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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16th September, 2021

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W.P.(C) 10344/2021 & CM APPL. Nos.31844-45/2021

M/S NO.1 WORLD WIDE EXPRESS PVT LTD Petitioner

Through: Ms.Preeti Goel &
Mr.Siddhartha Jain, Advs..

versus

UNION OF INDIA AND ORS Respondents

Through: Mr.N.K.Srivastava, Senior
Panel Counsel for UOI /R-1.
Mr.Harpreet Singh, Sr.
Standing Counsel for R-2 & R-
3 with Ms.Suhani Mathur, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The hearing has been conducted through video conferencing.

1. This petition has been filed by the petitioner praying for a direction to the respondent no. 2 and 3 to consider and decide the proposal of the petitioner submitted under Sabka Vikas (Legacy Dispute Resolution) Scheme 2019 (herein after referred to as SVLDRS) vide application being ARN No. LD3112190022236 along with Form SVLDRS-1 dated 31.12.2019 after granting an opportunity of hearing to the petitioner. The petitioner further prays that no coercive action be taken against the petitioner till such time the above application is considered and decided by the respondent no. 3.

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2. It is the case of the petitioner that the petitioner had filed the abovementioned application under the SVLDRS, however, no response thereto has been received from the respondent no. 3. The petitioner claims that the respondent no. 3 has neither rejected nor accepted the proposal of the petitioner company, however, in February 2020, petitioner was orally informed that the same has been rejected as the Deputy Commissioner till date has not calculated any duty/tax liability. The petitioner states that copy of such order, however, has not been supplied to the petitioner.

3. The learned counsel for the petitioner submits that though no reason for rejection has till date been communicated to the petitioner, the above orally stated reason is also incorrect inasmuch as by a notice dated 20.11.2018 addressed by the Assistant Commissioner, Central Excise and Service Tax, CGST, Delhi (South) to M/s Carex Cargo Express Private Limited, a demand of Rs. 87,88,387/- excluding interest towards service tax liability and GST liability to the tune of Rs.1,34,25,218/- excluding interest has been raised and demanded against the petitioner. She submits that therefore, there was a 'quantified' demand of tax against the petitioner and the petitioner cannot be denied the benefit of SVLDRS.

4. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same. Form SVLDRS-1 placed by the petitioner as Annexure P-3 (page 37 of the paper book) itself contains the ground of its rejection as, '*ground of ineligibility*' with remarks, '*amount neither quantified nor*

communicated'. It is, therefore, apparent that the application form annexed by the petitioner itself shows its rejection as also the reason for the rejection. The petitioner, therefore, cannot plead ignorance of the same.

5. As far as the reliance of petitioner on the letter dated 20.11.2018 is concerned, the same is also ill-founded. The relevant extract from the letter, which has been relied upon by the learned counsel for the petitioner, is as under:

“2. During the course of investigation, Shri Gaurav Kwatra, Director of M/s No 1 Worldwide Express Private Limited, in his statement dated 31.10.2018 under Section 14 of Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017, before the Superintendent (AE) of Central Excise & Service Tax, CGST, Delhi South has admitted pending service tax liability to the tune of Rs.87,88,387/- excluding interest and GST liability to the tune of Rs. 1,34,25,218/- excluding Interest.....”

(Emphasis supplied)

6. A reading of the above would clearly show that this is not a quantification of demand by the respondents but a unilateral admission of liability by the petitioner itself.

7. In *Karan Singh vs. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme and Another* (Judgment dated 22.02.2021 in W.P. (C) 2408/2021), this Court on a detailed analysis of the relevant provisions of the Finance Act, 2019, held that in terms of Section 121(r) of the Finance Act, 2019, the word ‘quantified’ means a written communication of the amount of duty payable under the indirect tax enactment; a unilateral quantification by the petitioner does not render him eligible to avail the benefit of the scheme. It was further held that the benefits of the scheme would be available to only such cases where the Department quantifies the amount and not the Assessee. The relevant extracts from the judgment are as under:

“10. Petitioner filed a declaration on the premise that its case is covered under Section 125(1) (e) of the Finance Act, which reads as under:

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

(a) to (d)

(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.”

*11. This court had an occasion to examine the concept of ‘quantification’ under SVLDRS in **Chaque Jour HR Services Pvt. Ltd. v. UOI & Anr.**, 2020 [42] G.S.T.L. 24, and therefore it would be appropriate to extract the relevant portion from the said judgment, as under:*

“13. The ‘tax dues’ are defined in Section 123(c) of the Finance Act, 2019, as under:

“123. For the purposes of the Scheme, “tax dues” means-

.....

