

PMB/DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.970 OF 2020
WITH
WRIT PETITION NO.186 OF 2021
WITH
INTERIM APPLICATION (L) NO.6273 OF 2021
IN
WRIT PETITION NO.186 OF 2021**

JSW Steel Limited .. Petitioner

Vs.

Union of India and ors. .. Respondents

Mr. Naresh Thacker a/w Mr. Parth Parikh i/b. Economic Laws
Practice for the petitioner.

Mr. J.B. Mishra a/w Mr. Ashutosh Mishra for respondents.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

**HEARD ON : OCTOBER 7, 2021
JUDGMENT ON : OCTOBER 21, 2021**

JUDGMENT : (PER M.S. KARNIK, J.) :

1. These petitions raise common issues and hence are disposed of by a common judgment. The parties also consent to this course of action. In Writ Petition No.970 of 2020, the petitioner filed a declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

(hereinafter referred to as 'the Scheme' for short) under ARN No.LD2812190001777 dated December 28, 2019 under the category of 'Investigation/Enquiry/Audit', sub category 'Audit' declaring tax dues of Rs.75,64,008/-. In Writ Petition No.186 of 2021, the petitioner filed a declaration under the Scheme under ARN No.LD2812190001665 dated December 28, 2019 under the category of 'Investigation/Enquiry/Audit', sub category 'Audit' declaring tax dues of Rs.2,41,59,708/-. The declarations are rejected by the letters dated May 12, 2020 (hereinafter referred to as 'the impugned letters' for short). For convenience we have referred to the facts in Writ Petition No.970 of 2020.

2. The jurisdiction of this Court is invoked under Article 226 of the Constitution of India challenging the validity and legality of the impugned letters, rejecting the application made by the petitioner under the Scheme for settlement of the amount of excise duty payable.

3. The petitioner is a company registered under the Companies Act, 1956 duly allotted the Central Excise

Registration as well as the GST registration. The petitioner is engaged in manufacture and supply of steel. The office of respondent No.4 (Commissioner, CGST and CX) conducted EA-2000 audit on the records of the petitioner for the period April 2015 to June 2017. During the course of scrutiny on records of the petitioner, Circle X, Group I, GST Audit, Raigad, sought following details from the petitioner vide e-mail dated April 4, 2018 :-

i) Invoices in respect of which CENVAT Credit was availed and subsequently reversed on account of non-payment of consideration to the vendors within 90 days from the date of the invoices, as per Rule 4(7) of the CENVAT Credit Rules, 2004 (hereinafter referred to as 'Credit Rules').

ii) Invoices in respect of CENVAT Credit re-availed once the payment was made by the Petitioner to the vendors, as per the provisions under Rule 4(7) of the Credit Rules."

4. The petitioner on the same day i.e. April 4, 2018 provided the necessary details to the office of respondent No.4 through an e-mail correspondence. Based on the verification of the details submitted by the petitioner, the office of respondent No.4 vide letter dated September 4,

2018 observed that the credit availed by the petitioner in respect of many invoices was inadmissible. The office of respondent No.4 observed that the petitioner had re-availed CENVAT Credit under Rule 4(7) of the Credit Rules in respect of certain invoices for which the credit was not reversed in the first place. The petitioner pleads that the office of respondent No.4 quantified the amount of such ineligible CENVAT Credit availed by the petitioner for the period April 2015 to June 2017 as Rs.75,64,008/- (hereinafter referred to as 'the said amount' for short) and communicated the said quantification to the petitioner through e-mail on October 31, 2018. The petitioner then states that the office of respondent No.4 issued audit report dated August 29, 2019 whereby various observations with respect to the audit of the records of the petitioner are made. It is the petitioner's case that the letter dated August 29, 2019 specifically included the observation with respect to wrongful re-availing of credit which was not reversed earlier and adopted the same quantification of the said amount which was communicated by the office of

respondent No.4 to the petitioner vide e-mail dated October 31, 2018. The petitioner then made an application in Form SVDRS-I of the Scheme before the respondent No.3 in relation to the said amount quantified as duty payable by the petitioner during the course of audit and communicated to the petitioner vide e-mail dated October 31, 2018, pursuant to e-mail dated April 4, 2018 and letter dated September 4, 2018 issued by the office of respondent No.4.

