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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2020

PRONOUNCED ON : 12.10.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11018 of 2020

M/s.GT Holidays Private Limited,
Rep. by its Managing Director,
Sri.Karthik M.Manikandan,
2/18 A-6, South Car Street,
Agastheeswaram,
Kanyakumari 629 702.

... Petitioner

Vs.

1. The Designated Committee,
Sabka Vishwas Legacy Disputes Resolution
Scheme, 2019
(Commissioner of GST & Central Excise &
Joint Commissioner of GST & Central Excise),
Madurai Commissionerate,
CR Buildings, No.4, Lal Bahadur
Shastri Road,
Bibikulam, Madurai - 625 002.

2. The Commissioner of GST and Central Excise,
CR Buildings, No.4, Lal Bhadur
Shastri Road,
Bibikulam, Madurai - 625 002.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records leading to the impugned order passed by the first respondent dated 15.05.2020 in File No.C.No.IV/16/1371/2020-Tech.Sabka Vishwas and quash the same and consequently direct the first respondent to accept the declaration filed by the petitioner herein under ARN No.LD3012190013415 dated 30.12.2019 and to issue Discharge Certificate in SVLDRS-4 and to grant such further orders and other reliefs as the nature and circumstances of this case.



For Petitioner : Mr.S.Jaikumar
For Respondents : Mr.B.Vijay Karthikeyan

* * *

O R D E R

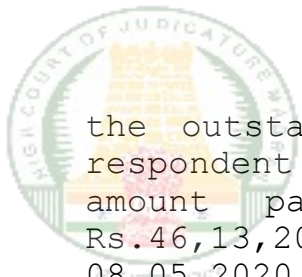
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Heard the learned counsel on either side.

2.The writ petitioner is a Private Limited Company. It is having its head office at Kanyakumari. It offers business and holiday tour packages within and outside India. It also renders allied services such as facilitating taking of travel documents. It was registered as an assessee liable to pay service tax with effect from 20.03.2015. The petitioner received summons dated 13.02.2018 from the senior intelligence officer, Directorate General of GST Intelligence, Coimbatore Zonal Unit, calling upon the authorised signatory of the petitioner Company to appear before him on 22.02.2018, since its affairs were being enquired by him. The Managing Director appeared before the said officer and his statement was also duly recorded. On being summoned again, he appeared before the said officer on 28.09.2018 and submitted further details. Vide letter dated 12.06.2019, the petitioner submitted the details of gross income and service tax calculation for the financial years 2014-15 to June 2017. This was duly certified by their Chartered Accountant also. The petitioner had declared their service tax liability at Rs.1,05,91,153/- for the period 01.04.2014 to 30.06.2017. Thereafter, nothing was heard from the Directorate General of GST Intelligence, Coimbatore Zonal Unit.

3.In the meanwhile, the Government of India notified Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 vide Chapter V of the Finance (No.2) Act, 2019. According to Circular No.1071/4/2019-CX.8 dated 27.08.2019 issued by the Central Board of Indirect Taxes and Customs, the object of the scheme is 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. It gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. The petitioner submitted their application in Form SVLDRS-1 on 30.12.2019 under the said scheme. The application was accepted and duly acknowledged. On 21.02.2020, the designated committee after consideration of facts on record determined the amount estimated to be payable by the petitioner towards full and final settlement of its tax dues and issued Form No.SVLDRS-2 quantifying the petitioner's liability at Rs.45,15,342.50/-. It was mentioned therein that if the declarant does not agree with the estimated amount payable as determined by the designated committee, the petitioner may appear for personal hearing on 03.03.2020 at 11.00 a.m. The petitioner requested the first respondent to enhance

<https://hcservices.ecourts.gov.in/hcservices/>



the outstanding liability to Rs.46,13,206. Thereafter, the first respondent issued Form SVLDRS-3 on 08.04.2020 stating that the amount payable by the petitioner had been determined as Rs.46,13,205.50/- towards full and final settlement of tax dues. On 08.05.2020, the petitioner paid the said amount. This payment made by the petitioner was duly notified by the first respondent in their web portal. What remained to be done was only the issuance of discharge certificate.

