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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.696 OF 2021

Future Enterprises Limited	]	..	Petitioner
vs.			
Union of India & Ors.	]	..	Respondents

Mr.Ashish Kamat a/w Akshay Puranik, Deepak Deshmukh and Vivek Dwivedi i/b Naik Naik & Co. for Petitioner.

Mr.J.B. Mishra, for Respondents.

CORAM : S.V. GANGAPURWALA & M.G.SEWLIKAR, JJ

DATE : 19TH APRIL, 2022.

P.C.

1] This writ petition assailed the order rejecting the declaration of the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (for short, “the Scheme”).

2] Mr. Kamat, learned Counsel for the petitioner submits that the petitioner is member 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 petitioner. 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 petitioner deposited 50% of the amount of Service Tax and had also filed affidavit and undertaking before the Apex Court. The learned Counsel for the petitioner submits that the declaration is rejected only on the ground that the appeal pending before the Apex Court 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 petitioner would be eligible to apply under the Scheme.

3] Mr.Mishra, learned Advocate for the respondents submits that the petitioner is not served with show-cause notice. The appeal pending before the Apex Court is not pursuant to the show-cause notice. The petitioner is service recipient 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 petitioner 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 petitioner/lessor has filed appeal before the Apex Court. The said circular is clarificatory in nature. In view of the circular, the petitioner is 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 respondents. In the light of above, the impugned order rejecting the declaration filed by the petitioner is set aside.

8] Needless to state that the petitioner is required to comply with all the conditions under the Scheme for availing the benefit of the said scheme. Respondents shall reconsider the declaration of the petitioner and shall not reject it on the ground upon which impugned order is passed.

9] Writ petition is disposed of. No costs.

[M.G.SEWLIKAR, J] **[S.V.GANGAPURWALA,J]**

JYOTI PRAKASH PAWAR

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