

(2021) 01 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition (ST) No.5293 Of 2020

M/s. Code Engineers Private Limited Through	APPELLANT
Vs	
Union Of India And Others	RESPONDENT

Date of Decision : 28-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 — Rule 5, 6, 6(1)
Finance Act, 1994 — Section 83, 124(1)(a), 124(2), 125, 126, 126(1), 132(1), 132(2)
Central Excise Act, 1944 — Section 14

Citation : (2021) 01 BOM CK 0015

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

Bench : Division Bench

Advocate : Bharat Raichandani, Sham Walve

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Bharat Raichandani, learned counsel for the petitioner and Mr. Walve, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 25.02.2020 issued by respondent No.3

and further seeks a direction to the said respondent to reconsider its declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

by allowing pre-deposit made by the petitioner to the extent of Rs.1,02,55,913.00.

3. Case of the petitioner is that it is a private limited company incorporated under the Companies Act, 1956 having its office at Belapur in the State of

Maharashtra. Petitioner is engaged in the business of providing erection, commissioning and installation services to its customers. Being a

service provider, it was registered as such under the Finance Act, 1994.

4. It is stated that petitioner was filing service tax returns regularly and was paying service tax wherever applicable.

5. Service tax department initiated investigation against the petitioner on 03.10.2011 on the ground of alleged non-payment of service tax dues for the period covering 01.04.2006 to 31.03.2011. In the course of investigation, statement of Shri. Abiraj Rajan, Managing Director of the petitioner was recorded on 03.10.2011 and 13.02.2012 under section 83 of the Finance Act, 1994 read with section 14 of the Central Excise Act, 1944.

6. During the course of investigation, petitioner made a deposit of Rs.1,30,00,000.00 under protest.

7. On the basis of the investigation carried out, show cause-cum-demand notice dated 20.04.2012 was issued to the petitioner from the office of

Commissioner of Service Tax, Mumbai-II. It was stated therein that service tax dues amounting to Rs.3,76,12,232.00 for the period 1. 04.2006 to

31.03.2011 was outstanding against the petitioner along with interest and penalty. In the said show cause-cum-demand notice, Commissioner proposed

to appropriate service tax of Rs.1,30,00,000.00 paid by the petitioner before issuance of the show cause-cum-demand notice.

8. Petitioner contested the show cause-cum-demand notice. That apart, it pointed out that in addition to payment of Rs.1,30,00,000.00, it had also made

payment of Rs.1,07,00,000.00 through its client M/s. Walchandnagar Industries Limited vide challans dated 04.06.2012 and 9. 06.2012. As per the first

challan, an amount of Rs.65,00,000.00 was paid and as per the second challan, an amount of Rs.42,00,000.00 was paid. By subsequent letters dated

13.10.2012 and 16.10.2012, it was clarified by the petitioner that out of the total amount of Rs.1,07,00,000.00, an amount of Rs.46,44,094.00 covered

by the first challan pertained to the year 01.04.2010 to 31.03.2011 which was part of the investigation period 01.04.2006 to 31.03.2011. The balance

amount pertained to the year 01.04.2011 to 31.03.2012 which was beyond the period of investigation.

9. Petitioner has stated that it had made additional payment of Rs.56,11,819.00 towards the service tax demand for the period from 1. 04.2006 to

31.03.2011. Thus, against the outstanding service tax demand of Rs.3,76,12,232.00, petitioner had made payment of the following amounts:-

Rs.1,30,00,000.00 + Rs.46,44,094.00 + Rs.56,11,819.00 = Rs.2,32,55,913.00

10. According to the petitioner, without appreciating the above, Commissioner of Central Goods and Services Tax (CGST) and Central Excise,

Belapur passed the order-in-original dated 27.09.2018 confirming the demand of service tax of Rs.3,76,12,232.00 and appropriated the amount of

Rs.1,30,00,000.00 as payment towards the service tax dues. However, the two payments of Rs.46,44,094.00 and Rs.56,11,819.00, totalling

Rs.1,02,55,913.00, were not included as payments made by the petitioner. It may be mentioned that on and from 1st July, 2017, the goods and services

tax (GST) regime came into force replacing the earlier indirect tax enactments including service tax under the Finance Act, 1994.

11. Aggrieved by the above, petitioner has preferred an appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT), Mumbai on

08.01.2019. As on date, the appeal is pending.

12. In the meanwhile, central government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly â??the Schemeâ??

hereinafter) vide the Finance (No.2) Act, 2019 (for short â??the Actâ?? hereinafter) to bring to an end pending litigations pertaining to central excise

and services tax under the erstwhile indirect tax regime which have been subsumed under GST providing for substantial relief to the declarants subject

to eligibility.