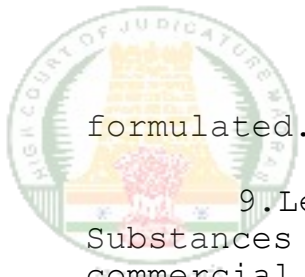
4. Instead, the first respondent issued the impugned order dated 15.05.2020 informing that the petitioner was not eligible to apply under the scheme and that therefore the designated committee has decided to reject the petitioner's declaration made on 30.12.2019. Questioning the same, this writ petition has been filed.

5. The petitioner wants this Court to not only quash the impugned order dated 15.05.2020 passed by the first respondent but also direct them to accept the declaration made by the petitioner in SVLDRS-1 on 30.12.2019 and to issue Discharge Certificate in SVLDRS-4.

6. The prayer made by the petitioner is strongly contested by the respondents. The learned Standing counsel appearing for the respondents would point out that admittedly, the writ petitioner was under investigation by the Directorate General of GST Intelligence. As per Section 125(1)(e) of the Finance (No.2) Act, 2019, those who have been subjected to an enquiry or investigation or audit will not be eligible to make a declaration under the scheme, if the amount of duty involved in the said enquiry or investigation or audit was not quantified on or before 30.06.2019. Since this fundamental requirement regarding eligibility was not fulfilled in the instant case, the designated committee rightly passed the impugned order. According to the learned Standing counsel, the impugned order does not warrant any interference. He placed reliance on the decision of the Delhi High Court reported in 2020[42] G.S.T.L.24 (*Chaque Jour HR Services Pvt. Ltd. Vs. Union of India and Ors.*). He thus prayed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The stand of the learned counsel appearing for the writ petitioner is that the impugned order has been passed without jurisdiction. On the other hand, the contention of the learned Standing counsel appearing for the respondents is that the petitioner lacked the eligibility to apply under the scheme. When two roads diverge in a yellow wood, one cannot travel both (with due apologies to Robert Frost). When divergent submissions are made, the outcome of the proceedings often depends on how the issue is



formulated.

9. Let me undertake a detour. Narcotic Drugs and Psychotropic Substances Act, 1985 states that those accused of possessing commercial quantity should satisfy the twin tests set out in Section 37 of the Act for grant of bail. In one case, the accused was granted bail without giving a finding that the tests set out in Section 37 of the Act stood satisfied. The State thereafter filed a petition for cancellation of bail. But the petition came to be listed before another Judge. The cancellation petition was allowed on the ground that the grant of bail was illegal in the first place. The accused filed C.A.No.1028 of 2018 before the Hon'ble Supreme Court. Vide Order dated 14.08.2018, the Hon'ble Supreme Court set aside the order cancelling the bail and allowed the appeal. The Hon'ble Supreme Court did not enquire into the eligibility of the accused for grant of bail in the first instance. What was taken up for consideration was the competency of another Single Judge to pass the order of cancellation. The Hon'ble Supreme Court took the view that when the Judge who granted the bail was very much available, the cancellation petition could not have been taken up by another Judge. In other words, the Judge who cancelled the bail could not have sat in appeal over the order passed by another single Judge of the very same Court.

10. What is under challenge is the jurisdictional validity of the impugned order passed by the first respondent. The respondents have to demonstrate that the impugned order is valid and legal. It cannot be sustained by challenging the standing of the petitioner. Whataboutery is an effective rhetorical tool in debate. But not always in forensic armory. I therefore propose to test the competence of the first respondent to issue the impugned order.

