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

WRIT PETITION NO.871 OF 2020

Thought Blurb ... Petitioner
V/s.
Union of India and ors. ... Respondents

Mr.Bharat Raichandani, Advocate for the Petitioner.
Mr.Pradeep S. Jetly, Senior Advocate with Mr.Jitendra B. Mishra, Advocate for the Respondents.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.
RESERVED ON : OCTOBER 15, 2020
JUDGMENT ON : OCTOBER 27, 2020

Judgment and Order (Per Ujjal Bhuyan, J.):-

1. Heard Mr.Bharat Raichandani, learned counsel for the petitioner; and Mr.Pradeep S. Jetly, learned senior counsel alongwith Mr.J.B.Mishra, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India petitioner seeks quashing of the order of the respondents in rejecting the application (declaration) of the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as conveyed vide e-mail dated 27th January, 2020 and further seeks a direction to the respondents to grant an opportunity of hearing to the petitioner in respect of the application (declaration) made under the above scheme and thereafter, to accept the same.

3. According to the petitioner, it is a partnership firm duly registered under the Partnership Act, 1932 engaged in the business of providing advertising and design services to its customers. Petitioner was registered as a service provider under the Finance Act, 1994.

4. Service tax authorities initiated investigation against the petitioner pertaining to payment of service tax for two periods i.e. for the period 1st April, 2016 to 31st March, 2017 and again for the period 1st April, 2017 to 30th June, 2017. Vide letter dated 21st May, 2019 respondent No.3 informed the petitioner regarding the enquiry being conducted against it. It was stated that petitioner had not paid service tax liability of Rs.47,44,937.00 for the period 2016-17. Accordingly, petitioner was requested to immediately pay the service tax liability alongwith applicable interest and penalty. Petitioner was also requested to file the return for the year 2017-18 and to pay the service tax liability alongwith applicable interest and penalty.

5. It is stated that vide letter dated 18th June, 2019 issued by the petitioner to respondent No.3 petitioner stated about certain payments and claims for the year 2016-17 and admitted service tax liability of Rs.10,74,011.00 for the period 1st April, 2017 to 30th June, 2017.

6. In the meanwhile, Central Government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

(briefly 'the scheme' hereinafter) to bring an end to pending litigations under the earlier indirect tax regime which now stood subsumed under the Goods and Services Tax (GST).

7. According to the petitioner, it filed electronic declaration on 12th December, 2019 i.e. Form No.SVLDRS 1 declaring an amount of Rs.59,54,669.00 as the tax dues payable. The category under which the application (declaration) was filed was investigation, enquiry or audit. It was disclosed that an amount of Rs.30,60,257.00 was paid as pre-deposit.

8. However, by e-mail dated 27th January, 2020 respondents rejected the application of the petitioner on the ground of ineligibility with the remark that tax dues were not finalized as on 30th June, 2019.

9. Above rejection of the application (declaration) of the petitioner was without affording any opportunity of hearing to the petitioner. In the circumstances, petitioner submitted a representation dated 31st January, 2020 addressed to respondent No.5 stating that as per notice dated 21st May, 2019 respondents themselves had quantified the service tax liability for the period 2016-17 at Rs.47,44,937.00. It was pointed out that all service tax dues for previous periods were duly paid reiterating the contention that petitioner was denied the benefits under the scheme without any opportunity of hearing. The above representation was filed requesting that an opportunity of hearing be provided to the petitioner. This was followed by subsequent representation

dated 3rd February, 2020 addressed to respondent No.4. However, no decision has been taken by the respondents and grievance of the petitioner has remained unaddressed.

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

11. Contention of the petitioner is that the impugned rejection is in violation of the principles of natural justice. Petitioner is eligible to file declaration under the scheme and is entitled to the benefits thereunder. Quantum of tax dues payable by the petitioner was finalized before 30th June, 2019. In that view of the mater summary rejection of the application (declaration) of the petitioner is not only in violation of the principles of natural justice but also in contravention of various provisions of the scheme. Such rejection is contrary to the very intent and object of the scheme.

