

Item no. 2 & 3

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 917 of 2021

with

IA No. CAN 1 of 2021

IA No. CAN 2 of 2021

with

FMA 918 of 2021

with

IA No. CAN 1 of 2021

IA No. CAN 2 of 2021

with

WPA 9755 of 2020

Additional Commissioner, Central Excise & Service Tax,
Bolpur Commissionerate

vs.

Reckitt Benckiser (India) Pvt. Ltd. & ors.

For the Appellants : Mr. K. K. Maiti

For the Respondents : Mr. R. Jawahar Lal
Mr. Sudhakar Prasad
Mr. Pradipta Bose

Heard on : 04.01.2022

Judgment on : 04.01.2022

T.S. Sivagnanam J.: The writ petition being WPA 9755 of 2020 is treated as on day's list and is taken up for consideration along with the appeals with consent of the parties.

FMA 917 of 2021, FMA 918 of 2021 and WPA 9755 of 2020 have been directed to be clubbed together as all of them concern same issue with regard to the eligibility of the respondent assessee to be entitled for being considered under the 'Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (in short SVS Scheme) which application was rejected by on line intimation dated 05.02.2020 on the ground that the date and order-in-original number have been wrongly given and instead of the said number, the order in appeal number issued by the Commissioner of Appeals had been mentioned and, therefore, the application was rejected. The assessee on being intimated about the rejection of the application vide electronic communication dated 05.02.2020 filed the writ petition being WPA 5235/2020 praying for issuance of writ of mandamus to direct the Designated Committee represented through its Commissioner, GST Bhavan to withdraw the order dated 05.02.2021 and for a consequential direction to consider the application under SVS Scheme, by taking on record their application dated 17.12.2019 and by reckoning the order-in-original dated 02.11.2015.

The writ petition was disposed of by order dated 28.09.2020 after noting submissions of the revenue that there was no appropriate authority for filing an application or representation under the said

scheme for rectification of any mistake. This submission by the revenue was noted by the court and the learned writ court observed that such stand could not have been taken and the assessee was entitled to be furnished with details of the appropriate authority before whom they can redress their grievances and issued a direction to disclose the names of the appropriate authority within a time frame. Aggrieved by such direction, the revenue is before us by way of this appeal in FMA 918/2021. After the direction was issued in the writ petition, the revenue had sent the communication to the assessee dated 13.09.2020 stating that under the Scheme and the Rules framed thereunder, there is no provision of appeal against the decision of the Designated Committee and as per the terms of the scheme, it is final and conclusive, however, if the assessee has any grievance, he may approach the legal forum. This communication prompted the respondent to file an application in the disposed of writ petition, WPA 5235/2020, questioning the correctness of the communication dated 13.09.2020. The said application was disposed of by order 19.10.2020 holding that no direction can be issued in the application filed in a disposed of writ petition. However, the court observed that the assessee is at liberty to file a separate writ petition for necessary relief and also take out an application for contempt, if so advised to punish the revenue for willful disobedience of the direction issued in WPA 5235/2020 dated 28.09.2020. On account of this observation and liberty granted, the

revenue being aggrieved by such direction has preferred the appeal being FMA 917/2021.

Since the assessee could not get any relief in the disposed of writ petition, they have filed WPA 9755/2020 praying for a direction to the Designated Committee to withdraw the communication dated 05.02.2020 and also withdraw the communication dated 13.09.2020 and also for consequential direction to reconsider the application filed by the assessee under the SVS Scheme dated 17.12.2019. This is how all the three matters are interlinked with each other.

From the facts stated hereinabove, we note that FMA 918 of 2021 is the lead case and any decision in this appeal will have a direct bearing on the relief to be granted in the other appeal and the writ petition.