11. Let me have a quick look at the statutory provisions. Chapter V of the Finance Act (No.2) 2019 contains the provisions (Section 120 to 135) pertaining to Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Section 121 contains the relevant definitions. Section 123 defines the expression "tax dues". According to Section 123(c) where an enquiry or investigation or audit is pending against the declarant, tax dues would mean the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th Day of June, 2019. Section 124 sets out the relief available under the scheme. The list of persons not eligible to make a declaration under the scheme has been



catalogued in Section 125. Section 126 authorizes the designated committee to verify the correctness of the declaration and issue statement. After the amount determined by the committee is paid, discharge certificate shall be issued under Section 129. The Central Government had issued Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 vide Notification No.04/2019 Central Excise-NT dated 21.08.2019. It contemplates that the declarant must electronically make a declaration in Form SVLDRS-1 on or before 31.12.2019. On receipt of declaration, an auto acknowledgement bearing an unique reference number shall be generated by the system. The designated committee shall verify the declaration based on the particulars furnished by the declarants as well as the record available with the department. The designated committee shall within a period of 60 days from the date of receipt of the declaration, issue a statement in Form SVLDRS-3 setting forth therein the particulars of the amount payable by the declarant.

12.Rule 6(6) of Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 states that within thirty days of the date of issue of Form SVLDRS-3, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being point out by the declarant or suo motu by issuing electronically a revised Form SVLDRS-3.

13.As per Rule 7, the declarant has to pay the amount within a period of thirty days from the date of issuance of Form SVLDRS-3. The designated committee on being satisfied that the declarant has paid in full the amount as determined by it and indicated in Form SVLDRS-3 shall issue the discharge certificate within a period of thirty days. The designated committee has the jurisdiction only to correct the arithmetical and clerical error which is apparent on the face of the record. Even then, the designated committee can only



issue a revised Form SVLDRS-3. The format of Form SVLDRS-3 reads as follows:-

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Form SVLDRS-3

[Statement under section 127 of the Finance (No.2) Act, 2019 read with rule 6 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 to be issued by the Designated Committee]

SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019

Declaration No.....

SVLDRS-3 No.....

Commissionerate/DGCI, Delhi.....

Zone/DGCI, Delhi.....

Whereas Mr./Ms./M/s.(hereinafter referred to as the declarant) having registration no./Non assessee code no.....has filed a Declaration No..... datedunder section 125 of the Finance (No. 2) Act, 2019;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (4), as the case may be, of section 127 of the Finance (No. 2) Act, 2019, the designated committee, after consideration of relevant material, hereby determines the following amount is payable by the declarant towards full and final settlement of tax dues under(Central Excise Act, 1944 /Finance Act, 1994/Cess Act) covered by the said declaration under the Scheme:

Category	Description of Goods/ Services	Matter involved	Time period	Tax dues		Tax relief	Pre-deposit or any other deposit of duty	Estimated Amount Payable	
A	B	C	D	E		F	G	H	
				Name* E1	Amount E2			Name* H1	Amt H2

*Name of Duty/Tax/Cess

Notes:

- (3) The Declarant is hereby directed to make payment of the amount payable within thirty days from the date of this Statement.
- (4) The Declarant has to withdraw the writ petition/appeal/reference before(mention the name of the High Court) High Court or the Supreme Court against any order in respect of the tax dues and furnish the proof of such withdrawal in accordance with the provisions contained in sub-section (7) of section 127 of the Finance (No. 2) Act, 2019;



[भाग II-खण्ड 3(i)]

भारत का राजपत्र : असाधारण

Members of the Designated Committee

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2. Name:
Designation:2. Name:
Designation:

(This is a computer generated print. There is no need for a signature)

Place.....
Date.....

PREVIEW

SUBMIT

For Declarant

Challan Link facility for duty payment

Document Upload facility for proof of withdrawal of case.....

Name of declarant/ authorized representative:

Date:

PREVIEW

SUBMIT

Nowhere the scheme provides for rejection of the declaration that has already been accepted.

14. There are two provisions, namely, Section 128 of the Finance (No.2) Act, 2019 and Rule 6(6) of the Scheme Rules that enable the designated committee to modify its order after issuance of statement under Section 127 of the Act. Section 128 reads as follows:-

"Section 128. Within thirty days of the date of issue of a statement indicating the amount payable by the declarant, the designated committee may modify its order only to correct an arithmetical or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or suo motu, by the designated committee."

