

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 19.02.2024

+ **W.P.(C) 4023/2020****M/S SKYLINE ENGINEERING CONTRACTS
(INDIA) PVT LTD**

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Karan Sachdev, Mr. Agrim Arora and
Mr. SumitKhadaria, Advs.

For the Respondent : Mr. Harish Vaidyanathan Shankar, CGSC
with Mr. Srish Kumar Mishra, Mr. Sagar
Mehlawat, Mr. Alexander Mathai Paikaday,
Mr. M. Sriram and Mr. Krishnan V., Advs.

Mr. Harpreet Singh, SSC with Ms. Suhani
Mathur, Mr. Jatin Kumar Gaur and Mr.
Gurpreet Singh Gulati, Advs.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****AMIT MAHAJAN, J**

1. Aggrieved by the rejection of the application filed by the petitioner on 16.12.2019, claiming the benefit of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, enacted by the Finance Act, No.2 2019 (hereafter '**the Scheme**'), in regard to the period



April, 2014 to June, 2019, the petitioner has filed the present writ petition praying as under:

- “(i) *to issue appropriate writ in the nature of mandamus striking down and setting aside e-mail communication dated 27.01.2020, informing rejection of application filed under Sabka Vishwas Scheme and Form SVLDRS-1 generated on-line on 28.01.2020 informing the grounds of rejection;*
- (ii) *consequently, to direct the respondents to consider the SVLDRS -1 filed vide ARN No LD1612190001379 dated 16.12.2019 as legally proper and acceptable under the scheme;*
- (iii) *to grant costs of this petition to the petitioner herein, and*
- (iii) *to pass such other order, or orders, as may be deemed fit and proper in the interests of justice.”*

Brief Facts

2. The petitioner, at the relevant time, was engaged in providing Works Contract services under HSN Code 995412, as defined under erstwhile Section 65(105)(zzq) of the Finance Act, 1994 (hereafter ‘**the Act**’). The petitioner was able to discharge only part of its service tax liability for the financial years 2012-2013 to 2017-2018 (upto 30.06.2017).

3. The officers of the Anti-Evasion Wing of the erstwhile Service Tax Commissionerate, Delhi, and Directorate General of the Central Excise Intelligence (DGCEI), Delhi Zonal and Delhi South Commissionerate of CGST, New Delhi initiated an investigation against the petitioner for non-payment of service tax and conducted a search at the registered office premises of the petitioner on 02.04.2013, 15.04.2015 and 25.06.2018.



4. A Show Cause Notice dated 13.07.2015 was issued in regard to the period April, 2012 to March, 2013, and a Show Cause Notice dated 10.03.2015 was issued in regard to the period April, 2013 to 2014 demanding a service tax of ₹9,19,70,124/- and ₹7,51,75,811/- respectively. The investigation in regard to the period April, 2014 to 2017, however, continued.

5. The respondent on 06.03.2019, issued a notice of attachment to the petitioner's bank (Canara Bank) in terms of Section 87(Chapter-V) of the Act. It was alleged that the investigation revealed that service tax dues pending against the petitioner pertaining to the period between financial year 2012–2013 to the financial year 2017–2018 amounted to ₹23.47 crores. The bank was directed to pay the amount lying in the petitioner's account directly to the credit of the Central Government.

6. Prior to the notice of attachment dated 06.03.2019, the respondent by a letter dated 01.03.2019 had called for certain documents from the petitioner. The petitioner, in response to the said letter, submitted the following documents *vide* letter dated 15.03.2019:

- a. Revised computation sheet (year wise service tax payable and challan details).
- b. Details of service tax payable under reverse charge mechanism (RCM).
- c. Details of CENVAT Credit availed and utilized for the period 2014 – 2015 to 2017 – 2018.
- d. Details of pending debtors as on date.
- e. Details of balances and bank accounts as on date.



7. The Parliament enacted the Finance Act (No.2), 2019. Sections 120 to 135 (Chapter V) of the Finance Act (No.2), 2019 introduced the Scheme. By virtue of Section 120(1) of the Finance Act (No.2), 2019, the Scheme was captioned the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The Scheme came into effect from 01.09.2019.

8. The Scheme is comprehensive and covers various enactments as specified in Section 122 of the Finance Act (No.2), 2019 including the Act.

9. In addition, the Central Board of Indirect Taxes and Customs (CBIC) has also issued circulars in exercise of its powers under Section 133 of the Finance Act (No.2), 2019 for the administration of the Scheme.

