

(2020) 12 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition (L) No. 4421 Of 2020

Saksham Facility Services Private Limited

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 08-12-2020

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 70, 174

Finance Act, 1994 — Section 83

Central Excise Act, 1944 — Section 14

Finance Act, 2019 — Section 120, 121, 121(r), 122, 123, 123(1)(c), 124, 124(1)(d), 124(2), 125, 125(1), 125(1)(e), 126, 127, 127(8), 128, 129, 130, 131, 132, 133, 134, 135

Constitution Of India, 1950 — Article 226

Citation : (2020) 12 BOM CK 0016

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

Bench : Division Bench

Advocate : Rajendra R. Mishra, Mukesh Gupta, Pradeep Jetly, J. B. Mishra

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Rajendra Mishra, learned counsel for the petitioner and Mr. Pradeep Jetly, learned senior counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 01.03.2020 whereby declaration of the

petitioner dated 24.11.2019 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was rejected and further seeks a direction to the

respondents to consider afresh the aforesaid declaration as a valid one and thereafter grant consequential relief to the petitioner in terms of the said

scheme.

3. Case of the petitioner is that it is a company incorporated under the Companies Act, 1956 having its registered office at Mumbai. Earlier, it had service tax registration for providing security / detective agency services and presently it has Goods and Services Tax (GST) registration.

4. A summons dated 19.06.2019 / 20.06.2019 was issued to the petitioner by the Senior Intelligence Officer in the Directorate General of Goods and Services Tax (GST) Intelligence, Mumbai Zonal Unit, Mumbai. It was mentioned therein that a case / inquiry regarding evasion of service tax was being conducted by the said officer under the Finance Act, 1994 read with section 174 of the Central Goods and Services Tax Act, 2017 (briefly the CGST Act hereinafter). Senior Intelligence Officer mentioned that he had reasons to believe that petitioner was in possession of facts, documents and things relevant for the said inquiry pertaining to the period prior to GST i.e., prior to 01.07.2017. Accordingly, petitioner was summoned to appear before the said authority on 27.06.2019.

5. Petitioner wrote to the said Senior Intelligence Officer vide letter dated 27.06.2019 in reference to the summons dated 20.06.2019. After giving year-wise service tax break-up for the period 2015-16 upto June, 2017, it was stated that the total liability for the said period was Rs.2,47,32,456.00.

Petitioner confirmed and admitted that its service tax liability amounted to Rs.2,47,32,456.00 for the period from 2015-16 upto June, 2017. It was further mentioned that out of the aforesaid amount, an amount of Rs.1,20,60,000.00 had been paid.

6. It may be mentioned that in connection with the said inquiry, statement of Shri. Sanjay Shirke, Director of petitioner company was recorded under section 83 of Chapter V of the Finance Act, 1994 read with section 14 of the Central Excise Act, 1944 read with sections 174 and 70 of the CGST Act on the same day i.e., on 27.06.2019 before the said Senior Intelligence Officer. In the said statement, in response to query No.3, he admitted and accepted revised service tax liability of Rs.2,47,32,456.00 for the period from 2015-16 upto June, 2017 and that service tax of Rs.1,20,60,000.00 was already paid. He further stated that the remaining amount of service tax along with interest and penalty would be paid by end of July, 2019.

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

schemeâ?? hereinafter) as part of Finance (No.2) Act, 2019. 01.09.2019 was the due date fixed for the commencement of the scheme. Rules under

the said scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 were also framed and notified.

8. Petitioner filed declaration in terms of the said scheme on 24.11.2019 under the category â??Investigation, Enquiry or Auditâ? under sub-

categorization of ""Investigation by DGGI"". It was mentioned therein that the quantified amount of service tax due was Rs.2,47,32,456.00 and

Rs.1,20,60,000.00 was paid as pre-deposit. Commissioner of Central Goods and Services Tax (CGST) and Central Excise, Mumbai Central wrote to

the petitioner vide letter dated 30.01.2020. In the said letter it was stated that petitioner had filed a declaration under the scheme on 24.11.2019 under

the category â??Investigation, Enquiry or Auditâ? with sub-categorization of â?? Investigation by DGGIâ? mentioning the quantified amount and

pre-deposit as Rs.2,47,32,456.00 and Rs.1,20,60,000.00 respectively. It was further stated that as per section 123(1)(c) of Chapter V of Finance

(No.2) Act, 2019, a declaration under the aforesaid category could be filed where the amount of duty payable had been quantified on or before

30.06.2019. However, Directorate General of GST Intelligence (DGGI) vide letter dated 24.01.2020 had informed that final quantification in the case

of the petitioner had not been done before 30.06.2019. Therefore, the declaration fell under the exception clause of section 125(1)(e) of Chapter V of

Finance (No.2) Act, 2019. Observing that the declaration of the petitioner was liable for rejection, a personal hearing of the petitioner was fixed before

the Designated Committee on 07.02.2020.

9. Personal hearing was granted as above. Petitioner relied upon circular dated 27.08.2019 of the Central Board of Indirect Taxes and Customs

(briefly â??the Boardâ? hereinafter) and submitted that its declaration was valid.

