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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.3191 of 2021  
and WMP. Nos.3619 & 3622 of 2021

M/s.Akshaya Aqua Farms,  
Represented by its Managing Partner  
G.Vinayagamurthy,  
#347/1A, Vayalur Road, Ulundai Village,  
Thiruvallur District - 602 105.  
Tamil Nadu.

... Petitioner

Vs

1.The Designated Committee,  
Chennai - Outer Commissionerate,  
Newry Tower, Plot No.2054, 1<sup>st</sup> Block,  
12<sup>th</sup> Main Road, 2<sup>nd</sup> Avenue,  
Anna Nagar, Chennai 600 040.

2.The Senior Intelligence officer,  
Directorate General of Goods &  
Service Tax Intelligence,  
Chennai Zonal Unit,  
C-3, C-Wing, II Floor, Rajaji Bhavan,  
Besant Nagar, Chennai 600 090.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the case relating to the impugned order dated 07.02.2020 issued by the first Respondent and to quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondents : Mr.Meganathan,

Junior Standing Counsel

O R D E R

The petitioner challenges order passed by the first respondent, the Designated Committee rejecting its application under the Sabka Viswas (Legacy Dispute Resolution) Scheme. The order is a one liner, which simply says 'Dear Taxpayer, your



SVLDRS Form for the ARN No LD1112190001929 has been rejected.' No reasons have been set out as to why the petitioner's application is found to be unsuitable for the purpose of the Scheme.

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2. In counter, the defence taken is that investigation in the matter is still on-going and that the duty component has not been quantified. Reference in this regard is made to the definition of the term 'quantified' under Section 121(r) of the Scheme in terms of which a written communication intimating the duty demand would connote proper quantification for the purpose of the Scheme.

3. The ambit of the word 'quantified' however stands amplified by a subsequent circular issued by the Board bearing No.1071/4/2019-CX dated 27.08.2019. Paragraph 10(g) states as follows:

Subka Vishwas (Legacy Dispute Resolution) Scheme, 2019  
- Clarification

Circular No.1071/4/2019-CX-8, dated 27.08.2019

F. No.267/78/2019/CX-8-Pt-III

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New  
Delhi

I am directed to state that the Government has announced the Subka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as a part of the recent Union Budget. Further, in accordance with the Finance (No.2) act, 2019, the Central Government has notified the Subka Vishwas (Legacy Dispute Resolution) Scheme rules, 2019 as well as issued Notification No.4/2019-Central Excise (N.T.) dated 21.08.2019 to operationalize this Scheme from 01.09.2019 to 31.12.2019.

.....

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

....

(g) Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30<sup>th</sup> day of June, 2019 are eligible under the Scheme. Section 2 (r) defined "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.

4. In this case, a statement of the petitioner has been recorded at the time of investigation on 02.05.2017 indicating the duty amount payable. This fact reveals itself from the counter affidavit wherein at paragraph 5 reference is made to statement recorded on 02.05.2017. The relevant portion of the statement reads thus:

"For the year 2016-17, for excise purpose we have declared only Rs.2.30 crores, I admit that we have made a mistake by giving wrong declaration, as per the above figures, as we have crossed the threshold limit of SSI exemption, I understand that we are required to pay central excise duty from 1<sup>st</sup> April onwards. The figure of Rs.5.64 Crore contains the sales details of identical invoices. You have shown me the sundry debtors list available in the said file, as per the said sheet, the total quantity manufacture for the entire year is mentioned. Based on the MRP and the cases manufactured, after taking abatement of 35% the approx. duty liability works out to Rs.98 Lakhs. We have paid only Rs.8.8 Lakhs for the entire period by availing SSI exemption of Rs.1.5 Crore for the year 2016-17. If SSI exemption is made available to us the duty liability would be around Rs.75 lakhs".

5. The doubt that arises from the quantification in the statement is as to whether the amount is a sum of Rs.98.00 lakhs or Rs.75.00 lakhs. This would hinge upon the status of the petitioner as SSI unit or otherwise. Subject to a decision on this aspect, a quantification of duty in both instances has been made at the time of recording of statement seen in the light of Section 121(r) of the Scheme read with clause 10(g) of the Circular dated 27.08.2017.

6. For the limited purpose of determining the status of the petitioner, I set aside the impugned order and remand the matter to the file of R1, who shall complete the exercise by determining this aspect of the matter alone. Had the respondent afforded proper opportunity as required in terms of Section 127 of the Scheme, heard the petitioner and passed a speaking order, this litigation might well have been avoided altogether.

7. Though the petitioner has proceeded on the basis that its liability to pay duty is an amount of Rs.75.00 lakhs, even that has not been paid. The procedure set out under Section 127 is as follows:



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127. (1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.

(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.

(4) After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.

(5) The declarant shall pay electronically through internet banking, the amount payable as indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.

(6) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

(7) Where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave



of the Court, he shall furnish proof of such withdrawal to the designated committee, in such manner as may be prescribed, along with the proof of payment referred to in sub-section (5).

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(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof.

8. Let the above procedure be followed and an order passed in terms thereof within a period of six (6) weeks from today.

9. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Designated Committee,  
Chennai - Outer Commissionerate,  
Newry Tower, Plot No.2054, 1<sup>st</sup> Block,  
12<sup>th</sup> Main Road, 2<sup>nd</sup> Avenue,  
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GPL(CO)  
CB(19/07/2021)