10. On 16.12.2019, the petitioner preferred three applications under Scheme for the period April 2012 to June, 2017. Whereas, the two applications for the period April, 2012 to March, 2013 and April, 2013 to March, 2014 were filed in the category of cases where Show Cause Notices were pending, the application for the period April, 2014 to June, 2017 was filed in the category of 'investigation, inquiry or audit'. The two applications in the category of pending Show Cause Notice were accepted but the application under the category 'investigation, inquiry or audit' was rejected. This has led the petitioner to file of the present petition.

11. The application of the petitioner was rejected, essentially, on the ground that as on the cut-off date, that is, 30.06.2019, the investigation



was pending and the amount of duty involved was not quantified. The chart indicating the filing of the applications and their status is mentioned below for ready reference:

S. No.	Particulars	Relevant period	SVLDRS status
1	SCN dated 13.07.2015	April 2012 to March 2013	Accepted by the department and discharge certificate issued
2	SCN dated 10.03.2015	April 2013 to March 2014	Accepted by the department and discharge certificate issued
3	Balance amount which was under investigation	April 2014 to June 2017	Rejected and in challenge in the present Writ Petition

12. After the present petition was filed, Respondent no. 3, on 30.06.2020, issued a Show Cause Notice to the petitioner in regard to the period April, 2014 to June, 2017 whereby, the petitioner was called upon to show cause as to why service tax amounting to ₹18,86,70,954/- along with interest and penalty not be demanded and recovered.

Submissions

13. The learned counsel for the petitioner submitted that the department had issued a letter under Section 87 of the Act on 06.03.2019, directing the bank to deposit the amount stated therein. He stated that the notice under Section 87 of the Act is in the nature of recovery, which is issued only when the department is aware of the amount of duty payable by the assessee. He submitted that the department in the said notice had quantified the amount payable for



the period April, 2012 to 2017 as ₹42.67 crores. The petitioner had opted for settlement of the entire amount of ₹42.67 crores by filing three separate applications for different periods (₹9,19,70,124/- + ₹7,51,75,811 + ₹25,95,55,528/-).

14. The learned counsel further submitted that the amount claimed by the department to be payable for the period April, 2014 to June, 2017 in the Show Cause Notice dated 30.06.2020 is quantified as ₹25.13 crores. He submitted that minor difference in the amount claimed by the department due to a calculation error. He further submitted that the issuance of Show Cause Notice subsequently does not render the petitioner ineligible to avail the Scheme. In this regard, he relied upon a circular dated 12.12.2019, issued by the department which states as under:

"2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made there-under, as follows:

.....

(v) For the purpose of eligibility under the Scheme in some of the categories such as litigation, audit/enquiry/investigation etc., the relevant date is 30-6-2019. However, it may so happen that the facts of a case may change subsequently. For instance, in a case under audit/ investigation/enquiry where the tax dues have been quantified on or before 30.6.2019, a show cause notice is issued after 30-6-2019. Similarly, a case, which was under appeal as on 30-6-2019, may attain finality in view of appeal period being over etc. It is clarified that the eligibility with respect to a category in such cases shall be as it was on the relevant date i.e., 30-6-2019."

15. He relied upon a judgment of this Court in ***Seventh Plane Networks Pvt. Ltd. v. Union of India:2020 SCC OnLine Del 2446*** to



contend that once the amount declared under the Scheme was quantified during the investigation, the assessee would be eligible under the Scheme and its eligibility would not be impacted if later during the investigation, reduction of demand is sought. He further relied upon the judgment of the Hon'ble Bombay High Court in the case of ***Landmark Associates v. Union of India :2021 SCC OnLine Bom 2162*** and contended that if the department had issued a notice of recovery under Section 87 of the Act, the application under the Scheme cannot be rejected on the ground that the tax dues were not quantified.

16. The learned counsel further submitted that only because the amount quantified in the Show Cause Notice is lower than the amount declared by the petitioner, will not lead to disqualification under the Scheme. Even if, the amount declared was incorrect, the respondent ought to have issued a Form SVLDRS-2 in terms of Section 127(2) of the Scheme within 30 days from the date of receipt of the said declaration and in terms of Section 127(3) of the Scheme, an opportunity of being heard ought to have been provided to the petitioner. It is vehemently contended that after having duly quantified the duty and issuing a letter in terms of Section 87 of the Act to petitioner's bank, the petitioner's application could not have been rejected for the reason mentioned in Section 125(1)(e) of the Scheme.

