



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15906 of 2020

**With
CIVIL APPLICATION (FOR AMENDMENT) NO. 2 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 15906 of 2020**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MR. JUSTICE DEVAN M. DESAI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

M/S FTA HSRP SOLUTIONS PVT. LTD.

Versus

UNION OF INDIA

Appearance:

MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

MR PY DIVYESHVAR(2482) for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 3

**CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI**



Date : 27/07/2023

**ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

ORDER IN CIVIL APPLICATION

Having heard learned advocates for the parties, application for amendment is allowed. Necessary amendment be carried out forthwith.

ORDER IN SPECIAL CIVIL APPLICATION

1. Rule returnable forthwith. Learned counsels appearing for the respective respondents waive service of notice of rule.

2. By way of this petition, the petitioner has prayed to issue a writ in the nature of certiorari or mandamus calling for the records pertaining to the petitioner's case and also quash and set aside the order dated 05.05.2020 rejecting the declaration filed by the petitioner bearing



Application Reference No LD0312190000359 dated 03.12.2019 vide letter dated 05.05.2020 and to direct respondent no. 2 to process the same on merits. The petitioner has further prayed to quash and set aside the impugned order dated 07.09.2020 rejecting the SVLDRS application filed by the petitioner and to direct respondent no. 2 to process the same on merits.

3. The facts in brief are as under:

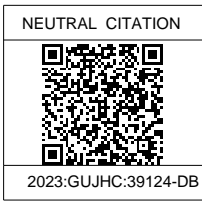
3.1 The petitioner is a private limited company for providing taxable service of installation of HSRPs on all vehicles. It is the case of the petitioner that it is also registered with the service tax department and subsequently registered under the GST regime having registration no. 24AABCF8939R2ZU.

3.2 According to the petitioner, one of the key announcements in the Budget 2019 was the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for



short 'the Scheme'/ 'SVLDRS'). The objective of the scheme which was enacted with effect from 01.08.2019 was to settle the legacy legal disputes relating to Central Excise & Service Tax pending before various courts and tribunals. Under the scheme the application window to apply for settlement of disputes was open from 01.09.2019 to 31.12.2019 which was subsequently extended till 15.01.2020 by respondent no. 1.

3.3 It is the case of the petitioner that being engaged in the business of manufacturing, supply and distribution of HSRPs in the State of Gujarat, the petitioner imports goods by a vessel from a place outside India to the customs station of clearance in India for which the petitioner pays ocean freight. The company did not pay service tax on royalty as well as on the ocean freight services under reverse charge mechanism. The petitioner company therefore was issued a summons vide letter dated 01.06.2018 under Section 14 of the Central Excise Act, 1944 read with Section 70 of the CGST Act, 2017. In



compliance of the summons, the petitioner supplied all the documents on 11.06.2018 and the statement of one Mr. Kapil Popat was recorded on 13.06.2018 by DGGI, Vapi in which all tax liabilities were duly admitted. The total service tax liabilities of Rs.92,12,344/- was paid by the petitioner and in proof thereof challans are annexed to the petition. By a letter dated 21.05.2019 the petitioner informed the DGGI, Vapi that he had duly discharged the tax liability with interest in the year 2018-19 and therefore requested waiver of show-cause notice and close the investigation. On 03.07.2020, the statement of Mr. Kapil Popat was recorded by the investigating authorities at Vapi where the total service tax liabilities with interest were admitted.

3.4 It is the case of the petitioner that on 21.05.2019 when the petitioner wrote a letter quantifying and informing the respondents of the tax liabilities which were duly admitted and paid, the other amounts towards penalty and interest were also paid and was accordingly



intimated to the department.

3.5 It is further the case of the petitioner that in the interregnum, SVLDRS came into force which provided a window with effect from 01.09.2019 for declaration of tax dues. The petitioner filed an application/declaration under Section 125 of the Finance Act, 2019 online on 03.12.2019 through SVLDRS-1. In the declaration, it was categorically quantified that the tax dues was to the extent of Rs.92,12,344/- and therefore there was zero tax liability. It appears that by communication dated 05.05.2020, the declaration of the petitioner was rejected on the ground that the declared tax had not been quantified and communicated on or before 30.06.2019.

3.6 That communication was challenged by the petitioner by filing Special Civil Application No. 8495 of 2020 before this court. The petition was disposed of on 27.07.2020 with an observation that it was open for the petitioner to approach the competent authority i.e. the



Commissioner of CGST and Central Excise Gandhinagar. The court further observed that on such representation being filed along with a certified copy of the order, the Commissioner shall look into the same and pass appropriate orders preferably within a period of four weeks.

3.7 Pursuant to the directions so issued and on a representation being made by the petitioner on 25.08.2020, by the impugned order dated 07.09.2020, the request of the petitioner for extension of benefits under the scheme was rejected.

