



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO.11651 OF 2023

Amit Anand Jamkhindikar

Age : 42 years, Occu : Service,

Resident at : Chakala road,

Andheri (East), Mumbai

.. Petitioner

Versus

1. The Union of India
Through the Ministry of Finance,
Department of Revenue,
Government of India,
Address at : Room No. 48C, North Block,
New Delhi
2. The Central Board of Excise and Customs
Government of India
Address at : 815, Nehru Place Market Road,
Nehru Place, New Delhi
3. The Commissioner
Goods and Service Tax (GST),
Address at : GST Bhavan, N5,
Town Center, CIDCO Cannought,
Aurangabad, Maharashtra
4. The Director General of Vigilance
Customs & Central Excise,
Address at : 2nd Floor, Hotel Samrat,
Chanakyapuri, New Delhi
5. The Chief Commissioner,
GST and Central Excise (Nagpur Zone),
Address at : GST Bhavan, Post Box No. 81,
Telangkhedi Road, Civil Lines,
Nagpur
6. Endress + Hauser Wetzler (India) Pvt Ltd.,
A Private Limited Company
incorporated and registered under the provisions
of the Companies Act, 1956

Having its Registered Address at :
Plot No. 171 – 173, MIDC Waluj,
Aurangabad, Maharashtra

..Respondents

...

Mr. Amit Anand Jamkhindikar, Petitioner - In Person
Mr. Ajay G. Talhar, DSGI for the Respondent – UOI

...

AND

WRIT PETITION NO. 11660 OF 2023

Amit Anand Jamkhindikar
Age : 42 years, Occu : Service,
Resident at : Chakala road,
Andheri (East), Mumbai

.. Petitioner

Versus

1. The Union of India
Through the Ministry of Finance,
Department of Revenue,
Government of India,
Address at : Room No. 48C, North Block,
New Delhi
2. The Central Board of Excise and Customs
Government of India
Address at : 815, Nehru Place Market Road,
Nehru Place, New Delhi
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Goods and Service Tax (GST),
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Chanakyapuri, New Delhi
5. The Chief Commissioner,
GST and Central Excise (Nagpur Zone),
Address at : GST Bhavan, Post Box No. 81,
Telangkhedi Road, Civil Lines,
Nagpur

6. Endress + Hauser Flowtec (India) Pvt Ltd.,
A Private Limited Company
incorporated and registered under the provisions
of the Companies Act, 1956
Having its Registered Address at :
M - 171 to 176, MIDC Waluj,
Aurangabad, Maharashtra

..Respondents

...

Mr. Amit Anand Jamkhindikar, Petitioner - In Person
Mr. Ajay G. Talhar, DSGI for the Respondent – UOI

...

**CORAM : MANGESH S. PATIL
AND
NEERAJ P. DHOTE, JJ.**

DATED : DECEMBER 12, 2023

ORAL JUDGMENT :

. In spite of the petitioner having been permitted to conduct the matters in-person, the cause list shows the names of his erstwhile advocates. The learned advocates stand discharged.

2. Heard the petitioner in-person in both the matters and also Mr. Talhar, learned DSGI.

3. The petitioner is aggrieved by the fact that in spite of the information furnished by him regarding the respondent establishments having illegally derived the benefits of CENVAT credit, the revenue department having issued the show cause notices pursuant thereto, still those were ultimately dropped by passing appropriate orders.

4. The issue essentially is as to if the petitioner who is merely an informant and who would have been entitled to fetch some reward under the guidelines can question the legality and sustainability of the orders passed by the authorities dropping the proceedings pursuant to the replies given to the show cause notices. As a corollary the issue would be, whether such an informant without there being any recovery of revenue, imposition of any penalty or interest, would be entitled to claim the reward.

5. The petitioner in-person made a vehement attempt to demonstrate as to how the orders were passed without being sufficient and cogent reasons to drop the show cause notices. He would submit that though the establishments had undeservedly derived the benefits of CENVAT credit, the authorities have ignored it. He would further submit that since ultimately he would be the beneficiary of the reward, he has every right to assail the orders passed by the authorities dropping the show cause notices.

6. Though the party in-person fairly conceded that there was no recoveries made pursuant to the information given by him, according to him, he is entitled to derive the benefit of observations of the Supreme Court in the matter of **Union of India vs. R. Padmanabhan, Appeal (Civil) No.2769 of 1999** decided on **13.08.2003**.