17. Lastly, it is submitted that the order passed was in violation of the principles of natural justice as no opportunity for personal hearing



was granted. The petitioner relied upon the judgment of this Court in the case of ***Vaishali Sharma v. Union of India: 2020 SCC OnLine 1386*** and ***Industrial Personnel & Security Services Pvt. Ltd. v. Commr. Of CGST, Delhi South: (2020) 83 GSTR 161***

18. Mr. Harpreet Singh, learned Senior Standing Counsel for the department submitted that the petitioner was never conveyed in writing about the demand till the issuance of the Show Cause Notice on 30.06.2020. He submits that the voluntary declaration by the petitioner cannot be considered as the duty having been quantified. He submitted that as of cut-off date, that is, 30.06.2019, the investigation was in progress and only a tentative amount was conveyed to the bank *vide* letter dated 06.03.2019 in order to safeguard the interest of revenue. He further submitted that the petitioner had claimed an amount of ₹25,95,55,528/- as the quantified tax dues in SVLDRS-1, which neither matches the amount conveyed to the bank (₹23.74 crores) the nor the amount of ₹24,29,49,314/- mentioned in the Show Cause Notice dated 30.06.2020. He relied upon the judgment passed by this Court in the case of ***Karan Singh v. Designated Committee, SVLDRS & Anr. : W.P.(C) No. 2408/2021: 2021 SCC OnLine Del 3353*** decided on 22.02.2021, and contended that the quantification of the amount as defined under the provisions of the Scheme in the Finance (No. 2) Act, 2019 only means the duty liability, which has been determined by the department. The duty as on 30.06.2019 had not been determined in the case of the petitioner.



He further submitted that there is no provision in the Finance Act, 2019 which provides for an opportunity of being heard.

Reasons and Conclusion

19. The only question to be addressed in the present petition is whether the service tax payable by the petitioner had been quantified in terms of Section 121(r) of the Finance Act (No. 2), 2019 prior to 30.06.2019. This Court in ***Hans Uttam Finance Limited*** (*supra*) had analysed the object of the Scheme and held as under:

“22. At the outset, it is relevant to note that the Scheme was introduced to settle the legacy cases. The Finance Minister of India, in her speech in the Parliament, had expressed concern regarding the huge backlog of pending litigations from the pre-GST (Goods and Services Tax) regime. She stated that an amount exceeding ₹3.75 lakh crore was blocked in litigation in service tax and excise, which required unloading for business to continue. The objective of the Scheme was to allow quick closure of pending litigations centering around service tax and excise duty.

23. Section 122 of the Finance Act (No.2), 2019 stipulates twenty nine separate enactments, which were covered under the Scheme. Further, by virtue of Clause (c) of Section 122 of the Finance Act (No.2), 2019, the Central Government was empowered to include, by a notification in the official gazette, any other enactment within the scope of the Scheme.

24. Section 123 of the Finance Act (No.2), 2019 defines the expression “tax dues” as under:

“123. For the purposes of the Scheme, “tax dues” means—

(a) where—

(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by



the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

Illustration 1: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.1000 and amount of penalty of Rs.100. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs.1000 and hence the tax dues are Rs.1000.

Illustration 2: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.900 and penalty of Rs. 90. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs.900.

Illustration 3: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs. 900 and penalty of Rs. 90. The declarant files an appeal against this order of determination. The departmental appeal is for an amount of duty of Rs. 100 and penalty of Rs. 10. The amount of duty which is being disputed is Rs. 900 plus Rs. 100 i.e Rs. 1000 and hence tax dues are Rs. 1000.

Illustration 4: The show cause notice to a declarant was for an amount of duty of Rs. 1000. The order was for an amount of duty of Rs.1000. The declarant files an appeal against this order of determination. The first appellate authority reduced the amount of duty to Rs. 900. The declarant files a second appeal. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs. 900;

(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice



as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;

(c) 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;

(d) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;

(e) where an amount in arrears relating to the declarant is due, the amount in arrears.”

25. *It is apparent from the above that the expression “tax dues” is defined in wide terms. It encompasses dues that were mentioned in show cause notice(s) or were subject matter of disputes before various authorities. It also includes dues that were voluntarily disclosed by an assessee without the same being subject matter of any enquiry or dispute. Further, it covers arrears in respect of which there was no dispute or any pending litigation. More importantly, it also covers cases where enquiry, investigation or audit were pending but the dues had been quantified.*

26. *Section 125(1) of the Finance Act (No.2), 2019 posites that all persons, except those as stipulated, would be eligible to make a declaration under the Scheme.*

27. *Section 125(1) of the Finance Act (No.2), 2019 is set out below:*

“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.”

28. It is apparent from the above that the legislative intent in enacting Chapter V of the Finance Act (No.2), 2019 (the Scheme) was to maximize the sweep of the Scheme. It was to cover all situations where tax was payable except those cases, which were expressly excluded.

29. Clause (c) of Section 123 of the Finance Act (No.2), 2019, which covers cases where enquiry, investigation or audit is pending, must be interpreted bearing the aforesaid legislative scheme in mind. In terms of Clause (c), the “tax dues” in cases where enquiry, investigation or audit was pending against a declarant meant the amount of duty payable under any indirect tax enactment, which was quantified on or before 30.06.2019.