5. Respondent No.3 was of the view that the said amount was not quantified prior to June 30, 2019 and therefore, the respondent No.3 in accordance with Section 127 of the Finance Act, 2019 read with Clause 6 of the Scheme issued Form SVLDRS-2 dated January 14, 2020 stating that the declaration filed by the petitioner appears ineligible. An opportunity of personal hearing was granted to the petitioner on January 21, 2020. The 'impugned letter' dated May 12, 2020 then came to be issued which is the subject matter of challenge in the present petition.

6. The petitioner vide communication dated May 21, 2020 addressed to respondent No.3 highlighted the errors

in the rejection letter which were apparent on the face of record and requested for the reconsideration of the petitioner's application. The respondent No.4 proceeded to issue Show Cause Notice dated June 24, 2020 and demanded a payment of duty amount of Rs.75,64,008/-. Again by a letter dated July 21, 2020, the petitioner requested the respondent No.3 to decide the petitioner's representation for reconsideration of the application. In the absence of any response to the said letters for reconsideration, the petitioner is constrained to file the present petitions.

SUBMISSION OF LEARNED COUNSEL FOR THE PETITIONER

7. Learned counsel for the petitioner invited our attention to the relevant provisions of the Scheme and the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (hereinafter referred to as "the said Rules" for short). Our attention is also invited to the circular dated August 27, 2019 to submit that the Scheme is a bold endeavour 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. Our attention is invited to the salient features of 'the Scheme' which are in the nature of instructions by way of circular to familiarize the concerned officials and staff with the provisions of the Scheme and actively ensure its smooth implementation. According to the learned counsel, the clarification issued under the circular dated August 27, 2019 is binding. It is urged that the impugned letter is in gross violation of Section 123(c) read with Section 121(r) of the Finance Act, 2019. Learned counsel was at pains to point out that the rejection order has been passed on a factually incorrect premise that the tax dues were not quantified as on June 30, 2019. Relying on the circular dated August 27, 2019, learned counsel emphasized that 'quantified' means any written communication of duty amount payable under the indirect tax enactment and that respondent No.3 has sought to restrict the meaning of 'written communication' under the Finance Act, 2019 to only printed letters issued on paper by the Authorities to the declarants and not to e-

mails. He urged that it is in the light of this factually incorrect premise that the respondent No.4 concluded that no evidence was placed by the petitioner to show that the duty amount payable was quantified prior to the cut-off date of June 30, 2019. Learned counsel submits that such a restrictive interpretation adopted by the respondent No.3 is vague, ambiguous and contravenes the basic fundamentals of law and equally reflects a biased approach.

8. Learned counsel while placing reliance on the e-mail dated April 4, 2018 and communication dated September 4, 2018 issued by the office of respondent No.4 contended that the same tantamounts to written communication of quantification. It is urged that as the said quantification is prior to the cut-off date viz. June 30, 2019, the impugned letter is unsustainable. Learned counsel also placed reliance on various decisions rendered by the High Courts which we have referred to in the latter part of this judgment in support of his submissions.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

9. Our attention is invited to the affidavit-in-reply filed on behalf of respondents. It is submitted that the quantification was communicated to the petitioner for the first time only on September 4, 2019, which is after the cut-off date. The communication relied upon by the petitioner at Exhibit 'C' dated October 31, 2018 cannot be said to be a quantification. Learned counsel submits that e-mail dated March 22, 2018 of Audit Commissionerate is only an excel sheet prepared by the Audit Commissionerate on the basis of the details submitted by the petitioner. According to him, the communication nowhere mentions that the duty/tax amount is quantified as payable and that, it is conclusive for the entire period under consideration of EA-2000. In his submission, the Audit Commissionerate called upon the petitioner to submit additional records vide letter dated September 4, 2018 and after receipt of information, finally quantified the amount and intimated the same to the petitioner vide letter dated August 29, 2019. He submits that in fact the Audit department had called for information from the petitioner vide letter dated September 4, 2018 and

had quantified the amount of tax only after receipt of requisite documents from the petitioner. Hence, it is submitted that as the demand of duty has not been quantified/finalised by the Audit department prior to June 30, 2019, the application of the petitioner was rejected by the impugned letter. He submits that there is nothing on record to indicate that the amount of tax payable is quantified or that the petitioner has admitted the tax liability prior to the cut-off date to avail benefit of the Scheme.

10. We have heard learned counsel for the parties. We have perused the copy of the petition along with the relevant exhibits, the affidavit-in-reply filed by the respondents and the rejoinder filed on behalf of the petitioner.