13. Petitioner filed declaration under the scheme on 14.01.2020 under the category of â??litigationâ?? and sub-category of â??appeal pendingâ??. It

was mentioned therein that appeal was pending as on 30.06.2019 and no final hearing was held before 30.06.2019 which was the cut-off date under

the scheme. Petitioner mentioned the outstanding service tax dues at Rs.3,76,12,232.00 and claimed pre-deposit of Rs.2,54,41,389.00 (the said figure should however have been Rs.2,32,55,913.00).

14. Petitioner has contended that under section 124(1)(a) of the Act, the amount payable under the scheme is 50% of the tax dues if one or more than

one appeal was pending as on 30.06.2019. Referring to section 124(2) of the said Act, it is contended that the scheme allows for deduction of any pre-

deposit made by a declarant while arriving at the estimated amount payable. Tax dues being Rs.3,76,12,232.00, the amount payable before adjusting

pre-deposit would be 50% thereof being Rs.1,88,06,116.00. As the amount of

pre-deposit made by the petitioner i.e., Rs.2,32,55,913.00 is more than the tax dues so determined, amount payable by the petitioner under the scheme would be nil.

15. However, respondent No.3 issued Form SVLDRS-2 dated 22. 01.2020 acknowledging pre-deposit to the extent of Rs.1,30,00,000.00 only thereby the amount payable was quantified at Rs.58,06,116.00 (Rs.1,88,06,116.00 - Rs.1,30,00,000.00). It was mentioned therein that if the declarant did not agree with the estimated amount payable as determined by the designated committee (respondent No.3), it should appear for a personal hearing before the designated committee on 31.01.2020 to explain the reasons thereof.

16. Personal hearing in the above matter was held before respondent No.3 on 31.01.2020. Petitioner appeared in the personal hearing and submitted

that apart from Rs.1,30,00,000.00 paid by the petitioner before issuance of show cause-cum-demand notice, petitioner had made further deposit of

Rs.1,02,55,913.00 submitting details of all challans in this regard. Petitioner vide letter dated 03.02.2020 again submitted the details of 33 challans

evidencing payment of service tax dues amounting to Rs.56,11,819.00. In addition, petitioner submitted a certificate of a practising Chartered

Accountant certifying that the said challans pertained to payment of service tax liability covering the period from the year 2006-07 to 2010-11. That

apart, it was pointed out that out of the payment of Rs.65,00,000.00 made by M/s. Walchandnagar Industries Limited as per the first challan dated

04.06.2012, an amount of Rs.46,44,094.00 was towards payment of service tax dues of the petitioner for the financial year 2010-11 while the

remaining amount was for the service tax liability of the financial year 2011-12. Affidavit dated 07.02.2020 was also filed by the petitioner. This was

followed by another letter of the petitioner dated 10.02.2020.

17. However, without considering the above, respondent No.3 issued order dated 25.02.2020 in Form SVLDRS-3 disallowing pre-deposit made by the

petitioner to the extent of Rs.1,02,55,913.00 thereby resulting in quantification of the estimated amount payable by the petitioner at Rs.58,06,116.00.

18. Aggrieved by the above, present writ petition has been filed by the petitioner seeking the reliefs as indicated above.

19. Notice in this case was issued on 25.09.2020.

20. Responding to the notice, respondents have filed reply affidavit through Ms.

Manpreet Arora, Commissioner of CGST and Central Excise

Commissionerate, Belapur. In the said affidavit, she has stated that she agrees with the contention of the designated committee that the entire amount

of Rs.65,00,000.00 was paid towards the service tax liability for the period 2011-12. Further, the amount of Rs.56,11,819.00 was not eligible for

deduction because it could not be ascertained whether the payments were made towards the demand confirmed in the order-in-original or for the

period post 2011. The fact that petitioner did not file any service tax return post March, 2012 made it impossible to ascertain the period for which the

payments were made. Reference has been made to that portion of the order-in-original whereby the Commissioner had declined to include payments

made by M/s. Walchandnagar Industries Limited as payments on behalf of the petitioner to meet the service tax dues of the petitioner. Moreover,

during the course of examination of the petitioner's case, designated committee verified all the challans submitted by the petitioner for the amount

totalling Rs.56,11,819.00; the amounts were paid from August, 2013 to April, 2015. However, it could not be ascertained whether the said payment

was for the period covered by the order-in-original or for the period post the order-in-original. Hence, the designated committee could not provide

relief as sought for by the petitioner with regard to the amount of Rs.56,11,819.00. In paragraph 21 of the reply affidavit, it is stated that though the

designated committee verified all payments made by the petitioner, it could not be ascertained with confidence whether the payments pertained to the

period covered by the order-in-original i.e., 2006-2011 or post the said period.

