

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

WRIT PETITION NO. 574 OF 2022

UCC Infrastructure Pvt. Ltd.,
Having office at 45A, Ground Floor,
Satra Plaza, Plot No. 19, Sector 19D
Palm Beach Road, Vashi
Navi Mumbai – 400703
through its Director
Mr. Monty R Khushalani

... 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. Joint Commissioner
CGST and CX 1st Floor,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.
4. Commissioner
CGST and CX, 1st Floor,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.
5. Assistant Commissioner
CGST and CX, 1st Floor,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.

... Respondents

Mr. Bharat Raichandani a/w Mr. Rishab Jain and Ms. Jasmine Dixit i/by UBR Legal Associates for the Petitioner.
Mr. Swapnil Bangur a/w Ms. Sangeeta Yadav for the Respondent Nos.1 to 5.

**CORAM: R. D. DHANUKA AND
S. M. MODAK, JJ.
DATE : 31st JANUARY, 2022
(Through Video Conference)**

ORAL JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. Rule. Mr. Bangur, learned counsel for the respondents waives service. 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 impugned orders dated 9th December, 2020 and 20th February, 2020 annexed at Exhibits 'A1' and 'A2' respectively.

3. On 5th July, 2019, the Central Government proposed Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short 'the said Scheme') in the budget for 2019-20 with an aim to assist taxpayers in clearing the baggage of disputes under erstwhile laws (service tax and central excise) which are subsumed in the Goods and Services Tax (GST). Vide notification dated 21st August, 2019, the said Scheme was notified and introduced w.e.f. 1st September, 2020. On 4th September, 2019, the respondents issued summons to the petitioner for giving oral evidence or to submit relevant documents.

4. On 9th September, 2019, the petitioner filed Electronic Declaration Form under SVLRDS-1 on CBEC website under 'voluntary category' and declared Rs.36,24,108/- as the amount of tax dues for the period 1st September, 2015 to 30th June, 2017. However, on 30th September, 2020, the respondent no.3 passed an order to the petitioner rejecting the said declaration on the ground that the petitioner was not eligible to opt for the said Scheme as the investigation against the petitioner had been initiated before they opted for the said Scheme. On 9th October, 2019, the petitioner protested against the said order dated 30th September, 2020 and pointed out as to why the declaration form submitted by the petitioner could not have been rejected. On 9th December, 2019, the respondents rejected the application filed by the petitioner on the ground that the investigation was initiated against the petitioner and thus the petitioner was not eligible to file declaration under 'voluntary category'.

5. The petitioner thereafter made various representations to the respondents for considering their application. On 30th December, 2019, the petitioner again filed Electronic Declaration Form under SVLRDS-1 on CBEC website under 'voluntary category' for the same period. The said form was once again rejected by the respondents on 20th February, 2020. The petitioner thus filed this writ petition for various reliefs.

6. Mr. Raichandani, learned counsel for the petitioner invited our attention to the declaration forms filed by the petitioner and the impugned orders passed by the respondents rejecting the declaration

forms filed by the petitioner on the ground that the petitioner was not eligible to opt under the said Scheme, since investigation was already initiated against the petitioner and was pending.

7. Learned counsel for the petitioner submits that the investigation was started by the respondents by issuing summons on 30th August, 2019 i.e. much after the cut-off date i.e. 30th June, 2019 and thus the declaration form submitted by the petitioner could not have been rejected on the ground that the investigation was initiated against the petitioner. He submits that the investigation initiated after the cut-off date i.e. 30th June, 2019 would be of no consequence and on such ground the declaration forms submitted by the petitioner could not have been rejected. In support of this submission, learned counsel invited our attention to the judgment of this Court delivered on 12th March, 2021 in case of ***M/s. New India Civil Erectors Private Limited v/s. Union of India and Ors.*** in Writ Petition (Lodging) No. 989 of 2020.

8. Mr. Bangur, learned counsel for the respondents invited our attention to various paragraphs of the said judgment in case of ***M/s. New India Civil Erectors Private Limited*** (supra) and would submit that even if the summons were issued by the respondents after 30th June, 2019, the powers of the respondents under Section 129(2)(c) of the said Scheme to continue the investigation are not taken away. He submits that if the particulars furnished by the petitioner in the declaration are found to be false within a period of one year of issuance of discharge certificate, it shall be presumed as if declaration was never

made and proceedings under the applicable indirect tax enactment shall be instituted.

9. In his rejoinder arguments, Mr. Raichandani, learned counsel for the petitioner submits that in this case, the petitioner had submitted a declaration under 'voluntary category' and had paid the tax due as payable. He does not dispute the powers of the respondents to take action under Section 129(2)(c), if within a period of one year of issuance of discharge certificate, if the respondents find any material particular as furnished by the petitioner in declaration as false.

