

(2023) 01 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 5097 Of 2022

K. Raheja Private Limited

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Cenvat Credit Rules, 2004 — Rule 5(1), 6(3)(I), 14
Finance Act, 1994 — Section 73(1), 75, 76, 77, 78
Central Goods And Services Tax Act, 2017 — Section 142, 174
Finance Act, 2019 — Section 2(r), 121, 121(m), 121(r), 123, 123(c), 125, 125(3), 125(1)(e), 125(2)

Citation : (2023) 01 BOM CK 0105

Hon'ble Judges : Nitin Jamdar, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : Prakash Shah, Jas Sanghavi, Ram Ochani, Karan Adik

Final Decision : Allowed

Judgement

Abhay Ahuja, J

1. This is a Petition challenging communication dated Nil March, 2020 by the Respondent No.3-Deputy Commissioner CGST & Central Excise, Mumbai, rejecting declaration in Form-SVLDRS-1 dated 20 December 2019 filed by the Petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("SVLDR Scheme").

2 Petitioner is a company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of real estate and related activities. Petitioner is stated to be registered under the Service Tax Rules, 1994 and upon coming into force of the CGST Act with effect from 1 July 2017, Petitioner is stated to have registered under the CGST Act as well.

3 Petitioner's case is that it had constructed a Public Parking Lot (PPL) on plot of land bearing No. C.S. No.2/1629 of Lower Parel Division, Plot No. 249, 249-A of

Worli Scheme No. 52, G/ S Ward, Opp. Hind Cycle Company, B. P. Road, Mumbai 400 025 (the "said plot").

4 That the Municipal Corporation of Greater Mumbai ("MCGM") by its letter dated 5 May 2012 approved the proposal of grant of incentive FSI over and above the normal FSI to the Petitioner against the construction of the said PPL on the said plot.

5 Pursuant to the visit of the Superintendent, Directorate General of GST Intelligence, Mumbai ("DGGSTI") and his team to the office of the Petitioner on 15 February 2018, Petitioner vide its letter of the same date informed the Superintendent that it had handed over the said PPL to MCGM. These facts have not been disputed by the Respondents.

6 Vide letter dated 23 March 2018 to DGGSTI, Petitioner is stated to have provided details of Cenvat credit availed by it alongwith copies of documents stating that they had ascertained that the total cenvat credit claimed for construction of PPL was Rs. 2,74,82,221/- and that they had reversed the same along with interest amounting to Rs. 1,86,14,476/- and requested the Superintendent, DGGSTI to close the proceedings.

7 The details of credit were also provided by the Petitioner vide its letter dated 11 June 2018 requesting the Superintendent to close the proceedings.

8 In the meanwhile, the SVLDR Scheme and Rules were announced to resolve pending disputes, which came into effect from 1 September 2019.

9 It is the case of the Petitioner that since the Scheme was given vide publicity, pursuant to paragraph no. 4(a) of Circular No. 1071/4/2019-CX.8 dated 27 August 2019, the Petitioner filed an application dated 20 December 2019 in Form SVLDRS-1 under the category, "Investigation, Enquiry or Audit" and sub-category "Investigation by DGGI" for the duty type "Service Tax".

10 Petitioner vide its letter dated 23 December 2019 informed the Designated Committee about the declaration filed by the Petitioner and also informed that it had already paid a sum of Rs. 4,60,96,697/- (Service Tax of Rs. 2,66,99,489/-, Education Cess. Rs. 4,47,293/-, Secondary & Higher Education Cess Rs. 2,23,640/- and Krishi Kalyan Cess of Rs. 1,11,799/- and interest of Rs. 1,80,81,197/- on service tax, interest of Rs. 3,46,099/- on education cess, interest of Rs. 1,73,043/- on Secondary & Higher Education Cess and interest of Rs. 14,137/- on Krishi Kalyan Cess).

11 By another letter of the same date Petitioner also informed the Superintendent, DGGSTI about filing of the said declaration.

12 The Designated Committee determined the estimated amount to be payable by Petitioner as "zero" and issued Form-SVLDRS-2 dated 16 January 2020. Petitioner was also intimated that personal hearing was fixed on 22 January 2020 in case Petitioner does not agree with the estimated amount and Petitioner was

further called upon to submit Form SVLDRS-2A in case any other date and time of personal hearing was desired. Petitioner submitted Form SVLDRS-2A dated 22 January 2020.

