

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2421 OF 2020

Magnum Management and Services P Ltd .. Petitioner

Versus

Union of India & Ors.

.. Respondents

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- Mr. Ishaan Patkar a/w Ms. Riya Jain i/by Mr. Jindagi Shah for the Petitioner
 - Mr. Devesh Tripathi for Respondent No.1
 - Mr. Pradeep S. Jetly, Senior Counsel a/w Mr. J.B. Mishra and Ms. Maya Mazumdar for Respondent Nos. 2 and 3
 - Ms. Shruti D. Vyas - 'B' Panel counsel for the State
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**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

DATE : MARCH 1, 2021.

ORAL JUDGMENT [PER UJJAL BHUYAN]:

Heard Mr. Ishaan Patkar, learned counsel for the petitioner; Mr. Tripathi, learned counsel for respondent No. 1; and Mr. Jetly, learned senior counsel for respondent Nos. 2 and 3.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 21.01.2020 passed by the designated committee rejecting the declaration of the petitioner dated 25.12.2019

filed under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and further seeks a direction to the respondents to reconsider the declaration of the petitioner dated 25.12.2019 and grant the relief(s) under the aforesaid scheme. Additional prayer made by the petitioner is for quashing of show cause cum demand notice dated 24.12.2020 issued by Joint Commissioner, CGST & CX, Belapur Commissionerate.

3. Petitioner is a private limited company engaged in the business of supplying unskilled, semi-skilled and skilled manpower for security services, management services etc. Being a service provider, it was registered as such under Chapter V of the Finance Act, 1994.

4. Central Government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly "**the scheme**" hereinafter) vide the Finance (No. 2) Act, 2019 for settlement of legacy disputes pertaining to service tax and central excise providing for substantial reliefs to the declarants subject to eligibility.

5. In terms of the scheme, petitioner submitted declaration dated 25.12.2019 under the category of

'voluntary disclosure' covering the period from 01.04.2016 to 31.03.2017 declaring service tax dues for the said period at Rs. 39,26,235.00

6. However, vide email dated 21.01.2020, the aforesaid declaration of the petitioner was rejected on the ground of ineligibility. Reason for rejection was mentioned as being ineligible under section 125(1)(f)(i) read with section 121(m) of the Finance (No. 2) Act , 2019.

7. When the petitioner inquired with the authorities the justification for such rejection, it was informed that because of letter dated 24.07.2019 which was issued to the petitioner by the Assistant Commissioner, Division-I, CGST & CX, Belapur Commissionerate for the period 2015-16 declaration of the petitioner was rejected on the ground of ineligibility.

7.1. In so far letter dated 24.07.2019 is concerned, it is stated that upon comparison of the service tax return of the petitioner with its income tax return for the financial year 2015-16 certain differences were noticed in the figures for which petitioner was required to explain and also to submit the documents mentioned therein.

8. Petitioner submitted representation on 03.02.2020 before the Assistant Commissioner, CGST & CX, Belapur Commissionerate explaining and contending that it cannot be treated as ineligible and requested the said authority to withdraw the rejection order and thereafter to accept the declaration filed by the petitioner. However, no decision was taken on the said representation.

9. Aggrieved, present writ petition came to be filed assailing rejection of declaration.

10. During pendency of the writ petition, Joint Commissioner of CGST & CX, Belapur Commissionerate issued show cause cum demand notice dated 24.12.2020 calling upon the petitioner to show cause as to why service tax amounting to Rs. 54,40,259.00 for the period 2015-16, 2016-17 and 2017-18 (upto June 2017) should not be paid along with interest and penalty.

10.1. By way of amendment, the above show cause cum demand notice has been brought on record and has also been impugned.

11. Responding to the notice issued by the court, respondents have filed their reply affidavit. Stand taken in the reply affidavit is that petitioner had filed declaration under the scheme on 25.12.2019 under the category of 'voluntary disclosure' declaring amount of service tax payable at Rs. 39,25,235.00. The declaration was rejected on 21.01.2020 as the petitioner was not eligible to file declaration under the category of 'voluntary disclosure'. In this connection, reference has been made to section 121(m) of the Finance (No. 2) Act, 2019 and section 125(1)(e) thereof to contend that petitioner was not eligible to file declaration under the category of 'voluntary disclosure'. It is further stated that under the scheme, there is no requirement or provision for giving opportunity of personal hearing to a declarant before rejection.

