IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.3880 OF 2020

Morde Foods Pvt. Ltd. and another … Petitioner
Vs.
Union of India and others … Respondents

Mr. Rohan Shah, Senior Advocate with Srisabari Rajan and Meetika Baghel i/b. Mr. Sharaon Patole for Petitioner.
Mr. Niranjan Shimpi for Respondent No.1.
Mr. Vijay Kantharia with Mr. Ram Ochani for Respondent Nos. 2 and 3.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.

Reserved on : DECEMBER 10, 2020
Pronounced on: MARCH 08, 2021

JUDGMENT and ORDER : (*Per Ujjal Bhuyan, J.*)

Heard Mr. Rohan Shah, learned senior counsel for the petitioners; Mr. Niranjan Shimpi, learned counsel for respondent No.1; and Mr. Vijay Kantharia, learned counsel for respondent Nos.2 and 3.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of rejection of its application under the *Sabka Vishwas* (Legacy Dispute Resolution) Scheme, 2019 (briefly 'the scheme' hereinafter) by respondent No.2 on 13.01.2020 and further seek a direction to the respondents to accept its application in terms of the said scheme under the category of "litigation". Alternative prayer made is for a direction to the respondents to accept the subsequent application of the petitioner in terms of the said scheme under the category of "arrears" after quashing its rejection on 30.01.2020.

3. Case of the petitioners is that petitioner No.1 is a private limited company incorporated under the Companies Act, 1956 having its

registered office at Byculla (East), Mumbai. Petitioner No.2 is the director of petitioner No.1. Petitioner No.1 (also referred to as the 'petitioner company') is engaged in the manufacturing of cocoa products, chocolates and sugar confectionery.

4. Petitioners have stated that goods manufactured by petitioner No.1 are primarily in the nature of industrial inputs which are utilized by buyers who are manufacturers, hotels, ice-cream parlours and confectioners for their output products. These in turn are supplied by the buyers to their customers. Thus, supplies made by petitioner No.1 are in bulk quantity to be sold either directly to industrial / institutional consumers or to distributors or dealers who in turn sell these goods to retail consumers. It is contended that such packages supplied by petitioner No.1 cannot be said to be retail packages. Since the goods manufactured by petitioner No.1 were supplied to industrial / institutional consumers for their captive use, petitioners have been discharging excise duty on the transactional value on removal of the said goods as per the provisions of section 4 of the Central Excise Act, 1944. The products were not intended for retail sale to end customers but were for sale to industrial / institutional consumers, such as, hotels, bakers etc. Petitioners however launched retail segment with effect from 12.09.2013 and in compliance to the provisions of the Legal Metrology Act, 2009 and the rules framed thereunder, the said products were duly marked with a MRP and appropriate duty as per section 4A of the Central Excise Act, 1944 was paid by petitioner No.1.

5. In May, 2014, an investigation was initiated against the petitioners by the Directorate General of Central Excise Intelligence in relation to goods supplied to industrial / institutional consumers through distributors alleging that the goods supplied through distributors were not covered under the exemption provided in rule 3 of the Legal Metrology (Packaged Commodity) Rules, 2011 and hence central excise duty was payable under section 4A of the Central Excise Act, 1944 (for

short 'Act') on MRP basis. While the investigation was on, petitioners paid a sum of Rs.1,65,00,000.00 under protest in order to ensure uninterrupted clearance of goods.

6. Pursuant to the above investigation, a show cause notice dated 24.12.2014 was issued to petitioner No.1 for recovering the differential excise duty payable by petitioner No.1 along with interest and penalty. Responding to the show cause notice, petitioners submitted a detailed reply before the adjudicating authority i.e., Principal Commissioner of Central Excise, Pune-II. In this connection, a hearing was given to the petitioners.

7. However, the adjudicating authority passed order-in-original dated 16.06.2015 confirming the demand of differential central excise duty amounting to Rs.4,06,47,261.00 along with interest and penalty in respect of goods cleared during the period from 01.12.2009 to 31.08.2014 besides directing recovery of applicable interest and penalty as per the provisions of the Act.