4. Mr. Anand Nainawati, learned counsel appearing for the petitioner would take the court through the impugned order dated 07.09.2020, perusal of which especially the discussions and the findings would indicate that in the perception of the department, the petitioner had applied online under the SVLDRS on 11.09.2019. According to the department, in light of Section 125(1)(e) of the



Finance Act, 2019 since there was no quantification of tax dues on or before 30.06.2019, the benefit of the scheme could not be given and therefore the petitioner was declared ineligible to make the declaration under the scheme.

4.1 Mr. Nainawati, learned counsel for the petitioner would invite the court's attention to the letter dated 21.05.2019 written by the assessee to the Senior Intelligence Officer, DGGI, Vapi Regional unit. Reading the letter, he would submit that the petitioner had agreed to the points raised during the verification/scrutiny and the amounts together with interest liability were admitted with a request that the issue may be treated as closed. He would further submit that the perusal of the statement of Mr. Kapil Popat recorded on 03.07.2020 would also indicate that the assessee clearly admitted the service tax liabilities as recorded in the statement.

4.2 Further inviting the court's attention to the



communication of the DGGI, Vapi dated 24.10.2019 wherein the tax liability dues were set out together with a form, he would submit that the fact that the tax liabilities which were indicated on 21.05.2019 i.e. before 30.06.2019 were *ad idem* with the figures shown by the respondent authorities in the communication dated 24.10.2019. Despite this fact, by the impugned communications of 05.05.2020 and 07.09.2020, the case of the petitioner was rejected as being ineligible as the quantification of tax liability was not done before 30.06.2019.

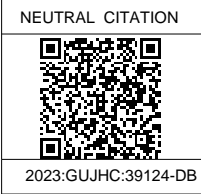
4.3 Further inviting the court's attention to a circular of the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, particularly to para 10(g) thereof, Mr. Nainawati would submit that the same would indicate that a clarification was issued that cases under inquiry/investigation or audit where the duty demand has been quantified on or before 30.06.2019 are eligible under the scheme, however, for the terminology



“quantified’ it was clarified that such written communication would also include a letter intimating duty demand or duty liability admitted by the person during inquiry, investigation or audit.

4.4 Mr. Nainawati, learned counsel for the petitioner would distinguish the decision in the case of **Chaque Jour Hr. Services Pvt. Ltd. vs. Union of India & Ors. [2020 (9) TMI 9]** relied upon by the department in the context of the perception of the department that the tax dues were not quantified before 30.06.2019 by taking the court through the relevant paragraphs of the decision to indicate that that was a case where there was a discrepancy of the admitted tax liability inasmuch as what was admitted by the assessee was Rs.1,75,63,982/- whereas post the investigation the show-cause notice amount was Rs.13,77,13,890/-. Therefore, there was a dispute on the quantification of the tax liability.

4.5 Reliance was placed on the decision of the Delhi



High Court in the case of **Seventh Plane Networks Pvt. Ltd. vs. Union of India & Ors. [2020(8) TMI 343 (Del)]**. The Delhi High Court therein opined that a liberal interpretation has to be given to the SVLDRS, 2019 which was with an intent to unload the baggage relating to legacy disputes under the Central Excise and Service Tax. He would also rely on the FAQs placed on record particularly question no. 45 with respect to cases under inquiry indicating that a letter intimating duty tax demands so admitted during the course of inquiry could also be a quantification of demand.

5. Mr. Parth Divyeshwar, learned advocate appearing for the Revenue would rely on the affidavit-in-reply especially the purposeful interpretation given by the department to Section 125 of the Finance Act, 2019 and reiterate that since there was no quantification on or before 30.06.2019, the petitioner was ineligible under the Scheme.



6. Having considered the submissions made by learned counsels for the respective parties and having perused the factual scenario, especially in light of the representation made by the petitioner pursuant to an order of the Division Bench of this court, the chronology of dates would indicate that as per the scheme the application window to apply for settlement of disputes was from 01.09.2019 to 31.12.2019. As per Section 125(1)(e), though benefit of the scheme was to be given where there was a quantification on or before 30.06.2019 and in the perception of the department that quantification was not done before that relevant date appears to be misconceived. It is apparent from the letter dated 21.05.2019 of the petitioner that it was the case of the petitioner that during the course of verification of record, the petitioner had agreed to the points raised during the verification/scrutiny quantifying the amount. It was even admitted by the statement made on behalf of the assessee as is evident from the statement of 03.06.2020. Communications of the revenue



authorities of 24.10.2019 as well as SVLDRS forms 1 and 2 indicate that there was no discrepancy in the figures of the outstanding amounts in the perception of the department and the ones that the petitioner had paid and informed accordingly to the department before 30.06.2019 i.e. on 21.05.2019. Apparently, therefore, the perception of the department that there was no “quantification” before 30.06.2019 is clearly misconceived.