13 By an e-mail dated 29 January 2020, Petitioner was informed that it had not attended the personal hearing and was requested to contact the SVLDRS Cell in respect of its application.

14 It is the case of the Petitioner that thereafter, Petitioner did not receive any other communication, but to its surprise received a Show Cause Notice dated 21 June 2021 from Respondent No.6- Deputy Director, Directorate General of GST Intelligence to show cause as under:-

A. The extended period envisaged under proviso to sub-section (1) of section 73 of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004 which has been kept in force in the GST era vide section 142 & 174 of the Central Goods and Services Tax Act, 2017 should not be invoked to demand the Service Tax evaded by them for the reasons discussed above:

B. An amount equal to Cenvat credit to the tune of s. 1,25,96,355/- (Rupees One crore twenty five lakhs ninety six thousand three hundred fifty five only) inclusive of Education Cess, Higher Secondary Education Cess, Swach Bharat Cess, Krishi Kalyan Cess taken by them during the period from October 2015 to December 2016 on input/inputs services in relation to Public Parking Lot (PPL) should not be demanded and recovered item them under Rule 6(3) (I) of CCR, 2004 read with Rule 14 of CCR, 2004 read with proviso to sub-section (I) of Section 73 of the Finance Act 1994.

C. An amount of Rs. 45,09,483/- (Rupees Forty Five Lakhs Nine Thousand Four Hundred Eighty Three Only) inclusive of Education Cess, Higher Secondary Education Cess, Swach Bharat Cess, Krishi Kalyan Cess paid by them during the course of investigation should not be appropriated against aforesaid tax liability;

D. Interest at the appropriate rate on the said amount should not be charged and recovered from them under Rule 14 of the CCR read with Section 75 of the Act;

E. Interest of Rs. 8,26,616/- (Rupees Eight Lakhs Twenty Six Thousand Six Hundred Sixteen Only) paid by them during the course of investigation should not be appropriate against their total interest liability;

F. Penalty should not be imposed upon them under Rule 5(1) of the Cenvat Credit Rules, 2004 read with Section 76 of the Finance Act, 1994 on the grounds discussed above;

G. Penalty should not be imposed upon them under Rule 15(3) of the Cenvat Credit Rules, 2004, read with Section 78 of the Finance Act, 1994 on the grounds discussed above;

H. Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for failing to keep, maintain or retain books of accounts and other

documents as required under provisions of the Finance Act.

15 In response thereto, Petitioner filed reply dated 22 July 2021 inter alia denying the allegations and also informing about Petitioner having filed declaration under SVLDRS.

16 Vide letter dated 24 September 2021, the Respondent No.6-Deputy Director General of GSTI, informed the Petitioner that during investigation it was noticed that Petitioner had availed all Input Tax Credit (ITC) of Excise duty of Rs. 1,27,984/- and Value Added Tax (VAT) of Rs. 14,93,853/- in TRANS-1. Petitioner was further called upon to submit details of reversal of inadmissible ITC, payment of appropriate interest and penalty.

17 It is submitted that by letter dated 12 October 2021, Petitioner furnished to Respondent No.6 documents with respect to the reversal of credit TRANS-1 and interest.

18 Later vide letter dated 14 February 2022, Petitioner requested the Designated Committee to issue to the Petitioner Form SVLDRS-4.

19 Vide communication dated 17 February 2022, Respondent No.4 -Additional Commissioner of CGST and Central Excise informed Petitioner that Form SVLDRS-1 file by Petitioner had been rejected on 20 March 2020 and enclosed copy of the said letter dated nil March 2020 rejecting the declaration filed by Petitioner.

20 It is the Petitioner's case that Petitioner never received the said communication of rejection of the declaration on 20 March 2020 either from Respondent No.4 or from the Designated Committed, prior to the 4th Respondent's letter dated 17 February 2022, by which the letter dated Nil March, 2020 rejecting the declaration was enclosed.

