A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 110 of 2021

Petitioner :- M/S Magma Industries Limited
Respondent :- Designated Committee Office Of Commissioner Central Goods And Service Tax And 2 Others
Counsel for Petitioner :- Suyash Agarwal
Counsel for Respondent :- A.S.G.I.,Ramesh Chandra Shukla

Hon'ble Naheed Ara Moonis,J.
Hon'ble Saumitra Dayal Singh,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri R.C. Shukla, learned counsel for the revenue.

2. Present writ petition raises challenge to the order dated 05.05.2020 passed by respondent no.1-Designated Committee rejecting the declaration filed by the petitioner on SVLDRS-1, seeking settlement of its dispute, under the provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short the 'Scheme').

3. Undisputed facts of the case are, a search was conducted in the case of the petitioner under the provisions of the Central Excise Act, 1944, (hereinafter referred to as the Act) on 10.02.2016 at the business and other premises of the petitioner and its directors etc. In the *'Panchnama'* drawn on 10.02.2016 itself, an allegation of short payment of Central Excise duty (against shortage of stock) Rs. 2,18,516/- was made. A copy of the same is annexed as Annexure No. 1 to the writ petition. Pursuant to the search, an investigation (under the Act), became pending against the petitioner and its directors. During that investigation, on 13.05.2016, the statement of Dinesh Garg, a director of the petitioner-company came to be recorded. As per Annexure-A to that statement duty payment Rs. 45,38,231/- was avoided upon clandestine removal of excisable goods. Its copy is annexed as Annexure No. 3 to the writ petition. Relevant to our discussion, the contents of question nos. 3 and 7

together with the answers furnished by the said Dinesh Garg, in that statement, read as under:

> *"**Q-3.** On the basis of print outs of sales register taken from the laptop and sales register submitted by your accountant Shri Gaurav Tyagi on 10.02.2016 in reply of Question No.4 of his statement, a detail have been prepared containing date wise entries of sales made to different buyers during the period 01.04.2015 to 09.02.2016 in Annexure-A. Please see the said Annexure-A and explain about the entries?*
>
> ***Ans:** I have seen the Annexure-A and put my dated signatures on it. I have also perused the sales detail given in our sales register provided by Shri Gaurav Tyagi on 10.02.2016. The said Annexure-A contains the sales details made to different parties by our manufacturing unit M/s Magma Industries Ltd., during the period 01.04.2015 to 09.02.2016. In some case where Bill issued has been shown, we have issued proper bills and account for the said sale in our ledgers. Against sales in few cases bills for lesser amount have been issued due to adjustment of commission to commission agent and rate differences. Against rest entries we have neither issued any Sale Bill nor account for the said sales in our ledgers for payment of central excise duty. I also want to state that the name of G.S. Pharma has wrongly mentioned by our Accountant in the said sales register and party ledger, whereas the actual sale was made to M/s Trends Remedies Pvt. Ltd., Roorkee on the sale bills. These facts may also be checked.*
>
> ***Q-7.** What do you want to state about the central excise duty liability on the sales done by your company without issuing bills and without payment of duty?*
>
> ***Ans:** I admit that sales of finished goods shown against other entries except the sales made to M/s S.S. Enterprises, Gulzar (Kabadi) have been done by our unit to different parties without payment of Central Excise duty and without entry in the statutory records. We have sold empty old and used drums, in which we purchased raw material to M/s S.S. Enterprises, Gulzar (Kabadi) and Israr (Kabadi) and we have neither issued any bill nor paid any central excise duty since these are not our manufactured goods. I admit the duty liability in respect of other clearances shown in the said Annexure-A, Which have been done without issuing sales bills and without payment duty."*

4. The amount of excise duty as per Annexure-A to that statement is Rs. 45,38,231/-. Yet, that investigation remained pending. Before a show-cause-notice could be issued, the Scheme was introduced by Finance Act No. 2 of 2019. Much later, after the Scheme came into force

a show-cause-notice was issued to the petitioner, on 06.09.2019.

