IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.25601 of 2021 and
W.M.P. Nos.27024 and 27025 of 2021

M/s. Darling Digital World Private Limited,
Represented by its Director-R.Balakrishnan
3/2, Anna Salai, (Officers Line),
Vellore – 632001. ..Petitioner

Vs.

1. The Designated Committee,
Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019,
Office of the Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
Anna Nagar, Chennai 600 040.

2. The Assistant Commissioner (TRC Section),
Office of the Commissioner of GST & Central Excise,
Chennai Outer Commissionerate,
Newry, No.2054, I Block, II Avenue,
Anna Nagar, Chennai 600 040.

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

4. The Joint / Additional Commissioner of GST
& Central Excise,
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block,
II Avenue, Anna Nagar,
Chennai 600 040. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the case relating to the impugned order proceedings C.No.IV/06/802/2019-TRC dated 17.08.2020 of the 2nd Respondent and quash the same.

For Petitioner : Ms.R.Sri Visvapriya
for J.Shankarraman,
T.R.Ramesh

For Respondents : Mr.Rajendra Raghavan
Senior Standing Counsel

ORDER

The short question that arises for consideration in this writ petition is whether an enquiry / investigation or audit post 30.06.2019 imposes a bar against filing a declaration under Sabka Vishwas (Legacy Dispute Scheme) 2019.

2. Brief Facts:

2.1. The Petitioner is engaged in the business of trading in consumer goods such as Television, Refrigerator, Washing Machine, etc.

The Petitioner is registered under Service Tax Registration No. AACCD2602EST001 and has paid service tax under Maintenance or Repair and Erection commission services.

2.2. The Central Government introduced an Amnesty Scheme Titled 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019' (hereinafter referred to as “SVLDRS”) to provide an opportunity for settlement of legacy cases pertaining to indirect taxes such as Central Excise, Service Tax etc.

2.3. In terms of the said scheme, Petitioner Company made a Declaration on 23.11.2019 under the Voluntary Disclosure category declaring an amount of Rs.46,90,842/- towards Service Tax due for the period April 2014 to June 2017 vide Form SVLDRS-1 as quantified and submitted by the Petitioner Company to the Third Respondent vide letter dated 09.10.2019. The First Respondent accepted the aforesaid declaration and issued the Discharge Certificate vide Form SVLDRS-4 dated 08.04.2020 after the payment made by the Petitioner Company as per the statement issued by the First Respondent vide Form SVLDRS-3 dated 22.01.2020.

2.4. In the meanwhile petitioner Company received a Summon dated 26.09.2019 from the Senior Intelligence Officer, Madurai, calling for documents relating to the period from April 2014 to August 2017. The Director of the Petitioner Company appeared before the said authority on 26.09.2019 and voluntary statement was recorded. Further documents/ details along with workings for Service Tax payable were submitted vide letter dated 09.10.2019.

2.5.Thereafter, the Petitioner received the impugned order dated 17.08.2020 from the Second Respondent stating that the Petitioner was not eligible to file declaration under the category of voluntary disclosure in terms of Section 125(1)(f) of the Finance (No.2) Act, 2019, inasmuch as an investigation has already been initiated against the petitioner and hence the declaration / application filed under "Voluntary Disclosure" is presumed to have never been made.

3. The writ petition is filed challenging the impugned order dated 17.08.2020 *inter-alia* on the following ground:

a) The Respondent herein who is one of the members of the Designated Committee does not have the power / authority to revoke the

Discharge Certificate issued by the Designated Committee.

b) The impugned order is made on the basis of a summon dated 26.09.2019 issued by the Central Intelligence Officer, Madurai calling upon the petitioner to furnish documents relating to the period April 2014 – August 2017. The above summon assuming constitutes an enquiry / investigation or audit nevertheless the same having been issued post 30.06.2019 would not act as a bar to file a declaration under the scheme.

c) That in any view the impugned order having been made unilaterally on the premise that the petitioner submitted a mis-declaration under the scheme is in violation of principles of natural justice and arbitrary thereby falls foul of Article 14 of the Constitution of India.

4. To the contrary it was submitted by the learned counsel for the respondent by placing reliance upon the counter that has been filed, that the impugned order was a result of a decision taken by the Designated Committee and was communicated by the respondent herein on behalf of the Designated Committee. That the petitioner had filed declaration under SVLDRS Scheme only after commencement of investigation

initiated against them by the office of DGGSVI, Madurai on 26.09.2019 by way of an inspection and statement recorded on 26.09.2019. The following timelines were relied upon to justify the impugned proceedings:

S.No.	***Event***	***Date***
1	Investigation Initiated	26.09.2019
2	SVLDRS 1 filed by the petitioner under voluntary disclosure category	23.11.2019
3	SVLDRS 3 issued for payment of Rs.46,90,842/-	22.01.2020
4	Payment made by the petitioner	13.02.2020
5	SVLDRS 4 issued by the Designated Committee	08.04.2020
6	SVLDRS Rejection Communication by the Designated Committee	17.08.2020
7	SCN No.35/2021 issued to the petitioner by the DGGSTI, Madurai for an amount of Rs.1,00,86,156/-	22.10.2021

4.1.That the petitioner has deliberately suppressed the facts about the initiation of investigation by the department in the Declaration filed under the Scheme. Once the declaration is found to contain a mis declaration the entire proceedings under the Scheme is reduced to a nullity and question of complying with natural justice does not arise.

