

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8793 OF 2021

Ashwini Builders and Developers Pvt. Ltd.	]	
A company registered under Companies	]	
Act, 1956 having its office at	]	
20 Deshmukh Colony, Sadar Bazaar	]	
Satara – 415 001.	]	...Petitioner

Vs.

1. Assistant Commissioner, Central Excise	]	
and Service Tax, Division I,	]	
Satara.	]	

2. Deputy Commissioner, Central GST,	]	
Kolhapur C. S. No. 1079/2 KH	]	
Vasant Plaza Commercial Complex	]	
Rajaram Road,	]	
Near Bagal Chowk	]	
Kolhapur – 416 001.	]	

3. Joint Commissioner, Central GST,	]	
Kolhapur,	]	
C. S. No. 1079/2KH	]	
Vasant Plaza Commercial Complex	]	
Rajaram Road, near Bagal Chowk	]	
Kolhapur – 416 001.	]	

4. The Commissioner (Appeals-I),	]	
Central Tax, Pune	]	
41/A, F Wing, 3 rd Floor,	]	
GST Bhavan Sassoon Road,	]	
Pune – 411 001.	]	...Respondents

Mr. Nikhil Wadikar a/w Ms. Komal Bhoir i/by Mr. Nandu V. Pawar -
Advocate for the Petitioner

Mr. J. B. Mishra a/w Mr. D. B. Deshmukh - Advocate for the Respondent Nos. 1 to 4.

CORAM : R. D. DHANUKA AND
S. M. MODAK, JJ.

DATE : 08th FEBRUARY, 2022
(Through Video Conference)

ORAL JUDGMENT (PER R. D. DHANUKA) :-

. Rule. Mr. J. B. Mishra, learned counsel waives service of notice on behalf of Respondents. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for a writ of certiorari for quashing and setting aside the notice/statement dated 06/03/2020 issued by the Designated Committee in form SVLDRS-3 and seeks an order and direction to allow/accept the Application/Declaration No. LD1501200005280 filed by the Petitioner.

3. The Commissioner of Central Excise and Service Tax issued a Show Cause Notice dated 03-07/08/2015 to the Petitioner for refunding the Service tax amounting to Rs. 49,96,083/- and show cause as to why the action proposed against the Petitioner shall not

be taken. The Commissioner of Central Excise passed an Order in Original on 29/03/2017 against the Petitioner. On 13/07/2018, the Petitioner filed an application for rectification of the alleged mistake apparent from the records according to the Petitioner under Section 74 of Chapter V of the Finance Act, 1994. On 20/02/2019, the authority rejected the said application for rectification. On 08/04/2019, the Petitioner preferred an appeal before the Appellate Authority under Section 85 of the Finance Act, 1994.

4. On 01/09/2019, the Central Government issued a Notification notifying the scheme named “Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred as the said Scheme).

5. On 15/01/2020, the Petitioner filed an Application/ Declaration under Section 125 of the said Scheme. The Petitioner in the said form SVLDRS-2 filed the said declaration under “Litigation Category”. On 08/02/2020, the Petitioner received a notice dated 07/02/2020 in form SVLDRS-2 stating that the case of the Petitioner was confirmed under “Arrears Category”. On 13/02/2020, the Petitioner submitted form SVLDRS-2A explaining the reason why the said case could not be treated as a case under ‘arrears category’ and why it should be treated as ‘litigation case’ instead.

6. On 06/03/2020, the Designated Committee issued a notice/statement in form SVLDRS-3 requiring the Petitioner to pay an amount of Rs.13,18,433.20/-. On 27/11/2020, the Commissioner (Appeal-I), Central Tax, Pune dismissed the Appeal filed by the Petitioner under Section 85 of the Finance Act. On 20/04/2021, the Petitioner filed this petition *inter-alia* impugning the Order dated 06/03/2020 passed by the Designated Committee raising the demand for Rs. 13,18,433.20/- against the Petitioner.