5. In the aforesaid fact background, the petitioner filed its declaration on SVLDRS-1, under the Scheme on 13.01.2020. It disclosed the amount of disputed duty payable under the Act at Rs. 47,56,751/- and the Estimate Amount Payable (EAP in short) Rs. 14,27,025.30/-. The disputed duty payable/'tax dues' disclosed was the sum of the alleged short-paid duty - as per the *'Panchnama'* document dated 10.02.2016 and, the evaded duty - as per the statement of Dinesh Garg dated 13.05.2016. The Designated Committee did not dispute the computation of disputed duty payable and EAP disclosed by the petitioner yet, on 31.01.2020, instead of issuing a demand on SVLDRS-3 it issued a demand on SVLDRS-2, to the petitioner. It also computed the EAP at Rs. 14,27,025.30. It included the amount of Rs. 2,18,516/- already paid by the petitioner, during the investigation.

6. Thereafter, though no hearing took place, the Designated Committee rejected the petitioner's declaration by the impugned order dated 05.05.2020. While rejecting the petitioner's declaration, it has been observed as under:

> *"I find that in the instant case, the officers of Anti-evasion, Central Excise Commissionerate, Meerut has initiated an enquiry against the party, wherein a search was conducted on 10.02.2016. During the visit a shortage in stock of finished goods valued at Rs. 17,48,129/- involving Central Excise duty of Rs. 2,18,516/- was found, which was debited by the party through CENVAT on the same day. Further, during statement dated 13.05.2016 tendered before the Superintendent (Anti-evasion), Central Excise, Meerut, Shri Dinesh Garg, Director admitted/accepted the liability of Central Excise duty of Rs. 45,38,231/- involved on the sales done without issuing bills and without payment of duty. This acceptance of taxability remains tentative as further investigation was still going on. It is only after conclusion of investigation, final Tax liability was to be computed and communication to the party. We find that no such communication of final Tax liability was made by the department in the instant case on or before 30.06.2019. From the records, it is evident that they have not got anything in writing from the department about final tax liability so far. In this case, Tax*

> *liability was finally quantified in Show Cause Notice dated 06.09.2019 issued vide C.No.IV-CE(9)CP/M/08/2016/1289-1305 dated 06.09.2019 for demand of Central Excise duty amounting to Rs. 47,56,751/- (including Rs. 2,18,516/- + Rs. 45,38,235/-) and to appropriate an amount of Rs. 2,18,516/- already deposited by the party"*

7. Having heard learned counsel for the parties, we find, under Section 125 of the Scheme all persons, except those specified under sub-clause 1(a) to (h) of that Section were eligible to make a declaration. Under Section 125(1)(e) of the Scheme in the case of a person who may have been subjected to an enquiry or investigation, if the amount of duty involved in that investigation had not been 'quantified' on or before 30.06.2019, would be ineligible to make a declaration. If that amount stood 'quantified', such person would be eligible and the liability of that declarant, would be 30% to 50% of the 'tax dues', thus 'quantified'. That is the effect of Section 123(c) read with Section 124(1)(d) of the Scheme.

8. Under Section 124(1)(d) of the Scheme in cases where enquiry, investigation or audit may have been pending on 30.06.2019 the 'tax dues' may be calculated as a percentage of amount 'quantified'. The word 'quantified' has been defined under Section 121(r) of the Scheme as below:

> *"**121(r)**. "quantified", with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment;"*

9. Also, the phrase "enquiry or investigation" has been defined under Section 121(m) of the Scheme. It reads:

> *"**121(m).** "enquiry or investigation", under any of the indirect tax enactment, shall include the following actions, namely:-*
>
> *(i) search of premises;*
>
> *(ii) issuance of summons;*
>
> *(iv) recording of statements;"*

10. Clearly, a person against whom an enquiry, investigation or audit may be pending and whose 'tax dues' may not have been 'quantified',

would remain ineligible to make a declaration on form SVLDRS-1. According to the revenue, for the purposes of Clause 123(c) of the Scheme, on 30.06.2019, the ‘tax dues’ against the petitioner were not ‘quantified’. Admittedly, prior to that date no communication whatsoever was issued by any Central Excise authority to the petitioner to communicate the 'quantified' amount of 'tax dues'/duty amount payable.

11. However, there is no doubt that the *‘Panchnama’* document dated 10.02.2016 prepared by the Central Excise authorities, in writing, clearly mentioned the amount Rs. 2,18,516/- as the amount of duty short paid by the petitioner. Again, there can be no doubt that a director of the petitioner-company Dinesh Garg, in his statement recorded, in writing, on 13.05.2016 further admitted duty avoidance by the petitioner, to the tune of Rs. 45,38,231/-. The total of these two admissions is Rs. 47,56,751/-. Section 121(r) does not, in any manner suggest and it therefore does not seek to limit the meaning of the phrase 'written communication' to be one written and issued by any Central Excise authority. Plainly, it refers to an amount of duty under any indirect tax enactment, reduced to writing. Once the amount of Rs. 45,38,231/- was thus reduced to writing before the Central Excise authority in an “enquiry or investigation” as defined under Section 121(m) of the Scheme and the petitioner did not dispute the same, the requirement of Section 121(r) read with Section 125(1)(e) read with 123(c) stood fulfilled.

