



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2405 OF 2020

Mr. Santosh S/o Domaji Bhandarkar,
Proprietor of Third Eye Security Services,
C/o. Fulzele, Sumitra Nagar,
Near Nadiya Beauty Parlour,
Durgapur Road, Shastri Nagar,
Chandrapur-442401.

... **Petitioner**

Versus

- 1. The Union of India,**
through Ministry of Finance,
Department of Revenue,
Room no.46, North Block,
New Delhi-110001.
- 2. The Designated Committee of SVLDRS,**
through Commissioner, CGST and
Central Excise,
Commissionerate, Nagpur-I,
GST Bhavan, Telankhedi Road,
Civil Lines,
Nagpur-440001.
- 3. The Joint Commissioner,**
CGST & Central Excise,
Nagpur-I, Commissionerate,
Telankhedi Road,
Civil Lines,
Nagpur-440001.

... **Respondents**

Shri Gopal B. Sawal, Counsel for Petitioner.
Shri S.N. Bhattad, Counsel for Respondent Nos.2 and 3.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : NOVEMBER 26, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The petitioner, who is amenable to the payment of service tax, has questioned the order passed by the respondent No.2-The Designated Committee of SVLDRS, Central Goods and Service Tax and Central Excise, Nagpur-I, thereby rejecting the online application of the petitioner under the 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019' ('SVLDRS') and also the impugned show cause notice dated June 25, 2020 issued by the respondent No.3-The Joint Commissioner, Central Goods and Service Tax and Central Excise, Nagpur-I.

3. The facts necessary for deciding the present petition are as under :

(i) The petitioner, a proprietary concern, is engaged in the business of providing/supplying of manpower and security-related services to its clients and is operating from Chandrapur.

(ii) The petitioner is registered bearing Service Tax Registration No.AGZPB3228JST001.

(iii) On the service provided by the petitioner, the petitioner is required to pay the service tax, as prescribed under the Finance Act, 1994. Such payment of service tax was due for the Financial Year 2014-15 to

2017-18, which he has failed to deposit for want of receipts from his clients.

(iv) Vide notice dated May 14, 2018, the respondent No.2- The Designated Committee of SVLDRS summoned the petitioner so as to have an enquiry under Section 70 of the Central Goods and Service Tax Act, 2017 read with Section 83 of the Finance Act, 1994, alleging evasion of the service tax. The petitioner was accordingly directed to appear on May 21, 2018 in the office of the respondent.

(v) Vide another communication dated May 10, 2019, the Superintendent, Central Goods and Service Tax and Central Excise, Chandrapur informed the petitioner about the requirement to deposit an amount of Rs.64,27,679/-.

(vi) In response to the summons dated May 14, 2018, vide letter dated June 19, 2019, the petitioner informed the respondents that the tax returns submitted during the month of September 2018 for the Financial Year 2015-16 (second half) and 2016-17 were incorrect and incomplete. The petitioner further informed that the actual liability is much more than the amount mentioned in the said returns. The service tax of Rs.97,54,079/-, which was charged from the clients, was not received, but the same was due, and as such admitted the liability for payment of tax of Rs.97,54,079/-.

(vii) With effect from July 01, 2017, the Goods and Service Tax was introduced and for settlement of long-standing legal disputes under the old enactment, the aforesaid Scheme of 2019, i.e. SVLDRS, came to be introduced.

(viii) Section 123 of the Finance Act, 2019 defines 'tax dues' and clause (c) thereof provides that where an enquiry or investigation or audit

is pending against the declarant, the amount of duty payable under any of the indirect tax enactment, which has been quantified on or before the 30th day of June, 2019 can be termed as ‘tax dues’. A clarification came to be issued to the aforesaid, vide Circular dated August 27, 2019 issued by the Central Board of Indirect Taxes and Customs and clause 10(g) of the said Circular, viz. SVLDRS Rules, reads thus :

“10(g) Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the Scheme. Section 121(r) defines ‘quantified’ as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that, 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.”

4. It is the case of the petitioner that he having admitted the liability, is entitled for the benefit under the aforesaid scheme, which has been incorrectly rejected, thereby passing the aforesaid impugned order and issuance of show cause notice.