12. This court by order dated 25th September, 2020 directed the respondents to file affidavit in reply, whereafter affidavit in reply was filed on behalf of the respondents.

13. Stand taken by the respondents in their affidavit is that based on intelligence input investigation was initiated against the petitioner on 10th March, 2014 regarding payment of service tax for the period from 2012 to 2017. However, respondent No.3 vide letter dated 21st May, 2019 quantified the amount payable at Rs.47,44,937.00 for the period 2016-

17 as previous liability was discharged by the petitioner. It is stated that petitioner vide the letter dated 18th June, 2019 accepted this liability for the period 2016-17 and on its own quantified its liability for the period 1st April, 2017 to 30th June, 2017 at Rs.10,74,011.00 though petitioner did not submit necessary documents for verification and quantification of actual liability.

14. Referring to the scheme, it is stated that the scheme would cover those cases where investigation by the department was ongoing but the tax dues was quantified on or before 30th June, 2019. In cases where the tax dues were not quantified on or before 30th June, 2019, declarants of those cases were not eligible for filing declaration to avail the benefits under the scheme.

15. Respondents have pointed out certain discrepancies; in its application (declaration) dated 12th December, 2019 petitioner had declared its tax dues at Rs.59,54,669.00 comprising of Rs.47,44,937.00 for the period 2016-17 and Rs.12,09,732.00 for the period 1st April, 2017 to 30th June, 2017; but the liability amount declared for the period 1st April, 2017 to 30th June, 2017 i.e. Rs.12,09,732.00 was different from the amount mentioned in the letter dated 18th June, 2019 i.e. Rs.10,74,011.00.

16. Regarding non-affording of opportunity of hearing before rejection of application, stand taken is that hearing was not granted as there was no estimation done by the Designated

Committee since the application itself was not admissible on account of tax dues being not quantified on or before 30th June, 2019. Therefore, Designated Committee rightly rejected the said application without any hearing.

17. Contending that rejection of the application of the petitioner by the Designated Committee was on merit, it has been clarified that the entire scheme was processed online. After rejection of the application online Designated Committee could not have recalled the application. This position was explained to the petitioner informing him the reason for rejection.

18. Finally it is contended that respondent No.3 had communicated the liability for the period 1st April, 2016 to 31st March, 2017 only and no such liability for the period 1st April, 2017 to 30th June, 2017 was communicated to the petitioner as investigation was still in progress. It was the petitioner who had quantified its liability for the later period though the said quantum was changed at the time of filing the application (declaration) under the scheme. Since the tax dues were not quantified on or before 30th June, 2019, petitioner was not entitled to file the application under the scheme. In the circumstances, respondents contend that the writ petition is devoid of any merit and should be dismissed.

19. Petitioner has filed rejoinder affidavit. It is reiterated that petitioner is eligible to file the declaration under the

scheme. Said declaration was rejected on the ground that tax dues were not finalized on or before 30th June, 2019 but no opportunity was given to the petitioner to present or explain its case. Referring to section 125 of the scheme read with section 121(r) thereof he submits that the amount of dues payable by the petitioner whose case was under investigation stood quantified before 30th June, 2019. Reference has been made to the circular dated 27th August, 2019 of the Central Board of Indirect Taxes and Customs in this connection. Regarding the discrepancy in the amount of taxes quantified for the period 1st April, 2017 to 30th June, 2017, it is submitted that in its letter dated 18th June, 2019 petitioner had admitted the liability of Rs.10,14,011.00 for the period 1st April, 2017 to 30th June, 2017. However, on account of calculation mistake petitioner had disclosed a higher amount of Rs.12,09,732.00 for the said period in the application (declaration) which cannot be held against the petitioner. Referring to sub sections (3) and (4) of section 127 it is contended that the Designated Committee is required to grant personal hearing to a declarant before rejecting his application.