12. While that is the interpretation that commends to us, the discussion cannot rest here. Section 133 of the Scheme, reads as below:

> *"**133**(1) The Central Board of Indirect Taxes and Customs may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of this Scheme, and such authorities, and all other persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions:*
>
> *Provided that no such orders, instructions or directions shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.*
>
> *(2) Without prejudice to the generality of the foregoing power,*

> *the Central Board of Indirect Taxes and Customs may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the said Board is of opinion that it is necessary in the public interest so to do, be published in the prescribed manner."*

13. The Central Board of Indirect Taxes and Customs (hereinafter referred to as the CBIC), is the highest administrative authority under the Act. It was also given the power to issue binding orders and instructions and directions to other authorities under the Scheme, for its proper administration. In exercise of that power, the CBIC issued the Circular No. 1071/4/2019-CX.8, dated 27.8.2019 (hereinafter referred to as the 'Circular'). Relevant to our discussion, the opening Clauses and Clause 10(g) of that Circular read as under:

> *" I am directed to state that the Government has announced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as a part of the recent Union Budget. Further, in accordance with the Finance (No.2) Act, 2019, the Central Government has notified the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 as well as issued Notification No. 04/2019 Central Excise-NT dated 21.08.2019 to operationalize this Scheme from 01.09.2019 to 31.12.2019.*
>
> *2. As may be appreciated, this Scheme is a bold endeavor to unload the baggage relating to the legacy taxes viz. Central Excise and Service Tax that have been subsumed under GST and allow business to make a new beginning and focus on GST. Therefore, it is incumbent upon all officers and stall of CBIC to partner with the trade and industry to make this Scheme a grand success.*
>
> *3. Dispute resolution and amnesty are the two components of this Scheme. The dispute resolution component is aimed at liquidating the legacy cases locked up in litigation at various forums whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. As may be seen, this Scheme offers substantial relief to the taxpayers and others who may potentially avail it. Moreover, the Scheme also focuses on the small taxpayers as would be evident from the fact that the extent of relief provided*

is higher in respect of cases involving lesser duty (smaller taxpayers can generally be expected to face disputes involving relatively lower duty amounts).

4. …..

5. …..

6. …..

7. …..

8. …..

9. .....

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:

a. …..

b. …..

c. .....

d. …..

e. …..

f. …..

g. 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."

14. In **CCE, Vadodara Vs. Dhiren Chemical Industries, (2002) 2 SCC 127**, a five-Judge Constitution Bench of the Supreme Court had the occasion to interpret the phrase *"on which the appropriate amount of duty of excise has already been paid"* appearing in an exemption notification issued under the Act. Giving a wider meaning to that phrase, in view of the purpose of the exemption notification, as to the Circular issued by the CBEC, the Constitution Bench of the Supreme Court held as below:

"11. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon

> *the said phrase, that interpretation will be binding upon the Revenue."*

That principle has been consistently applied by the Supreme Court. Also, our Court has consistently followed the same.

15. In **Commissioner of Customs, Calcutta & Ors. Vs. Indian Oil Corporation Ltd. & Anr., (2004) 3 SCC 488**, the above principle was reiterated and reaffirmed. After discussing the entire gamut of law on the subject, the Supreme Court held as below:

> *"**12**. The principles laid down by all these decisions are :*
>
> *(1) Although a circular is not binding on a Court or an assessee, It is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.*
>
> *(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.*
>
> *(3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad.*
>
> *(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."*

16. Thus, the Circular would bind the revenue authorities ranked lower to the CBIC, in so far as it is beneficial to the petitioner. Those revenue authorities, subordinate to the CBIC, cannot resist or protest or deviate from the interpretation of the Scheme made by the CBIC. To allow them to do so would be to render the mandate of Section 133 of the Scheme, redundant.