30. The expression “quantified” has been defined under Section 121(r) of the Finance Act (No.2), 2019 as under:

“121. In this Scheme, unless the context otherwise requires, —

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



31. *It is obvious that Clause (c) of Section 123 of the Finance Act (No.2), 2019 covers cases where the matter had not reached the final determination, as it concerns cases where enquiry, investigation or audit is pending. It follows that the term “quantified” used in the context of amount of duty payable, in those cases, cannot mean the tax payable as finally determined as a result of conclusion of any audit, enquiry or investigation. It must necessarily mean a case where enquiry, audit or investigation is pending but the quantification of the tax dues is ascertainable from a written communication on record. In this context, it is important to note that Clause (r) of Section 121 of the Finance Act (No.2), 2019 does not stipulate that the written communication, in which the amount of duty payable under the indirect tax enactment is quantified, must emanate from the concerned tax department; it is equally acceptable that the said amount of tax due is mentioned in a written communication emanating from the taxpayer or even a third party subject to the same being a part of the record.*

32. *Having stated the above, we also find merit in the contention that the amount of tax dues mentioned in any unilateral communication sent by the assessee, which is disputed or not accepted by the Department, cannot be considered as quantification of the ‘tax due’ even though it may be mentioned in a written communication forming a part of the record of the pending proceeding. It is essential that the amount as mentioned in the written communication has some credibility and is not disputed by the concerned department. It should, in a sense, represent a consensus regarding the duty payable by the taxpayer. Clearly, in cases where the Department is proceeding on the basis of certain quantification, although not mentioned in any written communication issued by the Department but admitted by the taxpayer in writing; the same would satisfy the definition of the term “quantified” under Section 121(r) of the Finance Act (No.2), 2019.*

33. *The circulars issued by the CBIC, in exercise of the powers under Section 133 of the Finance Act (No.2), 2019 for administration of the Scheme, also support the aforesaid interpretation. In this regard, it is relevant to refer to the Circular dated 27.08.2019 (Circular No.1071/4/2019 – CX.8) issued by the*



CBIC to explain the provisions of the Scheme. The CBIC had explained that there are two components of the Scheme – Dispute Resolution and Amnesty. Whereas the Dispute Resolution component is aimed at liquidating the legacy cases locked up in litigations in various forums; the Amnesty component is intended to give an opportunity to those who have failed to correctly discharge their liability to pay the tax dues. Further, it was stated that the scope of discretion is kept to the minimum. Paragraph 9 of the said Circular is relevant and reads as under:

“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.”

34. In addition to explaining the intent and scope of the Scheme, the CBIC had also clarified certain issues in the context of the provisions of the Finance Act (No.2), 2019 and the rules made thereunder. In regard to cases under enquiry, investigation and audit, the CBIC had clarified as under:

“(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.”

35. It is clear from paragraph 9 of the aforesaid Circular that tax dues would be quantified where the duty amount is known to the Department and the taxpayer in the form of a written communication. It is also apparent from the above that the legislative intent is to include the ‘tax dues’ that were known to the Department and the taxpayers, within the cover of the Scheme,



even though the enquiry, investigation or audit for final determination of the dues was pending.

36. *The CBIC had also clarified aspects concerning the Scheme in the form of responses to frequently asked questions. The responses of the CBIC to question nos.1 and 45 are relevant and the same are set out below:*

“Q 1. Who is eligible to file declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019? Ans. Any person falling under the following categories is eligible, subject to other conditions, to file a declaration under the Scheme:

(a) Who has a show cause notice (SCN) for demand of duty/tax or one or more pending appeals arising out of such notice where the final hearing has not taken place as on 30.06.2019.

(b) Who has been issued SCN for penalty and late fee only and where the final hearing has not taken place as on 30.06.2019.

(c) Who has recoverable arrears pending.

d) Who has cases under investigation and audit where the duty/tax involved has been quantified and communicated to him or admitted by him in a statement on or before 30th June, 2019.

(e) Who wants to make a voluntary disclosure.

Q 45. With respect to cases under enquiry, investigation or audit what is meant by ‘written communication’ quantifying demand? Ans: Written communication will include a letter intimating duty/tax demand or duty/tax liability admitted by the person during enquiry, investigation or audit or audit report etc.”

[emphasis added]

37. *Mr. Hossain, the learned counsel for the Revenue, had contended that tax duties could not be considered as quantified unless determined by the concerned authority. He had also referred to the decisions of the Co-ordinate Benches of this Court in **Chaque Jour HR Services Pvt. Ltd. v. Union of India: 2020 SCC OnLine Del 2632** and in **Karan Singh v. Designated***



Committee Sabka Vishwas Legacy Dispute Resolution Scheme &Anr.: 2021 SCC OnLine Del 3353 in support of his contention.

