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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.611 OF 2023

Kuber Health Food And Allied
Services Pvt. Ltd (Kuber for short),
situated at Vrindavan Housing
Society, Raheja Township, Near
Sai Baba Temple, Malad, East,
Mumbai – 400 097

...Petitioner

Versus

1. The Union of India,
Ministry of Finance, Department
of Revenue, South Block, New Delhi.
2. Joint Director DGGI, Zonal Unit,
Mumbai, having his office N.T.C.
House-III, Floor 15, N. M. Road
Ballard Estate, Mumbai – 400 001.
3. The Commissioner GST & Central
Excised, Mumbai East
Commissionerate having his office
at Lotus Infocenter, Parel,
Mumbai – 400 012.
4. The Designated Committee
constituted under Section 126 of the
Finance (No.2) Act, 2019, having its
office at Lotus Infocenter, Parel,
Mumbai – 400 012.

...Respondents

Mr. Shreyas Shreevastava a/w Mr. Saurabh Rajan Mashelkar for
Petitioner.

Ms. Kavita Shukla a/w Mr. Ram Ochani for Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 19 November 2024

PRONOUNCED ON : 22 November 2024

JUDGMENT (Per Jitendra Jain J):-

1. By this petition under Article 226 of the Constitution of India, the Petitioner challenges rejection, by the Respondents, of its application filed under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (“SVLDR Scheme”) on the ground that since the quantification of demand is made after 30 June 2019, Petitioner is not eligible to avail the benefit of the said Scheme.

Brief facts :-

2. The Petitioner had registered itself under the Finance Act, 1994 for discharging its service tax liability on services rendered under “Outdoor Catering Services and Manpower Supply Services”.

3. On 11 April 2018, premises of the Petitioner was visited by the Intelligence Officers of the Respondents and documents relating to enquiry were called for. In the course of investigation, summons were issued and statements of the authorised officers of the Petitioner were also recorded.

4. On 16 April 2019, in the statement of Shri Vithal Sunder Nayak, in response to question No.5, service tax payable for the years

2013-2014 to 2017-2018 was admitted by the Petitioner. The Petitioner paid the service tax liability admitted in the course of the investigation for the year 2013-2014 amounting to Rs.20,08,662/-. The balance demand of Rs.1,39,58,752/- pertained to the financial year 2014-2015 to 2017-2018. Meanwhile, SVLDR Scheme was introduced on 21 August 2019 for reducing the litigation by giving an opportunity to the assesses to settle the dispute by paying the amount specified as per the Scheme. The cut-off date as per the Scheme was quantification of demand on or before 30 June 2019.

5. On 16 October 2019, a show cause notice was issued to the Petitioner wherein the Petitioner's quantification of service tax liability for the period 2014-2015 to 2017-2018 admitted during the investigation was reproduced and the Petitioner was called upon to show cause why service tax amount of Rs.1,50,37,871/- for the period 2014 to 2017 alongwith interest and penalty should not be recovered.

6. The Petitioner made an application in Form SVLDRS-1 for availing the benefit of the SVLDR Scheme and in the said Form amount of Rs.1,50,37,871/- was mentioned as duty quantified. The said figure by way of abundant caution was taken from the show cause notice although lesser amount was admitted in investigation. Respondents issued Form SVLDRS-2 rejecting the application on the ground that the

quantification of the amount is post 30 June 2019 and, therefore, the Petitioner is not eligible for availing the benefit of the SVLDR Scheme. It is on this backdrop that the present petition is filed by the Petitioner challenging the rejection of its application under SVLDR Scheme.

7. Mr. Shreevastava, learned counsel for the Petitioner submits that the quantification has been admitted by the Petitioner in the course of the investigation proceedings wherein a sum of Rs.1,39,58,752/- has been admitted as service tax liability for the period 2014 to 2017. In the show cause notice, the relevant quantification made by the Petitioner in the course of the investigation has been reproduced. It is his submission that since the quantification is done in the course of the investigation prior to 30 June 2019, the Petitioner is eligible to avail the benefit of the Scheme. However, he submits that the Petitioner by way of abundant caution in his application stated the figure of Rs.1,50,37,871/- as the disputed amount which was picked up from the show cause notice. It is his submission that in the application he has disclosed more than what was required as per the Scheme and, therefore, he should not be penalised by rejecting the application. He fairly states that he is not seeking refund of the amount payable on the difference of Rs.1,50,37,871/- and Rs.1,39,58,752/-. He relied upon the clarification issued by the Ministry of Finance dated 27 August 2019

and the decision of various High Courts including the decisions of the Co-ordinate Benches of this Court.

8. Mr. Ochani, learned counsel for the Respondents submits that since the figure mentioned in the application is based on the show cause notice which notice was issued post 30 June 2019, the Petitioner is not eligible as per Section 125 of the SVLDR Scheme and, therefore, justifies the order of the rejection passed by the Respondents. No other submission has been made by the Respondents.

9. We have heard learned counsel for the Petitioner and Respondents.

10. It is not disputed that in the case of the Petitioner investigation proceedings were initiated in April 2018 and statements were also recorded of the representative of the Petitioner. In the statement dated 16 April 2019, the Petitioner admitted its service tax liability for the period 2014-2015 to 2017-2018 amounting to Rs.1,39,58,752/-. The said quantification was done by the Petitioner in the course of the investigation prior to 30 June 2019. However, at the time of filing the application under the SVLDR Scheme, the Petitioner has disclosed more amount of Rs.1,50,37,871/-. The show cause notice was issued post 30 June 2019. However, the said higher figure was taken by way of abundant caution and no prejudice is caused to the Respondents

since the Petitioner has disclosed more than what was quantified during the course of the investigation.