21 Aggrieved by the aforesaid, Petitioner has preferred this Writ Petition submitting that rejection of the declaration filed by Petitioner under Section 125(2) of the Finance Act, 2019 is ex- facie, arbitrary, unreasonable and contrary to the scheme and in breach of principles of natural justice and liable to be set aside on the grounds mentioned in the petition. The Petitioner has prayed for the following reliefs:

“(a) that this Hon’ble Court be pleased to issue writ of Certiorari or any other appropriate writ, order or direction in nature of certiorari calling for the records of the Petitioners’ case and after examining the legality and validity thereof be pleased to quash and set aside communication dated Nil March, 2020 of the Deputy Commissioner (SVLDRS), CGST & CX. Mumbai-East, rejecting the declaration in Form SVLDRS-1 filed under ARN No. LD201290003118 dated 20.12.2019;

(b) that this Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writs, orders or directions under Article 226 of the Constitution of

India ordering and directing the Respondents to forthwith accept the declaration in Form SVLDRS-1 filed under ARN No. LD20129003118 dated 20.12.2019 filed by the Petitioner and issue Form SVLDRS-3 or SVLDRS-4 as the case may be;

(c) pending the hearing and final disposal of the Petition, the Respondents by themselves and their subordinates, servants and agents be restrained by an interim injunction of this Hon'ble Court from taking any steps or proceedings against the Petitioner from adjudicating the Show Cause Notice F. No. DGGSTI/MZU/I&IS"B"/ 12(4)33/2018/3314 dated 21.06.2021 issued by the Respondent No.6;"

22 Mr. Prakash Shah, learned Counsel for Petitioner would submit that even as on 22 June 2021 i.e. after the date of rejection of Petitioner's declaration, the online status of the Petitioner on the SVLDRS portal was showing as "Agreed by Taxpayer"

23 Learned Counsel submits that the rejection of declaration post issuance of Form SVLDRS-2 and the Petitioner having accepted the estimate by submitting SVLDRS-2A is without jurisdiction.

24 Further since the entire scheme was made functional electronically and was to operate online, no powers were conferred on Respondent No.5 to accept or reject the declaration manually. And therefore, the rejection letter dated Nil March, 2020, is de hors the prescribed procedure and deserves to be quashed and set aside.

25 Mr. Prakash Shah, learned Counsel for the Petitioner would further submit that as per the scheme, the rejection could only have been done at the SVLDRS-1stage but not when SVLDRS-2/3/4 have already been issued. In the present case, since SVLDRS-2 has already been issued and Petitioner had also filed SVLDRS-2A, Respondent No.5 could not have rejected the declaration.

26 He further submits that the rejection letter refers to and relies upon a DGGI report dated 27 February 2020 to submit that the amount has not been quantified but the said verification report has not thus been furnished to Petitioner nor Petitioner has been granted an opportunity to deal with the same, making the rejection in breach of the principles of natural justice.

27 Reliance has also been placed by learned Counsel for Petitioner on Section 123(c) of the Finance Act, 2019, to submit that this is a case where the amount of duty payable under Service Tax law has been quantified on or before 30 June 2019.

28 Learned Counsel also refers to Clause (e) of Section 125(1) to submit that all persons are eligible to make a declaration except, inter alia, 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 30 June 2019.

29 Learned Counsel also refers to the letter dated 23 March 2018 from Petitioner to DGGSTI, Mumbai to submit that the said communication clearly admits Cenvat Credit taken of Service Tax, Education Cess, Secondary & Higher Education Cess, Krishi Kalyan Cess aggregating to Rs. 4,60,96,697/- to be the amount quantified before 30 June 2019 as per SVLDRS which amount was not disputed by the Respondents-Authorities and therefore "Nil" SVLDRS-2 was issued by Designated Committee.

30 It is submitted that the said communication clearly falls within the definition of "quantified" as per Section 121(r) as well as under Clause (g) of Circular No. 1071/4/2019-CX.8 dated 27 August 2019 as the aforesaid amount has been quantified before 30 June 2019.

31 Mr. Shah submits that the scheme is a beneficial one for unloading the baggage of legacy disputes of pre GST regime and the administrative machinery should have approached Petitioner's declaration with a view to make the scheme successful. Therefore the rejection is ex-facie untenable and unsustainable in law and ought to be set aside.

