

Ashvini Narwade

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

ASHVINI
BAPPASAHEB
KAKDE

WRIT PETITION NO.396 OF 2021

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BAPPASAHEB KAKDE
Date: 2024.03.26
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Gautam Hospitality Private Limited

... Petitioner

Versus

The Principal Commissioner GST and Central Excise
And Anr.

... Respondents

Mr. Vipul Shah for the Petitioner.

Mr. Satyaprakash Sharma for Respondent No.1.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 18th MARCH, 2024

ORAL JUDGEMENT (Per G. S. Kulkarni J):-

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties.
2. This Writ Petition, under Article 226 of the Constitution of India, challenges the rejection of the Petitioner's Application filed under Sabka Vishwas – (Legacy Dispute Resolution) Scheme, 2019 (for short "SVLDRS") on the ground that the amount of tax is not quantified before 30th June 2019 and investigation is going on. Such remark has been made in an electronically generated form, being FORM SVLDRS 1, setting out such reason for the rejection.

3. This petition is pending for almost three years. On 11th March 2021, a co-ordinate bench of this Court (Coram: Ujjal Bhuyan (as his Lordship then was) & Milind N. Jadhav JJ.) while issuing notice on the Petition passed the following order:-

“ Heard Mr. Shah, learned counsel for the Petitioner and Mr. Mishra for the Respondents.

2. Issue notice.

3. Mr. Mishra, learned counsel for the respondents waives notice for both the respondents.

4. Let the respondents file their reply affidavit by the next date.

5. Learned counsel for the petitioner submits that after filing of the writ petition office of the Directorate General of GST Intelligence, Mumbai Zonal Unit has issued show cause- cum-demand notice to the petitioner on 19.02.2021.

6. Petitioner may amend the writ petition to bring on record the aforesaid show cause-cum-demand notice.

7. Let the amendment be carried out within 7 days.

8. Re-verification is dispensed with.

9. Petitioner prays for stay of the show cause-cum-demand notice. Let petitioner inform the respondents about today's order.

10. Stand over to 26th April, 2021.”

4. Thus, although a reply affidavit was required to be filed on or before 26th April 2021, however, the same was not filed before the said returnable date. Thereafter, a further Order came to be passed by another Co-ordinate bench of this Court (Coram: Nitin Jamdar and Abhay Ahuja JJ.) on 24th April 2023 when a request as made on behalf of the Respondent seeking time to file reply affidavit, was accepted, adjourning the matter to June 2023, i.e., after the 2023

summer vacation. The proceedings were accordingly adjourned to 20th June 2023. However, again no reply affidavit was filed. The said position has continued even today. Despite categorical orders passed by the Court, the Respondents have not filed any reply nor any extension of time was sought. It is hence clear that the Respondents were not inclined and desirous of complying the order passed by this Court nor were inclined to file any affidavit in reply, although, a weak attempt is made on behalf of the Respondents today, by Mr. Sharma, to seek a further opportunity to file a reply affidavit. However, considering the facts of the present case and the discourtesy to the previous orders, we refuse to accept such request. We have accordingly proceeded to hear the arguments.

5. The relevant facts can be noted: The Petitioner is a company, registered under the Companies Act. It is stated to be engaged in hospitality business. An inquiry and investigation was initiated against the Petitioner in June 2017 by Respondent No.2. On 22nd June 2017, summons was issued by Respondent No.2 calling upon the representatives of the Petitioner to appear before the said officer. During the course of the said investigation, on 15th December 2017 a declaration was made by Mr. Satish Shetty, the director of the Petitioner, admitting the liability to pay the tax. Such declaration was made before Respondent No.2 and also counter signed by him. A copy of the same is annexed to the Petition wherein the Petitioner admitted the service tax liability

for financial years 2013-14 to Financial Year 2017-18 to be Rs. 3,77,61,635/-. The entire calculation of such liability was furnished. The same is contained in a statement which we find at pages 26 to 28 of the Petition. Thereafter, as another summons was issued on 7th February 2019 by the Respondents, on behalf of the Petitioner, a fresh declaration dated 26th March 2019 was submitted, which appears to be similar to what was furnished earlier. Such declaration was again counter signed by the Senior Intelligence Officer whereby the Petitioner admitted the service tax liability.

6. It is on the above backdrop that the Petitioner intended to avail the benefit of the SVLDRS scheme, which was notified by the Finance Act, 2019 (No. 23 of 2019). Under Chapter-V of the said Act, Section 121(r) thereof defines “quantified” as under:-

“(r) “quantified”, with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment;”

7. Section 125(1) provides that all persons shall be eligible to make a declaration under the Scheme, except the persons mentioned therein. Subsection (1) (e) of section 125 reads thus:-

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

(a)

(b)

(c)

(d)

(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;*”

8. The Petitioner, on 13th January 2020, made two applications in Form SVLDRS copies of which are annexed to the Petition. The Petitioner’s forms, however, came to be rejected on the ground that the amount was not quantified before 30th June 2019 and the investigation was in progress.