CONSIDERATION

11. The issue that arises for consideration is whether the e-mail dated March 22, 2018, further correspondence of the respondents vide communication dated April 4, 2018, letter dated September 4, 2018 and the e-mail dated October 31,

2018 is an 'intimation' or 'written communication' for quantification to be eligible for the benefit of the Scheme. As noted hereinbefore, it is the case of the respondents that these letters/communications are only seeking clarification in respect of the availment of the said CENVAT Credit by the petitioner which the petitioner is misconstruing to be 'quantification' in order to claim the benefit under the Scheme. Factually, according to the respondents, the quantification was finalised by the Audit Raigad Commissionerate only vide letter dated August 29, 2019.

12. To appreciate the controversy, a reference needs to be made to the relevant provisions of the Scheme. The Government introduced the Scheme as a one-time measure for liquidation of past disputes of Central Excise, Service Tax and other tax enactments. The Scheme *inter alia* provides waiver of the partial tax demand and for certain immunities including penalty, interest or any other proceedings including prosecution in respect of specified legal disputes pending disposal on June 30, 2019. The Scheme provides that all persons are entitled to make a declaration under the

Scheme except the persons specified under Section 125 of the Finance Act, 2019.

13. Section 123 of the Finance Act, 2019 *inter alia* provides that where any enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before June 30, 2019 shall be treated as 'tax dues'. Further, Section 124 of the Finance Act, 2019 *inter alia* provides for the relief the declarant is entitled under the Scheme where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount is quantified on or before June 30, 2019. Section 121(r) of the Finance Act, 2019 defines the term 'quantified' as a written communication of the amount of duty payable under the indirect tax enactment.

14. It is also material to refer to the relevant portion of circular dated August 27, 2019 issued by the respondent No.2 in accordance with the power entrusted thereupon under Section 133 of the Finance Act, 2019, wherein it has been clarified as under :-

(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.”

15. The Frequently Asked Questions (FAQs) issued on the Scheme by the Ministry of Finance reiterates the above clarification under circular dated August 27, 2019. The relevant FAQ reads thus :-

“Q.3. If an enquiry or investigation or audit has started but the tax dues have not been quantified whether the person is eligible to opt for the Scheme?

Ans. No. If an audit, enquiry or investigation has started, and the amount of duty/duty payable has not been quantified on or before 30th June, 2019, the person shall not be eligible to opt for the Scheme under the enquiry or investigation or audit category. ‘Quantified’ means a written communication of the amount of duty payable under the indirect tax enactment [Section 121(g)]. 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. [Para 10(g) of Circular No.1071/4/2019-CX dated 27th August, 2019]”

16. Thus, placing reliance on the definition of the term ‘quantified’ under Section 121(r) of the Finance Act, 2019 and the clarification under circular dated August 27, 2019, learned counsel for the petitioner was at pains to point out that the communication vide e-mail dated October 31, 2018, pursuant to e-mail dated April 4, 2018 and the letter dated September 4, 2018 issued by the office of respondent No.4 will have to be regarded as a quantification.

17. Let us examine if in terms of the definition of the term ‘quantified’ there is any written communication of the quantification. It is also necessary to examine whether the petitioner has admitted the duty liability to avail the benefit of the Scheme in view of the law laid down by this Court which we shall soon refer to. At this juncture, it would be apposite to reproduce the contents of the written communications addressed by the respondents to the petitioner and the Reply thereto which learned counsel for the petitioner wants us to construe as written communication of ‘quantification’ of duty liability.

(A) The communication dated April 4, 2018 addressed by the respondents to the petitioner reads thus :-

"Dear Patil,

You are again requested to please provide the monthwise annexure of the credit reversed and credit retaken for non payment within 90 days as per attached annexure.

Regards

Superintendent

Circle-X, Group-I

GST, Audit Raigad"

(B) On the very same day, vide communication dated April 4, 2018, the petitioner's response reads thus :-

"Sir,

Pl. find attached as desired by you.

Pl. confirm

Best Regards

VIJAY K Patil

Excise Deptt.

Mob.8108094920/Direct 02143277874/Extn No.7087

JSW STEEL LTD DOLVI WORKS"

Along with the said communication dated April 4, 2018, the necessary details in respect of the invoices of which the CENVAT Credit was availed was provided by the petitioner.

(C) By a communication dated September 4, 2018 at Exhibit 'B', the respondents called upon the petitioner to submit clarification in respect of the matters stated therein.