7. Mr. Nikhil Wadikar, the learned counsel for the Petitioner invited our attention to the Show Cause Notice, the Order in Original passed by the Assessment Officer, the application for rectification filed by his client under Section 74 of the Finance Act, the Order passed by the Assessing Officer refusing to rectify alleged mistake, the declaration filed by the Petitioner in SVLDRS-1 and various correspondences annexed to the petition.

8. Learned counsel invited our attention to the Order passed by the Designated Committee on 06/03/2020 rejecting the said application under the 'Litigation Category' and confirming the said application under 'Arrears Category'. He invited our attention to the definition of 'Order' under Section 121 (o) of the said Scheme. He

also invited our attention to the definition of 'Appellate Forum' under Section 121 (f) and the definition of 'amount in arrears' under Section 121 (c). It is submitted that the definition of 'Order' under Section 121 (o) does not refer only an Order in original passed by the Authority but would also mean and include the order passed on the application for rectification filed by the Petitioner under Section 74 of the Finance Act, 1994.

9. It is submitted that the 'Appellate Forum' defined under Section 121 (f) would also include the Commissioner (Appeals) having jurisdiction to hear an appeal under Section 85 of the Finance Act against the Order of the assessing Officer refusing to rectify Order on the application filed under Section 74 of the Finance Act, 1994. He submits that none of the provisions under the said Scheme contemplates that the Appeal has to be only an appeal against the order in original and not against the order refusing to rectify the mistakes in the application filed under Section 74 of the Finance Act for the purpose of eligibility under the said scheme.

10. Mr. J. B. Mishra, the learned counsel for the Respondents submits that the 'Order' defined under Section 121 (o) clearly provides that Order means Order of determination under any of the

indirect tax enactment, passed in relation to a show cause notice issued under such indirect tax enactment. He submits that the Order passed by the assessing Officer on application for rectification filed under Section 74 of the Finance Act cannot be construed as an Order within the meaning of the Section 121 (o) of the said scheme.

11. It is submitted that the Petitioner has admittedly not challenged the Order-in-Original dated 29/03/2017 which was passed in pursuance to the Show Cause Cum Demand Notice dated 03/08/2015. The pendency of the appeal under Section 85 of the Finance Act against the Order of assessing Officer refusing to rectify the mistake on the application filed under Section 74 does not fall under the said Scheme. It is submitted that since the Petitioner had not challenged the Order in original, the Petitioner ought to have filed the said declaration under SVLDRS-1 only under the 'Arrears Category' and not 'Litigation Category'.

12. It is submitted by the learned counsel that the instead of paying the tax dues pursuant to the said Order dated 06/03/2020 in form SVLDRS-2 within the time contemplated, the Petitioner has filed this petition. He submits that the Petitioner has not made out a case for grant of any relief.

Reasons and conclusions:

13. It is not in dispute that much prior to 01/09/2019, when the Central Government issued a Notification notifying the said scheme, the assessing officer had already issued Show Cause Cum Demand Notice on 03/08/2015 and passed an Order in Original on 29/03/2017 in pursuance to the said Show Cause Cum Demand Notice. The Petitioner had already filed an Application for rectification of alleged mistake under Section 74 of the Chapter V of the Finance Act 1994 on 13/07/2018. It is not in dispute that the Assessing officer has rejected the said application on 20/02/2019. On 08/04/2019, the Petitioner preferred an Appeal under Section 85 of the said Finance Act 1994 much prior to Notification issued by the Central Government on 01/09/2019 introducing the said Scheme.

14. It is not disputed by the Respondents that against an assessment Order, an assessee can file an application for rectification under Section 74 of the Finance Act 1994. The said application for rectification filed under Section 74 came to be rejected by the assessing officer. It is not in dispute that the said Order passed by the Assessing Officer refusing to allow application for rectification filed under Section 74 was appealable under Section 85 of the Finance

Act 1994. The said appeal was admittedly pending as on 30/06/2019.