7. The learned DSGI Mr. Talhar strongly opposes the *locus standi* of the petitioner for raising question in respect of legality of the orders passed by the authorities dropping the proceedings whereby notices to show cause issued to the establishments have been recalled. He would then submit that without there being any recovery at the instance of the petitioner, the guidelines of the scheme do not permit any reward.

8. Having considered both the sides, at the outset it is necessary to note that the petitioner is an informant who is seeking to derive the benefit of a scheme viz. Guidelines for grant of Reward to Informers and Government Servants, 2015 (hereinafter referred to as the 'Guidelines') whereby he would have been entitled to have some reward, having informed authorities about the circumstances under which the establishments had illegally derived the CENVAT credit.

9. In our considered view, when the Central Excise Act, 1944 and CENVAT Credit Rules, 2004 provide for the mechanism for even recovery of the CENVAT credit illegally obtained, this cannot happen at the instance of the third party or a stranger. Permitting an informant to indirectly put up a challenge to the orders would lead to catastrophic circumstances. It is not that the authorities have not taken cognizance of the information furnished by the petitioner. Pursuant to his information,

show cause notices were issued to the establishments in both these matters, reply was solicited and by reasoned orders, the notices have been dropped. In our considered view, neither this Court in the present proceedings can indirectly examine sustainability of both these orders, nor can the petitioner be permitted to do it. To put it shortly, the petitioner who is merely an informant and should be interested in the reward if and when some recovery is made by the revenue, has no *locus standi* to challenge the basic order whereby the show cause notices issued have been dropped by reasoned orders.

10. Admittedly, no recovery has been made pursuant to the information furnished by the petitioner. If that be so, that being a *sine qua non* for any reward particularly when it is proportionate to the recoveries being made, the petitioner without there being any recovery of the revenue is not entitled to call upon us in exercise of the powers under Article 226 of the Constitution of India to examine the legality and sustainability of the orders dropping the recovery proceedings.

11. In both these matters, the petitioner was expressly informed as under:

(i) Reply in Writ Petition No.11651 of 2023:

“The complainant has raised the grievance for processing reward as per Reward Guidelines. In this regard, on the basis of information given by the complainant, searches were conducted at the factory of M/s. Endress & Hauser Flowtec (India) Pvt. Ltd. and M/s. Endress & Hauser Wetzler (India)

Pvt. Ltd., Aurangabad. After investigation, SCN No. 69/CEX/Commr/2016-17 dated 08.02.2017 for demand of duty of Rs.38,66,84,429/- was issued to M/s Endress & Hauser Flowtec (India) Pvt. Ltd and SCN No.09/CEX/Commr/2018 dated 12.04.2018 for demand of duty of Rs.4,57,47,242/- was issued to M/s. Endress & Hauser Wetzler (India) Pvt Ltd. These two SCNs were adjudicated vide OIO No.01/CEX/Commr/2018-19 dated 24.04.2018 and OIO No. 16/CEX/Commr/2018-19 dated 24.11.2018 respectively and the demands were dropped in both the OIOs. As per Para 5.1.1 of the Reward Guideline issued vide Circular No. 20/2015 dated 31.07.2015, Informers and Government Servants will be eligible for reward up to 20 percent of the net sale proceeds of the contraband good seized (except items listed in Para 5.2) and / or amount of duty / service tax evaded plus amount of fine and penalty levied / imposed and recovered in these two cases, Central Excise duty, interest and penalty has not been recovered as both the SCNs have been dropped by the adjudicating authority and also both the OIOs have been accepted by the Review Committee. Hence, as per Reward Guidelines, no reward can be sanctioned in these two cases. Accordingly, the grievance is disposed of.”