20. According to the petitioner, it had disclosed a higher figure of Rs.59,54,669.00 while filing the declaration under the scheme and had already paid an amount of Rs.30,60,257.00. Therefore, no further amount was payable by the petitioner under the scheme. Thus, the effect of the petitioner's mistake did not result in any amount becoming payable by the petitioner under the scheme.

21. Mr.Raichandani, learned counsel for the petitioner has elaborately taken us to the various provisions of the scheme. He has also referred to the circular dated 27th August, 2019. He contends that as is the requirement under the scheme in the case of a declarant whose case is under investigation, the tax dues payable had to be quantified on or before 30th June, 2019. In the case of the petitioner, for the earlier period the liability was quantified by the respondents themselves and in the case of the second period quantum of liability was admitted by the petitioner. As a matter of fact petitioner quantified a still higher figure for the later period at the time of filing the application (declaration). Therefore, petitioner had fulfilled the eligibility criteria and its application could not have been summarily rejected. In any view of the matter, respondents could not have summarily rejected the application of the petitioner without affording any opportunity of hearing. In support of his submissions, learned counsel for the petitioner has placed reliance on a number of decisions.

22. On the other hand, Mr.Jetly, learned senior counsel for the respondents submits that the stand of the respondents has been articulated in the common affidavit in reply filed. Since the tax liability for the period 1st April, 2017 to 30th June, 2017 was not finalized or quantified and as investigation was still in progress as on 30th June, 2019 petitioner was not entitled to file the application (declaration) under the scheme. Therefore, the application of the petitioner

was rightly rejected. He submits that there is no merit in the writ petition which should be dismissed.

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

24. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (already referred to as “the scheme” herein-before) was introduced by the Finance (No.2) Act, 2019 and notified in the Gazette of India, Extraordinary on 1st August, 2019. While proposing the scheme as part of her budget speech for the year 2019-20, Hon’ble Finance Minister, Government of India stated thus :-

> “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.”

25. Statement of object and reasons with respect to the scheme reads as under :-

> “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."

26. Central Board of Indirect Taxes and Customs 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)."

27. Thus from the above, it is seen that the Central Board of Indirect Taxes and Customs (briefly 'the Board' hereinafter) had conveyed to all the departmental heads that the scheme is a bold endeavour to unload the baggage relating to the legacy taxes, namely, central excise and service tax which have been subsumed under GST and to allow business to make a new beginning and to focus entirely on GST. It was emphasized that all officers and staff should partner with trade and industry to make the scheme a grand success. It was highlighted that dispute resolution and amnesty are the two components of this scheme. The dispute resolution component is aimed at liquidating the legacy cases whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. 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."

28. Before adverting to the relevant provisions of the scheme, we may also note that in ***Capgemini Technology Services India Limited Vs. Union of India***, ***MANU/MH/1428/2020***, this Court after examining various provisions of the scheme held as under :-

> "20. From the above, we find that as a one time measure for liquidation of past disputes of central excise and service tax, the SVLDR scheme has been issued by the Central Government. The SVLDR scheme has also been issued to ensure disclosure of unpaid taxes by an eligible person. This appears to have been necessitated as the levy of central excise and service tax has now been subsumed in the new GST regime. From a reading of the statement of object and reasons, it is quite evident that the scheme conceived as a one time measure, has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand. Both are equally

> important: amicable resolution of tax disputes and interest of revenue. 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 waiver of interest, fine, penalty and immunity from prosecution. This is the broad picture the concerned authorities are to keep in mind while dealing with a claim under the scheme."

29. Thus after observing that the scheme has the twin objectives of liquidation of past disputes pertaining to the subsumed taxes on the one hand and disclosure of unpaid taxes on the other hand, it was observed that the concerned authorities should keep in mind the broad picture while dealing with a claim under the scheme.