5. Heard both sides and perused the material on record.

6. The impugned order is liable to be set aside inasmuch as the impugned order proceeds on the erroneous premise that since an investigation was initiated prior to filing of the declaration by the petitioner under the Scheme, the same would be hit by embargo contained in Section 125 (i)(e) of the Act which reads as under :

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

6.1. The above provision had come up for consideration and it has been held by the Bombay High Court that on a cumulative / conjoint reading of clauses (e) and (f) to Section 125(1) of the Act it would be evident that the embargo against filing a declaration on the premise that the declarant has been subjected to an enquiry on investigation would only relate to an enquiry or investigation which has been initiated on or before 30.06.2019. In the present case admittedly the investigation was initiated by a issuance of a summon only on 26.09.2019 and thus the rejection / withdrawal of the discharge certificate by invoking Section

125(i)(e) is unsustainable. In this regard it may be relevant to refer to the relevant portions of the decision of the Bombay High Court in the case of *New India Civil Erectors Private Limited vs. Union of India and others* reported in *(2021) 48 GSTL 17)* wherein it was held as under:

> *"23.3 Section 125 deals with eligibility to make declaration under the scheme. Sub-section (1) opens with the words 'all persons shall be eligible to make a declaration under this scheme except those mentioned in clauses (a) to (h). Thus, from the language of sub-section (1) of Section 127 it can safely be said that eligibility to make a declaration is the som and ineligibility is the exception. As per clause (1)(1), a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit shall not be eligible to make a declaration under the scheme. At this stage, we may mention that tas per exclusion clauses (a), (c) and (e), those persons who have filed appeal before the appellate forum and such appeal had been heard finally on or before 30-6-2019 or those persons who have been issued a show cause notice under an indirect tax enactment and final hearing had taken place on or before 30-6-2019 or those persons who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation had not been quantified on or before 30-6-2019 would not be eligible to make a declaration. Clause (e) is just above clause (1) which deals with voluntary disclosure. As we have seen, clause (e) says that a person 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 had not been quantified on or before 30-6-2019 would not be eligible to make a declaration. Immediately following clause (e) is clause (1) which says that a person making a voluntary declaration after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration. <u>If clauses (e) and (f) are to be read in a harmonious manner then logically it follows that the enquiry or investigation or audit referred to in clause (1)(1) would necessarily have to be initiated on or before 30-6-2019.</u>*
>
> .....

> *28. .....* *<u>The enquiry or investigation or audit should commence prior to 30-6-2019. Though clause (f) of sub-section (1) of Section 125 does not mention the date 30-6-2019 by simply saying that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration, the said provision if read and understood in the proper context would mean making of a voluntary disclosure after being subjected to an enquiry or investigation or audit on or before 30-6-2019. Such a view if taken would be a reasonable construct consistent with the objective of the scheme.</u>*
>
> *29. That being the position, we are of the opinion that respondent No. 4 was not justified in rejecting the declaration of the petitioner dated 26-12-2019 on the ground that petitioner was not eligible to file declaration under the category of voluntary disclosure since enquiry was initiated against the petitioner on 19-12-2019 whereafter petitioner flied declaration."*
>
> *(emphasis supplied)*

7. The above judgment of the Bombay High Court has been followed by this Court in the case of Narayana Associates in W.P.8478 of 2020, wherein after finding that the petitioner's eligibility under the scheme in terms of Section 125(1)(f) of the Act was rejected on finding that the petitioner was in receipt of a letter dated 10.10.2019 calling upon the petitioner to submit various particulars it was held that the above enquiry or investigation being subsequent to 30.06.2019 which has been found to be the cut off date for availing the benefit of the Scheme by the Bombay High Court it was held that it may not be open to the revenue to challenge the correctness of the view in the case of another assessee without just cause. The relevant portion of the of the order of this court

is relevant and thus extracted here under:

> *"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) 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 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 it 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."*

8. Following the judgment of the Bombay High Court and this Court referred supra, the impugned order is liable to be set aside. Though other contentions were raised viz., that the impugned order suffers from violation of principles of natural justice and the impugned order by a member of the Designated Committee revoking / cancelling the discharge certificate by the Designated Committee is without jurisdiction, since this Court has already found that the reason which prompted the respondent to withdraw / revoke / cancel the discharge certificate viz., an enquiry / investigation initiated post 30.06.2019 cannot be a bar against the petitioner filing a declaration under the scheme, I am not inclined to

examine the above contentions.

9. The impugned order is set aside and the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

23.02.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

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MOHAMMED SHAFFIQ, J.

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