

(2020) 11 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition (Stamp) No. 3485 Of 2020

G. R. Palle Electricals

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-11-2020

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 70
Finance Act, 2019 — Section 120, 121, 121(g), 121(r), 122, 123, 123(c), 124, 124(1)
(d), 124(2), 125, 125(1), 125(1)(e), 126, 127, 127(1), 127(2), 127(3), 127(8), 128,
129, 129, 130, 131, 132, 133, 134, 135
Constitution Of India, 1950 — Article 226

Citation : (2020) 11 BOM CK 0041

Hon'ble Judges : Ujjal Bhuyan, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : Ashok Kotangle, Maithili Iyer Ghosh, Shakuntala Sharma, Pradeep S.
Jetly, J. B. Mishra

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Ashok Kotangle, learned counsel for the petitioner and Mr. Pradeep Jetly, learned senior counsel alongwith Mr. J. B. Mishra, learned

counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 22.01.2020 passed by the Designated

Committee rejecting its application (declaration) under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and further seeks a direction to

the respondents to consider afresh such application (declaration) as per the above scheme.

3. Case of the petitioner is that it is a proprietorship firm and Mr. Govind Ramlu

Palle is the sole proprietor. Petitioner is a government licensed electrical contractor and engineer. It provides taxable services while carrying works contract services, supply of manpower services and repairs and maintenance services to Maharashtra State Electricity Distribution Company Limited. Petitioner was holder of service tax registration certificate under the jurisdiction of Navi Mumbai Commissionerate.

4. A summons under section 70 of the Central Goods and Services Tax Act, 2017 (briefly "the CGST Act" hereinafter) was issued to the petitioner from the office of Commissioner of Central Goods and Services Tax (CGST) and Central Excise, Navi Mumbai on 05.01.2018 informing the petitioner that an enquiry against it had been initiated for evasion of government dues (service tax dues) in connection with which the proprietor was summoned for appearance. Pursuant to such summons, proprietor had appeared before the authorities and his statement was recorded on 11.01.2018.

Petitioner acknowledged in his statement that outstanding service tax dues for the period from 2015-2016 to June, 2017 was Rs.60 lakhs

(approximately). In this connection, Superintendent (Anti-Evasion, G-V), office of the Commissioner of CGST and Central Excise, Navi Mumbai

wrote to the proprietor on 24.01.2018 reminding him that in his statement dated 11.01.2018 he had admitted service tax liability of Rs.60 lakhs and had

promised to discharge Rs.15 lakhs by 15.01.2018 which had not been discharged.

5. It may be mentioned that the enquiry/investigation against the petitioner for alleged non-payment of service tax dues pertain to the period from

April, 2013 to June, 2017. Petitioner had stated that service tax liability was Rs.60 lakhs (approximately) which was outstanding for the period from

2015-2016 to June, 2017. According to the petitioner, the entire amount of service tax dues for the period from April, 2013 to June, 2017 worked out to

Rs.91,29,094.00. It is stated that petitioner had paid the aforesaid amount in entirety but because of delay in payment it had to pay additionally a sum

of Rs.1,46,985.00 as interest on delayed payment.

6. Though the respondents continued to issue summons and letters to the petitioner, formal proceedings like issuance of show-cause notice etc. were not initiated.

7. In the meanwhile, Central Government introduced an amnesty scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly

the scheme hereinafter) as part of Finance (No.2) Act, 2019. Subsequently, Central Board of Indirect Taxes and Customs issued notification on 21.08.2019 appointing 01.09.2019 as the due date for commencement of the scheme; Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 framed by the Central Government were also notified.

8. Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (briefly the Rules hereinafter) has since been amended. As per rule-3, the declaration made under sub section (1) of section 125 would be in form SVLDRS-1. Rule-6(3) says that the form issued by the Designated Committee under sub section (2) of section 127 shall be in form SVLDRS-2 mentioning the estimated amount payable by the declarant alongwith a notice of opportunity for personal hearing. As per sub rule (4), if the declarant waives personal hearing and indicates agreement or disagreement with the estimate made by the Designated Committee, he may file form SVLDRS-2A. Under rule-6(2) when the amount estimated by the Designated Committee equals the amount declared by the declarant, Designated Committee shall issue form SVLDRS-3. Discharge certificate contemplated in section 129 shall be issued in form SVLDRS-4.

9. In terms of the scheme, petitioner filed application (declaration) on 12.12.2019 in SVLDRS-1 form under the category Investigation, Enquiry or Audit with further sub-categorization as Investigation by Commissionerate. Petitioner mentioned that the amount of service tax dues was Rs.91,29,094.00 which amount was paid as pre-deposit. Therefore, it was mentioned that the amount required to be paid by the petitioner i.e. tax dues less tax relief was nil.

10. On 22.01.2020 petitioner received email from the respondents wherein it was mentioned that the application (declaration) of the petitioner was rejected on the ground of ineligibility. In the remarks column, it was mentioned that the application (declaration) was rejected as the investigation was still going on and the duty amount was pending for quantification.

