act, 2019.

16. Since petitioner's declaration under the scheme was rejected, investigation initiated against the petitioner continued and as a result petitioner was called upon by the respondents to pay the outstanding dues with interest and penalty which has however not been complied with by the petitioner.

17. Basic stand taken by the respondents in their affidavit is that in terms of section 125(1)(f) of the Finance (No.2) Act, 2019, a person who makes a voluntary disclosure after being subjected to an enquiry or investigation would not be eligible to make a declaration. In the case of the petitioner, enquiry was initiated on 19.12.2019 whereas petitioner filed declaration thereafter on 26.12.2019. In this connection, reference

has been made to question No.10 of the Frequently Asked Questions (FAQs) prepared by the Board of Indirect Taxes and Customs (briefly 'the Board') which says that once a person is subjected to an enquiry or investigation or audit under the concerned indirect tax enactment, he would not be eligible to make a declaration under the voluntary disclosure category. Therefore, there is no merit in the writ petition which should be dismissed.

18. Petitioner has filed rejoinder affidavit denying the contentions of the respondents and reiterating the averments made in the writ petition.

19. Mr. Raichandani, learned counsel for the petitioner has first referred to the summons dated 19.12.2019 issued by the office of Principal Commissioner of CGST, Mumbai South to the petitioner. He submits that the said summons was issued under section 70 of the CGST Act. Nothing is discernible from the said summons as to whether that was a summons issued under the Finance Act, 1994 by invoking section 70 of the CGST Act. In the absence of such a provision, the summons would be construed to be one under the CGST Act. If that be so then the enquiry to which the petitioner was made subject to was under the CGST Act and not under the Finance Act, 1994. Therefore, initiation of enquiry against the petitioner was not under the Finance Act, 1994 dealing with service tax but under the CGST Act. On this ground, the declaration of the petitioner ought not to have been rejected.

19.1. Even if the said summons is construed to be one for service tax purpose then also it was issued on 19.12.2019. Referring to various provisions of the scheme, he submits that an overall reading of the scheme would indicate that 30.06.2019 is the cut-off date for determination of eligibility of a declarant under the scheme. Therefore, initiation of enquiry against the petitioner after 30.06.2019 on 19.12.2019 cannot be a ground for rejection of the declaration of the petitioner.

19.2. Referring to question No.39 and the answer given thereto in the FAQs as well as to the circular of the Board dated 12.12.2019, he submits that clause (f) of sub-section (1) of section 125 which says that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration under the scheme should not be read in isolation. It should be read in the overall context of the scheme and if so read it would mean that such enquiry or investigation or audit should be prior to 30.06.2019. In this connection, learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in *Tata Engineering and Locomotive Company Limited Vs. State of Bihar*, **(2000) 5 SCC 346**.

20. *Per contra*, Mr. Jetly, learned senior counsel for the respondents has referred to the averments made in the reply affidavit and submits that designated committee has rightly rejected the declaration of the petitioner. Refuting the argument of Mr. Raichandani, learned counsel for the petitioner that the enquiry initiated against the petitioner as is discernible from the summons dated 19.12.2019 was under the CGST Act and not under the Finance Act, 1994 dealing with service tax, he submits that by inadvertence only section 70 of the CGST Act, 2017 was mentioned in the summons. However, it would be quite clear from the statement of the two officials of the petitioner recorded on 19.12.2019 that the subject matter of enquiry is with respect to non-payment of service tax by the petitioner in terms of Finance Act, 1994 which is a specified indirect tax enactment under section 122 of the Finance (No.2) Act, 2019. He has referred to section 125(1) of the Finance (No.2) Act, 2019 and contends that as per the said provision a person after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration under the voluntary disclosure category in terms of the scheme. In the case of the petitioner, the enquiry was initiated on 19.12.2019 whereafter petitioner filed declaration under the scheme on 26.12.2019 which was after initiation of enquiry rendering the petitioner

ineligible. Thus, respondent No.4 was justified in rejecting the declaration of the petitioner. He, therefore, seeks dismissal of the writ petition.

21. Submissions made by learned counsel for the parties have been duly considered.

22. In the present case, petitioner filed declaration in terms of the scheme on 26.12.2019 under the category of voluntary disclosure declaring service tax payable for the period 01.04.2015 to 30.06.2017 at Rs.92,13,450.00.