11.1. Record of the petitioner for the last five years i.e from 2015-16 may be examined by the respondents under section 73(1) of the Finance Act, 1994. This period includes the financial year 2016-17 in respect of which petitioner had filed the declaration. The proceedings which are underway may incorporate the period 2016-17 thus rendering the petitioner ineligible.

12. Learned counsel for the petitioner submits that impugned rejection of the declaration of the petitioner is in violation of the principles of natural justice as no opportunity of hearing was granted to the petitioner before such rejection. That apart, no reasons have been assigned except the bald statement about ineligibility of the petitioner. An unreasoned order being in violation of the principles of natural justice is certainly arbitrary and unreasonable and is therefore liable to be appropriately interfered with by this Court. Learned counsel has referred to various provisions of the scheme where from he contends that the declaration of the petitioner for the period 2016-17 could not have been rejected by the respondents on the ground that the investigation presently underway may incorporate the period 2016-17 in future. Such a ground is no ground at all in the eye of law for rejection. In support of his contentions, learned counsel for the petitioner has filed a compilation of documents and judgments as well as written submissions.

13. On the other hand, Mr. Jetly, learned senior counsel for the respondents has placed reliance on the averments made in the reply affidavit and submits that the designated committee was justified in rejecting the

declaration of the petitioner as being ineligible. Therefore, no interference is called for.

14. Submissions made by learned counsel for the parties have received the due consideration of the court.

15. At the outset, we may advert to certain provisions of the scheme as contained in the Finance (No. 2) Act, 2019 relating to making of declaration under the category of 'voluntary disclosure'.

16. Section 121(m) defines the expression "enquiry or investigation" under any of the indirect tax enactments to mean search of premises; issuance of summons; requiring the production of accounts, documents or other evidence and recording of statements.

16.1. Section 123 deals with tax dues as understood under the scheme. As per section 123(d), where the amount has been voluntarily disclosed by the declarant, then tax dues would mean the total amount of duty stated in the declaration.

16.2. Reliefs available under the scheme are dealt with in section 124. As per section 124(1)(e), subject to the conditions specified in sub-clause (2), where the tax dues are payable on account of a voluntarily disclosure by the declarant, then, no relief shall be available with respect to tax dues. Sub-section (2) says that relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit shall be deducted when issuing the statement indicating the amount payable by the declarant. However, as per the proviso, if the amount of pre-deposit or deposit exceeds the amount payable by the declarant, the declarant would not be entitled to any refund.

16.3. Section 125 deals with eligibility to make declaration under the scheme. As per sub-section (1) of section 125, all persons shall be eligible to make a declaration under the scheme except those who are specifically excluded under clauses (a) to (h). From the wordings of sub-section (1) of section 125, it is evident that under the scheme, eligibility is the norm and ineligibility is the exception. In so far voluntary disclosure is concerned, ineligibility is dealt with in clause (f)(i) which says that a

person after being subjected to any enquiry or investigation or audit would be ineligible to make a voluntary disclosure.

16.4. Section 126 deals with verification of declaration by designated committee. Proviso to sub-section (1) clarifies that no such verification shall be made in a case where voluntary disclosure of an amount of duty has been made by the declarant.

16.5. Section 129 provides that every discharge certificate issued under section 126 with respect to the amount payable under the scheme shall be conclusive as to the matter and time period stated therein. Section 129(2)(c) says that notwithstanding anything contained in sub-section (1), in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.

16.6. Under section 131, for removal of doubts, it has been clarified that nothing contained in the scheme shall be construed as conferring any benefit, concession or immunity

on the declarant in any proceedings other than those in relation to the matter and time period in which the declaration has been made.

17. We may also refer to circular dated 25.09.2019 issued by the Central Board of Direct Taxes and Customs (briefly "**the Board**" hereinafter). In clause (vi) of paragraph 2, it is stated that in a case of filing declaration under the category of 'voluntary disclosure', whether benefit of the scheme would be available to a declarant in a case where documents like balance sheet, profit and loss account etc are called for by the department, Board has clarified that in such a case, the designated committee may take a view on merit, taking into account the facts and circumstances of the case as to whether provisions of section 125(1)(f) would be attracted or not.

18. Board has also prepared a set of Frequently Asked Questions (FAQs). Question No. 59 and the answer given thereon are as under:-

"Q. 59 Although I have not been subjected to any search of my premises or investigation of any kind as per my knowledge I have recently received a letter from the department asking for some documents like balance sheets and Profit and loss accounts of certain years. I want to make a voluntary declaration with regard to the same period. Am I eligible?

