IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3228 OF 2020

M/s. Jamuar Brothers. … Petitioner.
V/s.
Union of India and another. … Respondents.

WITH
WRIT PETITION NO. 187 OF 2021
AND
WRIT PETITION NO. 192 OF 2021

Neelkamal Realtors & Builders Pvt.Ltd.
and another. … Petitioners.
V/s.
Union of India and others. … Respondents.

Ms. Kiran Doiphode i/b. V.M. Doiphode & Co. for the Petitioner in WP No.3228/2020.
Mr.Ramnath Prabhu with Mr.Abhishek Deodhar i/b. P.K.Shetty for the Petitioners in WP Nos.187 and 192/2021.

Mr. Satyaprakash Sharma for the Respondents in WP No.3228/20.
Mr.Ram Ochani for the Respondents in WP Nos.187 and 192/2021.

CORAM: NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE: 11 January 2023.

<u>P.C.</u> :

These three petitions raise a common question and, therefore, they are disposed of by this common order.

2. Heard the learned Counsel for the parties.

3. The common grievance of the Petitioners in these petitions is regarding absence or inadequacy of reasons as to why the Petitioner's application for the benefit of the Sabka Vishwas (Legacy Disputes Resolution) Scheme, 2019 was rejected. This being the common and limited grievance, it is not necessary to detail the facts of the cases.

4. The Finance Act, 2019 introduced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Section 120 of the Finance Act brings the Scheme into force on such date as the will be notified. The Scheme in question came into force on 1 September 2019 by notification dated 21 August 2019 making it applicable to the Customs, Central Excise and Service Tax matters. Section 121 deals with definitions. Section 122 is regarding application of the Scheme to the Indirect Tax Enactment. Tax dues are defined under Section 123 and Section 124 deals with the relief available under the Scheme. The procedure for dealing with the declaration by the

eligible persons is specified under Section 125. The procedure for the issue of statement upon a declaration received by the Designated Committee is enumerated in Section 127 of the Finance Act, 2019. Relevant portion of section 127 reads thus :-

> ***"127. Issue of statement by designated committee.***
> *(1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration.*
>
> *(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration.*
>
> *(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant: Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.*
>
> *(4) After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.*
>
> *(5) to (8) ….. ….. ….. ….. ….. ….. …..*

This section has to be read with Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019. The Scheme in short is that when an amount is declared to be payable by the the declarant and the one estimated by the Designated Committee is the same, Form SVLDRS-3 can be issued. When the amount estimated by the Designated Committee exceeds the amount declared by the declarant, then electronic Form SVLDRS-2 is to be issued under Rule 6 of of the Rules of 2019 giving estimate of the amount payable by the declarant. After the estimate is issued, the Designated Committee gives an opportunity of being heard to the declarant, if he so desires to. After hearing the declarant, statement in electronic form is issued as per format in SVLDRS-3. Form SVLDRS-3 contains columns such as Serial Number, Category, Issue Involved, Time Period, Tax Dues, Tax Relief, Pre-deposit/ any other deposit of duty, Estimated Amount Payable, and provides for the reasons to be incorporated in the "Remarks" column.

5. There is no dispute that the Petitioners had applied under the Scheme of 2019 by filing declarations in Form SVLDRS-1 and they have received responses from the Respondents under SVLDRS-3.

5. In the case of Petitioners in Writ Petition Nos.187/2021

and 192/2021, the ‘Remark’ column in Forms SVLDRS-3 is blank. In case of the Petitioner in Writ Petition No.3228/2020, in the ‘Remark’ column in Form SVLDRS-3 it is stated “*Status as on 30.06.2029 is relevant in the scheme*.” Thus, in the case of the Petitioners in Writ Petition Nos.187/2021 and 192/2021, there is no reason at all why the declaration was rejected and in case of Petitioner in Writ Petition No.3228/2020, the reason is not discernible.

6. It is not contended before us by the Respondents nor it can be contended that the Designated Committee is under no obligation to give any reason whatsoever. The Scheme of section 127 as above contemplates issuance of estimate under Form SVLDRS-2 and then, after giving hearing to the declarant, when sought for, the final statement is issued. Therefore, after the estimate is issued, the declarant can put forth his case that the estimate is not correct and the hearing provided enables him to do so. If the declarant is not informed why his contentions are not accepted, then the statutory requirement of giving opportunity of hearing would be meaningless. We do not intend to suggest that the statutory scheme requires the Designated Authority to pass an order akin to a judgment, but the remarks in the column, even if brief, should be discernible. In the cases at hand, either there are no remarks or cryptic unclear remarks. The Respondents have filed exhaustive

replies seeking to place on record the reasons. Therefore, it is for the first time in this Court an adjudication will have to take place on the basis of replies filed. Such position cannot be countenanced. The Respondents cannot be permitted to abdicate their duty to fill up the Remarks column in SVLDRS-3 in a meaningful manner. The failure to do so is adding to the already crowded docket of this Court. Therefore, we are constrained to remand the matters to emphasis upon and inculcate administrative discipline on the offices of the Respondents to provide reasons as required by the Statue, by setting aside the impugned orders/ communications and directing remedial action.

7. Accordingly, impugned order/ communication dated 8January 2020 issued to the Petitioner in Writ Petition No.3228/2020 and impugned orders/ communications dated 6 March 2020 issued to the Petitioner in Writ Petition Nos.187/2021 and 192/2021 in Form SVLDRS-3 are quashed and set aside.

8. We direct the Respondents to issue Form SVLDRS-3 with Remarks column filled up with discernible reasons. If issuance of Form SVLDRS-3 is not feasible now, then we permit the Respondents to pass a separate order giving reasons why the Petitioners' declarations were not accepted. Upon such reasons being given, the Petitioners would be entitled to challenge the same

as per law. This course of action be taken by the Respondents within a period of eight weeks from today.

9. The writ petitions are disposed of in the above terms.

(ABHAY AHUJA, J.) (NITIN JAMDAR, J.)