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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3934/2020

**SEVENTH PLANE NETWORKS
PRIVATE LIMITED**

..... Petitioner

Through: Mr. Nikhil Gupta, Advocate with
Mr. Divyanshu Agrawal and Ms. Rubel
Bareja, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC for respondent No.1.
Mr. Amit Bansal, Sr. Standing Counsel
with Mr. Aman Rewaria, Advocate for
respondents Nos. 2 and 3.
Ms. Sonu Bhatnagar, Senior Standing
Counsel with Mr. Vaibhav Joshi and
Ms. Anushree Narain, Advocates for
respondent No.4.

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Date of Decision: 14th August, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the rejection order dated 17th January, 2020 whereby the declaration filed by the petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short “SVLDRS, 2019”) has been rejected on the ground that the audit was conducted and conveyed on 02nd July, 2019 and amount of duty involved in the audit had not been quantified on or before the 30th day of June, 2019.
3. Mr. Nikhil Gupta, learned counsel for petitioner states that though the respondent No.4 issued audit memo in writing on 02nd July, 2019, yet the petitioner had accepted the demand on disputed points on 28th June, 2019, i.e. prior to coming into force of SVLDRS, 2019.
4. He points out that though respondent no. 4 in its counter-affidavit has denied that all the demands were quantified and communicated to the petitioner on 28th June, 2020, yet the respondents 2 and 3 in their counter-affidavit have admitted that during the visit of the audit team on 28th June, 2020, not only the audit was concluded but tax amount on each issue was quantified and communicated to the petitioner. Learned counsel for petitioner states that as the petitioner had admitted its liability on 28th June, 2019 itself, the demands stood quantified.
5. Learned counsel for petitioner submits that para 2(v) of Circular No. 1074/07/2019-CX dated 12th December, 2019 and paras 4(a) and 10(g) of Circular dated 27th August, 2019 issued by the Central Board of Indirect Taxes and Customs provide for relief under the aforesaid Scheme for cases under investigation and audit where the duty involved had been admitted by the assessee/declarant in a statement on or before 30th June, 2019. The relevant portion of the para 2(v) of Circular dated 12th December, 2019 and paras 4(a) and 10 (g) of the Circular dated 27th August, 2019 read as under:-

A) Circular dated 12th December, 2019

“2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made there-under, as follows:

xxx

xxx

xxx

*(v) For the purpose of eligibility under the Scheme in some of the categories such as litigation, audit/enquiry/investigation etc., the relevant date is 30-6-2019. However, it may so happen that the facts of a case may change subsequently. For instance, **in a case under audit/ investigation/enquiry where the tax dues have been quantified on or before 30.6.2019, a show cause notice is issued after 30-6-2019. Similarly, a case, which was under appeal as on 30-6-2019, may attain finality in view of appeal period being over etc. It is clarified that the eligibility with respect to a category in such cases shall be as it was on the relevant date ie., 30-6-2019.**”*

B) Circular dated 27th August, 2019.

“4. The relief extended under this scheme is summed up, as follows:

*(a) For all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved if it is Rs.50 lakhs or less and 50% if it is more than Rs.50 lakhs. **The Same relief is available for cases under investigation and audit where the duty involved is quantified and communicated to the party or admitted by him in a statement on or before 30.06.2019.**”*

“10. Further, the following issues are clarified in the context of the various provisions of the Finance (No. 2) Act, 2019 and Rules made thereunder:

xxx

xxx

xxx

(g) Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of

June, 2019 are eligible under the Scheme. Section 2(r) defines “quantified” as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that such written communication will include a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc.”

(emphasis supplied)

6. He also points out that the Frequently Asked Questions (FAQs) issued on the SVLDRS, 2019 by the Ministry of Finance states that even if the amount quantified under an audit before 30th June, 2019 gets modified subsequently due to any reason, the assessee shall be entitled to file a declaration under the SVLDRS, 2019. The relevant portion of the FAQs is reproduced hereinbelow:-

“Q.53. The amount quantified under an enquiry, investigation or audit on or before 30.06.2019 gets modified subsequently due to any reason. Will I still be eligible to file a declaration under the Scheme?”