REASONS AND CONCLUSION :-

10. It is not in dispute that in this case, the respondents had issued summons on 30th August, 2019 i.e. after 30th June, 2019. The petitioner had filed Electronic Declaration Form on 9th September, 2019 which was rejected on 30th September, 2020. The declaration form filed by the petitioner again on 30th September, 2020 was once again rejected on 20th February, 2020.

11. This Court in case of *M/s. New India Civil Erectors Private Limited* (supra) has considered identical facts and after adverting to various provisions of the said Scheme including Section 123(d), 124(1) (e), 125(1), 127(1)(f)(i) and the judgment of the Hon'ble Supreme Court in case of *Tata Engineering and Locomotive Company Limited v/s. State of Bihar, (2000) 5 SCC 346* held that if any enquiry or investigation or audit was initiated on or before 30th June, 2019, such a

person would not be eligible to make declaration under the voluntary disclosure category. Logical corollary to this would be that an enquiry or investigation or audit post 30th June, 2019 would not act as a bar to the filing of declaration under the 'voluntary disclosure' category. In the facts of that case, the enquiry was initiated after 30th June, 2019. Considering these facts, this Court was of the opinion that the respondents were not justified in rejecting the declaration of the petitioner dated 26th December, 2019 on the ground that the petitioner was not eligible to file declaration under the category of 'voluntary disclosure' since enquiry was initiated against the petitioner on 19th December, 2019. This Court held that though under Section 125(1)(f) of the said Scheme does not mention the date 30th June, 2019 by simply saying that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration, the said provision if read and understood in the proper context would mean making of a voluntary disclosure after being subjected to an enquiry or investigation or audit on or before 30th June, 2019. Such a view if taken would be a reasonable construct, consistent with the objective of the scheme.

12. This Court also adverted to the judgment of this Court in case of ***Thought Blurb v/s. Union of India, 2020 (10) TMI 1135*** and was pleased to quash and set aside the order impugned in the said writ petition and remanded the matter back to the Authority for taking a fresh decision on the declaration filed by the petitioner therein treating the same as a valid declaration under the 'voluntary disclosure' category and thereafter to grant the admissible relief to the petitioner

after giving an opportunity of hearing.

13. The principles laid down by this Court in case of ***M/s. New India Civil Erectors Private Limited*** (supra) would apply to the facts of this case. We do not propose to take any different view in this matter.

14. In the facts of this case also the respondents had issued a summons only on 30th August, 2019 i.e. after 30th June, 2019 and thus summons issued after the cut-off date of 30th June, 2019 could not be the ground for declaring the application filed by the petitioner under SVLRDS-1 ineligible. In our view, the stand taken by the respondents is contrary to the principles of law laid down by this Court in case of ***M/s. New India Civil Erectors Private Limited*** (supra) and also contrary to the objectives, purposes and intent of the said Scheme introduced by the Central Government. The respondents would have been justified to declare the petitioner ineligible to file declaration under 'voluntary disclosure' category, if enquiry or investigation or audit would have been initiated on or before 30th June, 2019.

15. The respondents while rejecting the declaration form submitted by the petitioner also did not grant any opportunity of being heard to the petitioner. If an opportunity would have been granted by the respondents to the petitioner, the petitioner would have pointed out that the summons issued after 30th June, 2019 could not be a ground for declaring the petitioner's application ineligible. In our view, the impugned order is in gross violation of principles of natural justice.

16. However, we take cognizance of the powers of the respondents under Section 129(2)(c) of the said Scheme which empowers the respondents to take an appropriate action against the petitioner, if within one year from the date of issuance of discharge certificate, if the respondents find any material particular in the declaration as false. In such circumstances, the respondents to presume as if the declaration was never made and the proceedings under the applicable indirect tax enactment shall be instituted.

17. We accordingly pass the following order :-

- (i) Impugned orders dated 9th December, 2020 and 20th February, 2020 annexed at Exhibits 'A1' and 'A2' respectively are quashed and set aside.
- (ii) The Declaration Forms filed by the petitioners are restored to file and are remanded to the respondent no.3 for taking a fresh decision on these two declaration forms filed by the petitioner by treating the same as valid declarations under the 'voluntary disclosure' category and thereafter grant the admissible relief to the petitioner. The respondents shall grant an opportunity of personal hearing to the petitioner by issuing seven days clear notice before the date of proposed hearing. The petitioner shall remain present at the time of hearing before the respondent no.3, without fail. The respondent no.3 shall pass a reasoned order, in accordance with the law within a period of eight weeks from the date of receipt of an authenticated copy of this judgment. The

order that would be passed by the respondent no.3, shall be communicated to the petitioner within one week from the date of passing such order.

- (iii) It is made clear that the respondents are empowered to take action under Section 129(2)(c) of the said Scheme, if within a period of one year of issuance of the discharge certificate against the petitioner, the respondent no.3 finds that the material particulars furnished in the declaration filed by the petitioner are found to be false.
- (iv) Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.
- (v) Parties to act on an authenticated copy of this Judgment.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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