IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4174 OF 2021

Nilkamal Limited ... **Petitioner**
V/s.
The Union of India & Ors. ... **Respondents**

WITH
WRIT PETITION (ST) NO. 5887 OF 2020

Globus Stores Pvt. Ltd. ... **Petitioner**
V/s.
The Union of India & Ors. ... **Respondents**

WITH
WRIT PETITION (ST) NO. 92098 OF 2020

Spykar Lifestyles Pvt. Ltd. ... **Petitioner**
V/s.
The Union of India & Ors. ... **Respondents**

WITH
WRIT PETITION (ST) NO. 92105 OF 2020

Major Brands (India) Pvt. Ltd. ... **Petitioner**
V/s.
The Union of India & Ors. ... **Respondents**

WITH
WRIT PETITION (ST) NO. 92762 OF 2020

Trent Limited ... **Petitioner**
V/s.
The Union of India & Ors. ... **Respondents**

WITH
WRIT PETITION (ST) NO. 92817 OF 2020

Bagzone Lifestyle Pvt. Ltd. ... **Petitioner**
V/s.
The Union of India & Ors. ... **Respondents**

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Mr. Prakash Shah a/w. Mr. Jas Sanghvi i/b. PDS Legal, Advocate for the Petitioner in all the Petitions.

Mr. Y. R. Mishra a/w. Mr. D. P. Singh, Advocate for the Respondent/UOI.

Mr. P. S. Jetly, Senior Advocate a/w. Mr. Ram Ochani a/w. Ms. Ruju Thakkar, Advocate for the Respondents in all the Petitions.

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CORAM : S. V. GANGAPURWALA & VINAY JOSHI, JJ.

DATED : 14th MARCH 2022.

P.C.

1. All these writ petitions assailed the order rejecting the declarations of the petitioners under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (for short, **"the Scheme"**).

2. Mr. Shah, learned Counsel for the petitioners submits that the petitioners are members of Retailers Association of India (for short, **"RAI"**) which had filed writ petition before this Court challenging the validity of levy of service tax on "Renting of Immovable Property Services". The writ petition was dismissed. The RAI filed the appeal before the Apex Court. The Apex Court

by its order dated 14th October 2008 was pleased to grant interim relief in favour of petitioners. The Apex Court directed to deposit with the concerned department 50% of the arrears towards the said tax and file an undertaking to pay the balance arrears of service tax as may be directed at the time of final disposal of the appeal. In pursuant to the interim order the petitioners deposited 50% of the amount of Service Tax and had also filed affidavit and undertaking before the Apex Court. The learned Counsel for the petitioners submits that the declarations are rejected only on the ground that the appeal pending before the Apex Clourt is not pursuant to the show cause notice issued by the Department. The learned Counsel for the petitioners relies on the Circular No. 1073/06/2019.CX dated 29th October 2019 and submits that petitioners would be eligible to apply under the Scheme.

3. Mr. Jetly, learned Senior Advocate for the respondent submits that the petitioners are not served with show-cause notice. The appeal pending before the Apex Court is not pursuant to the show-cause notice. The petitioners are service recipients and not the service provider. Service provider is only liable to discharge the service charge tax liability.

4. We have heard the learned Counsel for the parties.

5. The Circular No. 1073/06/2019.CX more particularly clause

(5) of the same reads thus :

> "(v) In many cases the assets of a tax defaulter are taken over by an Asset Reconstruction Company (ARC), and the department asks the ARCs to pay the outstanding dues. In another case, M/s. RIICO, a PSU of State of Rajasthan, has taken physical possession of the fixed assets of some of its borrowers who also happen to be tax defaulters. They have reported that they may be able to realise their dues, if they are allowed to settle the tax dues under the Scheme, and thereby removing an encumbrance on the disposal of the fixed assets. Similarly, M/s. Retailers Association of India have represented that in many cases, department has initiated proceedings against lessors for non-payment of service tax on rent on immovable property rented by their members. Hon'ble Supreme Court has allowed the lessees to file a Civil Appeal challenging the applicability of service tax in such matters, subject to the condition that they deposit appropriate pre-deposit as well as the remaining dues, if the case is decided against them eventually. It is clarified that such persons are allowed to file a declaration under the Scheme and avail the benefits. The remaining conditions of the Scheme such as withdrawal of pending cases etc., apart from payment of dues as determined by the designated committee, will still need to be complied by them."

6. The circular clarifies that the Retailer Association of India has represented that the department has initiated proceedings against lessors for non-payment of service tax on rent over immovable property rented by the members. The Apex Court has allowed the lessees to file a Civil Appeal challenging the applicability of service tax subject to the condition that they deposit appropriate pre-deposit as well as the remaining dues if the case of the petitioners is decided against them eventually.

7. It is further clarified in the aforesaid circular that such members are allowed to file declaration under the Scheme and avail the benefits. The petitioners/lessors have filed appeals before the Apex Court. The said circular is clarificatory in nature. In view of the circular, the petitioners are allowed to file declaration

under the Scheme and avail benefits subject to complying with the remaining conditions of the Scheme. The said circular is binding upon the respondent. In the light of above, the impugned orders rejecting the declaration filed by the petitioners are set aside

8. Needless to state that the petitioners are required to comply with all the conditions under the Scheme for availing the benefit of the said scheme. Respondent shall reconsider the declarations of the petitioners and shall not reject it on the ground upon which impugned orders are passed.

9. Writ petitions are disposed of. No costs.

(VINAY JOSHI J.) **(S. V. GANGAPURWALA J.)**

RAJU DATTATRAYA GAIKWAD Digitally signed by RAJU DATTATRAYA GAIKWAD Date: 2022.03.16 12:37:06 +0530