



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2814 OF 2021

Chandra Developers Private Limited.  
6<sup>th</sup> Floor, Royal Arch, Peter Dias Road,  
Bandra (W), Mumbai- 400 050  
Through Mr.Narinder Chandra, Director. ... Petitioner.

V/s.

1. Union of India,  
Represented by the Secretary,  
Department of Revenue,  
Ministry of Finance, North Block,  
New Delhi- 110 001.
2. Designated Committee,  
Mahavir Jain Vidyalaya,  
CD Burfiwala Marg, Juhu Lane,  
Andheri (West),  
Mumbai West- 400 058.
3. Directorate General of GST Intelligence,  
Gurugram Zonal Unit, 5<sup>th</sup> Floor,  
Plot 24, Mudit Square, Sector 32,  
Gurugram 122 001.
4. Additional Commissioner of CGST & CX,  
Mahavir Jain Vidyalaya,  
CD Burfiwala Marg, Juhu Lane,  
Andheri (West),  
Mumbai- 400 058.
5. Superintendent, CGST  
Investigation Cell (TI),  
1<sup>st</sup> Floor, CD Burfiwala Marg,  
Juhu Lane, Andheri (West),  
Mumbai West- 400 058.. ... Respondents.

Mr.Bharat Raichandani with Mr.Rishabh Jain i/b. UBR Legal Advocates for the Petitioner.

Mr.J.B.Mishra with Mr.Ram Ochani for the Respondents.

**CORAM :** NITIN JAMDAR AND  
ABHAY AHUJA, JJ.

**DATE:** 23 January 2023.

**ORAL JUDGMENT:** (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Learned counsel of the respondents waive service. Taken up for disposal.

2. Petitioner applied under a legacy dispute resolution scheme and was granted benefits under it regarding payment of service tax. Later the petitioner received a show cause notice to pay the service tax due on the ground that the petitioner was not eligible to apply as the matter was under investigation. This show cause notice is the subject matter of challenge in the Petition. The factual matrix and the analysis are as follows.

3. The Petitioner is a private limited company engaged in construction and development. The Petitioner was registered as a service provider under the provisions of the Finance Act, of 1994.

4. A scheme titled Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, was introduced under the Finance Act 2019 by the Central Government to end the pending litigations and offer certain benefits to the declarants. The Scheme is governed by Chapter-V from Section 120 to Section 135 of the Finance Act. The Scheme was for resolution of legacy disputes and also an amnesty. Upon certain conditions, the Scheme provided relief of a certain percentage from tax dues and waiver of interest and penalty.

5. The Petitioner filed an application pursuant to the Scheme in form SVLDRS-1 on 10 January 2020 under the Voluntary Disclosure category declaring Rs.29,30,056/- under Work Contract Service and Rs.3,84,326/- for Renting of Immovable Property for the period from 1 October 2014 to 30 June 2017. On 29 January 2020, the Designated Authority under the Scheme issued form SVLDRS-3 to the Petitioner, giving an estimate of the amount payable by the Petitioner. The Petitioner paid the amount of Rs.32,14,382/- on 30 January 2020. As per section 127(8) of the Finance Act, the Petitioner was issued a discharge certificate in form SVLDRS-4 on 3 February 2020.

6. The Petitioner received a show cause notice cum demand notice dated 30 December 2020 issued by the Commissioner of Central GST, Mumbai. The notice referred to the inquiry initiated against Petitioner on the communication dated 11 November 2020

issued by the Director General of GST Intelligence, Gurgaon Zonal Unit. By that communication, the Gurgaon Zonal Unit informed the Commissioner of Central GST, Mumbai, that the Petitioner was not eligible to apply under the voluntary declaration scheme as the matter was under investigation by the Gurgaon Zonal Unit and the Petitioner's declaration was invalidated and, as a result, inquiry was initiated. A reference was made to sections 125(1)(f) and (i) and section 129(2)(c) of the Finance Act, 2019. The show cause notice dated 30 December 2020 called upon the Petitioner to show cause as to why the amount of Rs.1,37,70,406/- be not paid by the Petitioners towards service tax liability along with applicable cesses under the proviso to section 73(1) read with section 66 and section 66B of Chapter-V of the Finance Act 1994. Being aggrieved, the Petitioner is before us, challenging the impugned show cause notice.