38. *In Chaque Jour HR Services Pvt. Ltd. v. Union of India (supra)* a Co-ordinate Bench of this Court had, inter alia, referred to the Circular dated 27.08.2019 and observed as under:

“16. By virtue of the aforesaid circulars, the respondents have clarified that the benefit of the Scheme can also be given to those cases where the duty involved is quantified by way of an admission made by the declarant in a statement made on or before 30th June, 2019.”

39. However, the Court in that case found that there was a discord between the total dues as contemplated by the Department and those which the petitioner in that case had assured to pay. In the said context, the Court observed that purposive interpretation of the Scheme was required, and the Scheme could not be interpreted in a manner, which would run counter to its objective. In the said case, the Court found that although some dues were admitted by the declarant, the same did not cover the entire dues. Therefore, the object of the Scheme to put an end to the disputes would not be achieved. Accordingly, the Court repelled the contention that an admission of liability to pay some part of the dues could be considered as the amount of duty payable for the purpose of Section 121(r) of the Finance Act (No.2), 2019.

40. *In Karan Singh v. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme &Anr. (supra)* the Court found merit in the submission of the Revenue that unilateral quantification by the petitioner by writing letters and communications, would not render him eligible for the benefits of the Scheme. Undeniably, a unilateral submission which is not accepted by the Department cannot be considered as quantification of tax. For the purpose of Section 121(r) of the Finance Act (No.2), 2019, it is necessary that the taxpayer and the Department are in some sense ad idem as to the amount of duty payable. As explained by the CBIC in its Circular dated 27.08.2019, the relief under the Scheme is limited to “the duty amount which is already known to both the Department and the taxpayer” in the form of a written communication.



41. The decision in *Chaque Jour HR Services Pvt. Ltd. v. Union of India* (supra) is of no assistance to the Revenue in the facts and circumstances of this case. There is no cavil with the proposition that admission of part of dues would not qualify as “tax dues” for the purpose of Section 123(c) of the Finance Act (No.2), 2019; under Section 123(c) “tax dues” would mean the entire amount of duty payable under indirect tax enactment as quantified.

42. In ***K.N. Rai (Proprietorship firm) through Kirit Kedarnath Rai v. Union of India & Ors.: 2021 SCC OnLine Bom 15***, a Division Bench of the Bombay High Court had rejected the Revenue’s contention that the tax dues had not been quantified as the same had not been determined by the Department. In that case, the statement of the proprietor of the petitioner (Sh. Kirit Kedarnath Rai) was recorded by the Senior Intelligence Officer. The Bombay High Court found that the questions posed and the responses of the assessee clearly indicated quantification of the tax dues. The relevant extract of the statement of the proprietor of the petitioner in that case, as referred to by the Bombay High Court, is set out below:

“17.Q.20. Please peruse a work-sheet (Annexure-A) wherein the Service Tax liability of your firm M/s. K. N. Rai has been quantified on the basis of RA bills of taxable work orders submitted by you and as discussed and admitted hereinabove, the total Service Tax liability comes to the tune of Rs.1,26,54,725/- including all cesses for the period from 2014-15 to 2017-18 upto 30.06.2017. Please, go through the said work-sheet in detail and state whether you are completely agreed with the said Service Tax liability of Rs.1,26,54,725/-. Please also state by what time you are paying the said liability along with applicable amount of interest.

Ans:- Yes, I have minutely gone through the said work-sheet and found it correct as per my records/documents. Further, I am completely agreed with the amount of Service Tax liability of Rs.1,26,54,725/- for the period from 2014-15 to 2017-18 upto 30.06.2017 and in admittance of the same I confirm to pay the same along with applicable amount of interest. Further, with regard to time of payment



of the said Service Tax liability, I have to state and request that I need some more time since we have some financial problem but as and when we get funds we shall pay the same.”

43. *The Bombay High Court found that there was a clear admission on the part of the petitioner and that the tax dues were quantified in terms of Section 121(r) of the Finance Act, 1994. It is also relevant to refer to the decision of the Bombay High Court in **Thought Blurb v. Union of India & Ors.:2020 SCC OnLine Bom 1909**. In that case, the Bombay High Court had referred to the Circular dated 27.08.2019 and held that, in terms of the letters written by the petitioner / taxpayer, the tax dues were quantified before the relevant date. The relevant extract of the said decision is set out below:*

“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 :-

“(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.”

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.”