The relevant portion of the said letter reads thus :-

“2) Further it is also observed that in the ER-1 filed by you and submitted to this office for audit, the opening balance and closing balances of the products manufactured and cleared by you do not match. Please clarify on this issue also.

3) During the course of audit, inadmissible credit in many invoices were noticed and clarification was sought from you on the said issue. However, till date, the clarification is not received.

4) Details clarification in r/o CENVAT credit taken after one year period on input service invoices, is also not submitted by you, till date, for the audit period April 2015 to June 2017.

6) Kindly also provide Detail worksheet for determination of Service tax liability paid under RCM (month wise) for the financial years 2015-16, 2016-17 & 2017-18.

7) Kindly also provide Sales Reconciliation of ER-1 with Annual Report for the financial years 2015-16, 2016-17 & 2017-18.

8) Please provide the copies of ledgers with narration as per list attached to this letter for the financial year 2015-16, 2016-17 and 2017-18 (upto June, 2017)“

18. Having gone through these communications, in our opinion, there is nothing reflected from the communications to indicate that duty demand was quantified. We find force in the submission of learned counsel for the respondents that the correspondence/emails referred to by the petitioner prior to the cut-off date are meant only to obtain additional required information by the audit officers during the course of the audit and cannot be termed as 'quantification' of the duty. There is nothing on record to indicate that quantification of duty was done prior to June 30, 2019. We find that the demand of the duty quantified/finalised by the Audit Raigad was only under letter dated August 29, 2019.

19. To our mind, reading of the communications and perusal of the invoices reveal that the respondents seem to be justified in taking a stand that in order to ascertain the correct quantum of ineligible credit on the issue, a list of such credit entries were shortlisted from the excel sheet provided by the petitioner during the visit of the audit team to petitioner's premises on March 22, 2018. The petitioner was requested to provide the invoices for verification. In the

affidavit it is stated that the petitioner verbally requested the auditors to provide the shortlisted excel sheet to enable them to locate and search the invoices easily and produce the same for verification. Accordingly, the said shortlisted excel sheet namely 'credit taken after one year' was forwarded to the petitioner by email dated March 22, 2018 as per petitioner's request. The respondents categorically denied that the said e-mails are intimation as regards the tax amount having been quantified finally. It is further stated in the affidavit-in-reply that as the petitioner did not provide any further documentary evidence, a letter dated September 4, 2018 was issued to the petitioner for providing necessary clarification. No doubt it is only on the basis of the communications placed on record and the impugned letter that its action is to be justified by the respondents. We have referred to the affidavit-in-rely only to ensure that the stand taken by the respondents is in consonance with the communication and the impugned letter and nothing more.

20. Now a reference to paragraphs 7 and 8 of the

communication dated August 29, 2019 would be relevant. Paragraph 7 of the said letter reads that "on reconciliation of both the annexures, it appears that you have taken CENVAT credit as re-credit without reversal of CENVAT credit for an amount of Rs.75,65,008/- (Basic Rs.73,43,696/- Ed.Cess Rs.1,46,882/- & S&H Ed. Cess Rs.73,430/-) (Detailed as per Annexure-A). You are therefore requested to pay the amount along with interest and penalty." Further, in paragraph 8 the petitioner is intimated about the inadmissibility of an amount of Rs.4,44,64,068/- and a request is made to pay amount with interest and penalty. We therefore find substance in the contention of the respondents that the final quantification in terms of the scheme was done only on August 29, 2019 and not prior to the cut-off date viz. June 30, 2019.

21. Undoubtedly, we are in complete agreement with the submission made by the petitioner and as clarified in the circular dated August 27, 2019 that the entire 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, nonetheless, only those cases relating to any settlement of erstwhile tax dues existing as on June 30, 2019 which are in conformity with the provisions of the scheme are entitled to avail benefit thereunder.

22. At the cost of repetition, Section 121 (r) of the Finance Act, 2019 defines the term “quantified” as duty payable under the indirect tax enactment. The term “quantified” is to be read in context of the provisions of the scheme. Though a liberal approach has to be adopted to confer the benefit, however, the term quantification has to be given a definite meaning. It cannot be read to mean ‘a quantification’ as the petitioner wants us to infer which at best can be said to be petitioner’s *ipse dixit* on the basis of the invoices submitted for scrutiny. The petitioner has not placed on record any document to demonstrate that the duty liability is admitted prior to the cut-off date. At the cost of repetition, the case of the petitioner is that the communications/emails of the respondents dated April 4, 2018, September 4, 2018 and October 31, 2018 are written