21. Petitioner has filed rejoinder affidavit. While reiterating the contentions and pleadings made in the writ petition, it has been averred that the

designated committee instead of verifying the authenticity of payments made by the petitioner or on behalf of the petitioner, relied on incorrect findings

of the adjudicating authority i.e., the Commissioner. Designated committee ought to have carried out verification of the payments / challans de-hors

the order-in-original and ought to have arrived at an independent conclusion. Referring to the averments made in paragraph 21 of the reply affidavit,

petitioner has stated that it is an admission by the respondents that verification of the pre-deposit made by the petitioner was incomplete before issuing

the impugned order. Certificate of the Chartered Accountant and affidavit filed by the petitioner were ignored. Payment of Rs.56,11,819.00 has been

made to the service tax department and this is not in dispute. The fact that no service tax returns was filed post March, 2012 itself goes to show that

the above payment was not utilized towards that period. No show cause notice has been issued post 2012 as well.

22. Mr. Raichandani, learned counsel for the petitioner has taken us to the show cause-cum-demand notice as well as to the order-in-original and

submits that designated committee has confined its verification to the tax demand raised as well as confined the pre-deposit to cash payment of

Rs.1,30,00,000.00 only. Designated committee clearly fell in error in not allowing pre-deposit made by the petitioner to the extent of Rs.1,02,55,913.00

comprising of two amounts - Rs.46,44,094.00 paid by M/s. Walchandnagar Industries Limited and Rs.56,11,819.00 thereby resulting in quantification

of the amount of Rs.58,06,116.00 as payable by the petitioner whereas petitioner is not required to pay any amount in terms of the scheme.

23. On the other hand, Mr. Walve, learned counsel for the respondents has referred to the order-in-original dated 27.09.2018 and submits that the

adjudicating authority i.e., the Commissioner has clearly discussed as to why payments received from M/s. Walchandnagar Industries Limited to the

extent of Rs.1,07,00,000.00 could not be accepted as being paid on account of service tax dues of the petitioner. He submits that adjudicating authority

has clearly recorded that there was no documentary evidence / letter issued by M/s. Walchandnagar Industries Limited confirming the payment so

made against the direction given by the service tax department to pay the amounts due to the noticee as service tax.

23.1. He has also referred to paragraph 10 of the reply affidavit filed by the respondents. Contention of Mr. Walve is that arguments made by the

petitioner against the order-in-original pertaining to non-acceptance of the two pre-deposits may be made before the CESTAT and not before the

designated committee. Designated committee is not an appellate forum which can sit in appeal over the decision of the commissioner. Therefore, he

has justified issuance of the impugned order.

24. In his reply submissions, Mr. Raichandani submits that he is not relying on the order-in-original. Mandate of the designated committee is not to

confine its verification to the order-in-original as it is not bound by the order-in-original. It has to independently assess the dues payable by the

petitioner and the amounts claimed to have been paid as pre-deposit. He, therefore, submits that since the designated committee has failed to

discharge its duty in accordance with law, this Court may intervene in the matter and grant the reliefs as sought for by the petitioner.

25. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record.

26. Basic grievance of the petitioner is non-acceptance or rather dis-allowance by the designated committee i.e., respondent No.3 of two payments

made by the petitioner i.e., Rs.46,44,094.00 through its client M/s. Walchandnagar Industries Limited and additional payment of Rs.56,11,891.00

totalling Rs.1,02,55,913.00 as pre-deposit made by the petitioner thus resulting in the amount payable by the petitioner being quantified at

Rs.58,06,116.00 which it says is not required to be paid under the scheme.

27. From the factual narrative laid out above what is deducible is that service tax department had initiated investigation against the petitioner on the

ground of alleged non-payment of service tax dues covering the period from 01.04.2006 to 31.03.2011. During the investigation period, petitioner had

made a deposit of Rs.1,30,00,000.00. This is admitted by the respondents and accepted as a pre-deposit while determining the outstanding dues

payable by the petitioner. After issuance of the show cause-cum-demand notice dated 20.04.2012, petitioner has stated that it had made further

payments of Rs.46,44,094.00 covering the period under investigation through its client M/s. Walchandnagar Industries Limited; in addition further sum

was paid which pertained to the period from 01.04.2011 to 31.03.2012 which was beyond the period of investigation. This amount was not accepted as

payments made on behalf of the petitioner by the adjudicating authority i.e., the Commissioner on the ground that no evidence was submitted to that