We have heard the learned counsel for the parties at length. Before we examine the factual matrix, we shall take note of certain provisions of the SVS Scheme. Under Section 120(k) the 'designated committee' has been defined to mean the committee referred to in Section 125. Section 122 defines 'tax due' for the purposes of the scheme. In the case in hand, the tax dues is not in dispute. Section 123 enumerates the reliefs available under the scheme; Section 124 speaks about declaration under the Scheme; Section 126 deals with the issue of statement by Designated Committee and Section 127 deals with

rectification of errors. As Section 127 would have a bearing on the case on hand, the same is quoted hereinbelow:

“Section 127. Within thirty days of the date of issue of a statement indicating the amount payable by the declarant, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or suo motu, by the designated committee.”

The assessee made an application electronically as required under the scheme of 2019. The screen shot of the uploaded SVLDRS-1 shows that the appeal number, the date of appeal, the forum, the order in original number and date are required to be mentioned apart from other details pertaining to the basic excise duty, cess etc. In terms of the notification issued by the Central Government dated 21.08.2019, declaration under Section 125 shall be made electronically in form SVLDRS-1 by the declarant on or before 31.12.2019. Admittedly, the application filed by the assessee before us was well within time. By further notification dated 31.12.2019, the time limit was extended by substituting figures, letters and words with the date 15.01.2020. The assessee was electronically intimated on 05.02.2020 that the declaration submitted by them is rejected. The reason being the order- in-original number has been wrongly given and instead of the said number order-in-appeal number has been given. To be noted that the intimation of such rejection was much after 15.01.2020, the last date on which a

declarant can file an application under the scheme. Thus, the attempt made by the appellant revenue to foreclose the case of the respondent assessee by referring to cut off date as 15.01.2020 has to necessarily fail. This is so because the said date is the last cut off date for a declarant to file an application and it does not render the designated committee “functus officio” beyond the said date. It goes without saying that applications filed after close to office hours on 15.01.2020 would obviously be processed beyond the said date. Thereafter, the designated committee would continue to exercise the jurisdiction to decide the application filed under the scheme and dispose of the same in accordance with law. Thus, we can safely hold that by referring to 15.01.2020 revenue cannot non suit the respondent assessee as purported to be done by them in the supplementary affidavit filed before this court for which an appropriate affidavit in opposition has been filed by the assessee writ petitioner. Thus, we need to ascertain as to what relief the assessee would be entitled to.

Before we consider this question, we need to point out that from the order of rejection it is evidently clear that it was well within the knowledge of the department that instead of mentioning the number of the order-in-original, the order-in-appeal has been mentioned. This, in our considered view, is a trivial and minor technical mistake especially when all other figures were not found to be incorrect. In fact, the Department was aware of the mistake committed by the assessee while logging into the system and uploading the form. It would be well within

the jurisdiction of the Department to give an opportunity to the declarant to rectify the minor defects which are within their knowledge. Interestingly, the assessee would state that he was orally intimated by the department to furnish all particulars which prompted them to send an email to the official ID of the Department on 10.01.2020. The assessee had appended the relevant documents, more particularly, the order-in-original dated 21.1.2015. Obviously the assessee cannot expect a reply from the department but the fact remains the email had been received by the department. This email, which was sent by the assessee, is dated 10th January, 2020 and assuming the department was of the opinion that beyond 15.01.2020 their hands were tied, even then the information which was furnished by the assessee on 10th January, 2020 necessary rectification could have been done to the online application by substituting the correct date and number of the order-in-original instead of the order-in-appeal. However, such attempt appears to have not been done by the department but the assessee was visited with the order of rejection dated 5.2.2020. Thus, the issue would be whether the designated committee as constituted in terms of Section 125 of the scheme was justified in not affording an opportunity to the assessee to rectify such minor technical error. Section 127 deals with rectification of error. The said provision not only provides for correction of the arithmetic error and clerical error which are apparent on the face of the record as pointed out by the declarant or suo motu by the designated authority. Admittedly the declarant had not pointed the