30. Chapter V of the Finance (No.2) Act, 2019 contains the scheme. Sections 120 to 135 under Chapter V comprises the scheme. As per section 121(r), the word "quantified" with its cognate expression has been defined to mean a written communication of the amount of duty payable under the indirect tax enactment.

31. Application of the scheme to indirect tax enactments is dealt in section 122. As per clause (a), the scheme shall be applicable to the Central Excise Act, 1944, Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder. Clause (b) mentions a list of other acts to which the scheme would also be applicable.

32. Tax dues for the purposes of the scheme is dealt with in section 123. For the purpose of the present case, clause (c) is relevant and the same is extracted hereunder :-

> "**123**. For the purposes of the scheme, "tax dues" means -
> (a) .....
> (b) .....
> (c) 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 30th day of June, 2019;
> (d) .....
> (e) ....."

33. Therefore, in a case where an enquiry or investigation or audit is pending against a declarant, the amount of duty payable under any of the indirect tax enactment has to be quantified on or before 30th June, 2019 and that quantified amount would be treated as the tax dues for the purposes of the scheme.

34. Reliefs available to a declarant under the scheme are provided in section 124. As per section 124(1)(d)(ii), where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before 30th June, 2019 is more than rupees fifty lakhs, then, fifty percent of the tax dues.

35. Section 125 deals with eligibility of persons to make a declaration under the scheme. Sub section (1) provides a negative list of persons ineligible to make a declaration. Except those persons, all other persons shall be eligible to make a declaration under the scheme. As per clause (e), 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 has not been quantified on or before 30th June, 2019 would not be eligible to make a declaration under the scheme. In other words, a person who has been subjected to an enquiry or investigation or audit and the amount of duty involved has not been quantified on or before 30th June, 2019 would not be eligible to make a declaration under the scheme in terms of sub section (1) of section 125.

36. At this stage, we may make a mention that sub section (2) of section 125 provides that a declaration under sub section (1) shall be made in such electronic form as may be prescribed.

37. Section 126 deals with Designated Committee. As per sub section (1), the Designated Committee shall verify the correctness of the declaration made by the declarant under section 125 in such manner as may be prescribed.

38. Sub section (1) of section 127 says that where the amount estimated to be payable by the declarant, as estimated by the Designated Committee, equals the amount declared by the declarant, then the Designated Committee shall issue in electronic form a statement indicating the

amount payable by the declarant within the period specified. As per sub section (2), where the amount estimated by the Designated Committee to be payable by the declarant exceeds the amount declared by the declarant, the Designated Committee shall issue in electronic form an estimate of the amount payable by the declarant within the period specified. Sub section (3) provides that after issue of the estimate under sub section (2), the Designated Committee shall give an opportunity of being heard to the declarant before issuing the statement indicating the amount payable by the declarant.

39. From a conjoint reading of sub sections (1), (2) and (3) of section 127, the picture that emerges is that if the amount estimated by the Designated Committee is equal to the amount declared by the declarant, then the Designated Committee shall issue a statement in electronic form indicating the amount payable by the declarant. However, if the amount estimated by the Designated Committee is higher than the amount declared by the declarant, the Designated Committee shall give an opportunity of hearing to the declarant.

40. There is a provision for rectification of errors in section 128 and under section 129 every discharge certificate issued under section 126 shall be conclusive as to the matter and the time period stated therein. Once such a discharge certificate is issued, the declarant shall not be liable to pay any further duty, interest or penalty for the matter and time period covered by the discharge certificate besides being protected

from prosecution; further no matter and time period covered by such declaration shall be re-opened.

41. While power to make rules has been conferred on the Central Government under section 132, the Board has been conferred power under section 133 to issue orders, instructions and directions to various authorities for proper administration of the scheme and it shall be the duty of such persons employed in the execution of the scheme to observe and follow such orders, instructions and directions.