Ans. The letter may have been sent to you by the department as a result of a specific intelligence input as part of an enquiry or investigation or it may be with the aim of making a preliminary assessment as to whether or not an enquiry or investigation is warranted. This would depend on the facts and circumstances of each case. You can make a declaration. However the eligibility will be decided on a case to case basis by the designated committee."

19. Thus, we find that for determining eligibility under the category of 'voluntary disclosure', a great deal of discretion is vested on the designated committee, who has to decide eligibility on a case to case basis. Needless to say, when a discretion is conferred upon an authority to decide an issue which has civil consequences upon the party concerned, such discretion has to be exercised in a just, fair and reasonable manner complying with the principles of natural justice. Thus, while deciding eligibility, the designated committee is required to consider all relevant materials and also hear the concerned declarant.

20. Having held so, let us deal with the contention of the petitioner that before a declaration is rejected, an opportunity of hearing should be granted to the declarant. Though we do not find any such express provision in the scheme laying down requirement of hearing before rejection of the declaration, we find from section 127 more particularly under sub-sections (3) and (4) thereof that if the designated committee

upon verification, determines the amount payable by the declarant to be higher than what is declared by the declarant, then an opportunity of hearing should be granted to a declarant. This coupled with what we have discussed in paragraph 19 above, makes hearing before rejection obligatory.

21. This aspect of the matter was gone into by this Court in **Thought Blurb Vs. Union of India**¹. It has been held that in a situation where the amount estimated by the designated committee is in excess of the amount declared by the declarant, an opportunity of hearing is required to be given by the designated committee to the declarant, then it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject a declaration on the ground of being ineligible. Summary rejection of a declaration without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice impeaching the decision making process thus rendering the decision invalid in law. It has been held in paragraph Nos. 51 and 52 as under:-

"51. We have already discussed that under sub sections (2) and (3) of section 127 in a case where the amount estimated by the Designated Committee exceeds the amount declared by the declarant, then an intimation has to

¹ 2020 SCC OnLine Bom 1909

be given to the declarant in the specified form about the estimate determined by the Designated Committee which is required to be paid by the declarant. However, before insisting on payment of the excess amount or the higher amount the Designated Committee is required to give an opportunity of hearing to the declarant. In a situation when the amount estimated by the Designated Committee is in excess of the amount declared by the declarant an opportunity of hearing is required to be given by the Designated Committee to the declarant, then it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject an application (declaration) on the ground of being ineligible without giving a chance to the declarant to explain as to why his application (declaration) should be accepted and relief under the scheme should be extended to him. Summary rejection of an application without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice. Rejection of application (declaration) will lead to adverse civil consequences for the declarant as he would have to face the consequences of enquiry or investigation or audit. As has been held by us in Capgemini Technology Services India Limited (supra) it is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be complied with. Non-compliance to the principles of natural justice would impeach the decision making process rendering the decision invalid in law.

52. We have one more reason to take such a view. As has rightly been declared by the Hon'ble Finance Minister and what is clearly deducible from the statement of object and reasons, the scheme is a one time measure for liquidation of past disputes of central excise and service tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. Therefore the focus is to unload this baggage of pre-GST regime and allow business to move ahead. We are thus in complete agreement with the views expressed by the Delhi High Court in Vaishali Sharma Vs. Union of India, WP(C) No. 4763 of 2020 decided on 05.08.2020 that a liberal interpretation has to be given to the scheme as its intent is to unload the baggage relating to legacy disputes under central excise and service tax and to allow the business to make a fresh beginning. "

22. Since we find that impugned rejection of the declaration of the petitioner is in violation of the principles of natural justice which has impacted the decision making process thus rendering the decision invalid, it may not be necessary for us to enter into the merits of the challenge as to whether the declaration of the petitioner was in fact valid or not under the category of 'voluntary disclosure'. This is a matter which should be best left to the designated committee to decide after granting opportunity of hearing to the petitioner.

23. Consequently we set aside the order dated 21.01.2020 and direct the designated committee to decide afresh the declaration of the petitioner dated 25.12.2019 in terms of the scheme under the category of 'voluntary disclosure' after giving due opportunity of hearing. The date, time and place of hearing shall be intimated to the petitioner. The entire exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

24. All contentions of the parties are kept open.

25. Till such decision is taken by the designated committee, respondents shall not proceed further with the show cause cum demand notice dated 24.12.2020.

26. With the above directions, writ petition is disposed of. However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]

Ravindra M.
Amberkar

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by Ravindra M.
Amberkar
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