44. A similar view was also expressed by the Bombay High Court in *G.R. Palle Electricals v. Union of India &Ors.*: 2020 SCC OnLine Bom 3137 and *Saksham Facility Services Private Limited v. Union of India &Ors.*: 2020 SCC OnLine Bom 3591. In a later decision in *Jai Sai Ram Mech & Tech India P Ltd. v. Union of India &Ors.*: 2021 SCC OnLine Bom 221, a Division Bench of the Bombay High Court referred to its earlier decision and observed as under: “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.”

45. We are in respectful agreement with the aforesaid view of the Bombay High Court. It is not necessary that the tax dues be finally quantified by the Department. An admission of the liability in any written communication or in a statement recorded by the Department is required to be accepted as tax dues, for the purpose of Section 123(c) read with Section 121(r) of the Finance Act (No.2), 2019. However, it is essential that the said dues are



not disputed by the Department and that the Department is proceeding on the basis of such quantification. Clearly, in cases where the Department is not in agreement with the amount of tax as mentioned by the taxpayer in any communication, the dues as quantified in such communication(s) cannot be accepted as 'quantified' for the purpose of the Scheme. However, a written communication or a statement by the Department, determining the amount of duty, is not necessary for a taxpayer to be eligible to make a declaration under the Scheme.

46. The observation in Karan Singh v. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme &Anr. (supra) must also be read in their context. The Court had explained that the amount mentioned in the communication issued by the taxpayer could not alone be the measure for interpretation of the concept of quantification. The duty liability would also require to be determined by the Department. However, the said observations cannot be read to mean a final determination by the Department or a determination that is reflected in any written communication issued by the Department. It would suffice that the Department does not contest the tax dues as quantified by the taxpayer in its communication. As noted above, Section 123(c) of the Finance Act (No.2), 2019 is only applicable where enquiry, audit or investigation is pending. There is no question of final determination by the Department prior to conclusion of the said proceedings. Thus, the Revenue's contention that the expression "quantified" under Section 121(r) of the Finance Act (No.2), 2019 would necessarily mean the duty as finally determined by the Department for the purpose of Section 123(c) of the Finance Act (No.2), 2019 is unmerited."

20. This court held that in cases where an inquiry, audit or investigation is pending, the quantification of the tax dues can be ascertained from the written communication. It is not necessary that the written communication, in which the amount of duty payable is quantified must emanate from the concerned tax department. The said amount of tax dues can be ascertained from the written



communication emanating from the taxpayer as well subject to the same being part of the record. The unilateral communication, which is disputed and is not accepted by the department, however, cannot be considered as quantification of tax due.

21. This Court held that the written communication or statement by a department determining the amount of duty is not a necessary precondition for a taxpayer to be eligible for making a declaration under the Scheme. It was also held that an admission of the liability in any written communication or a statement recorded by the department is to be accepted as quantification of tax dues for the purpose of Section 129(3) read with Section 121(r) of the Scheme provided the dues are not disputed by the department and the department is proceeding on the basis of such quantification.

22. Two important facts that cannot be ignored in the present case are: first, that the department itself had issued a notice under Section 87 of the Act, and second, that the quantification in the Show Cause Notice was essentially based on the documents submitted by the petitioner *vide* its letter dated 15.03.2019.

23. Section 87 of the Act gives power to the concerned officer to recover the service tax by one or more modes mentioned therein. Section 87 reads as under:

“[87. Recovery of any amount due to Central Government.

Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:-



(a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;

(b) (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;

(c) the Central Excise Officer may, on an authorisation by the ³[Principal Commissioner of Central Excise or] Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of



sale remaining unpaid and shall render the surplus amount, if any, to such person;

²[Provided that where the person (hereinafter referred to as predecessor) from whom the service tax or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining the written approval of the ³[Principal Commissioner of Central Excise or] Commissioner of Central Excise, for the purposes of recovering such service tax or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.]

(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.]”

24. The principal object of the Scheme was to put an end to the disputes in order to enable the assessee to move on to the new regime without the baggage of the disputes. This Court in ***Kama Ayurveda Private Limited v. Union of India &Ors. : 2023:DHC:3841-DB*** held as under :

21. It is contended on behalf of the respondents that tax dues quantified by the petitioner in its communication cannot be considered as quantified tax dues for the purposes of the Scheme because the investigations continued till the issuance of the show cause notice dated 09.08.2019. According to the respondents, the tax dues could be considered as quantified only on completion of the investigation and on the concerned officer, issuing the show cause notice or any communication quantifying the amount due.