error. However, their case is that they were orally informed that the documents have to be furnished which they complied with on 10th January, 2020. If the relevant documents were available with the department which clearly shows that there is a typographical or clerical error in entering the correct number and date of the order-in-original it would have been well within the jurisdiction of the Designated Authority to permit the assessee to make necessary amendment to the declaration. If such exercise had been done, it would augur well bearing in mind the purpose for which the Central Government brought about the SVS Scheme. Thus if the scheme was brought about with the spirit of settlement then it goes without saying that such spirit of settlement is not a “one way traffic” but mutual, that is both by the revenue and the assessee. Section 127 provides that within 30 days of the date of issue of a statement indicating the amount payable by the declarant, the Designated Committee may modify its order only to correct an arithmetical error or clerical error which is apparent on the face of the record on such error being pointed by the declarant or even suo motu by the Designated Committee. Thus, the said provision empowers the Designated Committee to rectify the errors with regard to the amount payable by the declarant indicated in the statement either suo motu or upon an error being pointed by the declarant. Upon reading the said scheme as a whole this Court is of the considered view that the Designated Committee after scrutinizing the materials on record shall indicate the amount payable by the declarant upon issuing a statement

in respect thereof and such exercise has to trigger obviously after an application being made by the declarant. Therefore, it cannot be said that the Designated Committee became *functus officio* after the last date stipulated in the scheme for making an application as the function of the Designated Committee to decide the claim made under the said scheme starts only upon an application being made.

The only reason for rejection of the application of the appellant was that wrong particulars in respect of the order-in-original were uploaded while applying under the said scheme but the fact remains that the appellant furnished the necessary documents including the order-in-appeal as well as the order in original before the Designated Committee well before the last date for applying under the said scheme. Since all the relevant materials required for the purpose of assessing the eligibility as well as the entitlement of the appellant to the benefits of the said scheme were available with the Designated Committee, the action of the Designated Committee in rejecting the application of the appellant on such technical ground calls for interference by this Court.

In the facts of the instant case it was incumbent upon the Designated Committee to offer an opportunity to the appellant to rectify such technical error within a stipulated time. Since admittedly the order of rejection was communicated to the appellant after expiry of the last date stipulated under the said scheme for submission of the application and also that the relevant materials are available with the

Designated Committee, this Court is of the considered view that the Designated Committee should be directed to consider the claim of the appellant as to the entitlement of the appellant to the benefits of the said scheme.

On this issue it is beneficial to take note of the decision of the High Court of Gujarat at Ahmedabad in the case of ***Hitech Projects Private Limited vs. Union of India*** reported in ***2020(39) GSTL 388***. More or less identical situation was considered by the Hon'ble Division Bench and the communication rejecting the application was quashed and the Designated Committee was directed to decide the application afresh.

Further, in the case of ***M/s. Sobha Limited vs. Union of India & Anr. (CWP 10804-2020 (O & M)*** dated 25.09.2020 the Hon'ble Division Bench of Punjab and Haryana High Court at Chandigarh had considered an identical issue and the order of rejection of the declaration filed in Form SVLDRS-1 was set aside and direction was issued to the designated authority to decide the application afresh. Identical direction was issued in the case of ***Vaishali Sharma vs. UOI & Anr.*** reported in ***MANU/DE/1529/2020***. In the said decision the Court went a step further to observe that an opportunity of hearing must have been given to the assessee before rejecting the declaration. Further, we note that in the case of ***Assam Cricket Association vs. UOI*** reported in ***MANU/GH/0280/2020*** the department, in fact, considered and accepted to reconsider the application of the declarant.

