IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.5510 OF 2020

Sabareesh Pallikere,
Proprietor of M/s. Finbros Marketing ..Petitioner

Versus

Jurisdictional Designated Committee,
Thane Commissionerate, Division IV,
Range-II & Ors. ..Respondents

Mr. Devendra Jain i/by M/s. DHJ Law, Advocate for the Petitioner.
Mr. Pradeep S. Jetly, Senior Advocate a/w Mr. J. B. Mishra, Advocates for the Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

RESERVED ON : 27.01.2021
PRONOUNCED ON : 11.02.2021

JUDGMENT AND ORDER (Per Ujjal Bhuyan, J)

Heard Mr. Devendra Jain, learned counsel for the petitioner and Mr. Pradeep S. 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 31.01.2020 passed by the designated committee i.e. respondent No.1 rejecting the declaration of the petitioner dated 24.12.2019 filed under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly "the scheme" hereinafter) and further seeks a direction to the said respondent to reconsider the declaration of the

petitioner dated 24.12.2019 in terms of the scheme and grant the reliefs to the petitioner.

3. According to the petitioner, he is the sole proprietor of the proprietorship firm M/s. Finbros Marketing having its office at Thane (West). Petitioner is engaged in the business of facilitating distribution of personal loan in Mumbai and is associated with various banks and financial institutions. Being a service provider, it was registered as such under Chapter V of the Finance Act, 1994.

4. It is stated that an inquiry was initiated by the Senior Intelligence Officer of Directorate General of GST Intelligence (DGGI), Pune Zonal Unit against the petitioner for alleged non-payment of service tax dues during the period from 2013-14 to 2017-18 (upto June, 2017).

5. In this connection, summons dated 28.05.2018 under section 14 of the Central Excise Act, 1944 was issued to the petitioner. Responding to the summons, petitioner appeared before the Senior Intelligence Officer and his statement was recorded on oath by the said officer on 06.07.2018. In his statement, petitioner admitted that the total service tax liability for the period under consideration was around Rs.1.93 crores, further stating that after initiation of inquiry, petitioner had paid service tax of Rs.18 lakhs besides undertaking to discharge Rs.50 lakhs by 02.09.2018 and a further amount of Rs.32 lakhs by December 2018. It was also stated that the remaining amount of service tax liability would be paid by March 2019 along with interest due.

6. Similar statement of the petitioner was recorded on 6. 06.2019 under section 14 of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 and section 174 of the Central Goods and Services Tax Act, 2017. In question No.1 of the statement itself, petitioner was asked as to whether he had paid the entire service tax liability of Rs.1.75 crores. In his reply, petitioner stated that he had paid Rs.3.30 lakhs in the months of September 2018 and October 2018; and made further payment of Rs.10.10 lakhs on 03.06.2019. Balance amount could not be paid because of crisis faced by non-banking financial companies which had affected his business.

7. A further statement of the petitioner on similar lines was recorded by the Senior Intelligence Officer on 25.09.2019. In this statement, he admitted service tax liability of Rs.2,08,29,640.00 for the period 2014-15 to 2017-18 (upto June, 2017).

8. Additional Director General, DGGI, Pune Zonal Unit issued show-cause notice dated 11.11.2019 to the petitioner wherein reference was made to the statements of the petitioner as alluded to herein-above whereafter it was alleged that service tax liability of the petitioner for the aforesaid period amounted to Rs.2,17,97,355.00 which the petitioner had failed to pay.

9. In the meanwhile, Central Government introduced the scheme through the Finance (No.2) Act, 2019 for resolution of disputes relating to central excise and service tax which have since been subsumed in

goods and services tax (GST).

10. Availing the opportunity for settlement under the scheme, petitioner made a declaration in terms thereof on 24.12.2019 under the category of inquiry, investigation or audit.

11. On 31.01.2020, respondent No.1 rejected the said declaration of the petitioner on the ground of ineligibility with the remark that the amount of tax dues was not quantified on or before 30.06.2019.

12. Aggrieved, present writ petition has been filed.

13. Respondents in their reply affidavit have stated that after completion of investigation, show cause-cum-demand notice dated 11.11.2019 was issued to the petitioner alleging that petitioner had not paid service tax amount to Rs.2,17,97,355.00 for the period from 2014-15 to June, 2017. Petitioner had filed declaration in terms of the scheme under the category of investigation, inquiry or audit disclosing outstanding service tax dues of Rs.2,17,97,355.00. Petitioner's declaration was rejected on 31.01.2020 on the ground of ineligibility since the final amount came to be quantified after 30.06.2019 i.e., on 11.11.2019 when the show cause-cum-demand notice was issued. In this connection, reference has been made to section 125 of the Finance (No.2) Act, 2019 whereafter it is contended that it was only on issuance of show-cause notice dated 11.11.2019 that the outstanding service tax dues stood quantified. This being post 30.06.2019, petitioner was clearly ineligible to make the declaration under the said category.