22. *The contentions advanced by the respondent are not merited. Tax dues as quantified in any communication emanating from the the tax payer, would qualify as “tax dues” if there is no dispute regarding the same. The Scheme also covers cases where investigations, enquiries and audit are pending.*

23. *The Scheme was introduced by the enactment of the Finance Act No. 2 of 2019 (hereafter ‘the Act’). Chapter V of the Act (Sections 120 to 135) provided the statutory framework for the Scheme. Section 122 of the Act specified various enactments, which were covered under the Scheme.*

24. *The principal object of the Scheme was to put an end to the disputes in order to enable the assesseees to move on to the new regime without the baggage of legacy disputes. The Central Board of Indirect Taxes and Customs (hereafter ‘CBIC’), in exercise of the powers under Section 133 of the Act, issued a Circular dated 27.08.2019 (Circular No.1071/4/2019-CX.8) explaining the provisions of the Scheme.*

25. *There are two components of the Scheme. One is dispute resolution and one is amnesty. The dispute resolution component is intended to put an end to disputes that are pending in various forums. The amnesty component is intended to give tax payers, who have not correctly discharged their liability, to come clean and pay their tax dues. The Scheme covers not only cases where show cause notice has been issued and disputes are pending before various authorities but also cases where enquiry, investigation or audit is pending against an assessee. In addition, it also covers cases where there was no dispute as to the arrears as well as cases where tax payers had come forward to voluntarily disclose their tax liability.*

26. *The petitioner had applied in the category where enquiry, investigation or audit is pending.*

27. *Section 123 of the Act defines the expression ‘tax dues’. Clause (c) of Section 123 of the Act covers cases where enquiry or investigation or audit is pending. It specifies that the tax dues in such cases would be the amount of duty payable, which has been quantified on/or before 30.06.2019. Clause (c) of Section 123 of the Act reads as under: “123. For the purposes of the Scheme, “tax dues” means— xx xxxx (c) 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.”

28. The expression ‘quantified’ is defined in Section 121(r) of the Act, which reads as under:

“121. In this Scheme, unless the context otherwise requires, —

**** ***

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

25. In certain cases, the Revenue has power to pass an order for provisional attachment of any property of the assessee during the pendency of any proceedings under Section 73 or 73A of the Act for the purpose of protecting the interests of the Revenue. Any such order ceases to have an effect after the expiry of period of six months from the date of the order. Section 73C of the Act is set out below:

73C. Provisional attachment to protect revenue in certain cases.

“(1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.”



26. A bare perusal of Section 73C of the Act makes it clear that any such order is provisional in nature till such time, the proceedings under Section 73 or 73A of the Act are pending. The order is passed to protect the interest of Revenue till such time, a determination of the amount due from the assessee is made under Section 73 or 73A of the Act. On the other hand, Section 87 of the Act gives power to the Revenue to recover the amount due from the assessee by one or more of the modes provided therein. The provisions of Section 87 of the Act provides for the manner of recovery of the dues, the same is not for protecting the interest of Revenue till the pendency of the determination of the dues as provided in Section 73C of the Act.

27. In the present case, however, it is not the case of the department that the account of the petitioner was provisionally attached during the pendency of any proceedings under Section 73 or Section 73A of the Act. It is an admitted case that the order was passed under Section 87 of the Act for recovery of the amount due, which necessarily means that the tax payable by the petitioner had been determined and ascertained. The revenue had directed the bank to pay directly to the credit of the Central Government a sum of ₹23.47 crores being the pending service tax liability of the petitioner.

28. Further, the Show Cause Notice dated 30.06.2020 is based solely on the computation sheet submitted by the petitioner on 15.03.2019. The relevant extract of the Show Cause Notice states as under:



“10. Further, some documents / details were called for from SECIPL vide letter dated 01.03.2019 (**RUD-XI**). In response to office letter dated 01.03.2019, the assessee submitted the following documents vide their office letter C.No.SECIPL/TF/ST/2018-19/1023 dated 15.03.2019 (**RUD-XII**) (acknowledged in this office on 18.03.2019 vide diary No.14675):-

- Revised computation sheet (Year-wise Service Tax payable and Challan details;
- Details of Service Tax payable under RCM,
- Details of CENVAT Credit availed & utilized for the period 2014-15 to 2017-18 (upto 30.06.17)

Table-A

11. On the basis of revised computation sheet, the Service Tax liability of SECIPL for the FY 2014-15 to 2017-18 (upto 30.06.2017) has been calculated as under:

Period	ST Payable	RCM Payable	Total Tax payable	CENVAT Credit Utilized	Net tax liability	
(1)	(2)	(3)	(4 = 2+3)	(5)	(6=4.5)	
2014-15	62621242	4869849	67491091	23215992	44275099	As per Annexure-A
2015-16	61239325	10508130	71747455	18765332	52982123	
2016-17	77481580	14170053	91651633	16422483	75229150	
2017-18 (upto 30.06.17)	16486112	3988220	20474332	4289750	16184582	
Total	217828259	33536252	251364511	62693557	188670954	

From the above, it appears that the assessee has not discharged the Service Tax liability amounting to Rs.18,86,70,954/- and the same is recoverable under Section 73 of the Finance Act, 1994 along with interest applicable under Section 75 of the Finance Act, 1994.”

