

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8905 OF 2021

Sunil Jay Prakash Singh	]	
Bhalchandra CHS, Shop No. 1,	]	
Plot No.55, Sector 44A, Seawood,	]	
Nerul, Navi Mumbai – 400 706.	]	... Petitioner

Versus

1. Union Of India	]	
represented by the Secretary,	]	
Department of Revenue,	]	
Ministry of Finance, North Block,	]	
New Delhi – 110 001.	]	
2. Central Board of Indirect Taxes and	]	
Customs, Department of Revenue,	]	
Ministry of Finance, North Block,	]	
New Delhi – 110 001	]	
3. Assistant Commissioner	]	
CGST and CX, Division VI,	]	
Belapur Commissionerate,	]	
6 th Floor, C.G.O. Complex,	]	
CBD Belapur, Navi Mumbai – 400 614	]	
4. Joint Commissioner	]	
CGST and CX, Division VI,	]	
Belapur Commissionerate,	]	
6 th Floor, C.G.O. Complex,	]	
CBD Belapur, Navi Mumbai – 400 614	]	
5. Designated Committee	]	
C.G.O. Complex, CBD Belapur,	]	
Navi Mumbai – 400 614.	]	... Respondents

Mr.Bharat Raichandani a/w. Mr.Rishabh Jain i/b. UBR Legal Advocates for Petitioner.

Mr.Ram Ochani for Respondent No.1.

Mr.Swapnil Bangur a/w. Ms.Sangeeta Yadav for Respondent Nos.2 to 5.

**CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.**

**DATE : 10th JANUARY 2022.
(Through Video Conference)**

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

1. Rule.

2. Mr.Ram Ochani, learned counsel for Respondent No.1; and Mr.Swapnil Bangur, learned counsel for Respondent Nos.2 to 5 waives service of notice. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the rejection Order dated 30th December 2019, rejecting Form SVLDRS-1 and also seeks writ of mandamus directing the Respondents to accept the application Form SVLDRS-1 filed by the Petitioner and to issue discharge certificate. The Petitioner also seeks an opportunity to put forth his case/submissions and for a direction that, a reasoned Order be passed thereafter.

4. It is the case of the Petitioner that the Respondent no.3 had quantified the amount of service tax payable by the Petitioner for the year 2013-2014 amounting to Rs.30,80,020/- by a letter/email dated 24th January 2019. By another letter/email dated 13th February 2019, the Respondent No.3 quantified the amount of service tax payable amounting to Rs.50,74,259.4/- The Respondent No.3 called upon the Petitioner to submit documents by the said letters/emails dated 24th January 2019, 13th February 2019 and 11th April 2019. It is the case of the Petitioner that the Petitioner vide their letters dated 23rd April 2019 and 6th May 2019 sought time to submit the required documents. On 27th May 2019 the Petitioner submitted the required documents.

5. The Petitioner also quantified the amount for the financial year 1st April 2015 to 31st March 2016 and 1st April 2016 to 30th June 2017. The Central Government introduced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short, "SVS Scheme 2019"). On 30th December 2019 the Petitioner filed the electronic declarations in Form No. SVLDRS-1 for the period of 2015-2016, 2016-2017 and 2017-2018 (upto June 2017). The Petitioner declared various amounts as amount of tax due for the said period. The Respondent No.5 however rejected the said application by Order/e-mail

dated 24th February 2020, 26th February 2020 and 28th February 2020 without giving any opportunity to the Petitioner. The application was rejected on the ground “Nil returned filed online, Investigation under process / data provided in application does not match with record”.

6. It is the case of the Petitioner that, the Respondent No.3 issued a show cause notice on 1st December 2020 for the period 2013-2014 (October – March) to 2017-2018 (upto June 2017) proposing to demand service tax of Rs.87,79,971/- along with interest under Section 75 and penalty under Section 70, 77(1) (d), 77(2) and 78 of the Finance Act, 1994. On 1st December 2020 the Petitioner requested the Respondent No.5 to grant an opportunity to the Petitioner to prove their eligibility under SVS 2019 and also to allow them to rectify declaration filed under the said Scheme. There was no response to the said request made by the Petitioner. The Petitioner thus filed this Petition.

7. Mr.Raichandani, learned counsel for the Petitioner invited our attention to the applications made by the Petitioner and the Orders passed by the Respondent No.5. He also invited our attention to the averments made by the Respondent No.5 in paragraph No.18 of the Affidavit-in-Reply dated 18th December 2021 and more specifically the contention of the Respondent No.5

that “the Petitioner was not eligible to file the declaration under SVLDR Scheme, 2019 and thus question of granting any personal hearing is not warranted in the present case” and submits that the said contention is totally erroneous and contrary to the law laid down by this Court in catena of decisions.