13.1. As a matter of fact, designated committee i.e. respondent No.1 had called for a verification report from DGGI, Pune to verify correctness of the claim of the petitioner. Based on the verification report of the DGGI, petitioner's declaration was rejected on 31.01.2020.

13.2. In such circumstances, respondent No.1 was justified in rejecting the declaration of the petitioner and no case for interference has been made out.

14. Learned counsel for the petitioner has referred to the statements made by the petitioner before the Senior Intelligence Officer during the course of the investigation on 06.07.2018 and 06.06.2019 and submits that from the said statements it is evidently clear that petitioner had admitted service tax liability to be around Rs.1.93 crores. These two statements are prior to the cut off date of 30.06.2019. The subsequent statement made on 25.09.2019 which is post 30.06.2019 only reiterates what was stated in the earlier two statements though in the later statement he had admitted service tax liability of Rs.2,08,29,640.00. Referring to section 121(r) of the Finance (No.2) Act, 2019 as well as to the circular dated 27.08.2019 of the Central Board of Indirect Taxes and Customs (briefly "the Board" herein-after), more particularly to paragraph 10(g) therein, he submits that there was clear admission as well as quantification on the part of the petitioner to the service tax dues prior to 30.06.2019. In such circumstances, petitioner is clearly eligible to make the declaration under the category of inquiry, investigation or audit. Therefore, respondent No.1 was not justified in rejecting the declaration of the

petitioner as being ineligible.

15. *Per contra*, Mr. Pradeep S. Jetly, learned senior counsel for the respondents submits that quantification of service tax dues can be said to have taken place only upon issuance of show-cause notice dated 11.11.2019 whereby service tax dues of the petitioner was quantified at Rs.2,17,97,355.00. Such quantification being after 30.06.2019, petitioner was not eligible to make the declaration. Referring to the statements of the petitioner both before and after 30.06.2019, he submits that there was no consistency in the figure of service tax dues admitted by the petitioner which figure kept on changing with every statement. Therefore, such statements could not have been accepted as admission of liability. Respondent No.1 was justified in rejecting the declaration of the petitioner as being ineligible. No interference is called for.

16. Statements made by learned counsel for the parties have been duly considered.

17. Issue raised in the present writ petition i.e. eligibility of the petitioner or maintainability of his declaration to avail the benefits of the scheme under the category of investigation, enquiry or audit on the ground that quantification of the service tax dues of the petitioner for the related period was not quantified on or before 30th June, 2019 is no longer *res-integra*.

18. In **Thought Blurb Vs. Union of India, 2020-TIOL-1813-HC-**

MUM-ST, this court faced with a similar issue referred to provisions of the Finance (No.2) Act, 2019 and to the circular dated 27th August, 2019 of the Central Board of Indirect Taxes and Customs (briefly "the Board" hereinafter) whereafter it was held as under :-

> "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 :-
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> 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.
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> 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.
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> 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."

19. Subsequently, in **M/s G.R.Palle Electricals Vs. Union of India, 2020-TIOL-2031-HC-MUM-ST**, this court 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]."

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"**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."

20. Finally in **Saksham Facility Private Limited Vs. Union of India, 2020-TIOL-2108-HC-MUM-ST,** where a similar issue had cropped up, this court reiterated the above position and held as under :-

> "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.
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> 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.
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> 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 crystalized 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."

21. From the above it is evident that all that would be required for being eligible under the above category is a written communication which will mean a written communication of the amount of duty payable including a letter intimating duty demand or duty liability admitted by the person concerned during inquiry, investigation or audit. For eligibility under the scheme, the quantification need not be on completion of investigation by issuing show-cause notice or the amount that may be determined upon adjudication.

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.

23. That apart, in **Thought Blurb** (*supra*) we have held that when there is a provision for granting personal hearing in a case where the declarant disputes the estimated amount, it would be in complete defiance of logic and contrary to the very object of the scheme to reject a declaration on the ground of being ineligible without giving a chance to the declarant to explain as to why its declaration should be accepted and relief under the scheme be extended to him. It was held as under :-

> "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."

24. Thus, on a thorough consideration of the matter, we set aside the order dated 31.01.2020 and remand the matter back to respondent No.1 to consider the declaration of the petitioner dated 24.12.2019 afresh as a valid declaration in terms of the scheme under the category of investigation, inquiry and audit and thereafter grant the consequential

relief(s) to the petitioner. While doing so, respondent No.1 shall provide an opportunity of hearing to the petitioner and thereafter pass a speaking order with due communication to the petitioner. The above exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

25. Writ petition is accordingly allowed to the above extent. However, there shall be no order as to cost.

MILIND N. JADHAV, J **UJJAL BHUYAN, J**