42. Central Government has framed the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (briefly “the Rules” hereinafter) which has since been amended. As per Rule-3, the declaration made under sub section (1) of section 125 would be in form SVLDRS-1. Rule-6(3) says that the form issued by the Designated Committee under sub section (2) of section 127 shall be in form SVLDRS-2 mentioning the estimated amount payable by the declarant alongwith a notice of opportunity for personal hearing. As per sub rule (4), if the declarant waives personal hearing and indicates agreement or disagreement with the estimate made by the Designated Committee, he may file form SVLDRS-2A. Under Rule-6(2) when the amount estimated by the Designated Committee equals the amount declared by the declarant, Designated Committee shall issue form SVLDRS-3. Discharge certificate contemplated in section 129 shall be issued in form SVLDRS-4.

43. Having broadly noticed the framework of the scheme, we may now advert to the controversy in the present case. Petitioner filed the application (declaration) under the scheme on 12th December, 2019. Category under which the declaration was made was mentioned as investigation, enquiry or audit. Amount of tax dues declared by the petitioner was Rs.59,54,669.00 which has been explained in the writ petition to include Rs.47,44,937.00 for the period 1st April, 2016 to 31st March, 2017 and Rs.12,09,732.00 for the period 1st April, 2017 to 30th June,2017. Petitioner also mentioned that it had made pre-deposit of Rs.30,60,257.00. This application (declaration) was rejected by the respondents vide email dated 27th January, 2020 on the ground of ineligibility with the remark that the tax dues were not finalized on or before 30th June, 2019.

44. From the letter of respondent No.3 dated 21st May, 2019, it is evident that the service tax liability of the petitioner for the period 2016-17 was quantified at Rs.47,44,937.00. As per petitioner's letter dated 18th June, 2019 addressed to respondent No.3, petitioner mentioned that tax dues for the period from April 2017 to June 2017 was Rs.10,74,011.00, thus admitting the aforesaid amount as the tax dues for the later period. When respondents in their affidavit have pointed out that while according to the petitioner the tax dues for the period from 1st April, 2017 to 30th June, 2017 was Rs.10,74,011.00 the amount declared for the said period in the application (declaration) under the scheme was Rs.12,09,732.00, petitioner in its rejoinder affidavit has

reiterated that in its letter dated 18th June, 2019 it had admitted the tax liability of Rs.10,74,011.00 for the period from 1st April, 2017 to 30th June, 2017. The discrepancy in the two figures has been attributed to calculation error at the time of filing the declaration which could have been explained to the Designated Committee if the petitioner was given an opportunity of hearing. Respondents in their affidavit have specifically stated that petitioner had filed the declaration under the investigation head. Requirement of eligibility in case of such a declarant is that the tax dues should be quantified on or before 30th June, 2019. Since the tax dues were not quantified on or before 30th June, 2019, petitioner was not entitled to file application (declaration) under the scheme to avail the benefits. Accordingly, application of the petitioner was rejected.

45. After noticing the contours of the dispute, we may now examine the same. As per section 125(1)(e), 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 has not been quantified on or before 30th June, 2019, shall not be eligible to make a declaration under the scheme. In such a case tax dues has been defined under section 123(c) 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 30th June, 2019. The word “quantified” has been defined in section

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

46. In so far the petitioner is concerned, there are two periods in question; first period is 1st April, 2016 to 31st March, 2017 and the second period is from 1st April, 2017 to 30th June, 2017. In so far the first period is concerned, by written communication dated 21st May, 2019 respondent No.3 informed the petitioner that the service tax liability was Rs.47,44,937.00. Regarding the other period, petitioner in its letter dated 18th June, 2019 addressed to respondent No.3 admitted service tax liability of Rs.10,74,011.00. It is another matter that in the application (declaration) filed, instead of the amount Rs.10,74,011.00 petitioner declared Rs.12,09,732.00. The total declared amount of tax liability was Rs.59,54,669.00 and if the tax liability for the second period is taken as Rs.10,74,011.00, the declared amount would be Rs.58,18,948.00. As per section 124(1)(d)(ii) in either case the tax dues would be more than rupees fifty lakhs in which event relief available to a declarant under the scheme would be fifty percent of the tax dues. So there is no material difference to the claim of the petitioner and consequential relief that may be granted because of the mistake in declaring the tax dues for the second period on the higher side. We will come back to this aspect a little later.