5. While trying to substantiate the case for quashing of the order passed by the respondent No.2, served on the petitioner on February 11, 2020 and produced at Annexure-C, and also the show cause notice dated June 25, 2020 issued by the respondent No.3, produced at Annexure-10, it is the contention of Shri Sawal, learned counsel appearing for the petitioner, that the respondents have failed to interpret the provisions of Section 123(c) of the Finance Act, 2019, which state that “if the enquiry or investigation or audit is pending against the declarant,

the amount of duty payable under any of the indirect tax enactment, which has been quantified on or before the 30th day of June, 2019” making it eligible to make a declaration under the Scheme. Further, he would urge that the Government of India, Central Board of Indirect Taxes and Customs, vide Circular No.267/78/2019/CX-8-Pt.III dated August 27, 2019 clarified the word ‘quantified’ as defined under Section 2(r) of the Finance Act, 2019 as a written communication of the amount of duty payable under the indirect tax enactment. It was clarified that 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. He would claim that owing to the communication dated June 19, 2019, the petitioner-firm has admitted its liability, viz. Rs.97,54,079/-, for which written communication was served on the respondents before June 30, 2019, in view of the clarification dated August 27, 2019, the petitioner-firm is eligible under Section 123(c) of the Finance Act, 2019 for the benefit under the Scheme.

6. The learned counsel for the petitioner to substantiate above contentions would invite the attention of this Court to the judgments of the Co-ordinate Benches of this Court in the cases of *Saksham Facility Services Private Limited Vs. Union of India and others*, reported in 2020 SCC OnLine Bom 3591; *Suyog Telematics Limited Vs. Union of India and others*, reported in 2021 SCC OnLine Bom 5997; *Sabareesh Pallikere Vs. Jurisdictional Designated Committee, Thane Commissionerate*,

Division IV, Range II and others, reported in 2021 SCC OnLine Bom 174; *Jai Sai Ram Mech & Tech India P. Ltd. Vs. Union of India and others*, reported in 2021 SCC OnLine Bom 221; *K.N. Rai Vs. Union of India and others*, reported in 2021 SCC OnLine Bom 15, and *Unify Facility Management Pvt. Ltd. and another Vs. Union of India and others* [Writ Petition No.115 of 2021, Decided on November 10, 2022].

7. Shri Bhattad, learned counsel appearing for the respondent Nos.2 and 3, would at the outset strongly oppose the prayers made in this petition. He would urge that via communication dated June 19, 2019, the petitioner-firm intimated the respondent No.2 about the service tax liability not discharged by them and the same does not amount to 'duty liability admitted by the person during the enquiry, investigation or audit'. The petitioner-firm on their own estimated the tax liability and on the other hand the Scheme envisages the liability which is assessed and then admitted by the assessee for seeking one-time relief. The admission of duty during investigation means any duty liability quantified by the investigation agency in any form, viz. communicated by letter or requiring the tax payer to confirm as to whether they agree to non-payment of amount so quantified/calculated. There was no statement which was recorded by the investigating agency under the indirect tax enactment till June 30, 2019 and therefore, there is no admission of duty liability by the petitioner-firm. Hence, in view of Section 125(1)(e) of the Finance Act, 2019, the petitioner-firm is ineligible as the said respondents have

confirmed that the tax liability was neither quantified nor they have agreed to any quantification done by the petitioner-firm, on or before June 30, 2019. Further, he would submit that the reliance placed by the petitioner-firm upon Paragraph 10(g) of the Circular dated August 27, 2019 is misconceived as the clarification allows the tax payers to file a declaration under three conditions and the petitioner-firm does not satisfy any of the conditions. There is neither any written communication by the Department intimating about the duty liability nor there is any audit report. He would also urge that the object behind the Scheme is to provide one-time settlement of arrears of dues. It is an alternative mechanism to curtail the dispute, and so as to claim the benefit under the Scheme, the terms and conditions have to be duly fulfilled by the petitioner-firm. So as to substantiate the above contention, he would place reliance on the judgment of the Apex Court in the case of *Union of India Vs. Charaka Pharmaceuticals (India) Ltd.*, reported in *2003(11) SCC 689*, which states that if a benefit is sought under a Scheme, the party must fully comply with the provisions of the Scheme. If all the requirements of the Scheme are not met, then on principles of equity, Courts cannot extend the benefit of that Scheme. Hence, the learned counsel for the respondents seeks dismissal of the petition.

8. We have heard the rival submissions of the learned counsel appearing for the parties.

9. The short question involved in this petition is whether the duty liability of the petitioner-firm was quantified on or before June 30, 2019 during the enquiry or investigation undergone by it so as to make it eligible under the Scheme.

