



W.P.No.8478 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.8478 of 2020 and
WMP.No.10227 of 2020

M/s.Narayana Associates,
Prop: M.Narayana Moorthy,
Plot No.4B, Chandra City,
Vasantham Nagar,
Avadi, Chennai-600 071.

... Petitioner

Vs

The Designated Committee, SVLDRS Scheme,
GST & Central Excise,
Chennai Outer Commissioner,
2052, 2nd Avenue, 12th Main Road,
Newry Towers, Anna Nagar,
Chennai-600 040.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the case relating to rejection in SVLRD-1 dated, 13.02.2020 by the Respondent and quash the said Rejection order and thereby direct the Respondent to estore the declaration ARN No.LD3112190017375 dated, 31.12.2020 filed by the Petitioner under Section 123(d) of Finance Act, 2019 and settle the dispute under the said scheme.



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For Petitioner : Ms.Sri Visvapriya

For Respondent : Mr.A.P.Srinivas, Senior Standing Counsel
assisted by
Mr.K.S.Ramasamy, Junior Standing Counsel

ORDER

The petitioner is a sole proprietary and was registered with the Service Tax Department under the category 'management consultant service'. The petitioner had made an application under Sabkha Vishwas (Legacy Dispute Resolution) Scheme, 2019 (in short, 'Scheme'), which has come to be rejected on 13.02.2020 and is hence challenged by way of the present writ petition.

2. Though the petitioner has raised grounds relating to the violation of principles of natural justice, such grounds are not pursued in the writ petition. Instead, the substantial point raised relates to the ground of rejection itself which turns upon an interpretation of Section 125 of the Scheme as per which certain persons have been declared to be ineligible for availing the Scheme. Section 125 sets out eight categories of such applicants who are ineligible and it reads thus:-

"125. Declaration under Scheme. - (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:-



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(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 payable, but not has 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 (1 of 1944);

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



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3. In the present case, the petitioner was in receipt of letter dated 10.10.2019 calling upon the petitioner to submit various particulars on the basis of an allegation that there was a mis-match between the income tax and service tax returns for the year 2016. It is this letter that is cited by the respondent to stand in the way of acceptance of petitioner's eligibility under the Scheme in terms of Section 125(f) which states that any assessee which has been subjected to enquiry or investigation or audit would not be eligible to make a declaration under the Scheme.

4. The petitioner would draw attention to the fact that in sub-clause 125 (e), which also refers to enquiry or investigation or audit, there is a requirement that the quantification of duty should have been done prior to 30.06.2019. Thus, she would submit that the requirement for being subjected to enquiry or investigation or audit should also be read along with the aforesaid date. To put it in another way, her specific submission is that it is only if the assessee has been subject to enquiry or investigation or audit prior to 30.06.2019, that the assessee would be rendered ineligible whereas, in the



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present case, enquiry was admittedly on 10.10.2019 which is beyond the effective date.

5. In this context, she relies on the decisions of the Bombay High Court in the case of *New India Civil Erectors Pvt Ltd v Union of India* [2021 48 GSTL 17 (Bom)], *UCC Infrastructure Pvt Ltd v Union of India*, [2022 65 GSTL 294 (Bom)] and *M/s. Sonjoli Construction v Union of India and others* [W.P.No. 5423 of 2021 dated 24.08.2022]. In all these writ petitions, the Courts have taken a view that the enquiry or investigation or audit should have been conducted prior to 30.06.2019 and any such enquiry or investigation or audit conducted thereafter would be inconsequential in the context of the Scheme. The decisions were thus, all in favour of the petitioner / assesseees in those matters.

6. The respondent was asked to verify whether those decisions have attained finality and accepted by the Goods and Services Tax Department. Today, Mr.A.P.Srinivas, learned Senior Standing Counsel, would confirm that one of the decisions of the Bombay High Court wherein the matter had been remanded to the file of the designated authority of the Scheme, had ended in favour of the assessee and discharge certificate had been issued. No appeals had



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been filed in the other two cases as the tax effect had been below the required threshold.

7. Thus, the revenue has accepted the position that Clause (f) of Section 125 should be read to contain the stipulation that the enquiry/investigation/audit should have been conducted prior to 30.06.2019 though such date does not figure in the said clause. With this, there is no necessity for any further discussion in the matter as the interpretation of the revenue in one case must be applied in respect of other matters involving identical issues, the Central Goods and Services Tax Act, 2017 being a central enactment.

8. The judgments in the case of *Union of India and others v. Kaumudini Narayan Dalal and another* [(2001) 10 SCC 231]; *Berger Paints India Ltd. v. Commissioner of Income Tax, Calcutta* [(2004) 12 SCC 42]; *Commissioner of Income Tax v. Shivsagar Estate* [(2004) 9 SCC 420] and *Commissioner of Income Tax v. Narendra Doshi* [(2004) 2 SCC 801] are all to the effect that where a particular issue has been decided in the case of an assessee in one particular manner, and that interpretation/decision has been



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accepted by the revenue, it is not open to the revenue to challenge the correctness of that view in the case of other assesseees without just cause.