23. Having noticed the above, let us briefly refer to some of the relevant provisions of the scheme. Under section 121(m), enquiry or investigation would mean enquiry or investigation under any of the indirect tax enactments mentioned in the scheme including the Finance Act, 1994 dealing with service tax and it shall include search of premises, issuance of summons, requiring production of accounts, documents or other evidence and recording of statements.

23.1. Section 123 deals with tax dues for the purposes of the scheme. As per section 123 (d) for the purposes of the scheme, tax dues would mean the total amount of duty stated in the declaration where the amount has been voluntarily disclosed by the declarant.

23.2. Reliefs available under the scheme are provided in section 124. As per clause (e) of sub-section (1) of section 124 where the tax dues are payable on account of a voluntary disclosure by the declarant then no relief shall be available with respect to tax dues.

23.3. Section 125 deals with eligibility to make declaration under the scheme. Sub-section (1) opens with the words ‘all persons shall be eligible to make a declaration under this scheme’ except those mentioned

in clauses (a) to (h). Thus, from the language of sub-section (1) of section 127 it can safely be said that eligibility to make a declaration is the norm and ineligibility is the exception. As per clause (f)(*i*), a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit shall not be eligible to make a declaration under the scheme. At this stage, we may mention that as per exclusion clauses (a), (c) and (e), those persons who have filed appeal before the appellate forum and such appeal had been heard finally on or before 30.06.2019 or those persons who have been issued a show cause notice under an indirect tax enactment and final hearing had taken place on or before 30.06.2019 or those persons who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation had not been quantified on or before 30.06.2019 would not be eligible to make a declaration. Clause (e) is just above clause (f) which deals with voluntary disclosure. As we have seen, clause (e) says that a person who has been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30.06.2019 would not be eligible to make a declaration. Immediately following clause (e) is clause (f) which says that a person making a voluntary declaration after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration. If clauses (e) and (f) are to be read in a harmonious manner then logically it follows that the enquiry or investigation or audit referred to in clause (f) (*i*) would necessarily have to be initiated on or before 30.06.2019.

24. In this connection, we may refer to observations of the Supreme Court in **Tata Engineering and Locomotive Company Limited** (*supra*) which states as under:-

> "14. Statutes, it is often said, should be construed not as theorems of Euclid but with some imagination of the purposes which lie behind them and to be too literal in meaning of words is to see the skin and miss the soul. The method suggested for adoption, in cases of doubt as to the meaning of the words used is to explore the intention of the legislature through the words,

> the context which gives the colour, the context, the subject matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their literal sense is interpreted from the context and scheme underlying in the text of the Act. The decision in Utkal Contractors & Joinery Pvt. Ltd. case (supra) also emphasis the need to construe the words in a provision in the context of the scheme underlying the other provisions of the Act as well, which ultimately was considered to be in tune with the object set out in the statement of objects and reasons and in the Preamble. Apart from the fact that the observations contained in the decision have to be understood in the light of the issue raised and exercise undertaken by the Court therein, the fallacy in the submission on behalf of the appellant lies though not in the principles of construction to be adopted but in the assumption of the counsel to confine or restrict and construe the law in question to be one made to regulate the trade of sawing, contrary to the very Preamble which reads, To make provisions for regulating in the public interest the establishment and operation of saw mills and saw pits and trade of sawing for the protection and conservation of forest and the environment (emphasis applied).”

25. While at the scheme, we may also mention that as per the *proviso* to sub-section (1) of section 126, no verification shall be made by the designated committee in case where a voluntary disclosure of an amount of duty has been made by the declarant. This is perhaps because of the fact that under section 124(1)(e), where tax dues are payable on account of voluntary disclosure then no relief is available with respect to the tax dues. However, section 129(2)(c) makes it clear that 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.

26. Question No.10 of the FAQs and the answer given thereto read as under:-

> “**Q.10.** I have been subjected to an enquiry or investigation or audit under indirect tax enactment and I want to make a voluntary disclosure regarding the same. Am I eligible for the Scheme?

> **Ans.** No, you are not eligible to make a declaration under the voluntary disclosure category as per section 125(1)(f)(i).”

