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

WRIT PETITION NO. 1247 OF 2020

Access Platform Equipments Limited
A company incorporated under the Companies
Act, 1956 and having its office at 208, Building
No.1 (61), Sector-2, Millennium Business Park,
Mahape, Navi Mumbai – 400 710 … Petitioner

V/s.

1. The Union of India
Ministry of Law & Justice
Aayakar Bhavan, New Marine Lines,
Mumbai – 400 020

2. The Principal Commissioner,
CGST,Central Excise & Service Tax,
Mumbai Zone, New Central Excise Building
115, M.K. Road, Churchgate, Mumbai – 400 020

3. The Commissioner,
CGST & Central Excise,
Belapur Commissionerate,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614

4. The Designated Committee,
CGST, Central Excise & Service Tax,
Belapur Commissionerate,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614

5. Joint Commissioner
CGST, Central Excise & Service Tax
Belapur Commissionerate,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614 ... Respondents

Mr. Vinay Ansurkar i/b. Legal Solutions for the Petitioner

Mr. Jitendra B. Mishra with Mr. Ashutosh Mishra for the Respondents

CORAM : NITIN JAMDAR & ABHAY AHUJA, JJ.

DATE : 19 JANUARY 2023

ORAL JUDGMENT (Per Nitin Jamdar, J.) :-

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. The Petitioner had applied under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, seeking benefit thereunder which has been denied to the Petitioner by the Respondents on the ground that investigation is pending against the Petitioner. Being aggrieved, the Petitioner has filed this Petition.

3. The Petitioner is a company engaged in the business of the provision of supply of goods and services. The Petitioner is registered under the Finance Act, 1994. The Petitioner did not

discharge the service tax liability for the Financial Years 2015-16, 2016-17 and 2017-18. Though the Petitioner had paid the service tax for the year 2015-16, it was paid late, and that too without interest. The Deputy Commissioner (Anti Evasion), CGST, called upon the Petitioner on 28 August 2019 to submit the documents in respect of the Financial Years 2014-15 to 2017-18 for verification. On 12 September 2019, the Petitioner's premises were searched.

4. A scheme named Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, was brought into force by the Finance Act, 2019.

5. The Petitioner filed declarations under the scheme for the Financial Years 2015-16, 2016-17 and 2017-18 under the category "Voluntary Disclosure". The Designated Committee under the act rejected the declaration by issuing Form SVLDRS-1 with the remark, "*It is a voluntary disclosure, but the investigation is still on*". On 19 December 2019, the Designated Committee rejected the declaration SVLDRS-1 filed on 19 November 2019 for the year 2015-16 on the ground "*Ineligible for Voluntary Disclosure under Section 125 (1)(f)(i) of the Finance Act, 2019".* The Petitioner made representation to the Joint Commissioner, CGST and Central Excise, Belapur.

6. The Petitioner was permitted to file a fresh declaration, which the Petitioner did on 15 January 2020 under the category

'Voluntary Disclosure'. This declaration, dated 15 January 2020, was also rejected by the Designated Committee on the ground "*Investigation already initiated by the Department*".

7. On 22 February 2020 and on 25 February 2020, the Designated Committee again rejected the three declarations for the Financial Years 2015-16, 2016-17 and 2017-18 with remarks "*Department has already initiated the investigations against the Applicant*" and "*The application is subsequent to Anti Evasion Visit at their premises. VD cannot be accepted*".

8. Aggrieved by these rejections, the Petitioner is before us.

9. The learned Counsel for the Petitioner submitted that it is not in dispute that the Petitioner falls in the category of case under Section 125(1)(f)(i) of Finance Act as on 30 June 2019, there was no enquiry/investigation pending against the Petitioner and at the most the same could be as initiated by way of notice dated 28 August 2019 by the Deputy Commissioner (Anti Evasion) CGST, Belapur. The learned Counsel for the Petitioner submitted that under Section 125(1)(f)(i) the benefit for the declarants applying for the voluntary disclosure as on 30 June 2019 and can be denied only if the investigation is pending. However, in the present case, admittedly, the investigation/notices were issued on 28 August 2019 post 30 June 2019. The learned Counsel for the Petitioner relied upon the decision of the Division Benches of this Court in the case of *M/s.*

New India Civil Erectors Pvt. Ltd. v/s. Union of India and Ors.[1] which is followed by the Division Bench in the case of *UCC Infrastructure Pvt. Ltd. v/s. Union of India and Ors.*[2] wherein the view is taken by this Court that under the voluntary disclosure category also, the investigation should be pending as of 30 June 2019, and the declarant cannot be denied the benefit of the scheme if the inquiry or investigation is initiated post 30 June 2019.

10. The learned Counsel for the Respondents submitted that Section 125 of the Finance Act, 2019 clearly stipulates that the date 30 June 2019 is the only relevant date only for the category of case under Section 125 and no date is mentioned under Section 125 and therefore, there is no error in rejecting the Petitioner's declarations.

11. The Division Bench of this Court, in the case of *New India Civil Erectors,* has dealt with this stand of the Respondents that for the category of voluntary disclosure under Section 125 of the Finance Act, there is no mention to the date of 30 June 2019, and have held that, by adopting liberal interpretation, it will have to be held that the pendency of the investigation/enquiry on 30 June 2019 referred to Section 125 of the Act of 2019 is also relevant for the voluntary disclosure category under Section 125 (1)(f)(i) of the Act of 2019. The Division Bench in the case of *UCC Infrastructure* has followed the reasoning of the Division Bench in the case of *New*

1 WP(L) No. 989.20 dtd. 12 March 2021
2 WP 574.22 dtd. 31 Jan. 2022

India Civil Erectors and has opined that there is no reason to take a different view. We have not been informed that the decisions in the case of *New India Civil Erectors* or *UCC Infrastructure* have been challenged by the Respondents. That being the position, though the Petitioner is entitled to succeed as there is no other ground except the above on which the Petitioner is held to be ineligible under the Scheme.

12. Accordingly, the impugned rejections of the declarations filed by the Petitioner on 15 January 2020 under the Scheme of 2019 are quashed and set aside. The Respondents will process the declarations filed by the Petitioner for the years 2015-16, 2016-17 and 2017-18 as per law and pass necessary orders within a period of eight weeks from the date order is uploaded.

13. As regards the apprehension expressed by the learned Counsel for the Petitioner of the Respondent's taking coercive action, it is baseless considering the order that we have passed, it would clear as that the Respondents will not take action against the Petitioner on the ground that the Declarations filed by the Petitioner have been rejected.

14. Rule is made absolute in above terms. The Writ Petition is disposed of.

ABHAY AHUJA, J. ***NITIN JAMDAR, J.***

JYOTI PRAKASH PAWAR Digitally signed by JYOTI PRAKASH PAWAR Date: 2023.01.30 12:41:43 +0530