Ans. Only such cases of enquiry, investigation or audit are covered under the Scheme where the duty/tax demand has been finally worked out on or before 30.06.2019. In other words, all the evidence/document gathering process is over and the tax liability has been worked out on or before 30.06.2019. For instance, a Draft Audit Report or the Final Audit Report has been issued on or before 30.06.2019. Similarly, a letter intimating duty demand has been issued by the department. These would include those cases also where the duty/tax demand undergoes a change only due to any clerical or calculation error.”

7. He further submits that the impugned order is in violation of principles of natural justice inasmuch as respondents had neither issued any notice nor given any opportunity of hearing to the petitioner.

8. Mr. Amit Bansal and Ms. Sonu Bhatnagar, learned counsel for respondents state that petitioner was ineligible to apply under the SVLDRS, 2019 as the amount of duty involved in the audit had not been quantified before 30th June, 2019. They submit that the expression “quantified” under Section 121(r) of the Finance Act, 2019 means a written communication of the amount of duty payable under the indirect tax enactment. The relevant portion of SVLDRS 2019 namely Sections 121 and 125 of the Finance Act, 2019 relied upon by them are reproduced hereinbelow:-

“121. Definitions. -In this Scheme, unless the context otherwise requires,-

.....

(r) "quantified", with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment;

125. Declaration under Scheme. - (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely :-

.....

(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;”

9. They emphatically deny that all demands were quantified and communicated to the petitioner on 28th June, 2020. They state that only one audit memo dated 02nd July, 2019 was issued to the petitioner i.e. after the cut-off date of 30th June, 2019. They emphasise that even the petitioner had mentioned the date of communication as 02nd July, 2019 in his declaration filed on 26th December, 2019 in the Form SVLRDS-1 under the SVLDRS, 2019.

10. Mr. Amit Bansal and Ms. Sonu Bhatnagar state that an opportunity of hearing can only be granted if the conditions laid down under Section 127 of the Finance Act, 2019 are fulfilled. They submit that there is no provision for an opportunity of hearing to the declarant in case of ineligibility. The relevant portion of the Section 127 is reproduced hereinbelow:-

“127. Issue of statement by designated committee. –

(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration.

(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant :

Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.”

11. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the expression ‘quantified’ in Section 121(r) has been extended/widened by way of para 2(v) of Circular dated 12th December, 2019 and paras 4(a) and 10(g) of Circular dated 27th August, 2019.

12. In ***Navnit Lal C. Javeri vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, Bombay, AIR 1965 SC 1375, K.P. Varghese vs. Income Tax Officer, Ernakulam & Anr., (1981) 4 SCC 173***

and *Paper Products Ltd. Vs. Commissioner of Central Excise, (2001) 247 ITR 128 (SC)*, it has been held that circulars are binding on departments and department cannot challenge them even if they are inconsistent with the statute.

13. This Court also finds that the audit in the present case was concluded on 28th June, 2019 and the amount due and payable was not only determined as well as communicated by the respondents to the petitioner but was also admitted by the petitioner. The relevant portion of the Audit Memo dated 2nd July, 2019 is reproduced hereinbelow:-

“Point No.4: Wrong availment of CENVAT Credit:

.....Therefore, the CENVAT Credit pertaining to input services used in providing these particular services was not available to the assessee in terms of Rule 2(1), 2(P), 3 and the assessee is liable to reverse the CENVAT Credit of Rs.61,07,408/- (as per Annexure-D) in terms of Rule 6(3A) of CCR-2004.

The above observation was brought to the notice of Shri Anurag Mittal, authorised signatory of the Company, and he was verbally agreed with the objections to pay the tax liabilities as mentioned above.”

(emphasis supplied)

14. Even in the counter-affidavit filed by respondent nos. 2 and 3 it has been admitted that the tax amount was quantified and communicated to the petitioner when the Audit Team visited the premises for the last time on 28th June, 2019. The relevant portion of the counter-affidavit of respondent nos. 2 and 3 is reproduced hereinbelow:-

“3. That on 28.06.2019, the Audit team visited the premises of the Petitioner for the last time and concluded the Audit. All the observations were communicated to the Petitioner and further,

the tax amount on each issue was quantified and communicated to the Petitioner through various Computation Sheets.”

(emphasis supplied)

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 28th 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 21st September, 2020.

20. With the aforesaid directions, present writ petition stands disposed of.

21. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

AUGUST 14, 2020

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