effect. Regarding the further payments made by the petitioner to the extent of Rs.56,11,819.00, stand taken by the respondents is that the challans

pertaining to payment of the aforesaid amount were from August, 2013 to April, 2015. Designated committee could not ascertain whether the said

payment was for the period covered by the investigation or for the period beyond the investigation. Therefore, designated committee could not provide

relief to the petitioner vis-a-vis the amount of Rs.56,11,819.00. In paragraph 21 of the reply affidavit, it is stated that designated committee could not

ascertain with confidence whether the said payment pertained to the period covered by the investigation i.e., by the order-in-original or pertained to

period post 2012. Nonetheless, respondents have admitted receipt of the said amount of Rs.56,11,819.00 but the stand taken is that it could not be

completely verified whether the said payment covered the period in question.

28. Before we refer to the relevant provisions of the Act or the scheme, it would be apposite to highlight the purport and object of the scheme. While

proposing the scheme as part of her budget speech for the year 2019-20, Honâ??ble Finance Minister, Government of India stated thus:-

Â??GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than

Rs.3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow the business to move on. I,

therefore, propose, a Legacy Dispute Resolution scheme that will allow quick closure of these litigations. I would urge the trade and business to avail

this opportunity and be free from legacy litigations.â??

29. Statement of objects and reasons with respect to the scheme reads as under:-

â??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.â??

30. Central Board of Indirect Taxes and Customs (briefly â??the Boardâ?? hereinafter) issued circular dated 27th August, 2019 informing all the

Principal Chief Commissioners / Chief Commissioners / Principal Director Generals and Director Generals that the central government had announced

the scheme as part of the union budget for the year 2019-20. The aforesaid authorities were also informed about notification of Sabka Vishwas

(Legacy Dispute Resolution) Scheme Rules, 2019. It was stated thus :-

2. As may be appreciated, this scheme is a bold endeavour to unload the baggage relating to the legacy taxes viz. central excise and service tax

that have been subsumed under GST and allow business to make a new beginning, and focus on GST. Therefore, it is incumbent upon all officers and staff of CBIC to partner with the trade and industry to make this scheme a grand success.

3. Dispute resolution and amnesty are the two components of this scheme. The dispute resolution component is aimed at liquidating the legacy cases

locked up in litigation at various forums whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax

liability to pay the tax dues. As may be seen, this scheme offers substantial relief to the taxpayers and others who may potentially avail it. Moreover,

the scheme also focuses on the small taxpayers as would be evident from the fact that the extent of relief provided is higher in respect of cases

involving lesser duty (smaller taxpayers can generally be expected to face disputes involving relatively lower duty amounts).

31. After saying so, the Board concluded as under:-

12. The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has the potential to liquidate the huge outstanding litigation and free the

taxpayers from the burden of litigation and investigation under the legacy taxes. The administrative machinery of the Government will also be able to

fully focus on helping the taxpayers in the smooth implementation of GST. Thus, the importance of making this scheme a grand success cannot be

overstated. The Principal Chief Commissioners/Principal Directors General/ Chief Commissioners/Directors General and all officers and staff are

instructed to familiarize themselves with this scheme and actively ensure its smooth implementation.

32. From a careful analysis of the above, it is quite evident that the scheme has been introduced primarily for liquidation of past disputes pertaining to

central excise and service tax so that trade and industry can move ahead so also the tax administration which can then fully focus on the smooth

implementation of goods and services tax (GST). Basic thrust is to unload the baggage of pending litigations centering around service tax and excise

duty which stood subsumed in GST. As an incentive those making the declaration

and paying the declared tax verified and determined in terms of the scheme would be entitled to certain benefits in the form of reduced tax liability, waiver of interest, fine, penalty and immunity from prosecution. This is a beneficial scheme for settlement of legacy disputes. Therefore, the officials while considering declarations made under the scheme must have the broad picture in mind. The approach should be to ensure that the scheme is successful and, therefore, a liberal view embedded with the principles of natural justice is called for.

33. Section 126 deals with designated committee. As per sub-section (1), the designated committee shall verify correctness of the declaration made by the declarant under section 125 in such manner as may be prescribed. However, as per the proviso, no such verification shall be made in a case of voluntary disclosure. Sub-section (2) deals with composition and function of designated committee.

33.1. So from sub-section (1) of section 126, we find that designated committee is mandated to verify correctness of the declaration made by a declarant in such manner as may be prescribed.

