

(2020) 09 P&H CK 0289

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10804 Of 2020 (O&M)

M/S. Sobha Limited

APPELLANT

Vs

Union Of India And Another

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Finance Act, 2019 — Section 121(o), 123, 123(a)(i)
General Clauses Act, 1897 — Section 13(2)
Sabka Viswas (Legacy Dispute Resolution) Rules, 2019 — Rule 3(2)

Citation : (2020) 09 P&H CK 0289

Hon'ble Judges : S. Muralidhar, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Amar Pratap Singh, Sourabh Goel

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. A short point is involved in the present writ petition, which is directed against an order dated 21st February, 2020 passed by the Designated Committee/ Respondent No. 2, rejecting the Petitioner's declaration in form SVLDRS 1 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ('Scheme') on the ground that only one declaration has been filed by the Petitioner, whereas Rule 3 (2) of the Sabka Viswas (Legacy Dispute Resolution) Rules, 2019 ('Rules') requires "a separate declaration to be filed for each case".

2. The brief facts for the purpose of the present writ petition are that four Show Cause Notices ('SCNs') were issued to the Petitioner covering a period from July, 2013 to December, 2015, which SCNs taken together demanded a duty amount of Rs. 66,70,553/- from the Petitioner. By a consolidated order dated 17th March, 2016 of the Additional Commissioner, Central Excise, the demands were confirmed.

3. Aggrieved by the aforesaid order dated 17th March, 2016, the Petitioner filed

an appeal before the Commissioner of Central Excise, who by an order dated 10th January 2017, upheld the demand of duty.

4. The Petitioner then filed a single appeal before the Central Excise Service Tax Appellate Tribunal ('CESTAT') against the above order dated 17th March, 2016. That appeal is pending adjudication.

5. With the Scheme being announced, the Petitioner decided to avail the benefit thereunder. As a pre-condition of availing the benefit in terms of the Scheme, under Section 123 of the Finance Act, 2019 ('Act'), the 'tax dues' as admitted by the assessee have to be disclosed in the application in form SVLDRS 1 and a pre-deposit made. Section 123 (a) (i) of the Act defines 'tax dues' as under:

"(a) where-

(i) a single appeal arising from an order pending as on 30th June, 2019 before the Appellate Forum, the total amount of duty which is being disputed in the said appeal."

6. Accordingly, the Petitioner filed an application in form SVLDRS 1 on 30th December, 2019 reflecting its 'tax dues' as Rs. 26,68,220.50 and making a pre-deposit of Rs. 6,67,056/-.

7. It is this application that has now been rejected by the impugned order on the ground that Petitioner ought to have filed four separate declarations/applications.

8. The Court notes that the requirement under Rule 3 (2) of the Rules is that a separate application is to be filed for each 'case'. The Explanation thereunder defines a 'case' as under

"(a) a show cause notice or one or more appeal arising out of such notice which is pending as on the 30th June, 2019 or

(b) an amount in arrears; or

(c) an enquiry or investigation or audit where the amount is quantified on or before the 30th June, 2019; or

(d) a voluntary disclosure".

9. It is, thus, seen in the present case that as on 30th June, 2019, the four SCNs were not pending. In fact, these had been adjudicated and one consolidated order was passed in the four SCNs by the Additional Commissioner, Central Excise. Likewise, one consolidated order was passed by the Appellate Authority in the combined appeal. This has further led to one appeal being filed before the CESTAT. The Petitioner is, therefore justified in contending that in relation to the single pending appeal before the CESTAT one declaration is required to be filed even in terms of Rule 3 (2) of the SVLDRS Rules. The Court is, therefore, unable to appreciate why on a hyper-technical ground that four separate declarations were not filed, the Petitioner's application under the SVLDRS should have been rejected.

10. Mr. Sourabh Goel, Senior Standing Counsel, appearing for the Respondents draws the attention of the Court to the definition of 'order' in Section 121 (o) of the Finance Act, as "an order of determination under any of indirect tax enactment, passed in relation to a show cause notice issued under such indirect tax enactment."

11. The Court finds merit in the plea of Mr. Amar Pratap Singh, learned Counsel for the Petitioner that in the above circumstances Section 13 (2) of the General Clauses Act, 1897 can be invoked in terms of which the "words in the singular shall include the plural, and vice-versa".

12. Viewed from any angle, this Court is of the considered opinion that in the present case the Petitioner's application ought not to have been rejected only on the ground that one declaration, and not four, was filed on 30th December, 2019.

13. In addition to this, the Court notes that the Respondents have not disputed the averment of the Petitioner that if four separate declarations were to be filed, the Petitioner might have to pay only Rs. 13,34,110/-, whereas in terms of the declaration now filed, the Petitioner has agreed to pay Rs. 26,68,220.50.

13. For all the aforementioned reasons, the impugned order dated 21st February, 2020 is hereby set aside. A direction is issued to the Respondents to decide the Petitioner's declaration/application in form SVLDRS 1 afresh within a period of eight weeks and communicate the decision thereon to the Petitioner within one week thereafter.

14. If aggrieved by the order passed in the declaration/application, the Petitioner will be at liberty to avail appropriate remedies in accordance with law.