15. In our view, if the said application for rectification would have been allowed partly or fully by the assessing Officer, under Section 74 (7), the assessing officer was required to give effect and implement the said Order, if any, on the application for rectification. A perusal of the said Section 74 (7), indicates that where any such amendment has the effect of enhancing the (liability of the assessee) or reducing the refund already made, the (Central Excise Officer) shall make an order specifying the sum payable by the assessee and the provisions of said chapter shall apply accordingly.

16. A perusal of Section 74(5), indicates that where an amendment is made under the said provision, an order shall be passed in writing by the Central Excise Officer concerned. A perusal of Section 74(4), indicates that an amendment which has the effect of enhancing [the liability of the assessee or reducing a refund], shall not be made under the said provision unless the Central Excise Officer himself has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

17. It is thus clear beyond reasonable doubt that any Order allowing the said application for rectification partly or fully would modify the Order in original passed by the Assessing Officer in pursuance of show cause notice issued by the assessing Officer. Such Order of rectification has to be read with the Order in Original. The said Order is also appealable under Section 85 of Finance Act, 1994.

18. We have perused the definition of the 'Order' under Section 121 (o) of the said Scheme which means an Order of determination under any of the indirect tax enactment passed in relation to a show cause notice issued under such indirect tax enactment. The Order in original was admittedly passed in pursuance of show cause notice issued by the authority under the Central Excise Act 1994. In our view, any such Order in Original duty modified/rectified under Section 74 would be also an order within the meaning of Section 121 (o) of the said scheme.

19. We are not inclined to accept the submission of Mr. Mishra, the learned counsel for the Respondents that the definition of 'Order' under Section 121 (o) would be only the Order in original and not an order in original if rectified pursuant to the Order allowing application under Section 74 of the said scheme. The Order in

original obviously has to be read with order of rectification under Section 74 of the Finance Act 1994 and merges with the order passed by on the application for rectification.

20. The definition of “Appellate Forum” under Section 121 (f) clearly indicates that the Appellate forum means the Supreme Court or the High Court or the Customs, Excise and Service Tax Appellate Tribunal or the Commissioner (Appeals). Admittedly, the Appeal filed by the Petitioner under Section 85 of the Finance Act, 1994 was before the Commissioner (Appeals). The said provision under Section 121 (f) does not prescribe that the Commissioner (Appeals) would be only the Commissioner (Appeal) having jurisdiction to hear appeal arising out of Order in Original and not an appeal filed under Section 85 of the Finance Act, 1994 arising out of the Order rejecting the application for rectification filed under Section 74 of the Finance Act, 1994.

21. There is thus no merit in the submission of Mr. Mishra, the learned counsel for the Respondents that the appellant having not filed an appeal against the Order in original but having filed an appeal against the Order under Section 74 of the Finance Act 1994 would not be eligible to apply under the said scheme under ‘Litigation Category’. It is not in dispute that the said appeal filed by

the Petitioner under Section 85 of the Finance Act, 1994 was pending on 30/06/2019.

22. Under Section 125 (1) of the said scheme, it is clearly provided that all persons shall be eligible to make declaration under the said Scheme except (a) who have filed an appeal before the Appellate Forum and such appeal has been heard finally on or before 30/06/2019. In this case the appeal filed by the Petitioner under Section 85 of the Finance Act, 1994 was pending on 30/06/2019. The Petitioner was thus eligible to file the said scheme under the 'litigation category'.

23. In so far as, the term 'amount in arrears' under Section 121(c) of the said scheme is concerned, it means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of (i) no appeal having been filed by the declarant against an Order or an order in appeal before the expiry of the period of time for filing appeal or (ii) an Order in appeal relating to the declarant attaining finality.

24. In this case the Petitioner had already filed the appeal against the Order passed by the Assessing Officer under Section 74 of the Finance Act, 1994 rejecting the application for rectification. There is

no merit in the submission of the Mr. Mishra, the learned counsel for the Respondents that the declaration form filed by the Petitioner could only fall under “arrears category” within the meaning of Section 121 (c) on the ground that the Petitioner had not filed any appeal against the Order in original.