10. The legal position as flows from the various judgments is required to be appreciated. In the matter of *Saksham Facility Services Private Limited*, cited supra, the Division Bench of this Court, while dealing with a similar issue, in Paragraphs 22, 23 and 26, has observed thus :

"22. In the circular dated 27.08.2019 relied upon by learned counsel for the petitioner, Board had issued instructions clarifying certain issues pertaining to the scheme. Clause (a) of paragraph 4 is relevant and is extracted hereunder :-

"4. The relief extended under this Scheme is summed up, as follows:

(a) For all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved if it is Rs.50 lakhs or less and 50% if it is more than Rs.50 lakhs. The same relief is available for cases under investigation and audit where the duty involved is quantified and communicated to the party or admitted by him in a statement on or before 30.06.2019...."

22.1. It means that in a case which is pending under investigation and audit and where the duty involved is quantified and communicated to the declarant or admitted by the declarant in a statement on or before 30.06.2019, the relief available would be 70% of the duty involved if it is Rs.50 lakhs or less and 50% if it is more than Rs.50 lakhs.

22.2. Likewise, clause (g) of paragraph 10 is relevant and the same is extracted hereunder :-

"10. Further, the following issues are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder:

...

(g) Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the Scheme. Section 2(r) defines "quantified" as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that 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.

..."

22.3. Clause (g) of paragraph 10 makes it abundantly clear that cases under an enquiry, investigation or audit where the duty demand had been quantified on or before 30.06.2019 would be eligible under the scheme. The word "quantified" has been defined under the scheme as a written communication of the amount of duty payable under the indirect tax enactment. In such circumstances, Board clarified that such written communication would include a letter intimating duty demand or duty liability admitted by the person during enquiry, investigation or audit etc.

23. Reverting back to the facts of the present case we find that there is clear admission/acknowledgment by the petitioner about the service tax liability. The acknowledgment is dated 27.06.2019 i.e., before 30.06.2019 both in the form of letter by the petitioner as well as statement of its Director, Shri. Sanjay R. Shirke. In fact, on a pointed query by the Senior Intelligence Officer as to whether petitioner accepted and admitted the revised service tax liability of Rs.2,47,32,456.00, the Director in his statement had clearly admitted and accepted the said amount as the service tax liability for the period from 2015-16 upto June, 2017 with further clarification that an amount of Rs.1,20,60,000.00 was already paid.

26. Following the above it is evident that the word 'quantified' under the scheme would mean a written communication of the amount of duty payable which will include a letter intimating duty

demand or duty liability admitted by the person concerned during enquiry, investigation or audit or audit report and not necessarily the amount crystalized following adjudication. Thus, petitioner was eligible to file the declaration in terms of the scheme under the category of enquiry or investigation or audit as its service tax dues stood quantified before 30.06.2019.”

Similarly, an identical issue was considered in the matter of *Suyog Telematics Limited*, cited supra, in Paragraphs 16 and 17, which read thus :

“16. From the above, it is evident that all that would be required for being eligible under the above category is a written communication which will include a letter intimating duty demand or duty liability admitted by the person concerned during inquiry, investigation or audit.”

“17. In so far the present case is concerned, from paragraph Nos. 4,7 and 9 of the affidavit of the respondents we find that the Director of the petitioner Mr. Lature in his statement made under section 83 of the Finance Act, 1994 read with section 14 of the Central Excise Act, 1944 on 24th November, 2016 and 11th May, 2017 had admitted service tax liability of the petitioner for the period under consideration at Rs.12,24,99,843.00. Such averments have been reiterated in paragraph No.14 of the reply affidavit wherein it is stated that during the course of investigation the Director had confessed in his statement recorded on 24th November, 2016 and 11th May, 2017 that petitioner had evaded service tax payment and that the service tax liability stood at Rs.12,24,99,843.00. Such admission was clearly prior to 30th June, 2019, the cut off date.”