(ii) Reply in Writ Petition No.11660 of 2023 :

“The complainant has raised the grievance for processing reward as per Reward Guidelines. In this regard, on the basis of information given by the complainant, searches were conducted at the factory of M/s. Endress & Hauser Flowtec (India) Pvt. Ltd. and M/s. Endress & Hauser Wetzler (India) Pvt. Ltd., Aurangabad. After investigation, SCN No. 69/CEX/Commr/2016-17 dated 08.02.2017 for demand of duty of Rs.38,66,84,429/- was issued to M/s Endress & Hauser Flowtec (India) Pvt. Ltd and SCN No.09/CEX/Commr/2018 dated 12.04.2018 for demand of duty of Rs.4,57,47,242/- was issued to M/s. Endress & Hauser Wetzler (India) Pvt Ltd. These two SCNs were adjudicated vide OIO No.01/CEX/Commr/2018-19 dated 24.04.2018 and OIO No. 16/CEX/Commr/2018-19 dated 24.11.2018 respectively and the demands were dropped in both the OIOs. As per Para 5.1.1 of the Reward Guideline issued vide Circular No. 20/2015 dated 31.07.2015, Informers and Government Servants will be eligible for reward up to 20 percent of the net sale-proceeds of the contraband good seized (except items listed in Para 5.2) and / or amount of duty / service tax evaded plus amount of fine and penalty levied / imposed and recovered. In these two cases, Central Excise duty, interest and penalty has not been recovered as both the SCNs have been dropped by the adjudicating authority and also both the OIOs have been accepted by the Review Committee. Hence, as per Reward Guidelines, no reward can be sanctioned in these two

cases. Accordingly, the grievance is disposed of.”

12. We see no arbitrariness or illegality in these replies.

13. The petitioner is seeking to rely upon the guidelines, therefore, it is also imperative to refer to the relevant provisions. PART I of the guidelines lays down provisions regarding principles, eligibility, quantum of reward, undertaking etc., and PART II provides for scheme for grant of Reward to Informers and Government Servants. The following clauses would be relevant.

“PART (I)

3. PRINCIPLES GOVERNING GRANT OF REWARD :-

3.1 Reward should not be granted as a matter of routine: - Reward is purely an ex-gratia payment which, subject to guidelines, may be granted based on the judgment of the authority competent to grant rewards and taking into account facts and circumstances of each case and cannot be claimed by anyone as a matter of right.

3.2

3.3 Criteria for grant of reward :- In determining the reward which may be granted, the authority competent to grant reward will keep in mind the following:-

3.3.1 In cases of collection of information / intelligence, in respect of cases of seizure made out / or infringements/ evasion of duty / service tax etc.

3.3.2 In cases of successful investigation.

3.3.3 In cases of post investigation work.

3.3.4 In cases of Audit / special Audit in Central Excise and Post Clearance Audit in Customs.

5. QUANTUM AND CEILING OF REWARDS :-

5.1.1 Informers and Government Servants will be eligible for reward upto 20% of the net sale-proceeds of the contraband goods seized (except items listed in Para 5.2 below) and / or amount of duty / Service Tax evaded plus amount of fine and penalty levied / imposed and recovered.

5.1.2 In respect of cases of detection of Drawback frauds or

abuse of duty exemption schemes under various Export Promotion Schemes announced by the Government from time to time unearthed on the basis of specific prior information, provided by the informer or prior intelligence developed by the Government Servants, the informers and Government Servants will be eligible for reward upto 20% of recovery of drawback claimed fraudulently and / or recovery of duties evaded under various Export Promotion Schemes announced by the Government from time to time, plus amount of fine / penalty levied / imposed and recovered.

PART (II) :

SCHEME OF GRANT OF REWARD TO INFORMERS AND GOVERNMENT SERVANTS IN CASES OF RECOVERY FROM TAX DEFAULTERS

(i) The reward scheme shall be extended to grant of suitable reward to an informer who gives information regarding the whereabouts, assets, immovable properties etc., of persons from whom arrears of duty, tax, fine, penalty etc. (under the provisions of the Customs Act, 1962, the Central Excise Act, 1944 and the Chapter V of Finance Act, 1994 in so far as the said Act contains provisions relating to Service Tax) are recoverable and the information results in recovery of arrears.

(ii) The grant of reward shall be considered only in those cases where the Chief Commissioner is satisfied that: -

- a) All possible efforts have been made by the Departmental officers to trace the defaulter / details of defaulter's property; and*
- b) Information provided by the informer has been instrumental in the recovery of arrears."*

14. Aforementioned provisions from the guidelines would clearly indicate that grant of reward is not expected to be a routine matter and is subject to the guidelines. Grant of rewards taking into account the facts and circumstances of each case has been left to the judgment of the authority. More importantly, it has been expressly mentioned that reward cannot be claimed as a matter of right. Again, these guidelines explicitly make it clear that it is only awardable

where pursuant to the information, which has to be instrumental, results in some recovery of arrears. Again, the quantum of reward has been made proportionate to the recoveries. All these guidelines would clearly demonstrate that any claim for reward even if it is to be considered could be entertained only in case some recovery is made pursuant to the information provided by the informant.