7. Support can be drawn from the circular of the department itself dated 27.08.2019 wherein in para 10 (g) thereof a clarification was made that “quantified” would also include a written communication intimating duty demand or duty liability admitted by a person during inquiry. That admission in the facts of the case had come on 21.05.2019 for the dues already paid and admitted by the assessee which was not even disputed as has now come on record by virtue of an order being OIO passed on 20.06.2023 pursuant to the investigation proceedings

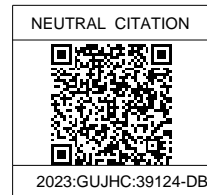


wherein the figure of outstanding tax dues is quantified at the same figure as that in the communication dated 21.05.2019.

8. The decision in the case of **Chaque Jour Hr. Services Pvt. Ltd. (supra)** can be distinguished on facts inasmuch as in the said case there was a huge discrepancy in the amount that was admitted by the assessee vis-a-vis the subsequent show-cause notice. The case of **Seventh Plane Networks Pvt. Ltd. (supra)** in fact shall squarely apply to the facts of the case. It will be fruitful to reproduce paras 15 to 19 thereof which read as under:

“15. This Court finds that the duty amount mentioned in Form SVLDRS-1 by the petitioner is the same amount that had been admitted by the declarant during the last visit of the Audit Team on 28 th June, 2019 as mentioned in the respondents’ Audit Memo dated 2nd July, 2019.

16. Though the petitioner vide its letter dated 3rd July, 2019 had asked for reduction in demand on account of change in the calculation formula, yet it had not denied the demand that had been



quantified by the respondents and admitted on 28th June, 2019.

17. Keeping in view the aforesaid admitted facts, this Court is of the view that the duty liability stood admitted in an oral statement by the petitioner before 30th June, 2019 and consequently stood quantified prior to the cut-off date in accordance with the beneficial circulars dated 12th December, 2019 and 27th August, 2019 issued by the Central Board of Indirect Taxes and Customs.

18. This Court is further of the opinion that a liberal interpretation has to be given to the SVLDRS, 2019 and the circulars issued by Central Board of Indirect Taxes and Customs as their intent is to unload the baggage relating to legacy disputes under the Central Excise and Service Tax and to allow the businesses to make a fresh beginning.

19. Consequently, the rejection order dated 17th January, 2020 is quashed and the Designated Committee is directed to decide the petitioner's application in accordance with the observations and findings of this Court after giving an opportunity of hearing to the petitioner. For this purpose, list the matter before the Designated Committee on 03rd September, 2020 at 11:00 A.M. A reasoned order, after giving an opportunity of hearing to the petitioner, shall be passed by the Designated Committee on or before 21 st September, 2020."

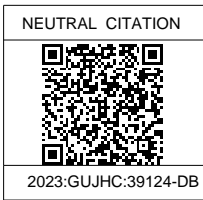
9. Even a co-ordinate bench of this court in the case of **N.N. Harsora Pvt. Ltd. vs The Union of India** rendered in **Special Civil Application No. 182 of**



2021 on 22.06.2023 while interpreting the SVLRDRS in paras 20 & 21 held as under:

“20. Keeping in view the aforesaid observations made by this Court, if the facts of the present case as discussed hereinabove are examined, it can be said that the basic object of the Scheme, 2019 is to reduce litigation by allowing the eligible assessee to make the payment of the outstanding dues after availing the relief under the Scheme, 2019. The petitioners herein made bonafide attempt to make the payment as determined under the Scheme, 2019 and the petitioners are also ready to pay the amount in question in accordance with law along with interest for the period for which the petitioners were not permitted to make the payment by the respondents. Therefore, we are of the opinion that this is a fit case for invocation of powers under Article 226 of the Constitution of India.

21. In view of the aforesaid facts and circumstances of the present case, we are inclined to entertain the present petition on aforesaid ground. Accordingly, the present petition stands allowed partly. The respondent authorities are directed to accept the payment of Rs.1,22,318/- as specified in SVLDRS-3 along with interest @ 9% per annum from 30.06.2020 till the date of payment and grant the benefit of the Scheme to the petitioner. The petitioner shall deposit the said amount with interest within a period of four weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent.”



10. Thus, from the above discussion, it can be culled out that the amount in question stood quantified before the cut-off date in accordance with the circulars of the department and thus the action on the part of the department making the petitioner ineligible to file declaration under the scheme is required to be quashed and set aside.

11. In view of the above, the impugned orders dated 05.05.2020 and 07.09.2020 are hereby quashed and set aside. The respondents are directed to accept the declaration filed by the petitioner on 03.12.2019 as per SVLRDS-1 and close the issue including the OIO dated 28.06.2023. Petition is accordingly allowed. Rule is made absolute accordingly. Direct service is permitted.

(BIREN VAISHNAV, J)

(D. M. DESAI, J)

DIVYA