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

WRIT PETITION NO. 3000 OF 2021

Virtusa Systems (India) Private Limited
(earlier known as E-Touch Systems (India)
Private Limited … Petitioner

vs.

Union of India & Ors. … Respondents

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Ms.Ashwin Chandrasekar with Mr.Bharat Raichandani and Mr. Rishabh Jain i/b. UBR Legal Advocates for the Petitioner.
Mr. J.B.Mishra with Mr.Ram Ochani for the Respondents.

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CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 17 JANUARY 2023

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

Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioner is challenging the action of the Respondent /Designated Committee under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, rejecting the declaration dated 20 December 2019 filed by the Petitioner under the Scheme and seeks a direction to the Respondents to extend the benefit of the Scheme to the Petitioner.

3. The Petitioner, a company, is engaged in providing software development services in the audit for the period from April 2014 to June 2017. The Respondents concluded that the Petitioner was providing information technology software and testing services to SEZ unit and to which a requisite certificate was issued, making the Petitioner liable to pay tax on the transaction. Consequently, a show cause notice was issued to the Petitioner on 17 July 2018 demanding service tax of Rs. 44,23,609/-. The Petitioner filed a reply to the notice and contended that the service tax exemption, according to the Petitioner, was correctly availed off. By order dated 19 July 2019, Respondent No.5 confirmed the demand against the Petitioner.

4. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was introduced by the Finance Act, 2019 enacted on 1 August 2019 extending certificate benefits to the declarants therein. The Petitioner filed a declaration on 10 September 2019 in form SVLDRS-1 under the category of "arrears", wherein the Petitioner declared the tax dues as Rs. 17,69,443.60/-. An acknowledgment was duly received by the Petitioner of the declaration. The application appeared on the portal of the Designated Committee of CGST, Mumbai West Commissionerate, and it was subsequently reassigned to the correct jurisdiction of Thane (Division-VI, Range-II) as requested by Mumbai West Commissionerate. The application was rejected with the remark that "*Final hearing has taken place*

before 30.06.2019 as per the records available with this office. Hence, the application is rejected". Hence, the application was rejected". The Petitioner subsequently filed a fresh application before the Jurisdictional Commissionerate. The then Designated Committee manually processed the application and accorded sanction on 18 February 2020 for issuing of SVLDRS-3 for tax dues of Rs. 17,69,443.60/-. The said application was not reflected on the portal of the Designated Committee of Thane Commissionerate, and the outcome could not be communicated to the Petitioner.

5. As per the procedure to be followed under the Scheme and as per section 127 of the Finance Act 2019, a declaration in form SVLDRS-1 is required to be filed online by a declarant. The same is thereafter verified. If the Designated Committee finds that the amount estimated by the Designated Committee is equal to the amount declared by the declarant, then the Designated Committee will issue form SVLDRS-3 indicating the amount payable within 60 days from the date of receipt of the declaration. As per section 127 (1) of the Act of 2019, when the amount payable by the declarant as estimated by the Designated Committee equals the amount declared by the declarant upon so communicated by way of an electronic form, the statement has to be issued within 60 days from the date of receipt of the declaration. As per section 127(5) of the Act of 2019 read with Rule 7 of Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019, the declarant then will have to make the

payment within 30 days from the date of issuance of such statement.

6. The present case falls in the category where the Designated Committee has accepted the amount declared by the declarant. The fact that form SVLDRS-3 is not issued to the Petitioner is an admitted position. This fact is admitted in the reply affidavit filed on behalf of Respondent Nos. 3 to 6 by the Assistant Commissioner of CGST & Central Excise, Division VI, Thane Commissionerate. Further, the Petitioner was eligible for availing the benefit of the Scheme is also accepted, and it is further stated in the reply affidavit that if the Petitioner is allowed to deposit the eligible amount it should be with interest at the rate of Rs. 9% per annum, which stand is reiterated before us by the learned Counsel for the Respondents. Therefore, the issuance of form SVLDRS-3 was necessary, and it was not issued to the Petitioner due to the error on the part of the Respondents is an accepted position. The Petitioner therefore is entitled to a direction to the Respondent to accept the eligible amount.

7. The only question remains is regarding the contention of the Respondents that the Petitioner should deposit the amount with interest at the rate of Rs. 9% per annum. For that purpose, the learned Counsel for the Respondents has relied upon the decision of the High Court of Gujarat in the case of *M/s. L G Chaudhary Vs*

Union of India[1]. In the case at hand, admittedly, to date, the Respondents have not issued an electronic form SVLDRS-3 as required. Therefore, the obligation of the Petitioner under section 127 (5) of the Act of 2019 to pay the amount within 30 days had not arisen at all. In the case of *M/s. L G Chaudhary (supra)* before the High Court of Gujarat, form SVLDRS-3 was issued to the Petitioner therein, but the Petitioner did not make payment as there was an error on the part of the Bank and the payment was returned. The facts in this case are entirely different. Admittedly, there is no fault on the part of the Petitioner. The Petitioner is therefore entitled to the relief prayed for as to the benefit of the Scheme.

8. Rule is made absolute in terms of prayer clauses (a) and (b). No costs.

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

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