32 Learned Counsel has relied upon the decision of this Court in case of RS HR Team Solutions Pvt. Ltd. Vs. Union of India 2020(47) G.S.T.L. 256 (Bom.).

33 The Respondents have filed an affidavit in reply dated 20 June 2022.

34 Mr. Ochani, learned Counsel for the Respondents would submit that in the present case the tax amount was not quantified as on 30 June 2019 and that the said fact was communicated to the Designated Committee by the investigating agency i.e. DGGI, Mumbai vide letter dated 27 February 2020 and therefore, the Designated Committee concluded that the Petitioner was not eligible for relief under the SVLDRS and the declaration was rejected.

35 With respect to the communication of the rejection to the Petitioner, it is stated in the affidavit in reply that although the declaration of the Petitioner was rejected on file on 20 March 2020, however, due to lockdown in view of Covid-19 pandemic, the rejection order could not be served on the Petitioner and the same was submitted to the Petitioner on 17 February 2022, upon a request made by Petitioner.

36 With respect to the averment that on the SVLDRS portal the status of the Petitioner is still showing "Agreed by Taxpayer", it is submitted that as the scheme has closed, the said portal has not been updated and therefore, the said remark was still showing on the portal.

37 It is also submitted that only when there is a dispute that Form SVLDRS-2 (notice of personal hearing) is issued to clarify the dispute and in the present case although the Petitioner was requested to appear before the Designated Committee on 21 January 2020 at 3.00 p.m. to clarify the matter, Petitioner did not appear for the personal hearing.

38 With respect to the manual rejection of the application of Petitioner, it is submitted that the Board vide letter F. No. 267/55/2020/CX-8/Pt-1 dated 4 May 2020 has informed the field formation that whenever the SVLDRS-2 is issued to the declarant, there is no functionality in the SVLDRS portal to reject the application online and therefore, the board has instructed that such applications may be rejected manually on merits.

39 It is submitted that since the Petitioner was not eligible for the Scheme as the tax amount was not quantified as on 30 June 2019, Petitioner's declaration was rejected, pursuant to communication from the DGGI, Mumbai dated 27 February 2020 to the Designated Committee.

40 It is further submitted on behalf of the Respondents that the Show Cause Notice issued to Petitioner is dated 21 June 2021, which demonstrates that the amount was not quantified as on 30 June 2019. Therefore, Petitioner could not have filed application for the tax dues of Rs. 4,60,96,697/- as the Show Cause Notice dated 21 June 2021 was issued for a demand of Rs. 1,25,96,355/-.

41 The reply refers to the definition of "quantified" as provided in Section 121 (r) to submit that quantification would refer only to the amount of duty and not any other amount including interest, penalty, etc.

42 Reliance has also been placed on behalf of Respondents upon Clause (g) of paragraph 10 of circular dated 27 August 2019 with respect to clarification on what is quantification and to FAQ No.53 with respect to the meaning of quantification as on 30 June 2019.

43 It is submitted on behalf of the Respondent-Revenue that the investigating agency i.e. DGGI, Mumbai, who was investigating the case, vide letter dated 27 February 2020 informed the Designated Committee that tax amount has not been quantified.

44 It is also submitted on behalf of Petitioner that although the SVLDRS-1 filed by Petitioner could have been straightaway rejected, however, to follow the principles of natural justice, Form 2 was issued to Petitioner. It is, therefore, stated that mere issuance of SVLDRS-2 does not confirm the eligibility of Petitioner for relief under the scheme and SVLDRS-3 can be issued only to an eligible declarant. That therefore, the Designated Committee has rightly rejected the application of the Petitioner and therefore this Petition also be dismissed.

45 We have heard Mr. Prakash Shah, the learned Counsel for the Petitioner and Mr. Ram Ochani, learned Counsel for the Respondents and with their able assistance, we have perused the papers and proceedings in the matter and also considered the rival contentions.

46 The Government of India notified SVLDR Scheme with effect from 1 November 2019 under Chapter V of Finance (No.2) Act, 2019 to provide amnesty with respect to legacy disputes arising inter alia out of Service Tax. Under the SVLDR Scheme tax payers could file online declaration for resolution of past

disputes, initially from 1 September 2019 to 31 December 2019, which was later on extended to 15 January 2020.