8. Mr.Raichandani, learned counsel for the Petitioner invited our attention to the judgment of this Court in the case of *Thought Blurb Vs. Union of India*, decided on 27.10.2020 = (2020) TIOL-1813-HC,MUM-ST. He submits that similar view has been taken by this Court in catena of decisions and also by other Courts. Copies of some of the judgments are annexed to the petition.

9. Mr.Bangur, learned counsel for Respondent Nos.2 to 5 on the other hand would submit that the fact that the Respondent No.5 had issued a show cause notice in the month of September 2020 annexed at Exh.K to the Petition, indicates beyond reasonable doubt that the tax liability was not quantified as on 30th June 2019. He submits that Petitioner was thus ineligible to make any application under the said Scheme. He submits that no purpose would have been served by granting any personal hearing to the Petitioner in these circumstances.

10. Learned counsel for the Petitioner on the other hand invited our attention to the averments made by the Petitioner in paragraph Nos.4.3 to 4.8 of the Petition and submits that the tax liability was already quantified by the Respondent No.3. These averments are not disputed by the Respondents in their Affidavit-in-Reply filed before this Court.

11. A perusal of the averments made in the Petition clearly indicates that it was a specific case of the petitioner that the tax liability was already quantified as recorded in various paragraphs of the Petition. In the Affidavit-in-Reply filed by the Respondents, these averments are not controverted by the Respondents.

12. A perusal of the Order passed by the Respondent No.5 indicates that the applications were rejected without affording any opportunity of being heard.

13. The question, as to, whether the tax liabilities are already quantified or not as on 30th June 2019 itself is a matter of dispute raised by the Petitioner in Writ Petition and also in the application/declaration filed under the said Scheme by the Petitioner before the Authorities. If according to the Respondents the tax liabilities were not quantified and the Petitioner was not eligible, the Respondents ought to have given an opportunity of being

heard to the Petitioner before passing such Order rejecting the application made by the Petitioner on the ground of ineligibility. If the Petitioner would have been given an opportunity, the Petitioner would have pointed out the quantification of tax liability during the course of the hearing. In our view, personal hearing was necessary in this situation.

14. The stand taken by the Respondents in paragraph No.18 of the Affidavit-in-Reply is that the Petitioner was not eligible to file the declaration under the said Scheme and thus the question of granting personal hearing was not warranted in the present case, is totally absurd and without application of mind. Whether the Petitioner was eligible to file declaration itself or not is an issue, which could be considered only after granting personal hearing to the Petitioner.

15. The principles of law laid down by the Division Bench of this Court in the case of *Saksham Facility Services Pvt. Ltd. Vs. Union of India & Others*, decided on 8th December 2020, reported in 2020-TIOL-2108-HC-MUM-ST, applies to the facts of this case. We are bound by the said judgment. We do not propose to take different view in the matter.

16. In our view the impugned Orders passed by the Respondents are in gross violation of the principles of natural justice and are liable to be

quashed and set-aside. We accordingly pass the following Order :-

- (i) The impugned Orders rejecting the applications filed by the Petitioner annexed at Exh.A are quashed and set-aside. Both the applications filed by the Petitioner in Form SVLDRS 1 are restored to file.
- (ii) The Respondent No.5 shall consider those two applications on its own merits in accordance with law after granting personal hearing to the Petitioner and pass a fresh Order without being influenced by the observations made and the conclusions drawn in the impugned Orders.
- (iii) The Respondent No.5 shall issue clear 72 hours notice to the Petitioner before granting personal hearing.
- (iv) The Petitioner shall appear on the date on which the personal hearing would be granted by the Respondent No.5 and shall not seek any unnecessary adjournment.
- (v) The Respondent No.5 shall pass a fresh Order within two months from the date of granting personal hearing.
- (vi) The Order that would be passed by the Respondent No.5 shall be communicated to the Petitioner within one week from the date of passing of such Order.
- (vii) If the Order that would be passed by the Respondent No.5 goes adverse against the Petitioner, no coercive steps shall be taken against the Petitioner by the Respondents for a period of two weeks from the date of communication of that Order.

17. It is made clear that, this Court has not expressed any views on merits. The contentions of both the parties are kept open.
18. Writ Petition is allowed in aforesaid terms.
19. Rule is made absolute. No order as to costs.
20. Parties to act on the basis of an authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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