*(c) where an 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 the 30th day of June, 2019**” [Emphasis Supplied]*

14. Section 121(r) defines “quantified” as mentioned hereunder:

*“Section 121(r): “quantified”, with its cognate expression, means a written communication of **the amount of duty payable under the indirect tax enactment**; [Emphasis Supplied]*

15. Further, tax relief is available in respect of tax dues as per Section 124(1)(d)(ii) which reads as under:

“124(1). Subject to the conditions specified in sub-section (2), the relief available to a declarant under this scheme shall be calculated as follows:-

.....

*(d) Where **the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th of June, 2019** is-*

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty percent, of the tax dues.” [Emphasis Supplied]

16. As per Section 123, in case of an enquiry or investigation or audit which is pending against the declarant, the amount of duty payable under any of the indirect tax enactments has to be quantified before 30th June, 2019. Section 125(1)(e) referred above, renders all such persons ineligible to make a declaration under the Scheme who have been subjected to an enquiry or investigation or audit and the amount involved has not been quantified on or before 30th June 2019. Thus, Section 125(1)(e) in a way compliments Section 123(c) of the Act and quantification of ‘tax dues ‘ is imperative for a declarant to become eligible for applying under the scheme. The meaning of the word ‘quantified’ has been extended and broadened, obviously keeping in view the objective of the Scheme by way of Circulars dated 12th December, 2019 and 27th August, 2019. The relevant portions are extracted hereunder:

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 thereunder, 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 i.e., 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]

17. By virtue of the aforesaid circulars, the Respondents have clarified that the benefit of the Scheme can also be given to those cases where the duty involved is quantified by way of an admission made by the declarant in a statement made on or before 30th June, 2019. This admission can be during an enquiry, investigation or audit report etc. (...)”

12. It thus clearly emerges that in terms of the afore-noted provisions, the quantification of the amount has to be before 30th June, 2019. Moreover, in terms of Section 121(r) of the Act, the word ‘quantified’ has been defined to mean a written communication of the amount of duty payable under the indirect tax enactment. Further, Section 124(1)(d)(ii) provides that in respect of cases where the tax dues are linked to an enquiry, investigation or audit against the declarant, the relief shall be calculated on the amount quantified on or before the 30th day of June, 2019.

13. Having regard to the aforesaid provisions, the question that arises for our consideration is whether the communication dated 18th June, 2019 issued to the Superintendent, Anti Evasion Group-1, Central Excise & Service Tax can be considered to be as an admission of duty liability so as to render the petitioner eligible under the SVLDRS.

14. Petitioner’s case falls within the ambit of ‘enquiry or investigation’, as the Petitioner was issued summons dated 10.05.2019 by the Anti-Evasion Group 4, Central Excise & Service Tax. In respect of such cases, by virtue of the aforesaid circulars, the Respondents have clarified that the benefit of SVLDRS can also be given to those cases where the duty involved is quantified before 30.06.2019.

15. Since quantification has co-relation and is interlinked with tax relief under the scheme, and the Petitioner has not

made a voluntary disclosure, but has rather approached for settlement in respect of case under investigation, we find merit in the submission of the Revenue that unilateral quantification by the Petitioner by writing the letter/communication dated 18.06.2019 cannot render him eligible. It would only be an admission of service tax liability of that amount, and such admission in itself would not rendered the petitioner eligible under SVLDRS. The quantification in the instant case was understood to be done on the issuance of the SCN. Petitioner points out that in the communication dated 18.06.2019, in fact, one of the relied upon documents was the SCN. That is quite obvious as the petitioner has taken a stand that to the extent of the amount stated therein, he admits the liability. It, however, cannot mean that the amount stood quantified before the relevant cut-off date i.e. 30.06.2019. In the category of cases where investigation or audit was continuing as on the introduction of SVLDRS, the benefit of the scheme would be available to only such cases, where, during investigation, the department quantifies the amount and not vice versa.

16. We have noticed that there is not much difference between the amounts as mentioned in the communication dated 18.06.2019 and the SCN issued by the department subsequent to the completion of investigation. However, in our opinion, that in itself cannot be a measure to interpret the concept of 'quantification'. The quantification of the amount in question, as defined under the relevant provisions noted above, and further clarified under the circulars noted above, can only mean to be a duty liability which has been determined by the department. In view of the above, since amount could not be said to have been 'quantified', the petitioner was not eligible, and therefore, the reasoning given by the respondent in rejecting the application does not call for any interference. Thus, the challenge to the SCN is also not maintainable as the petitioner still has its statutory remedies under the Act to impugn the same."

8. In the present case as well, we find that there was a reference to a unilateral declaration of liability by the petitioner and not a quantification of demand by the Revenue in the letter/notice dated 20.11.2018 and therefore, the same does not make the petitioner eligible to avail the benefit of SVLDRS.

9. In view of the above, we find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 16, 2021/rv/U.