Similar view is also expressed in the matters of *Sabareesh Pallikere* and *Jai Sai Ram Mech & Tech India P Ltd.*, cited supra. Paragraphs 13 and 16 in the matter of *Jai Sai Ram Mech & Tech India P Ltd.*, which are worth referring, reads thus :

“13. In Thought Blurb Vs. Union of India, 2020-TIOL-1813-HC-MUM-ST, this court faced with a similar issue referred to the provisions of the Finance (No.2) Act, 2019 and to the circular dated 27th August, 2019 of the Central Board of Indirect Taxes and Customs (briefly "the Board" hereinafter) whereafter it was held as under :-

"47. Reverting back to the circular dated 27th August, 2019 of the Board, it is seen that certain clarifications were issued on various issues in the context of the scheme and the rules made thereunder. As per paragraph 10(g) of the said circular, the following issue was clarified in the context of the various provisions of the Finance (No.2) Act 2019 and the Rules made thereunder :-

Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the scheme. Section 2(r) defines "quantified" as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that 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.

48. Thus as per the above clarification, written communication in terms of section 121(r) will include a letter intimating duty demand or duty liability admitted by the person during enquiry, investigation or audit etc. This has been also explained in the form of frequently asked questions (FAQs) prepared by the department on 24th December, 2019.

49. Reverting back to the facts of the present case, we find that on the one hand there is a letter of respondent No.3 to the petitioner quantifying the service tax liability for the period 1st April, 2016 to 31st March, 2017 at Rs.47,44,937.00 which quantification is before the cut off date of 30th June, 2019 and on the other hand for the second period i.e. from 1st April, 2017 to 30th June, 2017 there is a letter dated 18th June, 2019 of the petitioner addressed to respondent No.3 admitting service tax liability for an amount of Rs.10,74,011.00 which again is before

the cut off date of 30th June, 2019. Thus, petitioner's tax dues were quantified on or before 30th June, 2019.

50. In that view of the matter, we have no hesitation to hold that petitioner was eligible to file the application (declaration) as per the scheme under the category of enquiry or investigation or audit whose tax dues stood quantified on or before 30th June, 2019."

"16. From the above it is evident that all that would be required for being eligible under the above category is a written communication which will mean a written communication of the amount of duty payable including a letter intimating duty demand or duty liability admitted by the person concerned during inquiry, investigation or audit. For eligibility under the scheme, the quantification need not be on completion of investigation by issuing show-cause notice or the amount that may be determined upon adjudication."

11. In the aforesaid background of the authoritative legal pronouncements made by the Division Benches of this Court, if we consider the case of the petitioner, the petitioner vide communication dated June 19, 2019 has in categorical terms informed the respondents as under :

"As pointed out by your office we have checked invoice wise details and we admit that liability declared by us in ST-3 return is not correct and correct liability for the above period should be Rs.97,54,079/-, for which we are submitting our working."

The said communication is duly acknowledged by the respondents.

12. If we consider the aforesaid communication in the wake of the provisions of Section 121 of Chapter V, which provides for SVLDRS, 2019, the petitioner's case, in our opinion, is very much qualified to have the

benefit, particularly having regard to the definition of ‘quantified’ under clause (r) thereunder and also Section 123, which provides for tax dues.

13. The petitioner, in our opinion, was eligible to make a declaration under the aforesaid Scheme as on June 19, 2019. The petitioner has admitted the liability to pay the service tax in the communication dated June 19, 2019, which was duly acknowledged by the respondents.

14. The impugned communications issued to the petitioner, which are questioned in this petition, are contrary to the very object, which has been clarified by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs in its Circular dated August 27, 2019, particularly clause (g), which reads thus :

“(g) Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the Scheme. Section 2(r) defines “quantified” as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that 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.”

15. In the aforesaid background, we are of the view that the stand taken by the respondents so as to claim that the petitioner was not eligible in terms of Section 123 of the Finance Act, 2019 cannot be accepted in view of the admission of liability already communicated.

16. In the wake of the above findings, we are of the view that the impugned communication dated February 11, 2020 issued to the petitioner, produced at Annexure-7, thereby rejecting the online application of the petitioner and consequently the impugned show cause notice dated June 25, 2020, produced at Annexure-10, are not sustainable and are liable to be quashed and set aside and are accordingly quashed and set aside.

We remand the matter back to the respondent No.2-The Designated Committee of SVLDRS to consider the declaration of the petitioner dated December 05, 2019 in the wake of admission given by the petitioner in his communication dated June 19, 2019 afresh as a valid declaration in terms of the Scheme under the category of 'investigation, enquiry and audit' and may proceed to grant the consequential relief to the petitioner.

We direct the respondent No.2 to provide an opportunity of hearing to the petitioner and pass a speaking order.

Let the aforesaid exercise be completed by the respondent No.2 within a period of twelve weeks from the date of production of this judgment and order.

17. Rule accordingly. There shall be no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)