29. It is, thus, apparent that on 15.03.2019, the petitioner had provided the computation sheet which quantified the tax dues payable by the petitioner for the concerned period. In terms of the law laid down by this Court, the said communication qualifies as written communication quantifying the tax dues, *albeit* emanating from the petitioner. There is no material dispute as to this quantification. The Revenue has, in fact, accepted the calculation of the tax dues furnished



by the petitioner. Thus, for the purposes of Section 123(c) read with Section 121(r) of the Act, the tax dues stand quantified in terms of “*a written communication of the amount of duty payable under the indirect tax enactment;*” as an admission of liability in a written communication for the purpose of Section 123(c) read with Section 121(r) of the Scheme in the Finance Act (No.2), 2019. This is not a case where the department is not in agreement with the quantification as provided by the petitioner. It is apparent that the respondents have never disputed or doubted the calculations submitted by the petitioner on 15.03.2019. In fact, the demand made in the Show Cause Notice is based on the documents provided by the petitioner, which includes the revised calculations. The said calculations have not been questioned.

30. Insofar as the arguments raised by the learned counsel for the respondents that the amount quantified under the Scheme does not match with the amount mentioned in the notice under Section 87 of the Act or the Show Cause Notice dated 30.06.2020 is concerned, it is pointed out by the learned counsel for the petitioner that the same is for the reason of a minor miscalculation on the part of the department and not for any other material reason.

31. The same in our opinion cannot be a ground for summarily rejecting the application filed by the petitioner. Having observed that the petitioner’s application could not have been rejected on the ground that the amount had not been quantified as of cut-off date, that is, 30.06.2019, any error in the calculation is required to be ironed out in terms of Section 127 of the Scheme.



32. The Division Bench of Bombay High Court in the case of ***Thought Blurb v. Union of India &Ors.: 2020 SCC OnLine Bom 11719***, had examined the legislative intent of the Scheme and had held that a summary rejection of an application without affording an opportunity of being heard would fall foul of the principles of natural justice. It was held as under:

“50. We have already discussed that under sub-sections (2) and (3) of Section 127 in a case where the amount estimated by the Designated Committee exceeds the amount declared by the declarant, then an intimation has to be given to the declarant in the specified form about the estimate determined by the Designated Committee which is required to be paid by the declarant. However, before insisting on payment of the excess amount or the higher amount the Designated Committee is required to give an opportunity of hearing to the declarant. In a situation when the amount estimated by the Designated Committee is in excess of the amount declared by the declarant an opportunity of hearing is required to be given by the Designated Committee to the declarant, then it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject an application (declaration) on the ground of being ineligible without giving a chance to the declarant to explain as to why his application (declaration) should be accepted and relief under the scheme should be extended to him. Summary rejection of an application without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice. Rejection of application (declaration) will lead to adverse civil consequences for the declarant as he would have to face the consequences of enquiry or investigation or audit. As has been held by us in Capgemini Technology Services India Limited (supra) it is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be complied with. Non-compliance to the principles of natural justice would impeach the decision-making process rendering the decision invalid in law.”



33. This Court in *Carpet Export Promotion Council v. Union of India & Anr.* : 2023:DHC:3549:DB had respectfully concurred with the view taken by the Bombay High Court and noted that the legislative intent to enact the Scheme was to offload the baggage of disputes. The scope of coverage of Scheme is required to be interpreted liberally and tax payer cannot be excluded merely because there were some obvious and non-material errors in the quantum of the duty details filled in the form. Any such interpretation would run contrary to the legislative object of the Scheme.

34. As noted above, the legislative intent underlying the enactment of the Scheme was to include all taxpayers for offloading the baggage of disputes. All taxpayers, except those which were specifically excluded, were entitled to avail the benefit of the said Scheme. The Scheme also covered cases where no disputes were pending and enabled the taxpayers to voluntarily pay taxes and avail amnesty under the Scheme.

35. As discussed above, it is clear that the tax dues had been quantified as required under Section 121(r) of the Finance Act (No.2), 2019.

36. The respondents are directed to consider the declaration of the petitioner in terms of the Scheme as a valid declaration under the category of “investigation, enquiry and audit” and grant the consequential reliefs to the petitioner. While doing so, the respondents shall provide an opportunity of hearing to the petitioner and thereafter, pass a speaking order with due communication to the petitioner.



2024:DHC:1246-DB



37. The petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

FEBRUARY 19, 2024
'UG/SS/SK'

Signature Not Verified

Digitally Signed
By: SANJAY KUMAR
Signing Date: 25.02.2024
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