11. Aggrieved, present Writ Petition has been filed seeking the reliefs as indicated above.

12. Respondents have filed affidavit. Stand taken in the affidavit is that in response to summons, proprietor of the petitioner had appeared before the

Investigating Officer on 11.01.2018 whereafter his statement was recorded. In his statement the proprietor admitted that an amount of Rs.60 lakhs

was the approximate outstanding service tax liability for the period from 2015-2016 to June, 2017 and had agreed to discharge Rs.15 lakhs. Further

stand taken is that the scheme provides for eligibility to file declaration under four categories, namely, -

i) Arrears ;

ii) Litigation ;

iii) Investigation, Enquiry or Audit ; and

iv) Voluntary Disclosure

13. It is stated that when the scheme was launched, investigation was still going on against the petitioner. Therefore, from amongst the four categories,

petitioner could have filed declaration only under one category i.e. investigation, enquiry or audit. Referring to section 125(1) of the Finance (No.2)

Act, 2019, it is contended that a declarant was ineligible to file declaration as per the scheme under the category of investigation, enquiry or audit in a

case where he had been subject to an enquiry or investigation or audit and the amount of duty involved had not quantified on or before 30.06.2019.

Designated Committee after considering that investigation against the petitioner had not been completed and as the service tax liability of the petitioner

had not been quantified on or before 30.06.2019, rejected the declaration of the petitioner as being ineligible.

14. Learned counsel for the petitioner Mr. Kotangle submits that impugned decision of the respondents in rejecting the declaration of the petitioner is

wholly incorrect and liable to be appropriately interfered with by this Court. Referring to circular dated 27.08.2019 of the Central Board of Indirect

Taxes and Customs (Board) as well as the frequently asked questions (FAQs) prepared by the department, he submits that petitionerâ??s

declaration under the pending investigation, enquiry or audit category was maintainable as proprietor of the petitioner had admitted the tax dues in his

statement recorded on 11.01.2018 followed by the departmentâ??s acknowledgment of the quantification vide letter dated 24.01.2019, both before

30.06.2019. Even respondents in paragraph 14 of their affidavit have acknowledged eligibility of the petitioner. In any case, rejection of the declaration

was without any notice or hearing and therefore in gross violation of the

principles of natural justice.

15. On the other hand, Mr. Pradeep Jetly, learned senior counsel for the respondents has referred to section 125(1) and submits that under clause (e) thereof, petitioner was ineligible to make a declaration. Therefore, the Designated Committee had rightly rejected the declaration of the petitioner. No interference is called for.

16. Submissions made by learned counsel for the parties have been duly considered.

17. From the above, it is evident that proprietor of the petitioner Mr. Govind Ramlu Palle in his statement before the investigating authority recorded on

11.01.2018 in connection with the enquiry proceedings conducted against the petitioner responded to question No.3 as to what was the outstanding

service tax liability as on 30.06.2017 by stating that service tax liability of Rs.60 lakhs (approximately) was still outstanding for the period from 2015-

2016 to June, 2017. Referring to the said statement, Superintendent (Anti-Evasion, G-V), CGST and Central Excise, Navi Mumbai wrote to the

proprietor of the petitioner on 24.01.2018 reminding him that he had admitted service tax liability of the petitioner at Rs.60 lakhs (approximately) and

had promised to discharge Rs.15 lakhs by 15.01.2018 which he had not discharged.

18. Having noticed the above, we may briefly refer to the relevant provisions of the scheme. Section 120 to section 135 forming part of Chapter V of

the Finance (No.2) Act, 2019 (briefly "the Act" hereinafter) comprises the scheme. Section 123 defines "tax dues" for the purposes of the

scheme. As per clause (c) of section 123, 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 30.06.2019 would be the "tax dues". The word "quantified" has

been defined in section 121(r) to mean a written communication of the amount of duty payable under the indirect tax enactment.

19. Section 124 deals with relief available to a declarant under different categories as per the scheme. Clause (d) of sub section (1) of section 124

provides that where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before

30.06.2019 is rupees fifty lakhs lakhs or less, then the relief available to the

declarant would be seventy per cent of the tax dues; and if the amount quantified on or before 30.06.2019 is more than rupees fifty lakhs, then fifty percent of the tax dues would be available as the relief to the declarant.

19.1. Sub section (2) of section 124 clarifies that any amount paid as pre-deposit under the concerned indirect tax enactment shall be deducted from the relief available under sub section (1) at the time of issuing the statement indicating the amount payable by the declarant.

20. Section 125(1) provides a negative list. Whoever is not included in the negative list shall be eligible to make a declaration under the scheme. One of the clauses of disability is clause (e) which 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 has not been quantified on or before 30.06.2019 shall not be eligible.

21. Section 126 deals with Designated Committee which shall verify the correctness of the declaration made by the declarant under section 125.