25. The learned counsel placed reliance on the judgments of this Court in cases of *Thought Blurb Vs. Union of India and Ors.*¹ and *M/s Metro Developers Vs. Union of India and Ors.*² and *Jai Sai Ram Mech and Tech India P Ltd. Vs. Union of India and Ors.*³ in support of the submission that the impugned order passed by the Respondents is in gross violation of principles of natural justice and deserves to be quashed and set aside on that ground alone.

26. This Court in case of *Nabeel Construction Pvt. Ltd. v/s. Union of India and Ors., 2022 SCC OnLine Bom 145* after adverting to various judgments of this Court has held that a perusal of the statement of objects and intent of the said scheme indicates that the scheme was a one time measure for liquidation of past disputes of Central Excise and service tax as well as ensure the disclosure of

1 (2021) 85 GSTR 430 (Bom)

2 2021-TIOL-490-HC-Mum-ST

3 [2021] 90 GSTR 329 (Bom)

unpaid taxes by a person eligible to make a Declaration. It provides that eligible persons shall declare the tax dues and pay the same in accordance with the provisions of the scheme. It further provides for certain immunities including penalty, interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1944 to those persons who pay the declared tax dues.

27. It is further held by this Court that Central Board Indirect Tax and Customs accordingly issued circular dated 27th August, 2019 to implement the objects and intent of closing litigations from pre-GST regime quickly and to grant benefit to the business of availing of the said opportunity. Central Board of Indirect Tax and Customs conveyed to all the department heads of the scheme that an endeavour to be taken 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. It was emphasized that all the officers and staff of CBIC to make this scheme a grand success. The dispute resolution and amnesty are the two components of the scheme. The dispute resolution component is aimed at liquidating the legacy cases locked

up in litigation at various level whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. It was further stated in the said circular that the said scheme had the potential to liquidate the huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under the legacy taxes. The administrative machinery of the Government will also be able to fully focus on helping the taxpayers in the smooth implementation of GST. The importance of making this scheme a grand success cannot be overstated. The authorities are instructed to familiarize themselves with the scheme and actively ensure its smooth implementation.

28. This Court also adverted to the judgment of this Court in case of *Capgemini Technology Services Limited vs. Union of India* in Writ Petition (Stamp) No. 5629 of 2020, decided on 25th September, 2020 in which it was observed that the scheme had the twin objectives of liquidation of past disputes pertaining to the subsumed taxes on the one hand and disclosure of unpaid taxes on the other hand. The concerned authorities should keep in mind the broad picture while

dealing with a claim under the scheme.

29. This Court in the judgment in the case of *Thought Blurb* (supra) accordingly reiterated the principles laid down by this Court in case of *Capgemini Technology Services Limited* (supra) and also followed the principles laid down by the Delhi High Court in case of *Vaishali Sharma vs. Union of India, 2020 SCC OnLine Del 1386* and held 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.

30. In our view, the view taken by the respondents is not only contrary to various principles of law laid down by this Court in catena of decisions referred to aforesaid but also contrary to the objects and intent of the Central Government in introducing the said scheme for the benefit of the assessee and to bring them out of litigation forever pending under pre-GST regime. The view taken by the respondents thus deserves to be quashed and set aside with the order of remand.

31. In our view, the impugned Order dated 06/03/2020 passed by the Designated Committee requiring the Petitioner herein to pay the amount of Rs. 13,18,433.20/- placing the declaration form submitted by the Petitioner under “arrears category” is quashed and set aside. The said declaration form is restored to file before the designated authority. The Petitioner would be liable to pay the tax dues, if any, in accordance with SVLDRS-1 filed by the Petitioner within two weeks from today without fail.

32. The declaration form SVLDRS filed by the Petitioner on 15/01/2020 is to be placed before the Designated Authority. The designated authority is directed to consider the said declaration under ‘litigation category’ and shall issue discharge Certificate within 30 days from the date of the Petitioner paying the amount as reflected in SVLDRS-1.

33. The Writ petition is allowed in aforesaid terms. Rule is made absolute. No Order as to costs. Parties to act on the authenticated copy of this Order .

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]