47 The statement of objects and reasons of the said Scheme are set out as under:-

“ STATEMENT OF OBJECTS AND REASONS

The Scheme is a one time measure for liquidation of past disputes of Central Excise and Service Tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The Scheme shall be enforced by the Central Government from a date to be notified. It provides that eligible persons shall declare the tax due and pay the same in accordance with the provisions of the Scheme. It further provides for certain immunities including penalty interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 to those persons who pay the declared tax dues.”

48 Chapter V of the Finance Act, 2019 provides for the relief available under the Scheme, declaration to be made thereunder, the verification of declaration by the Designated Committee, the statement by Designated Committee, issue of discharge certificate, restrictions of the scheme and the power to make rules to issue orders, instructions, etc.

49 Before we proceed further, it would be apposite to set out the various provisions, clarifications, Frequently Asked Questions(FAQs), relied upon on behalf of the parties.

50 Section 121 defines various terms that are used in the Scheme. Section 121(m) defines “enquiry or investigation” as under:-

“ 121...

.....

.....

(m) “enquiry or investigation”, under any of the indirect tax enactment, shall include the following actions, namely:-

- (i) search of premises; (ii) issuance of summons;
 - (iii) requiring the production of accounts, documents or other evidence;
 - (iv) recording of statements;”
- (emphasis supplied)

51 Section 121 (r) defines the term “quantified” as under:-

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

52 Section 123 defines “tax dues”. Clause (c) of Section 123 defines tax dues

relevant to the facts herein to mean 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 30 June 2019.

53 Pursuant to Section 125 which provides for declaration under the scheme, all persons are eligible to make a declaration under the scheme except :

(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 30 th 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;

(emphasis supplied)

54 The text of Clause (g) of paragraph 10 of the circular dated 27 August 2019, FAQ 45 and FAQ 53 are quoted 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.

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.”

FAQ.53. The amount quantified under an enquiry, investigation or audit on or before 30.06.2019 gets modified subsequently due to any reason. Will I still be eligible to file a declaration under the Scheme?

Ans. Only such cases of enquiry, investigation or audit are covered under the Scheme where the duty/tax demand has been finally worked out on or before 30.06.2019. In other words, all the evidence/document gathering process is over and the tax liability has been worked out on or before 30.06.2019. For instance, a Draft Audit Report or the Final Audit Report has been issued on or before 30.06.2019. Similarly, a letter intimating duty demand has been issued by the department. These would include those cases also where the duty/tax demand undergoes a change only due to any clerical or calculation error”.

55 A Division Bench of this Court in the case of RS HR Team Solutions Pvt. Ltd. (supra) relied upon by learned Counsel for Petitioner, while considering the eligibility of Petitioners therein and maintainability of the declaration to avail of the benefits of the Scheme under the category of investigation, enquiry or audit on the ground that service tax dues of Petitioners for the related period was not quantified on or before 30 June 2019 has observed as under:-

“17. In *Thought Blurb Vs. Union of India*- 2020-TIOL-1813-HC-MUM-ST = 2020(43) G.S.T.L. 499 (Bom.), this Court faced with a similar issue referred to provisions of the Finance (No.2) Act, 2019 and to the circular dated 27th August, 2019 of the Central Board of Indirect Taxes and Customs (briefly “the Board” hereinafter) whereafter it was held as under :- ”

“47. Reverting back to the circular dated 27th August, 2019 of the Board, it is seen that certain clarifications were issued on various issues in the context of the scheme and the rules made thereunder. As per paragraph 10(g) of the said circular, the following issue was clarified in the context of the various provisions of the Finance (No.2) Act 2019 and the Rules made thereunder :-Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the scheme. Section 2(r) defines “quantified” as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that such written communication will include a letter intimating duty demand; or duty liability admitted by the person during enquiry, investigation or audit; or audit report etc.

