

(S.S.Kilaje)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2835 OF 2022

Rakesh Industrial Stitching

Through its Proprietor -Mr. Sujit Subodh Mistry .. Petitioner

Versus

Union of India and Ors.

.. Respondents

-
- Mr. Siddha Pamecha a/w. Mr. Raj Dani for Petitioner
 - Mr. Ram Ochani a/w. Mr. Karan Adik for Respondents
-

CORAM : K. R. SHRIRAM &
MILIND N. JADHAV, JJ.

DATE : JULY 18, 2022

P.C.:

1. One of the grievance raised by petitioner against rejection of the declaration filed by petitioner under the 'Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019' is that the rejection has been made by passing a very cryptic order without spelling out the reason. We have perused the Form SVLDRS-1 issued by respondent No.2 wherein the remarks it only states "investigation already initiated by department". It is bereft of any material particulars.

2. Mr. Pamecha for petitioner tenders a copy of a judgment of this court passed on 01.03.2021 in writ petition No. 2421 of 2000, where an identical situation had been discussed. Mr. Ochani in fairness states that facts in the said judgement '*Magnum Management & Services*

Pvt. Ltd. Vs. Union of India & Ors.' (supra) is almost identical to the petition in hand.

3. Having considered the petition, the reply and the views expressed by this court in the *Magnum Management & Services Pvt. Ltd. (supra)*, in our view, petitioner ought to have been given a personal hearing before his declaration was rejected. Paragraph Nos. 19 to 23 of the said judgment reads as under:

“19. Thus, we find that for determining eligibility under the category of 'voluntary disclosure', a great deal of discretion is vested on the designated committee, who has to decide eligibility on a case to case basis. Needless to say, when a discretion is conferred upon an authority to decide an issue which has civil consequences upon the party concerned, such discretion has to be exercised in a just, fair and reasonable manner complying with the principles of natural justice. Thus, while deciding eligibility, the designated committee is required to consider all relevant materials and also hear the concerned declarant.

20. Having held so, let us deal with the contention of the petitioner that before a declaration is rejected, an opportunity of hearing should be granted to the declarant. Though we do not find any such express provision in the scheme laying down requirement of hearing before rejection of the declaration, we find from section 127 more particularly under sub-sections (3) and (4) thereof that if the designated committee upon verification, determines the amount payable by the declarant to be higher than what is declared by the declarant, then an opportunity of hearing should be granted to a declarant. This coupled with what we have discussed in paragraph 19 above, makes hearing before rejection obligatory.

21. This aspect of the matter was gone into by this Court in **Thought Blurb Vs. Union of India**¹. It has been held that in a situation where the amount estimated by the designated committee is in excess of the amount declared by the declarant, an opportunity of hearing is

1 2020 SCC OnLine Bom 1909

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 a declaration on the ground of being ineligible. Summary rejection of a declaration without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice impeaching the decision making process thus rendering the decision invalid in law. It has been held in paragraph Nos. 51 and 52 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.

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, WP(C) No. 4763 of 2020 decided on 05.08.2020 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. "

22. Since we find that impugned rejection of the declaration of the petitioner is in violation of the principles of natural justice which has impacted the decision making process thus rendering the decision invalid, it may not be necessary for us to enter into the merits of the challenge as to whether the declaration of the petitioner was in fact valid or not under the category of 'voluntary disclosure'. This is a matter which should be best left to the designated committee to decide after granting opportunity of hearing to the petitioner.

23. Consequently we set aside the order dated 21.01.2020 and direct the designated committee to decide afresh the declaration of the petitioner dated 25.12.2019 in terms of the scheme under the category of 'voluntary disclosure' after giving due opportunity of hearing. The date, time and place of hearing shall be intimated to the petitioner. The entire exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order."

4. In the circumstances, we hereby quash and set aside the order dated 10.01.2020 with a direction to respondents to reconsider petitioner's declaration and pass order as it deemed fit but after offering an opportunity of a personal hearing to petitioner. The notice for personal hearing shall be given atleast 7 days in advance. The order shall be a reasoned order, if respondents are not willing to accept petitioner's explanation.

5. Petition disposed.

6. We hasten to add that we have not expressed any opinion on the merits of the matter.

[MILIND N. JADHAV, J.]

[K. R. SHRIRAM, J.]