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 :-

> "(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."

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.

51. We have already discussed that under sub sections (2) and (3) of section 127 in a case where the amount estimated by the Designated Committee exceeds the amount declared by the declarant, then an intimation has to be given to the declarant in the specified form about the estimate determined by the Designated Committee which is required to be paid by the declarant. However, before insisting on payment of the excess amount or the higher amount the Designated Committee is required to give an opportunity of hearing to the declarant. In a situation when the amount estimated by the Designated Committee is in excess of the amount declared by the declarant an opportunity of hearing is required to be given by the Designated Committee to the declarant, then it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject an application (declaration) on the ground of being ineligible without giving a chance to the declarant to explain as to why his application (declaration) should be accepted and relief under the scheme should be extended to him. Summary rejection of an application without affording any opportunity of

hearing to the declarant would be in violation of the principles of natural justice. Rejection of application (declaration) will lead to adverse civil consequences for the declarant as he would have to face the consequences of enquiry or investigation or audit. As has been held by us in ***Capgemini Technology Services India Limited (supra)*** it is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be complied with. Non-compliance to the principles of natural justice would impeach the decision making process rendering the decision invalid in law.

52. We have one more reason to take such a view. As has rightly been declared by the Hon'ble Finance Minister and what is clearly deducible from the statement of object 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 basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. Therefore the focus is to unload this baggage of pre-GST regime and allow business to move ahead. We are thus in complete agreement with the views expressed by the Delhi High Court in ***Vaishali Sharma Vs. Union of India, MANU/DE/1529/2020*** that a liberal interpretation has to be given to the scheme as its intent is to unload the baggage relating to legacy disputes under central excise and service tax and to allow the business to make a fresh beginning.

53. Regarding the mistake in declaring the tax dues in the application (declaration) for the later period, we may mention that Gauhati High Court in ***Assam Cricket Association Vs. Union of India, MANU/GH/0280/2020*** has taken the view that a bonafide and a curable mistake in making the declaration should be allowed to be rectified. In so far the present case is concerned, we have already noticed that because of the mistake in declaring the tax dues for the later period on the higher side; no benefit would accrue to the petitioner. Such a mistake could have been rectified had a hearing been given to the petitioner.

54. As discussed above, though the scheme has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand, the primary focus as succinctly put across by the Hon'ble Finance Minister in her budget speech is to unload the baggage of pending litigations in respect of service tax and central excise from pre-GST regime so that the business can move on. This was also the view expressed by the Board in the circular dated 27th August, 2019 wherein all the officers and staff working under the Board were called upon to partner with trade and industry to make the scheme a grand success which in turn will enable the administrative machinery to fully focus in the smooth implementation of GST. This is the broad picture which the officials must have in mind while considering an application (declaration) seeking amnesty under the scheme. 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.

55. Thus having regard to the discussions made above, we hold that rejection of the application (declaration) of the Petitioner under the scheme communicated vide email dated 27th January, 2020 is not justified. Consequently, the same is hereby set aside and quashed. Designated Committee is directed to decide the application (declaration) of the petitioner dated 12th December, 2019 afresh after giving an opportunity of hearing to the petitioner who shall be informed about the date, time and place of hearing. Such decision shall be taken keeping in mind the discussions made above and shall be in the form of a speaking order with due intimation to the petitioner.

56. Writ Petition is accordingly allowed. However, there shall be no order as to costs.

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

(ABHAY AHUJA, J.) **(UJJAL BHUYAN, J.)**