34. In exercise of the powers conferred by sub-sections (1) and (2) of section 132 of the Act, central government has made the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (briefly ‘the Rules’ hereinafter). While rule 5 deals with constitution of designated committee, rule 6 deals with verification by designated committee and issue of estimate etc. Sub-rule (1) is relevant. It says that the declaration made under section 125, except in a case of voluntary disclosure, shall be verified by the designated committee based on the particulars furnished by the declarant as well as records available with the department.

35. A conjoint reading of sub-section (1) of section 126 and sub-rule (1) of rule 6 makes it clear that declaration made by a declarant shall be verified by the designated committee. Such verification shall be based on particulars furnished by the declarant as well as the records available with the department which would include show cause-cum-demand notice or order-in-original, as the case may be.

36. The crucial word appearing in sub-section (1) of section 126 which finds its resonance in sub-rule (1) of rule 6 is ‘verify’. What is the meaning of or connotation of the word ‘verify’ As per Concise Oxford

English Dictionary, Indian Edition, 'verify' means to make sure or demonstrate that something is true, accurate or justified; swear to or support a statement by affidavit. Black's Law Dictionary, Eighth Edition, has defined the word 'verify' to mean-

1. to prove to be true; to confirm or establish the truth or truthfulness of; to authenticate.

2. To confirm or substantiate by oath or affidavit; to swear to the truth of.

37. It is a settled principle of interpretation that words and expressions used in a legislation must take their colour from the context in which they

appear. For ascertaining the true meaning of words and expressions used in a legislation, it is therefore necessary that the legislation must be read or understood as a whole.

38. We have already analyzed the object and purport of the scheme by adverting to the speech of the Hon'ble Finance Minister, statement of

objects and reasons and circular of the Board dated 27.08.2019. From the above, it is evident that the central focus of the scheme is settlement of

legacy disputes by giving incentives to the declarant subject to eligibility. The designated committee, therefore, has to perform its duty of verifying

correctness of the declaration keeping the above objective in mind. The verification required to be carried out by the designated committee is certainly

not an adjudicatory exercise or an appellate exercise. Viewed in the above context and keeping in mind the object of the scheme, verification of a

declaration by the designated committee cannot be confined to the show cause-cum-demand notice or to the order-in-original. Mandate of the

designated committee is to verify correctness of the declaration based on the particulars furnished by the declarant as well as the records available

with the department.

39. In the instant case, as against the petitioner's claim of pre-deposit of two amounts of Rs.46,44,094.00 and Rs.56,11,819.00, designated

committee did not accept payments of the two amounts as pre-deposit. In fact in the impugned order dated 25.02.2020, which is in Form

No.SVLDRS-3, no reasons have been assigned for exclusion of the two amounts. It is only in the reply affidavit that respondents have justified non-

allowance of the two payments as pre-deposit. In so far payment of Rs.46,44,094.00 is concerned, respondents have fallen back upon the order

passed by the adjudicating authority i.e., the Commissioner by contending that the said authority had rejected the above claim on the ground that no evidence to that effect were submitted. In so far the second amount of Rs.56,11,819.00 is concerned, stand taken is that though the said amount has been received by the department, it could not be verified with confidence whether the said payment pertained to the period covered by investigation i.e., by the order-in-original or for the period post the period of investigation.

39.1. Petitioner has responded to this by saying that it had submitted challans in support of the payments. That apart, it had submitted certificate of a practising Chartered Accountant certifying that the challans pertained to payment of service tax liability covering the period from the year 2006-07 to 2010-11. Petitioner had also filed an affidavit in support thereof. Designated committee i.e., respondent No.3 was required to consider all the above documents submitted by the petitioner independently, not being bound by the order-in-original, while verifying the claim of the petitioner. Evidently, this has not been done, which has caused prejudice to the petitioner as it has been called upon to pay an amount of Rs.58,06,116.00 which it would not be required to pay if the two amounts are accepted by respondent No.3 as pre-deposit.

40. Since the verification carried out by respondent No.3 cannot be said to be a full and complete verification in terms of section 126(1) and rule 6(1), we are of the considered opinion that the matter is required to be remitted back to the designated committee for taking a fresh decision in the matter after giving an opportunity of hearing to the petitioner and thereafter to pass a speaking order with due intimation to the petitioner.

41. To facilitate the above, impugned order dated 25.02.2020 of respondent No.3 (exhibit-A to the writ petition) is set aside and quashed. Matter is remanded back to respondent No.3 for taking a fresh decision in the matter after giving due opportunity of hearing to the petitioner which shall be informed about the place, date and time of hearing. Respondent No.3 shall thereafter pass a speaking order in accordance with law with due intimation to the petitioner. The above exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this judgment and order.

42. Writ petition is accordingly allowed to the extent indicated above. However,

there shall be no order as to cost.

43. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.