communications of quantification of the amount of duty payable. We have already held that the said written communications addressed by the respondents to the petitioner cannot be read to mean as 'quantification', for the purpose of Section 121(r) of the Finance Act. Even in paragraph 3 of the communication dated September 4, 2018 it is stated that during the course of audit, inadmissible credit in many invoices were noticed and clarification was sought from the petitioner on the said issue which clarification, according to the respondents, was never received. On the basis of the invoices of the said CENVAT credit produced by the petitioner alongwith the communications, the petitioner wants us to conclude that the quantification made by the Department on August 29, 2019 matches with the invoices submitted prior to the cut-off date. In our opinion, merely because the calculations made by the petitioner on the basis of the invoices matches with the quantification made by the department on August 29, 2019 will not stand to benefit the petitioner as what is contemplated is a quantification by the department in view

of Section 121 (r) of the Finance Act, 2019. These invoices submitted during the course of audit without the petitioner admitting the duty liability would not amount to quantification within meaning of the Scheme.

23(A). We now consider the decisions relied upon by learned counsel in support of the petitioner's case. Relying on the decision in **Seventh Plane Networks Private Limited Vs. Union of India and ors.**¹, learned counsel for the petitioner submitted that the Delhi High Court is of the view that even if the duty liability stood admitted in an oral statement by the petitioner before June 30, 2019, consequence thereof is the duty liability stood quantified prior to the cut-off date in accordance with the beneficial circulars. Reliance is also placed on the observations made by Their Lordships that a liberal interpretation has to be given to the Scheme of 2019 and the circulars issued by the Board 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. We are afraid that this decision relied upon has no application in

1 2020 (8) TMI 343-Delhi High Court

the facts of the present case. The factual matrix in **Seventh Plane Networks** (*supra*) pertains to the duty liability being admitted in an oral statement by the petitioner before June 30, 2019. Their Lordships in that fact situation held that the duty liability consequently stood quantified prior to cut-off date. The present is not a case of quantification of duty on the basis of an oral statement made admitting the liability.

(B) The next decision relied by learned counsel for the petitioner is in the case of **Saksham Facility Services Private Limited Vs. Union of India and others**². This Court while construing the definition of the word 'quantified' relied upon a clarification issued by the Board that a written communication would include a letter intimating duty demand or duty liability admitted by the person during enquiry, investigation or audit etc. Even this decision has no application in the facts of the present case. There is nothing on record to indicate that there is a letter intimating duty demand or duty liability admitted by the petitioner during enquiry, investigation or audit etc. Their Lordships in

2 2020 (12) TMI 318-Bombay High Court

Saksham Facility Services Private Limited (*supra*)

found that there is clear admission/acknowledgment by the petitioner about the service tax liability. Present is not a case where there is admission by the petitioner of his liability prior to the cut-off date and hence, the said decision can be of no assistance to the petitioner.

(C) Reliance is then placed on the decision of this Court in the case of **M/s. G.R. Palle Electricals Vs. Union of India and ors.**³ In paragraph 27, this Court observed that there is acknowledgment by the petitioner of the duty liability as well as by the department in its communication to the petitioner. This Court therefore held that in the case of the petitioner, the amount of duty involved had been quantified on or before June 30, 2019. It is in the light of the finding recorded that there has been a quantification of the duty amount on or before June 30, 2019 that this Court decided in favour of the petitioner. Such are not the facts in the present case. This decision again, does not further the petitioner's cause.

(D) Reliance is then placed on the decision of this Court in

3 2020(11) TMI 845-Bombay High Court

the case of **Thought Blurb Versus Union of India and ors.**⁴ This was the case where the duty liability was admitted by the petitioner. However, there was a mistake in declaring the tax dues in the application and hence, this Court held that in such a case because of the mistake in declaring the tax dues for the later period on the higher side, no benefit would accrue to the petitioner; such a mistake could have been rectified had a hearing been given to the petitioner. It is in these circumstances, the Designated Committee was directed to decide the application (declaration) afresh after giving an opportunity of hearing to the petitioner. The decision in **Thought Blurb** (*supra*) is in a different context altogether.