17. Once the CBIC clarified and thus enlarged the meaning of the word 'quantified' to give effect to the purpose of Section 123(c) read with Section 125(1)(e) and Section 121(1)(r) of the Scheme - clearly to extend the benefit of the Scheme to more persons, there is neither any wisdom nor legal basis to curtail the same, contrary to the express intent of the CBIC. We have reached this conclusion applying the first principle

crystalised/summarised by the Supreme Court in paragraph 12(1) in **Commissioner of Customs, Calcutta Vs. IOCL (supra)**.

18. We are also unable to accept the submission advanced by learned counsel for the revenue, that the Circular is contrary to the Scheme and therefore unenforceable. A similar submission had been advanced by the revenue in **UCO Bank, Calcutta Vs. Commissioner of Income Tax, W.B., (1999) 4 SCC 599**. In that case, it had been contended by the revenue, that a circular issued by the CBDT under Section 119 of the Income Tax Act, 1961 stood in conflict with the method of computation of income chargeable to tax (existing under the Income Tax Act, 1961). Dealing with such submission, it was held as below:

> *"Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."*

19. In the present case, Section 133 of the Scheme is *pari materia* (in material parts) to Section 119(1) of the Income Tax Act, 1961. Under clause 10(g) of Circular issued by the CBIC under Section 133 of the Scheme, the CBIC had forsaken the power it wielded, to its own advantage, under the Scheme. Thus, it waived that advantage and relaxed the rigor of law - to make the Scheme more purposeful and successful by maximizing amicable/consented resolution of legacy disputes, under all indirect taxation enactments, in the context of the imminent enforcement of the G.S.T. Regime, at the relevant time. That being the emphasis laid by the CBIC, it clearly sought to maximize the number and quantum of settlements under the Scheme. That intent is

self-apparent from a plain reading of paragraphs 2 and 3 of the Circular. It needs no elaboration.

20. Thus, the CBIC has only clarified the meaning to be given to the word 'quantified' used under the Scheme – to include thereunder any duty liability admitted (in writing) by a person (during an enquiry or investigation) – as a 'written communication' spoken of under Section 121(r) of the Scheme. Also, Rs. 45,38,231/- is the exact amount ‘quantified’ while issuing the subsequent show-cause-notice dated 06.09.2019. While that notice may never be read as evidence of the 'quantification' made earlier since that show-cause-notice was issued after the cut-off date 30.06.2019, at the same time, the said document does indicate - other than the aforesaid *‘Panchnama’* and admission made by the petitioner there was no other material with the revenue authorities to create any other or further demand.

21. Therefore, we unhesitatingly reach the conclusions - (i) the 'tax dues' of the petitioner stood 'quantified' for the purpose of Section 121(r), 123(c), 124(1)(d) and 125(1)(d) before the cut-off date 30.06.2019 at Rs. 45,38,231 and (ii) even if it may have been otherwise permissible to interpret those provisions in a manner that in the case of a pending enquiry, investigation or audit, no declaration may be filed unless the revenue authority had first communicated in writing the ‘quantified’ amount of ‘tax dues’/duty demand proposed under the Act, yet, that interpretation would stand blocked, at the instance of the revenue authorities, by virtue of the binding interpretation of the law offered by the CBIC, under section 133 of the Scheme.

22. We also note, the Scheme is a piece of reform legislation. It commends a purposive construction. That view we have expressed in Writ Tax No. 220 of 2020 (M/s Fashion Dezire And Another Vs. Union of India Through Principal Secretary, Ministry of Finance, Department of Revenue & 3 Ors.). We see no good ground to form any different opinion in this regard as the object of the Scheme is only to resolve all

legacy disputes and focus all energies of the revenue authorities as also the assessees at the (then) imminent enforcement of the new G.S.T regime.

23. Thus, the reasoning given by the Designated Committee in the impugned order runs contrary to law. The Designated Committee was obligated to deal with the declaration filed by the petitioner, on merits. No discretion was vested in the Designated Committee to take a different view. Even though the Circular has not been referred to or dealt by the Designated Committee, by virtue of the clear language of Section 133 of the Scheme, it was further obligated to necessarily act in accordance with that law.

24. Consequently, the impugned order dated 05.05.2020 is set aside. In absence of any other dispute or objection, the matter is remitted to the Designated Committee to issue the necessary SVLDRS-3 in line with the observations made above, within a period of thirty days from today. Petitioner shall have thirty days therefrom to deposit that amount and obtain a Discharge Certificate, in accordance with law.

25. Accordingly, the present petition is **allowed**. No orders as to costs.

Order Date :- 7.9.2021
Abhilash/Prakhar