9. Per contra, Mr.Srinivas refers to *Commissioner of Central Excise, Chandigarh v. Doaba Steel Rolling Mills* [2011 (269) E.L.T. 298 (S.C.)], wherein the similar issue, as to whether non-challenge of one order on an issue would stand in the way of the Central Excise Department taking a view contrary to that order in the case of other assesseees, came up for consideration. The Bench held that that proposition was not of universal application for the reason that there may be several compiling reasons such as, revenue involved, divergent views of the Tribunals or High Court, public interest or others, that would impel the revenue to either prefer an appeal or not. Hence, while there is some substance in the submission that there must be uniformity of approach qua a particular issue, it cannot be putforth as an all encompassing and overriding proposition. At paragraph 24, they state as follows:

24.As regards the argument of learned counsel for the respondents that having not assailed the correctness of some of the orders passed by the Tribunal and a decision of the High Court of Karnataka, the revenue cannot be permitted to adopt the policy of pick and choose and challenge the orders passed in the cases before us, it would suffice to observe that such a



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proposition cannot be accepted as an absolute principle of law, although we find some substance in the stated grievance of the assessee before us, because such situations tend to give rise to allegations of malafides etc. Having said so, we are unable to hold that merely because in some cases revenue has not questioned the correctness of an order on the same issue, it would operate as a bar for the revenue to challenge the order in another case. There can be host of factors, like the amount of revenue involved, divergent views of the Tribunals/High Courts on the issue, public interest etc. which may be a just cause, impelling the revenue to prefer an appeal on the same view point of the Tribunal which had been accepted in the past. We, may however, hasten to add that it is high time when the Central Board of Direct and Indirect Taxes comes out with a uniform policy, laying down strict parameters for the guidance of the field staff for deciding whether or not an appeal in a particular case is to be filed. We are constrained to observe that the existing guidelines are followed more in breach, resulting in avoidable allegations of malafides etc.; on the part of the officers concerned.

10. A perusal of the entire Scheme, indicates the following. (i) the Scheme was introduced by the Finance Act, 2019 (ii) It has come into force on 01.09.2019, being the effective date. (iii) Section 121 (c)(iii) refers to filing a return of by the declarant under indirect tax enactment on or before '30.06.2019' (iv) Section 123, defining 'tax dues' mentions in sub-clauses (i) (ii) (b) & (c), the date '30.06.2019' as being the cut-off date for computation of tax dues, (v)



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Section 124, being, 'relief available' under the Scheme clauses (a) & (d) refers to the cut-off date being '30.06.2019' and (vi) Section 125 refers to '30.06.2019' in clauses (a) (c) and (e) thereof.

11. Thus, the Scheme has adopted, in several instances, the 30th of June 2019 as a watershed for various purposes, including determination of tax dues / arrears.

12. The argument of the respondent is that had it been the intention of legislature that 30.06.2019 be adopted for the purposes of Section 125(f), it would have so stipulated in that clause itself. This is certainly a possible argument. In cases involving the interpretation of a beneficial scheme/exemption notification, the accepted Rule is that the scheme be interpreted strictly in line with the avowed and stated intention thereof. Seen in the light, clause 125(f) of the scheme must be read as is, without the addition of the date, 30.06.2019. However, this is not to be, as the interpretation of the Goods and Services Tax Department is itself contrary to that position.

13. Written instructions from the office of the Commissioner, CGST and Central Excise Commissionerate, Belapur in F.No.V/HLC/Bel-GST/MISC/2020-21 dated 22.05.2023, make it clear that pursuant to the order



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of the High Court dated 31.01.2022, the Bombay Commissionerate has accepted the order on 18.01.2022 '*on merit*'. The Designated committee of SVLDRS has reconsidered the matter and issued a discharge certificate on 22.04.2022. The instructions read as follows:

'Sir,

Please refer to your office letter GEXCOM/LGL/HC/ST/155/ 2023-LGL-COMMR-CGST-CHENNAI (OUTER) dated 09.05.2023 on the above subject.

It is to inform that vide the order dated 31.01.2022, The Hon'ble Court has remanded the matter back to the Designated Committee of SVLDRS, to consider the declaration of the Petitioners afresh under the voluntary disclosure category and thereafter grant consequential reliefs. The Hon'ble Court has directed to grant an opportunity of hearing to the Petitioners and thereafter pass a speaking order. As the matter has been remanded for denovo consideration, thus this office has accepted the said order on 18.01.2022 on merit. Further, the Designated committee of SVLDRS has reconsidered the matter and issued discharge Certificate i.e. SVLDRS-4 on 22.04.2022.'

14. In light of the discussion and for the reasons assigned above, this writ petition is allowed. Discharge certificate be issued within a period of two weeks from today. No costs. Connected miscellaneous petition is closed.

13.06.2023



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vs/ssm

Index : Yes

Speaking order

Neutral Citation : Yes

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Dr.ANITA SUMANTH, J.

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