7. We have heard Mr.Bharat Raichandani, learned counsel for the Petitioner and Mr.J.B.Mishra, learned counsel for the Respondents.

8. As regards the issuance of a statement by the Designated Committee is concerned, the same is referred to under section 127. Rectification of errors is provided under section 128, and the conclusive nature of the discharge certificate is referred to in section 129. Section 127(8) refers to the issuance of a statement by the Designated Committee in the form of a discharge certificate in electronic form. Under section 129(1), discharge certificate is

conclusive and the declarant who receives it is not liable to pay any further duty or penalty in respect of the matter, and the time period covered in the declaration is not to be re-opened in any other proceeding under indirect tax enactment. Under section 129(2)(c), in case of voluntary disclosure where material particulars furnished are subsequently found to be false within one year from the issue of the discharge certificate, then the presumption would follow that declaration was never made.

9. The Petitioner contended that the declaration issued in favour of the Petitioner is conclusive, and the same stands. As long as the discharge certificate is not recalled, the Respondents could not have issued the show cause notice. It was contended that the conclusion that the material particulars furnished in the declaration are found to be false could only be arrived at by the Designated Committee and none other. The learned counsel for the Respondents contended that the contention of the Petitioner that it is only the Designated Committee who can examine the aspect referred to in section 129(2)(c) is not correct and the role of the Designated Committee is over once the discharge certificate is issued, and it only remains for correcting arithmetical and clerical errors.

10. It is not necessary for us to rule on the argument of the Petitioner that only the Designated Committee will have jurisdiction, if at all, to recall the Discharge certificate. Because even proceeding on the basis that Respondent No.4 had the jurisdiction, the

declaration submitted by the Petitioner could not be treated as false, and no action against the Petitioner on that ground was warranted in light of the factual and legal position as argued by the Petitioner.

11. The Petitioner contends that there is no falsity in any of the declarations of the petitioner as admittedly, on 30 June 2019, there were no investigation proceedings pending against the Petitioner. The learned counsel for the Petitioner relied on the decision of this Court in the case of *New India Civil Erectors Private Limited v. Union of India*<sup>1</sup> and *UCC Infrastructure Pvt. Ltd. v. Union of India*<sup>2</sup>. The learned counsel for the Respondents submits that the Act does not refer to the date of 30 June 2019 as the category under which Petitioner applied.

12. Section 125 of the Act states that all persons shall be eligible to make a declaration under this Scheme except ones specified in the said section. The Petitioner had applied under the Voluntary Disclosure category. Section 125(1)(f) refers to a person making a voluntary disclosure after being subjected to any enquiry, investigation or audit, as not eligible. Even though Section 125(1)(f) does not make a specific reference to any date, the Division Benches of this Court in *New India Civil Erectors Private Limited* and in *UCC Infrastructure Pvt. Ltd.* have interpreted Section 125 to mean that the investigation must be pending as of 30 June 2019 to disentitle the declarant under voluntary disclosure category. We

---

1 Writ Petition (L) No.989/2020, decided on 12 March 2021

2 Writ Petition No.574/2022, decided on 31 January 2022

have not been shown any contrary decision nor been informed that these decisions have been challenged by the Revenue.

13. From the affidavit in reply filed by the Respondents, it is clear that even the basic process of issuing notice had commenced after 30 June 2019. Absolutely nothing is placed on record as regards the cut-off date of 30 June 2019 qua the Petitioner. In light of the position that emerges on record, the Petitioner is entitled to the benefit of the legal position laid down by this Court in *New India Civil Erectors Private Limited* and *UCC Infrastructure Pvt.Ltd.* since the date 30 June 2019 is relevant even for the voluntary disclosure category. On that date the Petitioner was not subjected to any inquiry/ investigation prior to 30 June 2019. Thus, it cannot be held that the Petitioner was not eligible to apply under the Scheme.

14. Thus, the Petitioner is entitled to succeed. Writ petition is allowed. Rule is made absolute in terms of prayer clause (a). No order as to costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)