26.1. From this query and the answer given thereto, it would appear that when a person is subjected to an enquiry or investigation or audit under an indirect tax enactment, he would not be eligible to make a declaration under the voluntary disclosure category.

27. However, question No.39 and the answer given thereto throws some light about such enquiry or investigation or audit. Question No.39 and the answer given thereto read as under:-

> “**Q.39.** I have received an intimation for audit, enquiry or investigation on or before 30.06.2019. Can I make a voluntary disclosure of my liability?
>
> **Ans.** No. If an intimation for audit, enquiry or investigation has been received by you on or before 30.06.2019 then you cannot make a voluntary disclosure of your liability under the Scheme.”

27.1. A careful reading of the query and the answer given thereto would make it clear that if an enquiry or investigation or audit was initiated on or before 30.06.2019 then such a person would not be eligible to make a declaration under the voluntary disclosure category. Logical corollary to this would be that an enquiry or investigation or audit post 30.06.2019 would not act as a bar to filing of declaration under the voluntary disclosure category.

28. If we read the scheme as a whole more particularly in the context of an enquiry or investigation or audit, then we find that the date 30.06.2019 is quite significant. We have already noticed the definition of enquiry or investigation as per section 121(m). Coming to section 123 of the Finance (No.2) Act, 2019 which deals with tax dues for the purposes of the scheme, as per clause (c) thereof where an enquiry or investigation or audit is pending against the declarant, the tax dues would mean the amount of duty payable which had been quantified on

or before 30.06.2019. Even in the context of eligibility under section 125(1), we find that clause (e) thereof clarifies that any person subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30.06.2019 would not be eligible to make a declaration. Therefore, whenever and wherever the scheme talks about an enquiry or investigation or audit, the date 30.06.2019 carries considerable significance and becomes relevant. The enquiry or investigation or audit should commence prior to 30.06.2019. Though clause (f) of sub-section (1) of section 125 does not mention the date 30.06.2019 by simply saying that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration, the said provision if read and understood in the proper context would mean making of a voluntary disclosure after being subjected to an enquiry or investigation or audit on or before 30.06.2019. Such a view if taken would be a reasonable construct consistent with the objective of the scheme.

29. That being the position, we are of the opinion that respondent No.4 was not justified in rejecting the declaration of the petitioner dated 26.12.2019 on the ground that petitioner was not eligible to file declaration under the category of voluntary disclosure since enquiry was initiated against the petitioner on 19.12.2019 whereafter petitioner filed declaration.

30. Since on the basis of the above deliberations, we have come to the conclusion that respondent No.4 was not justified in rejecting the declaration of the petitioner, it would not be necessary for us to examine the other points raised by the petitioner particularly relating to the nature of the summons dated 19.12.2019 issued under section 70 of the CGST Act.

31. Before parting with the record, there is one more aspect which we

would like to deal with. Petitioner's declaration was rejected without seeking any clarification from the petitioner or without giving any opportunity of hearing to the petitioner. This aspect of the matter was gone into by this Court in *Thought Blurb Vs. Union of India*, **2020 (10) TMI 1135** wherein we have 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.
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> 52. We have one more reason to take such a view. As has rightly been declared by the Hon'ble Finance Minister and what is clearly deducible from the statement of object and reasons, the scheme is a one time measure for liquidation of past disputes of central excise and service tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. Therefore the focus is to unload this baggage of pre-GST regime and allow business to move ahead. We are thus in complete agreement with the views expressed by the Delhi High Court in ***Vaishali Sharma Vs. Union of India,***

> ***MANU/DE/1529/2020*** that a liberal interpretation has to be given to the scheme as its intent is to unload the baggage relating to legacy disputes under central excise and service tax and to allow the business to make a fresh beginning."

32. Thus, upon thorough consideration of the above matter, we set aside and quash the order dated 29.01.2020 and remand the matter back to respondent No.4 for taking a fresh decision on the declaration filed by the petitioner on 26.12.2019 treating the same as a valid declaration under the voluntary disclosure category and thereafter grant the admissible relief to the petitioner. However, petitioner shall be afforded an opportunity of hearing, the date, time and place of which shall be intimated to the petitioner by respondent No.4 who shall thereafter pass a speaking order in accordance with law within a period of eight weeks from the date of receipt of a copy of this judgment and order.

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

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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