(E) Let us now consider the decision in **Landmark Associates Versus Union of India and ors.**⁵ relied by the learned counsel for the petitioner. After considering the decisions of this Court in '**Thought Blurb**', '**M/s. G.R. Palle Electricals**', '**Saksham Facility Services Private Limited**', Their Lordships held that the petitioner had given

4 2020(10) TMI 1135-Bombay High Court

5 2021(1) TMI 385-Bombay High Court

details of his outstanding service tax liability upto June, 2018 vide its intimation dated September 14, 2018 addressed to the respondent. Even the notices issued by the Commissioner, GST under Section 87(b) of the Finance Act dated December 3, 2018 also indicated that the petitioner had failed to discharge his service tax liability due to the Government for the relevant period. In these facts this Court held that all that would be required for being eligible is a written communication which will mean a written communication of the amount of duty payable including letter intimating duty demand or duty liability admitted by the person concerned during enquiry, investigation or audit. Such is not the position in the present case and therefore, the decision in **Landmark Associates** (*supra*) will not apply.

(F) Likewise in the decision relied upon by the petitioner in **Sabareesh Pallikere, Proprietor of M/s. Finbros Marketing Versus Jurisdictional Designated Committee, Thane Commissionerate, Division IV, Range-II & ors.**⁶, this Court in the facts of that case held

⁶ 2021(2) TMI 515-Bombay High Court

that there has been an admission of tax dues or liability by the declarant before the cut-off date and as the petitioner had fulfilled the said requirement, therefore was eligible to make the declaration in terms of the scheme under the aforesaid category.

(G) Now, advertent to the decision in **M/s. Suyog Telematics Limited Vs. Union of India and ors.**⁷, Their Lordships observed that the averments made in the reply affidavit of the department itself records that it is an admitted position that in the petitioner's statement recorded before the service tax authorities on November 24, 2016 and May 11, 2017, the Director of the Petitioner had admitted service tax liability of Rs.12,24,99,843/-. This Court held this to be an admissible quantification under the scheme which was prior to the cut-off date. It is in these circumstances, this Court held that the decision of the respondents in declaring the petitioner as ineligible is unjustified. Thus, the decision in **M/s. Suyog Telematics Limited** (*supra*) will turn on the facts of that particular case.

⁷ Writ Petition (L) No.807 of 2020

(H) The decision relied by the learned counsel for the petitioner in **Joseph Daniel Massey Vs. Union of India and ors.**⁸ again is in the facts of that case where this Court observed that the petitioner in a communication addressed to the respondent No.3 had specifically mentioned that the service tax amount due to be paid by the petitioner was Rs.40,95,110/-.

24. We may now turn to the decision of this Court relied upon by learned counsel for the respondents in the case of **Shri SiddhiKumar Infrastructure Private Limited Vs. Union of India, Ministry of Finance and others**⁹ dated February 17, 2021. This Court was considering a case where the petitioner had in fact made a categorical statement that the service tax liability as calculated was not acceptable to the petitioner. This Court was of the opinion that there being no admission of the petitioner as to its liability of service tax dues prior to the cut-off date of June 30, 2019, declaration of the petitioner was rightly rejected. In the present facts, we find that the learned counsel for the petitioner has not

8 Writ Petition (St.) No.3151 of 2020

9 Writ Petition (L) No.3556 of 2020

been able to demonstrate and/or there is nothing on record to indicate that the duty liability is admitted by the petitioner. On the contrary, we find that though the amount is quantified by the letter dated August 29, 2019, the petitioner goes ahead and addresses the e-mail dated November 16, 2019 stating that the matter in respect of reversal of credit of Rs.75 lakhs is under process and that the petitioner will revert back to the respondents shortly. Further, it is mentioned in the said e-mail that the petitioner attached the details of the credit taken within time and the details of credit taken more than 365 days, meaning thereby that even as late as on November 16, 2019, much after the cut-off date, the petitioner still does not admit its liability to pay the duty. In view of the decision in **Shri SiddhiKumar Infrastructure** (*supra*), we are of the considered view that even on this count, there being no admission of the petitioner as to its liability of duty payable prior to the cut-off date of June 30, 2019, the petitioner is not entitled to any relief.

25. We, therefore, do not find any merit in the petitions.

The same are accordingly dismissed with no order as to costs.

26. In the light of the disposal of Interim Application (L) No.6262 of 2021, learned counsel for the applicant seeks leave to withdraw the Interim Application (L) 6273 of 2021. The Interim Application (L) 6273 of 2021 is allowed to be withdrawn in the same terms as the order dated October 7, 2021 in Interim Application (L) No.6262 of 2021 in the connected writ petition and disposed of accordingly.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)

Digitally
signed by
PRADNYA
MAKARAND
BHOGALE
Date:
2021.10.21
12:24:54
+0530