Mr. Maity, learned counsel appearing on behalf of appellant revenue referred to the decision of the Hon'ble Supreme Court in the case of ***UOI vs. Unicorn Industries*** reported in ***2019 (368) E.L.T. 202 (Supreme Court)***. This judgment is pressed into service to support the argument that the scheme, namely, SVS Scheme is pursuant to a policy decision taken by the Government and once the scheme is over the Court cannot issue direction to reopen the scheme. Firstly, we need to point out that the decision in the case of Unicorn Industries (supra) was on a question whether doctrine of promissory estoppel would apply when Union of India withdrew exemption from payment of excise duty in respect of certain products for which exemption was granted earlier. Therefore, the decision rendered by the Hon'ble Supreme Court on the effect of withdrawal of exemption in public interest can have no application to the facts of the case. Furthermore, the scheme has not been challenged by the assessee. That apart we have held that the assessee's right to get his declaration processed does not stand extinguished on or after 15.1.2020 as it is the cut off date for filing the declaration alone. The learned senior standing counsel for the appellant revenue places reliance on the decision in the case of ***Indian Railway Catering and Tourism Corporation Limited vs. Indian Railway Major and Minor Caterers Association & Ors.*** reported in ***(2011) 12 SCC 792***. This decision is also on the scope of judicial review of policy decision of the government as observed earlier. There is no attempt made by the assessee to seek for review of any policy decision nor there

is any challenge to a policy decision. Therefore, the decision relied upon by the learned senior standing counsel cannot be applied to the facts of the case on hand. It is further relevant to note that a communication had been issued by the Central Board of Indirect Taxes and Customs pursuant to an interim order passed by the High Court of Karnataka in WP 11485 of 2020 dated 27.11.2020. The said communication of the Central Board of Indirect Taxes dated 8.1.2020 is to the following effect.

“Sub : Interim order dated 27.11.2020 of the Hon’ble High Court of Karnataka in Writ Petition No.11485/2020 filed by M/s. Mars Estates Pvt. Ltd. pertaining to the issue of SVLDRS 2019- reg.

I am directed to refer to your office letter dated 29.12.2020 on the above mentioned subject.

2.*It is hereby informed that in cases, where the Hon’ble High Court decides in favour of the petitioner and directs the department to extend the benefit of the SVLDRS, 2019 to the petitioner, then to give effect to such directions, the Board may allow manual processing of the subject declaration subject to the following conditions :*

- (i) The said order has been accepted by the concerned Commissionerate is not proposed to be challenged before the Hon’ble Supreme Court.*
- (ii) The Ld. ASG of the concerned High Court has advised for acceptance of the said order.*

(iii) *The Systems Directorate has expressed its inability in allowing electronic processing of the said declaration due to technical reasons.*

3.*It is requested that the above stand of the Board may be submitted before the Hon'ble High Court."*

Thus, from the above it is evidently clear that Central Board is alive of the situations faced by the assessee. Hence there would be no difficulty in extending relief to the assessee. In any event the correction to be made is trivial in nature, hence, technicalities should not come in the way of the assessee being disentitled for his declaration to be considered on merits.

Thus, we can safely observe that several High Courts in the country have been issuing directions and the bottom line of all the directions and observations is that the spirit of the scheme should not be defeated on account of technicalities. Thus, we are of the clear view that the order of rejection dated 05.02.2020 requires to be set aside. In the result, FMA 918 of 2021 stands **dismissed**. The order and the direction issued by the learned Single Judge is modified by setting aside the order of rejection dated 05.02.2020 and directing the Designated Authority to permit the assessee to rectify the number and date of the order-in-original manually or virtually by reflecting the correct particulars as furnished by the assessee which was well within the

knowledge of the department and decide the application filed by the assessee on merits and in accordance with law.

Considering the fact that the matter is a long pending issue, the Designated Authority is requested to finalise the declaration as expeditiously as possible, preferably within a period of six months, from the date of receipt of the copy of this judgment.

Consequently, in the light of the above judgment, FMA 917 of 2021 stands **disposed of** and the observations made by the learned Single Judge that the assessee would be at liberty to file contempt application against the officials of the Department is set aside. In the light of FMA 918 of 2021, no separate order is required to be passed in WPA 9755 of 2020 and the same stands **disposed of** accordingly. Consequently, all connected applications relating to both the appeals stand **disposed of**.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)