9. The Petitioner, having received such rejection, submitted a letter dated 12th March 2020 to the Principal Commissioner, GST and Central Excise, Mumbai (East), *inter alia*, contending that the Petitioner had filed applications on 13th January 2020, in the prescribed form, quantifying amounts of Rs. 59,59,535/- and 69,24,430/- respectively. It was brought to the notice of Principal Commissioner that the investigation was completed long ago. A copy of the working of the tax calculation and quantified demand, along with the statement of the Director of the Petitioner Mr. Satish Shetty as recorded were enclosed with the said letter. It was stated that on completion of the investigation, tax was determined, and till the date of the said letter, tax of Rs. 1,51,85,162/- had already been paid on various dates. It was stated that, only a part of the amount was outstanding, and the same was being offered in the SVLDRS scheme in taking the benefit of the scheme. It was hence requested that the application of the Petitioner be considered. However, there was no

response to such letter, moreover a Show Cause cum Demand Notice dated 22nd December 2020 was issued to the Petitioner by Respondent No.2 for the period 2015-16. Further, another second Show Cause Notice dated 19th February 2021 for the financial years 2014-15 to 2017-18 was issued to the Petitioner. The present Petition was filed on 18th September 2020. It is seen that the said Show Cause Notices were issued to the Petitioner after the filing of the present Petition.

10. It is on the above conspectus we have heard the learned Counsel for the parties. Mr. Shah, learned Counsel for the Petitioner, submits that the Petition is clearly covered by the SVLDRS scheme as the duty payable by the Petitioner was quantified in view of the clear statements made on behalf of the Petitioners, for the period in question, that is, on 15th December 2017, and, thereafter, on 26th March 2019. He therefore submits that once the amounts stood quantified, the Petitioner's application should not have been rejected on the ground that the amounts were not quantified before the cut off date i.e. 30th June 2019. In support of such contention, Mr. Shah has also drawn out attention to the Circular dated 27th August 2019, issued by the respondents whereby the frequently asked questions on the SVLDRS scheme came to be answered and more particularly question No. 3 as relevant in the present context which reads thus:-

“Q3. If an enquiry or investigation or audit has started but the tax dues have not been quantified whether the person is eligible to opt for the Scheme?”

Ans. No. If an audit, enquiry or Investigation has started, and the amount of duty/duty payable has not been quantified on or before 30th June, 2019, the person shall not be eligible to opt for the Scheme under the enquiry or Investigation or audit category. Quantified' means a written communication of the amount of duty payable under the indirect tax enactment [Section 121(g)]. Such written communication will include a letter intimating duty demand; or duty liability admitted by the person, during enquiry, investigation or audit; or audit report etc. [Para 10(g) of Circular No 1071/4/2019-CX dated 27th August, 2019]”

11. Learned Counsel for the Respondents has however vehemently opposed the Petition and he has made elaborate submissions as to why the Petition ought not to be allowed. He was however, unable to satisfy the Court in respect of the position as depicted in the Circular dated 27th August 2019 as also the decision of this Court as relied on behalf of the Petitioner.

12. It is thus seen that the Department has taken a clear position that the duty liability admitted by any person during enquiry, investigation or audit would amount to making him eligible for the benefits of the scheme. Such interpretation, as made by the Department, has also become relevant in terms of Section 121(r), which defines the term quantified. Section 125 (1) (e), as referred by us herein above, clearly sets out that an assessee, who has 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, would not make him eligible to take the benefit of the scheme. However, in the present case, the duty was

quantified much prior to the cut off date of 30th June 2019, as noted by us. Thus, on the face of it, the rejection, as generated by the electronic system, appears to be not correct, and would be required to be held to be illegal considering the clear position as brought out by the terms and conditions of the Scheme, and the clarification of the Scheme as issued by the Circular of the Revenue dated 27th August 2019, as noted by us herein above.

13. In such context, Mr. Shah's reliance on a decision of this Court in the case of **Sabareesh Pallikere Vs. Jurisdictional Designated Committee**¹, would be appropriate wherein in similar circumstances the Division Bench held that the Petitioner's declaration of the amount of tax due made him entitled to the benefit of the scheme.

14. In the aforesaid circumstances, we are of the the view that the Petitioner was clearly eligible to avail benefits of the Scheme and the rejection, as impugned, is illegal. We are hence inclined to allow the writ petition in terms of the following order:-

ORDER

- (i) The Writ Petition stands allowed in terms of prayer clause
- (b) which read thus :-

"b. This Hon'ble Court by a Writ of Certiorari or any other appropriate Writ Order or direction be pleased to call for the entire records from the custody of Respondents in the matter

of Declarations/Applications filed by the Petitioner under SVLDRS Scheme and after going through the legality and validity thereof be pleased to quash and set aside order/action of Rejecting Declarations/Applications being Exhibit "F & G" to this Writ Petition for the waiver of following amount;

Rs. 59,59,535/- for the year 2013-14 and 2014-15

*Rs. 93,49,323/- for the year 2015-16, 2016-17 and 2017-18
(till June-2017)*

*and pass appropriate orders to give benefits under the scheme to the Petitioner in respect of above outstanding demand.
And in the meantime stay the operation and effect thereof."*

(ii) As the Petitioner is held eligible for the benefits of the SVLDRS Scheme, the department shall consider the Petitioner's application in accordance with law and accordingly pass appropriate orders within a period of six weeks from today.

(iii) Consequent to the above reliefs prayers being granted, the Show Cause Notice dated 19th February 2021 and the show cause notice dated 22nd December 2020 also would not survive, they accordingly quashed and set aside.

(iv) Rule is made absolute in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)