11. Section 121 (r) of the Scheme defines “quantified” to mean a written communication of the amount of duty payable under the indirect tax enactment. The said definition does not state that who is required to quantify. Therefore, even if an assessee admits in the course of investigation prior to 30 June 2019 and arrived at the quantification same would fall within the meaning of the term “quantified” as defined. In the instant case, admittedly in the course of the investigation, the Petitioner has quantified the service tax liability of Rs.1,39,58,752/-. The said quantification was also communicated to the Respondents prior to 30 June 2019.

12. Section 125 (1) (e) of the said Scheme which reads thus :-

“Section 125. (1) All persons shall be eligible to make a declaration under this scheme except the following, namely:-

(a)

(b)

(c)

(d)

(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 30th day of June, 2019;”

13. Section 125 of the said Scheme provides for the eligibility except the exclusion mentioned therein. One of the exclusion under

Section 125(1)(e), which is relevant for our purpose, is where a person has been subjected to an enquiry or investigation or audit and the amount of duty involved has not been quantified on or before 30 June 2019. The Ministry of Finance by its clarification dated 27 August 2019 in paragraph 10(g) clarified that the duty liability admitted by the person during enquiry, investigation or audit quantified before 30 June 2019 would be eligible under the Scheme. The said clause (g) reads 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.”

14. In the instant case, admittedly in the course of the enquiry / investigation, the Petitioner has admitted its liability of Rs.1,39,58,752/- and, therefore, the Petitioner is eligible for availing the benefit of the Scheme. Merely because a higher figure is mentioned in the application by way of abundant caution, the Petitioner cannot be deprived of the benefit of the Scheme moreso, when the object of the Scheme is to reduce the litigation. It is also important to note that the Petitioner is not seeking refund of any amount paid or payable on the basis of his declaration of Rs.1,50,37,871/-.

15. The Petitioner is justified in relying upon the decisions of the Co-ordinate Bench in the case of ***Sabareesh Pallikere, Proprietor of M/s. Finbros Marketing Vs. Jurisdictional Designated Committee, Thane Commissionerate, Division IV, Range-II & Ors.***¹ and more particularly paragraph 22 of the decision wherein on an identical fact situation the rejection of the declaration was found to be not justified.

“22. In so far the present case is concerned, we may refer to the first statement of the petitioner recorded on 06.07.2018. In this statement, he categorically admitted that the total service tax liability of the petitioner for the period 2013-14 to 2017-18 (upto June, 2017) would be around Rs.1.93 crores. While petitioner did not give the exact figure of total service tax dues, he nonetheless admitted such dues to be around Rs.1.93 crores which was subsequently enhanced in his statement dated 25.09.2019 to Rs.2,08,29,640.00. From a conjoint reading of section 121(r) of the Finance (No.2) Act, 2019, circular of the Board dated 27.08.2019 and answers to question Nos. 3 and 45 of the Frequently Asked Questions, a view can legitimately be taken that the requirement under the scheme is admission of tax liability by the declarant during inquiry, investigation or audit report. It is not necessary that the figures on such admission should have mathematical precision or should be exactly the same as the subsequent quantification by the authorities in the form of show-cause notice etc. post 30.06.2019. The object of the Scheme is to encourage persons to go for settlement who had bonafidely declared outstanding tax dues prior to the cut off date of 30.06.2019. The fact that there could be discrepancy in the figure of tax dues admitted by the person concerned prior to 30.06.2019 and subsequently quantified by the departmental authorities would not be material to determine eligibility in terms of the scheme under the category of inquiry, investigation or audit. What is relevant is admission of tax dues or duty liability by the declarant before the cut off date. Of course the figure or quantum admitted must have some resemblance to the actual dues. In our view, petitioner had fulfilled the said requirement and therefore he was eligible to make the declaration in terms of the Scheme under the aforesaid category. Rejection of his declaration therefore on the ground of ineligibility is not justified.”

16. Similar view is taken on identical fact situation in the following judgment passed by the Co-ordinate Bench of this Court and other Court:-

1 Writ Petition (St) No.5510 of 2020 dtd. 11 February 2021

- (i) Unify Facility Management Pvt. Ltd. Vs. Union of India²,*
(ii) Sai Siddhi Hospitality Pvt. Ltd. Vs. Union of India³ and
(iii) FTA HSRP Solutions Pvt. Ltd. Vs. Union of India⁴ ;

17. In view of above, the rejection of the Petitioner's application is unjustified and, therefore, the impugned communication dated 12 February, 2020 (Exhibit-T) is hereby quashed and set aside. The Respondents are directed to accept the application of the Petitioner made in Form SVLDRS-1 at page 143 of the petition (Exhibit-J) and inform the Petitioner of any amount due and payable, if any, under the SVLDR Scheme within a period of four weeks from the date of uploading the present order. The Petitioner to pay the amount so determined, if any, within a period of four weeks and inform the Respondents about the payment. On receipt of the communication of payment having been made, the Respondents would issue the final certificate under Section 127 of the Scheme.

18. The petition is allowed in the above terms without any cost order.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)

2 (2022) 1 Centax 270 (Bom.)

3 2022 (67) G.S.T.L. 351 (Bom.)

4 (2023) 10 Centax 40 (Guj.)