

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4969 OF 2022

Avenue Supermarkets Ltd.)...Petitioner
V/s.
The Union of India and Another)...Respondents

Mr. Dharnendra Kumar Rana a/w. Mr. Shreyas Jain, Advocate
for the Petitioner.

Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. Ram Ochani,
Advocate for the Respondents.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 17 MARCH 2023

ORAL ORDER : (PER NITIN JAMDAR, J.)

Heard the learned Counsel for the parties.

2 The Petitioner has challenged the rejection of Petitioner's application / declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

3 The Petitioner is a company incorporated under the provisions of the Companies Act, 1956 and has supermarket outlets. The Petitioner was duly registered having Centralized Service Tax Registration. On 18 February 2013 the Officers of Directorate General of Central Excise Intelligence (DGCEI) visited the office of the Petitioner at Navi Mumbai and seized various documents and record. Show cause notice dated 2 June 2014 was issued to the Petitioner at Navi Mumbai office in respect of service tax dues. Thereafter, an Order in Original was passed on 30 January 2019 by the Additional Commissioner, Central Goods and Service Tax (CGST), Navi Mumbai, where a demand for tax was confirmed against the Petitioner. The Petitioner filed an Appeal before the Commissioner (Appeals), GST & Central Excise, Raigarh, in respect of confirmed demand of service tax under reverse charge.

4 Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was introduced by the Government through the Finance Act of 2019 for settlement of legacy disputes. There are various categories of persons through which a person can file a declaration to avail the benefit of the Scheme. The Petitioner, accordingly, filed a declaration under SVLDRS-1 on 1 October

2019. The Petitioner's form was not accepted with a remark *"The Order in Original which is pending before the Commissioner Appeals pertains to Navi Mumbai Commissionerate. Assessee has been advised to apply accordingly. Hence the application is rejected"*. Being aggrieved, the Petitioner has filed the present Petition.

5 The learned Counsel for the Petitioner submitted that with effect from 29 September 2016, the Petitioner had duly changed its Centralized Service Tax Registration Certificate with an application filed under Form ST-2 and had changed the corporate address to Thane Corporate Office. The learned Counsel submitted that jurisdictional Commissionerate of the Petitioner was also shifted from Navi Mumbai Commissionerate to Range-I, Division-VI, Thane. It was, therefore, contended that when the Petitioner was filing declaration on the portal in SVLDRS-1, there was no option to change the Commissionerate as once the Petitioner had entered the registration number, it automatically showed the concerned Commissionerate as Thane Commissionerate and it was not possible for the Petitioner to change the option to Navi Mumbai. The learned Counsel submitted that it was not possible for the Petitioner to login to select Navi Mumbai

Commissionerate using the registration number which was connected with Thane Commissionerate. The learned Counsel submitted that in view of this technical lacuna, the Petitioner's application was rejected and the Respondents ought to have redirected the application of the Petitioner to the correct Commissionerate.

6 The learned Counsel for the Respondents submitted that the Petitioner was informed that the Petitioner has chosen incorrect Commissionerate as he had to select Navi Mumbai Commissionerate since the pending appeal arose from Order in Original in Navi Mumbai Commissionerate. The learned Counsel for the Respondents submitted that the Petitioner was informed on 6 December 2019 and had forty-one days till 14 January 2020 to correct the Commissionerate to Navi Mumbai, which the Petitioner failed to do and therefore Petitioner is himself to be blamed for losing the benefit of the scheme.

7 The scheme of 2019 which is brought into force by the Finance Act of 2019 is for settlement of legacy disputes and also gives opportunity to the tax payer to come forward to make payments and to resolve their pending disputes. It was

also to help the Government to clear the amount locked in litigation to augment the revenue. In that context, the scheme of 2019 has to be construed. Section 125 of the Act, while it provides for declaration under the scheme, excludes categories of persons who are ineligible to make a declaration under the scheme. It is not the case of the Respondents, as conveyed to the Petitioner in the remark column, that Petitioner falls under in any of the exclusions.

8 The form to be filled under Section 125 of the Act is specified in the SVLDR Scheme Rules 2019 and form of SVLDRS-1 is appended to the Rules. The first column contains the service tax registration number. Then the other details and there is Column 8 which states select a Commissionerate. Prima facie reading of Column 8 would indicate that a Commissionerate can be selected. If the Petitioner had selected a wrong Commissionerate and when it was pointed out, if it was possible for the Petitioner to correct the Commissionerate, then the argument of the Respondents that the Petitioner failed to do so in forty-one days would have relevance. However, we find that the Petitioner has made a specific assertion in the Petition as under :

“xi. When the Petitioner was filing declaration on the portal in SVLDRS-1, there was no option to file

or change the Commissionerate. The portal automatically took the Thane Commissionerate as per Form ST-2. Therefore, the declaration filed in SVLDRS-1 was automatically assigned to Thane Commissionerate which Petitioner had no option to amend. However, Petitioner correctly filed details of Order in Original and pending Appeal together with service tax demand, service tax paid, etc.”

This specific assertion has gone unanswered in the reply affidavit. Nothing has been shown by the Respondents to us otherwise that there was such option for selection. Therefore, we have no option but to proceed on the premise that once the Petitioner had entered registration number which was tied up with Thane Commissionerate, the option at Column 8 was automatically selected.

9 The learned Counsel for the Respondents sought to argue that the Petitioner should have re-registered himself again at Navi Mumbai, if he wanted to get the benefit of the scheme. According to us, such stand ought not to be taken by the Respondents in the context of this scheme for settlement of legacy disputes, as it would involve needless harassment for the tax payer. If it is the contention of the Respondent that since the Petitioner was earlier in jurisdiction of Navi Mumbai and the issue was a legacy matter, Navi Mumbai was the proper

authority, then the scheme should have provided so when the Petitioner entered the registration number.

10 Therefore, from the pleadings in the Petition, which have not been controverted in the reply affidavit, what emerges to us is the Petitioner is a victim of the lacuna in the software governing the SVLDR scheme where the Petitioner could not have selected the option of Navi Mumbai Commissionerate which was earlier Commissionerate of the Petitioner. This being the position, we are of the opinion that the Petitioner is entitled to get his application / declaration SVLDRS-1 to be examined on merits as to whether the Petitioner is otherwise entitled to the benefit of the scheme.

11 Accordingly, we quash and set aside the impugned rejection of the Petitioner's declaration for SVLDRS-1. The Respondents will treat the application of the Petitioner for SVLDRS-1 as being properly instituted and decide the same on its own merit, as per law and as per the provisions of the scheme, within a period of eight weeks from today.

12 We make it clear that we have not commented on the merits of the Petitioner's claim and the rejection is being set aside in the above circumstances.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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KHATATE

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by ARTI VILAS
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