IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2023

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THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.7364 of 2020
and W.M.P.Nos.8798 & 9365 of 2020

E.K.Infrastructure Private Limited
No.21, Ayyasamy Street, Tambaram West
Chennai - 600 045, represented by its
Director S.Elred Kumar .. Petitioner

Vs.

1. The Designated Committee
   Office of the Commissioner of GST and
   Central Excise,
   Chennai Outer Commissionerate
   Anna Nagar, Chennai - 600 040

2. The Additional Director
   Directorate General of GST Intelligence
   Coimbatore Zonal Unit,
   155-1 Lakshmanan Street
   Behind Ukkadam Bus Stand, Ukkadam
   Coimbatore - 641 001

3. The Superintendent of GST and Central Excise
   Tambaram Range, No. 40, Ranga Colony
   Rajakilpakkam, Chennai - 600 073 .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records of the first respondent in its proceedings leading to issuance of email dated 27.02.2020 rejecting the Application in SVLDRS Form *vide* ARN No.LD1401200000193, quash the same with a direction to the respondent to accept the Application ARN No.LD1401200000193 under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

For Petitioner : Mr.S.Sathyanarayanan

For Respondents : Mr.Hema Muralikrishnan
Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 27.02.2020 passed by the first respondent rejecting its application filed under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for brevity "the Scheme"). Admittedly, the petitioner has not paid its service tax liability to the respondents. By notification dated 21.08.2019, the Scheme came into force to enable the defaulters of service tax liability to seek concession with regard to the same. The petitioner has also submitted an application under the said Scheme. According to the petitioner, having accepted its service tax liability by its letter dated 03.09.2018, it is entitled to come under the Scheme. However, according to the petitioner, arbitrarily, without giving any reason, the impugned order dated 27.02.2020 has been passed by the first respondent rejecting the petitioner's application submitted under the Scheme. The petitioner has primarily challenged the impugned order on the ground of violation of principles of natural justice and on the ground that the impugned order is a cryptic and non-speaking order.

3. A counter affidavit has been filed by the respondents denying the contentions of the petitioner. According to the respondents, the petitioner is not eligible to come under the Scheme and further, only based on the particulars furnished by the petitioner through an automated generated system, the petitioner's application has been rightly rejected. Further, according to the respondents, there is no necessity for them to give reasons for rejecting the petitioner's application. Further, according to the respondents, unless and until the service tax liability is quantified, the question of entertaining the application submitted by the petitioner under the

Scheme will not arise. Since the service tax liability has not been quantified on or before 30.06.2019, which is the deadline fixed under the Scheme, the first respondent has rightly rejected the petitioner's application under the impugned order.

4. Heard Mr.S.Sathyanarayanan, learned counsel for the petitioner and Mr.Hema Muralikrishnan, learned Standing Counsel appearing for the respondents.

5. The learned counsel for the petitioner relied upon the letter dated 03.09.2018 sent by the petitioner to the Senior Intelligence Officer, DGGSTI, CoZU, Coimbatore, wherein, it has been stated as follows:

> *"With reference to your summon No.INV/DGGSTI/CoZU/C/89/2017-ST/2849, Dated 23.08.2018, against we are producing the following documents and records.*
>
> *1. Trial Balance for the period 2017-18 [From April 17 to June 17]*
>
> *2. 26 AS form 2014-15 to 2017-18 upto June 2017*
>
> *3. Service Tax Calculation statements from 2014-15 to 2017-18 [From April 17 to June 2017]"*

6. According to the learned counsel for the petitioner, since a voluntary disclosure has been made by the petitioner with regard to its service tax liability pursuant to the investigation conducted by the respondents, it is entitled to come under the Scheme.

7. However, the same is disputed by the learned Standing Counsel appearing for the respondents, who would state that unless and until the service tax liability is quantified on or before 30.06.2019, which is accepted by the respondents, the petitioner cannot rely upon the letter dated 03.09.2018 extracted *supra*.

8. Section 125 of the Scheme reads as follows:

> *"125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—*
>
> *a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;*
>
> *(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the*

matter for which he intends to file a declaration;

(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;

(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;

(f) a person making a voluntary disclosure,—

(i) after being subjected to any enquiry or investigation or audit; or

(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;

(g) who have filed an application in the Settlement Commission for settlement of a case;

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.

(2) A declaration under sub-section (1)shall be made in such electronic form as may be prescribed."

