IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10695 OF 2022

Vision Container Line Private Limited ….Petitioner

V/s.

Union of India and Ors. …Respondents

Mr. Prathamesh Kamat a/w Mr. Harsh Behany, Ms. Maithili Iyer Gosh and Ms.Neena Shah for Petitioner.
Mr. Karan Adik a/w Ms. Maya Majumdar for Respondents.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 13th SEPTEMBER 2022

P.C. :

1. With the consent of parties the petition is taken up for final hearing. Mr. Adik states that since the impugned order is elaborate, he would proceed on the basis of what is stated in the impugned order.

2. Petitioner is impugning an order dated 21st June 2022 rejecting petitioner's application under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred to as "SVLDRS") on the ground that petitioner was ineligible. According to respondent there was enquiry/investigation that was commenced against petitioner as evident by a letter dated 20th August 2019 and issued on 26th August 2019 which culminated in issuance of a show cause cum demand notice dated 10th December 2020 and therefore petitioner will be one of those excluded person under Section 125 (1)(f) of the Finance Act, 2019.

3. Under Section 125 of the Finance Act, 2019 all persons are eligible to make declaration under the scheme except those who fall in the negative list mentioned therein. Section 125 (1) reads as under :

> *125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely: —*
> *(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;*
>
> *(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;*
>
> *(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;*
>
> *(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;*
>
> *(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;*
>
> *(f) a person making a voluntary disclosure —*
> *(i) after being subjected to any enquiry or investigation or audit; or*
> *(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;*
>
> *(g) who have filed an application in the Settlement Commission for settlement of a case;*
>
> *(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.*

4. Mr. Kamat and Mr. Adik state that petitioner would fall under the category of clause (f). According to Mr. Adik petitioner has filed declaration under the category of voluntary disclosure but since the

declaration was filed after being subjected to enquiry/investigation, petitioner is excluded.

5. Mr. Kamat submitted that (a) petitioner was not subjected to any enquiry or investigation before petitioner filed declaration; and (b) In the alternative even if the letter dated 20th August 2019 is taken to be commencement of enquiry or investigation, this court in ***New India Civil Erectors Private Limited vs. Union of India and Others***[1] and ***UCC Infrastructure Pvt. Ltd. vs. Union of India***[2] has held that though 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 and such a view if taken would be a reasonable construct consistent with the objection of the scheme. Paragraph nos. 4, 7, 9, 10, 11, 13 and 14 of *UCC Infrastructure Pvt. Ltd.* (supra) reads as under :

> *4. ………. 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. ……….*

1 Writ Petition (L) No.989 of 2020 dated 12/03/2021
2 2022 SCC OnLine Bom 229

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 in Writ Petition (Lodging) No.989 of 2020.

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.

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.

13. The principles laid down by this Court in case of 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 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.

6. Mr. Kamat submitted that therefore, even if the court holds that the letter dated 20th August 2019 amounts to commencement of any investigation, still, since the investigation did not commence on or before 30th June 2019 petitioner would not fall under the negative list.

7. We have considered the letter dated 20th August 2019 copy whereof is at Exhibit “D” to the petition. The letter reads as under :

> *………. Sub : Verification of Service Tax payments-reg.*
>
> *On going through the records, it is observed that you have obtained Service Tax Registration Certificate No.AAECV8951GSD001 for providing taxable Services.*
>
> *2. In this regard, it is requested to submit to this office the following documents immediately for verification purpose : ……….*

8. In our view, this letter cannot be considered commencement of investigation or enquiry. The letter has to be read to mean only because petitioner has obtained service tax registration for providing taxable services, the department in that regard want to verify the documents.

9. Therefore, in our view Mr. Kamat’s first submission should be accepted.

10. In any event, even for a moment we hold that this letter amounts to commencement of investigation or enquiry as submitted by Mr.Adik, still this letter having been issued only on 26th August 2019 though dated 20th August 2019, petitioner would be said to be subjected to enquiry or investigation only after 30th June 2019 and as held by this court in *New India Civil Erectors Private Limited* (supra) and *UCC Infrastructure Pvt. Ltd.* (supra), it would not be a ground for declaring application filed by petitioner under the SVLDRS as ineligible.

11. In the circumstances, we hereby quash and set aside the impugned order dated 21st June 2022. We declare petitioner will be eligible to file declaration under the scheme. Respondents are directed to proceed further and issue Form 2 to petitioner as applicable in law.

12. Petition disposed.

(A.S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**