Rule 6(6) of the Scheme Rules is as follows :

"Within thirty days of the date of issue of Form SVLDRS-3, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the



declarant or suo motu by issuing electronically a revised Form SVLDRS-3."

It is obvious from a reading of the aforesaid provisions that the designated authority can revisit the issue after issuance of Form SVLDRS-3 only in the circumstances set out in Section 128 r/w. Rule 6 (6). If during the verification process contemplated by Rule 6, if the designated committee finds that the applicant is not eligible to make a declaration under Section 125 of the Act, the declaration ought to be returned or rejected at that stage itself. Having moved to the next stage, the designated committee cannot retrace its steps. The designated committee is a creature of statute. It came into existence by virtue of the provisions of Chapter V of the Finance (No.2) Act, 2019. If the impugned order is sustained, it would mean that the designated committee has been conferred with absolute power of review, when what has been conferred is only limited power of review, namely, the power to correct the arithmetical or clerical error. It cannot revisit the issue on merits, having once made the determination under Section 127(4) of the Finance (No.2) Act, 2019 r/w. Rule 6 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019. I therefore have no hesitation to come to the conclusion that the designated committee did not have the jurisdiction to issue the impugned order. On this sole ground, the impugned order is liable to be quashed. It is accordingly quashed.

15. The impugned order is vulnerable on yet another ground. The Government announced the scheme to clear tax dues. The writ petitioner applied under the scheme. This application was verified and its liability was determined by the designated committee. The petitioner also remitted the amount. Thereafter, the first respondent has nullified the entire process. But before doing so, the petitioner was not put on notice. Thus, the impugned order is liable to be quashed on the ground of violation of principles of natural justice. When an order is quashed on this sole ground, usually the matter is remitted to the file of the very same authority to rehear and pass fresh orders, after issuing notice to the affected person or entity. But in the case on hand, I do not propose to remit the matter to the file of the first respondent. This is because I have already held that the first respondent has no jurisdiction to revisit the issue on merits after having made the determination and issued Form SVLDRS-3.

16. The learned Standing counsel during the course of his arguments made an important submission. According to him, if the impugned order is quashed, it would result in perpetuation of an illegality as an otherwise ineligible declarant will walk away with the benefit under the scheme. I therefore clarify that I have only held that the designated committee cannot reject the declaration after issuing Form SVLDRS-3. I have not gone into the question of eligibility. That exercise can be undertaken if the department



files a writ petition either for forbearing the designated committee from issuing the discharge certificate or for quashing the discharge certificate. I can refer to Section 21(2) of the Legal Services Authorities Act, 1987 in this connection. Though the award passed by the Lok Adalat is final and binding on the parties, still, it is open to challenge in writ jurisdiction if it is vitiated by fraud or illegality. If according to the department, the very acceptance of declaration by the assessee is illegal, the same can be questioned in writ jurisdiction. The eligibility of the assessee can be examined in those proceedings, if instituted. In this writ petition, I have confined my enquiry only to jurisdictional competence of the first respondent in issuing the impugned order. The first respondent is directed to issue Discharge Certificate as sought for within a period of thirty days from the date of receipt of a copy of this order. It is open to the department to file an appropriate writ petition as mentioned above.

17. With this liberty to the department, this writ petition stands allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Designated Committee,
Sabka Vishwas Legacy Disputes Resolution Scheme, 2019
(Commissioner of GST & Central Excise &
Joint Commissioner of GST & Central Excise),
Madurai Commissionerate,
CR Buildings, No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai - 625 002.

2. The Commissioner of GST and Central Excise,
CR Buildings, No.4, Lal Bhadur Shastri Road,
Bibikulam, Madurai - 625 002.

+1CC to M/s.B.Vijay Karthikeyan, SR No.19966

W.P. (MD) No.11018 of 2020

12.10.2020

pu (CO)

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