9. As seen from Section 125 of the Scheme, it is clear that the settlement amount has to be quantified on or before 30.06.2019. Any person making voluntary disclosure can avail the benefit of the Scheme, only if the said voluntary disclosure is made for getting the benefit under the Scheme. The settlement amount offered by the assessee must be in accordance with the Scheme. Any voluntary disclosure cannot be claimed that the amount disclosed therein is the quantified amount. If that be so, then every voluntary disclosure by any assessee shall be eligible for availing the benefits of the Scheme. The intention of the legislature would never have been to accept such a contention, as raised by the petitioner in this writ petition.

10. In the case on hand, the petitioner, during the course of investigation, has, by its letter dated 03.09.2018, even though has admitted its tax liability for the assessment years 2014-15 to 2016-17 amounting to a sum of Rs.1,59,69,579/-, the same has not been accepted by the respondents. The petitioner has also not paid the entire amount of Rs.1,59,69,579/-. If the contention of the petitioner has to be accepted by this Court, then, in all cases, where, a person discloses even a meagre amount as service tax

liability though he is liable to pay huge amount, they will also be brought under the purview of the Scheme and that would not have never been the intention of the legislature. Therefore, it is very clear that the amount of service tax liability has to be quantified in agreement with the respondents to enable the petitioner to come under the purview of the Scheme. Having not quantified in accordance with the Scheme, the question of accepting the petitioner's letter dated 03.09.2018 for the purpose of the Scheme will not arise and that is the reason as to why the impugned order dated 27.02.2020 has been passed rejecting the petitioner's application.

11. A Division Bench of this Court in the case of ***VitalRao Jayaprakash Vs. The Designated Committee under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and Others***[1], had an occasion to decide the issue as to when the Scheme can be applied. In paragraph no.12 of the said judgment, it has been made clear that unless and until the tax liability is quantified, the question of availing the benefits of the Scheme will not arise. Paragraph no.12 of the Division Bench judgment referred to *supra* is extracted hereunder:

1 decided on 23.02.2022 in W.A.No.2450 of 2021

"12. Thus, it is evident that for availing the benefits of the scheme, one of the conditions precedent is that the tax liability of the tax payer ought to have been quantified. Even though the appellant had submitted a letter dated 13.06.2019, much before the date of closure of the scheme, the fact remains that his tax liability has not been quantified and therefore he cannot avail the benefits of the scheme. In fact, the letter dated 13.06.2019 has been given by the appellant for the purpose of quantification of service tax liability in the on-going investigation pending against him, which itself is a disqualification for the appellant to avail the benefits of the scheme. The appellant, in the letter dated 13.06.2019, did not claim the benefits of the scheme, but only requested the respondents to quantify the tax liability payable by him. The letter dated 13.06.2019 is self-explanatory and it reads as under:-

> *"In respect of undergoing investigation relating to the non-payment of service tax, the documents, as mentioned below is submitted herewith for quantification of service tax liability.""*

12. The Division Bench in the aforesaid judgment has considered the very same issue, which is the subject matter of consideration in this writ

petition, by giving a ruling that it is not enough, if the assessee has submitted a letter to the department for the purpose of quantification of the service tax liability before the date of closure of the Scheme, and only when the tax liability has been quantified as per the Scheme before the closure of the Scheme, the assessee is eligible to avail the benefit of the Scheme.

13. The learned Standing Counsel appearing for the respondents had also relied upon the Division Bench judgment of Delhi High Court in the case of ***Karan Singh vs. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme and Another***[2], wherein, it has been made clear that the quantification of the amount under the Scheme has to be done on or before 30.06.2019.

14. In the instant case, excepting for the petitioner's letter dated 03.09.2018 intimating the respondents about its service tax liability for the subject assessment years, there is no quantification done by the respondents and they have also not accepted the petitioner's statement, as per its letter dated 03.09.2018. Furthermore, the petitioner has not sought to avail the

2 decided on 22.02.2021 in W.P.(C) 2408 of 2021

benefits under the subject Scheme in the said letter on or before 30.06.2019 and therefore, the first respondent has rightly rejected the petitioner's application on the ground that the petitioner is not eligible to come under the Scheme.