22. Under sub section (1) of section 127, where an amount estimated to be payable by the declarant, as estimated by the Designated Committee, equals the amount declared by the declarant, then the Designated Committee shall issue a statement in the prescribed electronic form indicating the

amount payable by the declarant. Under sub section (2), where the amount estimated to be payable by the declarant as estimated by the Designated

Committee exceeds the amount declared by the declarant, then the Designated Committee shall issue the estimate in the prescribed electronic form to

the declarant informing him about the estimated amount. Under sub section (3), after the issue of estimate under sub section (2), the Designated

Committee shall give an opportunity of being heard to the declarant and after hearing the declarant, the Designated Committee shall issue a statement

in the prescribed form indicating the amount payable by the declarant.

23. From a conjoint reading of sub sections (1), (2) and (3) of section 127, the picture that emerges is that if the amount estimated by the Designated

Committee is equal to the amount declared by the declarant, then the Designated Committee shall issue a statement in electronic form indicating the

amount payable by the declarant. However, if the amount estimated by the Designated Committee is higher than the amount declared by the

declarant, the Designated Committee shall give an opportunity of hearing to the

declarant.

24. Once the determined amount is paid, discharge certificate is issued by the Designated Committee under sub section (8) of section 127.

25. Respondents have relied upon section 125(1)(e) to contend 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 30.06.2019 would not be eligible to make the declaration. On this ground, declaration of the petitioner has been rejected by the Designated Committee, which has been justified.

26. 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.

* * * * *

26.1. 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.

26.2. 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.

* * * * *

26.3. Clause (g) of paragraph 10 makes it abundantly clear that cases under an enquiry, investigation or audit where the duty demand has 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.

27. We have already noticed that proprietor of the petitioner in his statement recorded on 11.01.2018 by the investigating authority admitted the

service tax liability of Rs.60 lakhs (approximately) to be outstanding for the period from 2015-2016 to June, 2017. This was corroborated by the

departmental authority in the letter dated 24.01.2018 which we have already noted and discussed. Therefore, present is a case where there is

acknowledgment by the petitioner of the duty liability as well as by the department in its communication to the petitioner. Thus, it can be said that in

the case of the petitioner the amount of duty involved had been quantified on or before 30.06.2019. In such circumstances, rejection of the application

(declaration) of the petitioner on the ground of being ineligible with the remark that investigation was still going on and the duty amount was pending

for quantification would not be justified.

28. This position has also been explained by the department itself in the form of frequently asked questions (FAQs). Question Nos.3 and 45 and the

answers provided thereto are relevant and those are reproduced hereunder :-

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

Scheme ?

Ans. No. If an audit, enquiry or investigation has started, and the amount of duty/duty payable has not been quantified on or before 30th June, 2019,

the person shall not be eligible to opt for the Scheme under the enquiry or investigation or audit category. "Quantified" means a written

communication of the amount of duty payable under the indirect tax enactment [Section 121(g)]. Such written communication will include a letter

intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc. [Para 10(g) of Circular No

1071/4/2019-CX dated 27th August, 2019].

* * * * *

Q45. 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.

29. This aspect of the matter was gone into in considerable detail by us in Thought Blurb Vs. Union of India, decided on 27.10.2020, whereafter in the

facts of that case it was held as under :-

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.

30. There is one more reason which would justify our intervention in this case. We have already noticed that in a case where the amount estimated by

the Designated Committee exceeds the amount declared by the declarant, then a hearing is given by the Designated Committee to the declarant

before determining the amount to be paid by the declarant. In a situation where Designated Committee grants hearing to a declarant when the amount

estimated by it exceeds the amount declared by the declarant, then it would be

wholly inconceivable that before an application (declaration) is rejected on the ground of ineligibility, no hearing is granted to the declarant. In *Thought Blurb* (supra), it was held as under :-

51. 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.

31. As has been held by us in *Thought Blurb* (supra), the scheme is a beneficial one with the prime object of unloading the baggage of pending

litigations centering around service tax and excise duty. The focus is to unload this baggage of pre-GST regime and thereby allowing business to move

ahead but at the same time to also ensure that the administrative machinery can focus fully in the smooth implementation of GST. This is the broad

picture which should be kept in mind while considering a declaration seeking

amnesty under the scheme. Therefore, a liberal view embedded with the principles of natural justice is called for. The approach should be to ensure that the scheme is successful.

32. Considering the above, we set aside the order dated 22.01.2020 and remand the matter back to the Designated Committee to consider afresh the application (declaration) of the petitioner dated 12.12.2019 as a valid declaration and grant the consequential relief after giving due opportunity of hearing to the petitioner, who shall be informed about the date, time and place of the hearing. Such decision shall be in the form of a speaking order with due intimation to the petitioner. The entire exercise shall be carried out within a period of six weeks from the date of receipt of a copy of the present order.

33. Writ Petition is accordingly allowed as above. However, there shall be no order as to costs.

34. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.