9.1. However, by the impugned order dated 01.03.2020 generated on 03.03.2020, the declaration of the petitioner was rejected on the ground of

ineligibility. In the remarks given, it was mentioned that DGGI, Mumbai Zonal Unit in its verification report dated 25.01.2020 had informed that final

quantification was not done before 30.06.2019. Thus, case of the petitioner fell under the exception clause. As a matter of fact, DGGI vide subsequent

verification report dated 28.02.2020 categorically stated that actual verification /

quantification of taxable liability of the petitioner was completed much after 30.06.2019. Therefore, the Designated Committee was of the view that case of the petitioner fell under the exception clause of section 125(1)(e).

10. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

11. Notice in this case was issued on 15.10.2020.

12. In response respondents have filed affidavit in reply through Mr. Rajesh Sanan, Commissioner of CGST and Central Excise, Mumbai Central

Commissionerate. A ground has been taken that DGGI, Mumbai Zonal Unit has not been added as a respondent to the writ proceeding. Therefore, writ petition suffers from non-joinder of necessary party.

12.1. Referring to section 123(1)(c) of Chapter V of Finance Act, 2019, it is contended that a declaration under the category of 'Investigation,

Enquiry or Audit' can be filed where the amount of duty payable had been quantified on or before 30.06.2019. Declaration of the petitioner was

forwarded to the Additional Director, DGGI, Mumbai Zonal Unit for verification. As per verification report dated 24.01.2020, it was mentioned that

declaration of the petitioner fell under the exception clause of section 125(1)(e) of Chapter V of Finance (No.2) Act, 2019 as the final quantification in

the enquiry had not been done before 30.06.2019.

12.2. Designated Committee had granted personal hearing to the petitioner on 10.02.2020 which was attended by its Director Shri. Sanjay R. Shirke

who had filed written submissions. Petitioner's written submission was sent to Principal Additional Director General of DGGI, Mumbai Zonal Unit

on 10.02.2020 for re-examination. Upon re-examination, verification report was sent by DGGI on 28.02.2020 where it was stated that actual

verification / quantification of taxable liability was completed by DGGI much after 30.06.2019.

12.3. Based on the above reports, Designated Committee took the view that petitioner's declaration fell under the exception clause of section

125(1)(e) and, therefore, rejected the declaration of the petitioner.

12.4. It is submitted that Designated Committee had rightly rejected the declaration of the petitioner. Before such rejection adequate and reasonable

opportunity of hearing was granted to the petitioner. There is no merit in the writ petition which should therefore be dismissed.

13. Learned counsel for the petitioner has referred to various provisions of the scheme as well as to the circular dated 27.08.2019 of the Board.

Thereafter he submits that impugned decision of the respondents in rejecting the declaration of the petitioner is wholly untenable in law as well as on

facts. He submits that petitioner in its letter dated 27.06.2019 as well as the Director of the petitioner in his statement recorded on 27.06.2019 well

before the cut off date of 30.06.2019 had clearly admitted that service tax liability of the petitioner for the period in question was Rs.2,47,32,456.00 out

of which an amount of Rs.1,20,60,000.00 was paid. Therefore, the declaration of the petitioner under the â??pending investigation, enquiry or audit

categoryâ?? was clearly maintainable.

14. On the other hand, Mr. Jetly submits that under section 125(1)(e) of the Finance (No.2) Act, 2019, petitioner was not eligible to make a declaration

as the outstanding amount due to be paid by the petitioner was not determined upon adjudication on or before 30.06.2019. Therefore, the Designated

Committee had rightly rejected the declaration of the petitioner and no interference is called for.

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

16. At the outset, we may briefly refer to relevant provisions of the scheme. Section 120 to section 135 forming part of Chapter V of the Finance

(No.2) Act, 2019 (briefly â??the Actâ?? hereinafter) comprises the scheme. Section 123 defines â??tax duesâ? 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 â??tax duesâ?. The word â??quantifiedâ? has been defined

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

17. 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 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 relief to the declarant.

17.1. 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.

18. 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 had not been quantified on or before 30.06.2019 shall not be eligible.

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

20. Section 127 deals with estimation by the Designated Committee of the amount payable by the declarant and the procedure to be followed. Once

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

21. 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 by the respondents

in their affidavit.

22. 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.

* * * * *

22.1. 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.

22.2. 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.

* * * * *

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.

23. 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 27.06.2019 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.

24. 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.

25. Again in the case of M/s. G. R. Palle Electricals Vs. Union of India decided on 26.11.2020, it was 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.

26. 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 crystallized 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.

27. 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.

28. Though not very relevant, we may still deal with the objection of the respondents regarding non-rejoinder of what is contended to be a necessary

party. In the affidavit of the respondents it is contended that petitioner did not make DGGI, Mumbai Zonal Unit a respondent in the writ petition and on

this ground, relief should be declined. In the present proceeding, petitioner is concerned with rejection of its declaration under the scheme. The

rejection is by the Designated Committee comprising of officers under respondent No.2. Communications of the officials working under respondent

No.2 with officials of DGGI is an internal matter on the basis of which the declaration of the petitioner was rejected. Thus, neither DGGI, Mumbai

Zonal Unit nor any of its officials are necessary parties to the present proceeding. This objection is, therefore, without any substance.

29. Considering the above, we set aside the order dated 01.03.2020 and remand the matter back to the Designated Committee to consider afresh the

declaration of the petitioner dated 24.11.2019 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 this judgment and

order.

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

31. 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.