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

49. Reverting back to the facts of the present case, we find that on the one hand there is a letter of respondent No.3 to the petitioner quantifying the service tax

liability for the period 1st April, 2016 to 31st March, 2017 at Rs.47,44,937.00 which quantification is before the cut off date of 30th June, 2019 and on the other hand for the second period i.e. from 1st April, 2017 to 30th June, 2017 there is a letter dated 18th June, 2019 of the petitioner addressed to respondent No.3 admitting service tax liability for an amount of Rs.10,74,011.00 which again is before the cut off date of 30th June, 2019. Thus, petitioner's tax dues were quantified on or before 30th June, 2019.

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

18. Subsequently, in M/s G.R.Palle Electricals Vs. Union of India, 2020 TIOL-2031-HC-MUM-ST=2021(45) G.S.T.L.10(Bom.), this Court held as follows:-

"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(r)]. 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.”

19. Finally in Saksham Facility Private Limited Vs. Union of India, 2020 TIOL-2108-HC-MUM-ST = 2021(47) G.S.T.L. 228 (Bom.), where a similar issue had cropped up, this Court reiterated the above position and held as under :-

“22.3. Clause (g) of paragraph 10 makes it abundantly clear that cases under an enquiry, investigation or audit where the duty demand had been quantified on or before 30.06.2019 would be eligible under the scheme. The word “quantified” has been defined under the scheme as a written communication of the amount of duty payable under the indirect tax enactment. In such circumstances, Board clarified that such written communication would include a letter intimating duty demand or duty liability admitted by the person during enquiry, investigation or audit etc. Reverting back to the facts of the present case we find that there is clear admission / acknowledgment by the petitioner about the service tax liability. The acknowledgment is dated 06.2019 i.e., before 30.06.2019 both in the form of letter by the petitioner as well as statement of its Director, Shri. Sanjay R. Shirke. In fact, on a pointed query by the Senior Intelligence Officer as to whether petitioner accepted and admitted the revised service tax liability of Rs.2,47,32,456.00, the Director in his statement had clearly admitted and accepted the said amount as the service tax liability for the period from 2015-16 upto June, 2017 with further clarification that an amount of Rs.1,20,60,000.00 was already paid.

Following the above it is evident that the word ‘quantified’ under the scheme would mean a written communication of the amount of duty payable which will include a letter intimating duty demand or duty liability admitted by the person concerned during enquiry, investigation or audit or audit report and not necessarily the amount crystalized following adjudication. Thus, petitioner was eligible to file the declaration in terms of the scheme under the category of enquiry or investigation or audit as its service tax dues stood quantified before 30.06.2019.”

20. 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.”

(emphasis supplied)

56 The above discussion leads to the conclusion that for being eligible under the

SVLDR Scheme, a written communication of the amount of duty liability admitted by the person concerned during enquiry, investigation or audit would be a quantification on or before 30 June 2019, which need not be determined upon completion of investigation by issuance of Show Cause Notice or upon adjudication.

57 It is not in dispute that on 15 February 2018, the Superintendent of the Director General of GSTI and his team visited its office and Petitioner vide its letter dated 15 February 2018 informed the Superintendent that it had handed over the PPL to MCGM. From the definition of enquiry and investigation as set out above, it is clear that search of premises as in the case of Petitioner on 15 February 2018 falls under enquiry or investigation as defined in Section 121(m).

58 It is also not in dispute that vide letters dated 23 March 2018 as well as dated 11 June 2018 to the DGGSTI i.e. prior to 30 June 2019, Petitioner ascertained and furnished details of Cenvat Credit of Service Tax, Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess, totalling to Rs. 4,60,96,697/- for the relevant period which has been paid together with interest through Service Tax challans which were also furnished to the DGGSTI.

59 A perusal of the said communication dated 23 March 2018 indicates that the company had availed Cenvat Credit including cenvat for construction of PPL for MCGM and has furnished the service tax returns for the respective periods as well as the profit centre wise details of such cenvat availed including for the period from 1 April 2012 to 30 June 2017.

60 It is stated in the said letter that pursuant to the ascertainment of cenvat credit of Service Tax, Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess, the company has ascertained applicable interest of Rs. 1,80,81,197/- on service tax, interest of Rs. 3,46,099/- on education cess, interest of Rs. 1,73,043/- on Secondary & Higher Education Cess and interest of Rs. 14,137/- on Krishi Kalyan Cess for the relevant period.

