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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 09.12.2019

+ W.P.(C) 12917/2019 & CM APPLs. 52720/2019 (interim relief) &
52721/2019 (*exemption*)

NIDHI GUPTA

..... Petitioner

Through: Mr. Bharat Bhushan with Ms. Nidhi
Gupta, Advs.

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Farman Ali, Adv. with
Mr. Prashant Rana, Adv. for Mr. Ravi
Prakash, Adv.
Ms. Manpreet Kaur, Adv. for
R-1/UOI.
Mr. Amit Bansal, Adv. with Mr. Aman
Rewaria, Adv. for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (Oral)

C.M.No.52721/2019 (exemptions)

Allowed, subject to all just exceptions.

W.P.(C) No.12917/2019

1. Having heard the counsel for the petitioner and looking to the facts of the case, it appears that the respondents have floated **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019** (hereinafter referred to as the “**Scheme, 2019**”) which is annexed as

Annexure P-3. Counsel appearing for the petitioner has pointed out to us **Rule 3** of the aforesaid **Scheme, 2019** which reads as under:-

“3. Form of declaration under section 125 (1).- The declaration under section 125 shall be made electronically at <https://cbic-gst.gov.in> in Form SVLDRS-1 by the declarant ,on or before the 31st December, 2019.

(2) A separate declaration shall be filed for each case. Explanation.- For the purpose of this rule, a "case" means —

(a) a show cause notice, or one or more appeal arising out of such notice which is pending as on the 30th day of June, 2019; or

(b) **an amount in arrears; or**

(c) an enquiry or investigation or audit where the amount is quantified on or before the 30th day of June, 2019; or

(d) a voluntary disclosure.”

(Emphasis supplied)

2. Counsel appearing for the petitioner submitted that in view of the aforesaid provision of the Scheme, 2019, which is brought into force w.e.f. 05.07.2019, the cut-off date is 30.06.2019 and four type of cases can be settled as mentioned in Rule 3 of the Scheme, 2019, however, the cut-off date of 30.06.2019 is not being maintained by the respondents. The respondents are settling the cases in which notices are issued after 30.06.2019 and the demands are quantified after 30.06.2019. We are not in agreement with this contention

mainly for the reason that looking to the aforesaid **Rule 3** to be read with **Section 121(c)** of **The Finance Act, 2013**, definition of **“amount in arrears”** which reads as under:-

“121 (c) **“amount in arrears”** means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of--

- (i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
- (ii) an order in appeal relating to the declarant attaining finality; or
- (in) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it;”

3. Counsel appearing for the petitioner has submitted that as per the Circular dated 25.09.2019, issued by the respondents especially para nos.vii & viii, the same are in violation of the Scheme, 2019 and the respondents are settling the cases beyond the Scheme. We are also not in agreement with this contention especially looking to Clauses VII & VIII of the Circular dated 25.09.2019 which read as under:-

“(vii) Section 125(l)(a) excludes cases which are under appeal and where final hearing has taken place on or before 30th June, 2019 from the purview of the Scheme. Similar exclusion has been made applicable, mutatis mutandis, under Section 125(l)(c) to cases under adjudication. It is clarified that such cases, however, may still fall under the arrears category once the appellate or adjudication

order, as the case may be, is passed and has attained finality or appeal period is over, and other requirements under the Scheme are fulfilled.

(viii) Section 121 (c)(i) and (ii) define "an amount in arrears" as the amount of duty which is recoverable, inter, alia, on account of no appeal having been filed by the declarant against an order or order in appeal before the expiry of the period of time for filing of appeal or the order-in-appeal having attained finality. There may be situations where the taxpayer does not want to file an appeal even though the time period for filing of appeal is not over. It is clarified that in such cases, the taxpayer can file a declaration under the Scheme provided he gives in writing to the department that he will not file an appeal. This declaration shall be binding on the taxpayer."

4. In view of Rule 3 of the Scheme, 2019, which is floated under the provisions of Finance Act, 2019, and looking to the definition of **"amount in arrears"** as stated hereinabove, by no stretch of imagination it can be said that paragraph Nos.vii and viii of the Circular dated 25.09.2019 is said to be in violation of the Scheme, 2019. Even if the demand is quantified and no appeal is preferred or even if the appeal is preferred but the assessee is applying under the aforesaid Scheme, 2019, it will mean to be covered by Clause 3(b).
5. Moreover, looking to Rule 3 of this Scheme, 2019, cut-off date of 30.06.2019 is not made applicable in all the four eventualities.
6. The cut-off date of 30.06.2019 is applicable only in the eventualities which are covered under Rules 3(a) and 3(c).
7. The cut-off date of 30.06.2019 is not applicable for the cases

which are covered under Rules 3(b) & 3(c). This cut-off date has been clarified in a Circular dated 25.09.2019 which is annexure P-1.

8. This is a public interest litigation and hence as and when such type of assessee or any individual petitioner is approaching this Court, the case can be decided looking to the facts of the individual case. Suffice it to say that in this public interest litigation the Circular issued by the respondents dated 25.09.2019 (Annexure P-1) *prima facie* is not violative of the provisions of the Scheme, 2019 nor of the relevant Act.

9. We expect from the respondents that they shall follow scrupulously the Scheme, 2019 and the provisions of the relevant Act whenever any benefit is to be given for the Central Excise and for the Service Tax. As and when the individual case will come to the Court in detail, the provisions of the Scheme, 2019 and the relevant Act shall be matched with the facts of that individual case.

10. With these observations, this writ petition is hereby dismissed.

CM APPLs. 52720/2019 (interim relief) & 52721/2019 (exemption)

11. In view of disposal of the main writ petition, this application is dismissed as having become infructuous.

CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 09, 2019

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