15. If such is the scheme, when in the matter in hand, admittedly, no recoveries could be made pursuant to the information provided by the petitioner, he is not entitled to claim reward much less has any *locus standi* to question the orders whereby the show cause notices issued to the establishments have been recalled by speaking orders.

16. Reliance of the petitioner in the observations in **R. Padmanabhan** (*supra*) is misplaced. He is reading only few sentences therefrom out of context. The entire paragraph and the portion being relied upon by the petitioner which we have underlined is as under:

“It is not in controversy that an amendment came to be issued vide P No. R-13011/5/89.Ad.v. of the department of revenue in April 1989 limiting the total reward to Rs. 1 lakh for seizure and to a total limit of Rs.10 lakhs in ones career, though there was dispute about its relevance and applicability to the claim of the respondent on the ground that it had no retrospective application to the seizure effected on 24.2.1989, in this case. The decision of the Division Bench rendered in affirmance of the one rendered by the Single Bench suffer from a serious infirmity in not advertent properly to the basics and fundamentals of the Scheme for Rewards and in assuming to the contra that when an

informer could be given liberally, the Government servant also, must be shown the same consideration, whereas a careful scanning through may go to show that an Informant is placed on a different pedestal than a Government servant. The rewards are also to be and can be “upto 20%” or as the case may be and not that invariably it must be as a rule 20% of the estimated market value. Reward is purely an ex gratia payment, subject to the Guidelines on the discretion of the competent authority, though it cannot arbitrarily be denied or refused at whim or fancy and it should specifically conform to and must be shown to fall or claimed within the four corners of the Scheme and not by any deviation or modulation of the Scheme, as the Courts think it should be and if it cannot come strictly within the four corners of it, such claim may have to be dealt with only under the residuary powers enabling the grant of reward. That part, being ex gratia, no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the Guidelines and Policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the Scheme itself. The line of decisions relation to vested rights accrued being protected from any subsequent amendments may not be relevant for such a situation and it would be apposite to advert to the decision of this Court reported in State of Tamil Nadu Vs. M/s. Hind Stone & Ors [(1981) 2 SCC 205]. That was a case wherein this Court had to consider the claims of lessees for renewal of their leases or for grant of fresh leases under the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the applications filed for lease or renewal for a long time and then dispose them of on the basis of a rule which had come into force later. This Court, while reversing such view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay, if any, involved although it is desirable to dispose of the applications, expeditiously. Therefore, the reward could not have been allowed in this case completely ignoring the amendments, which came into force in April 1989, merely because the seizure was in February 1989. That apart, under the Scheme final reward is postulated only on adjudication of the case resulting in confiscation of the goods as found stated in clause 6 of the Guidelines and that should, therefore, be crucial and relevant date for consideration of award and, therefore, the Guidelines, as are in force on that date, will be really applicable and would be relevant. Consequently, the exclusion of the amendment, which was made in April 1989, from consideration in this case, may not be proper, and the conclusion to the contrary by the High Court, cannot be

sustained. The interpretation placed as though the restrictions in clause 7 will have no relevance to the officers other than the officers specified of the Department of Central Excise / Customs cannot be justified, either on the language of the Guidelines or on the conspectus of the Scheme for rewards. The classification made is between informers on the one hand and Government servants on the other – and not with reference to any particular class or category of Government servants alone. The specification of certain officers are meant to illustrate the level and standard of their category / class with particular reference to the gradation of offices they hold and the granting authority or courts, if a need be, have to necessarily arrive at the equivalence in other Departments as well – from among the other class of Government servants, as a whole, serving either under the State or Central Government - and the Scheme cannot be mutilated otherwise or moulded to suit the consideration of a particular or given case, favourably. Clause 8.1.3 provides the necessary clue in this regard and the consideration, if at all, has to be with reference to the provisions contained in clause 4 and the various Guidelines contained therein.”

17. There is no substance in the petitions and the petitions are liable to be dismissed.

18. Both the petitions are dismissed.

[NEERAJ P. DHOTE]
JUDGE

[MANGESH S. PATIL]
JUDGE