61 By the said communication it was submitted that the Petitioner is entitled to the cenvat & input tax credits since ultimate sale of flats was liable to tax as they had paid the same there would be no reason to issue Show Cause Notice nor impose any penalty and the proceedings be closed as they had complied with provisions of the Service Tax, MVAT and GST law. There has been no reply to this communication.

62 This amount of Rs. 4,60,96,697/-, in our view, would fall within the definition of Section 121 (r) as a quantified amount being pursuant to a written communication of the amount payable under the indirect tax enactment in a case where an investigation though may have been pending but the amount had been quantified before 30 June 2019. Section 123 (c) as well as Section 125 (1)(e) of the Finance (No.2) Act, 2019 as well as paragraph 10 (g) of the circular dated 27 August 2019 read with FAQs 45 and 53 as quoted above also lend support to this view.

63 It is also not in dispute that the Designated Committee had pursuant to a declaration filed by the Petitioner determined the amount payable by Petitioner as "zero" and issued Form SVLDRS-2 dated 16 January 2020 and that Petitioner had also submitted Form SVLDRS-2A dated 22 January 2020. It is also not in dispute that by email dated 29 January 2020, Petitioner was informed by the Respondent Authorities to contact the SVLDRS Cell in respect of its application.

64 The Designated Committee instead of issuing Form 3 and followed with Form 4 to Petitioner, issued a Show Cause Notice dated 21 June 2021. It is only pursuant to communication dated 14 February 2022 when request was made by Petitioner to issue Form SVLDRS-4 that vide communication dated 17 February 2022, the Respondent No.4- Additional Commissioner of CGST and Central Excise informed Petitioner that Form SVLDRS-1 filed by Petitioner had been rejected on 20 March 2020 and enclosed a copy of the said letter dated nil March 2020. Admittedly, the communication was handed over to the Petitioner on 17 February 2022. Even the SVLDRS portal still indicates the status of the applicant as "Agreed by Taxpayer". It is only in the affidavit in reply that reasons are sought to be given that personal hearing on 22 January 2022 at 3.00 p.m. was to clarify the matter. Except a bald statement that tax amount has not been quantified as on 30 June 2019 and that the Designated Committee was informed of the said fact by the investigating agency on 27 February 2020 without affording an opportunity to the Petitioner of dealing with the same, the application of Petitioner is sought to be rejected. It is not explained as to why if information was furnished to the Designated Committee vide letter dated 27 February 2020, a clarification was sought from the Petitioner on 22 January 2020, a date prior to the communication by the investigating agency.

65 As noted above, the SVLDR Scheme is a legislation introduced for liquidation of legacy disputes on the one hand and recovery of unpaid taxes to the government on the other. The Respondent cannot contend that the portal was not updated. Once SVLDRS-2 has been issued and there has also been a follow up from the Respondents with respect to the said Form as well as the hearing that was fixed at the appointed date and time, the Respondent-Authorities cannot renege on the same. Particularly so in the peculiar facts and circumstances of this case, where admittedly, the rejection of SVLDRS-1 was not communicated to Petitioner on 20 March 2020, but only communicated to them on 17 February 2022 i.e. after a request came from Petitioner to issue Form SVLDRS-4.

66 Therefore, having held that the amount of Rs. 4,60,96,697/-, is the amount quantified pursuant to communication dated 23 March 2018 to the DGGSTI and the Designated Committee having issued Form SVLDRS-2 to Petitioner on 16 January 2020 and the communication of rejection having been communicated to Petitioner only on 17 February 2022, we are of the view that the action of the Respondent Authorities ought to be quashed and set aside.

67 As a result of the above discussion, the communication dated nil March, 2020

as well as the Show Cause Notice dated 21 June 2021 cannot be sustained and are hereby quashed and set aside.

68 The Respondents are directed to constitute Designated Committee to consider the SVLDRS-1 declaration filed by Petitioner as well as SVLDRS-2 issued by the Designated Committee and after giving a reasonable opportunity of hearing to Petitioner issue Form SVLDRS-3 and Form SVLDRS-4, within a period of eight weeks from the date of uploading of this order.

69 Petition stands allowed in the above terms. Parties to bear their own costs.