15. Paragraphs 12 and 15 of the Division Bench judgment of Delhi High Court referred to *supra* reads as follows:

> *"12. It thus clearly emerges that in terms of the afore-noted provisions, the quantification of the amount has to be before 30th June, 2019. Moreover, in terms of Section 121(r) of the Act, the word 'quantified' has been defined to mean a written communication of the amount of duty payable under the indirect tax enactment. Further, Section 124(1)(d)(ii) provides that in respect of cases where the tax dues are linked to an enquiry, investigation or audit against the declarant, the relief shall be calculated on the amount quantified on or before the 30th day of June, 2019.*
>
> ....
>
> *15. Since quantification has co-relation and is interlinked with tax relief under the scheme, and the Petitioner has not made a voluntary disclosure, but has rather approached for settlement in respect of case under*

investigation, we find merit in the submission of the Revenue that unilateral quantification by the Petitioner by writing the letter/communication dated 18.06.2019 cannot render him eligible. It would only be an admission of service tax liability of that amount, and such admission in itself would not rendered the petitioner eligible under SVLDRS. The quantification in the instant case was understood to be done on the issuance of the SCN. Petitioner points out that in the communication dated 18.06.2019, in fact, one of the relied upon documents was the SCN. That is quite obvious as the petitioner has taken a stand that to the extent of the amount stated therein, he admits the liability. It, however, cannot mean that the amount stood quantified before the relevant cut-off date i.e. 30.06.2019. In the category of cases, where, investigation or audit was continuing as on the introduction of SVLDRS, the benefit of the scheme would be available to only such cases, where, during investigation, the department quantifies the amount and not vice versa."

16. In the aforesaid decision of the Delhi High Court also, the petitioner therein had approached the tax authorities for settlement, but, did no make a voluntary disclosure as required under the Scheme. The Division Bench of the Delhi High Court rejected the contention of the assessee that

the settlement letter given by the assessee will amount to voluntary disclosure and quantification, as required under the Scheme.

17. This Court is agreement with the view taken by the Division bench of the Delhi High Court in the aforesaid decision. The petitioner herein is similarly placed and therefore, this Court is of the considered view that the respondents have rightly rejected the petitioner's application under the Scheme on the ground that they are not eligible to avail the benefit under the said Scheme.

18. That apart, earlier also, a similar request has been made by the petitioner, which was rejected by the respondents on 13.01.2020. Admittedly, the petitioner has not challenged the earlier rejection order dated 13.01.2020, but, has chosen to challenge only the subsequent rejection order *viz*. the impugned order dated 27.02.2020, which is the subject matter of this writ petition. Even in an hypothetical case, if this Court is going to quash the impugned order on the ground of violation of the principles of natural justice, the earlier order dated 13.01.2020 will still stand. The respondents

cannot now pass an order contrary to the earlier rejection order dated 13.01.2020. The circular of the Central Board of Indirect Taxes and Customs (for brevity "CBIC") dated 27.08.2019 relied upon by the learned counsel for the petitioner makes it clear that the petitioner, in case, wants a personal hearing, he will have to make a special request for the same. Admittedly, no such request was made by the petitioner. The relevant clause *viz*. clause 9 in the CBIC circular dated 27.08.2019 is extracted hereunder:

> *"9. Moreover, the scope of discretion has been kept to the minimum by linking the relief under this Scheme to the duty amount which is already known to both the Department and the taxpayer in the form of a show cause notice/order of determination or a written communication. The calculation of relief itself will be automated. Even in case of voluntary disclosure, no verification will be carried out by the Department. Still in the eventuality the declarant seeks the opportunity of being heard, the decision would be taken only after giving him this opportunity."*

19. Having not requested for personal hearing, the claim of the petitioner that no opportunity of hearing was granted to him before rejecting his request to fall under the Scheme will not arise at this stage. The

impugned rejection order being a system generated one based on the particulars furnished by the petitioner that too when the petitioner has not requested for any personal hearing and that too when an earlier request has been rejected on 13.01.2020, this Court does not find any infirmity in the impugned order warranting interference.

In such view of the matter, this writ petition is devoid of merits and accordingly, the same stands dismissed. No costs. Connected W.M.Ps. are closed.

30.01.2023

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No
nsd

To

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   Central Excise,
   Chennai Outer Commissionerate
   Anna Nagar, Chennai - 600 040

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   Directorate General of GST Intelligence
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   Tambaram Range, No. 40, Ranga Colony
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ABDUL QUDDHOSE, J.

nsd

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