8. Being aggrieved by the order-in-original dated 16.06.2015, petitioner filed appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai ('CESTAT' for short) which was registered as Excise Appeal No.86805 of 2015. The appeal was heard by the CESTAT on 10.05.2019. By the order dated 8. 11.2019, CESTAT set aside the order dated 16.06.2015 and remanded the matter back to the original authority for a fresh decision after granting an opportunity to the petitioners to be heard on all the submissions made before the CESTAT.

9. In the meanwhile, petitioners submitted declaration as per section 125 of the Finance (No.2) Act, 2019 through which the scheme was introduced. The declaration (also referred to as the 'application') was made in the prescribed form on 12.12.2019 under the 'litigation'

category i.e., show cause notice pending as on 30.06.2019. According to the petitioner, under section 124 of the Finance (No.2) Act, 2019 in case of tax dues being more than fifty lakhs relatable to show cause notice pending as on 30.06.2019 under 'litigation' category, the relief amount would be fifty percent of the tax dues. Accordingly, the amount payable in terms of the declaration was assessed at Rs.38,23,630.50. Petitioners have furnished a statement mentioning the duty amount, pre-deposit made and tax dues less tax relief in the following manner:-

Duty amount	Pre-deposit	Tax dues less Tax relief
4,06,47,261.00	1,65,00,000.00	38,23,630.50

10. However, the said declaration of the petitioners was rejected by the respondents on 13.01.2020 on the ground of ineligibility, the reason for rejection being appeal was finally heard before 30.06.2019 by CESTAT. No opportunity of hearing was granted to the petitioners prior to such rejection.

11. As a matter of abundant caution and keen to settle its tax disputes under the scheme, petitioner No.1 filed a declaration again under the category of 'arrears' on 15.01.2020. It is stated that in terms of the scheme, amount payable under the 'arrears' category was Rs.1,44,88,356.60 only, which is provided in the form of a statement by the petitioners as under:-

Duty amount	Pre-deposit	Tax dues less Tax relief
4,06,47,261.00	1,65,00,000.00	1,44,88,356.60

12. However, the second declaration of the petitioners dated 15.01.2020 was also rejected by the respondents on 30.01.2020 on the ground of ineligibility. It was mentioned that the application could not be accepted under the 'arrears' category as the case of the petitioners was remanded back for decision afresh by the competent authority by

order dated 08.11.2019. The date on which petitioners had filed the declaration i.e., 15.01.2020, the issue had not yet attained finality. Second time also, no opportunity was granted to the petitioners to explain the basis of the declaration.

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

14. Respondents have filed reply affidavit. It is admitted that during the stage of investigation, petitioners had paid an amount of Rs.1,65,00,000.00 under protest. Thereafter show cause notice dated 24.12.2014 was issued. Principal Commissioner of Central Excise and Service Tax, Pune-II passed order-in-original dated 16.06.2015 confirming the demand of differential central excise duty amounting to Rs.4,06,47,261.00 along with interest and penalty for the period from 1. 12.2009 to 31.08.2014. Being aggrieved by the order-in-original, petitioner No.1 filed appeal before CESTAT. Appeal was finally heard on 10.05.2019. However, by the order dated 08.11.2019, CESTAT remanded the matter back to the adjudicating authority for fresh decision confining the adjudication to the ground of limitation only.

14.1. Petitioner No.1 made a declaration in terms of the scheme on 12.12.2009 for settlement of dues relating to the show cause notice dated 24.12.2014 under the 'litigation' category. However, this declaration was rejected by the designated committee on 13.01.2020 on the ground of ineligibility clarifying that as per section 125(1)(a) of the Finance (No.2) Act, 2019, the appeal was finally heard by the CESTAT before 30.06.2019 rendering petitioner No.1 ineligible.

14.2. Petitioner No.1 filed another declaration in terms of the scheme thereafter on 15.01.2020 under the 'arrears' category. This declaration was also rejected by the designated committee on 30.01.2020 on the ground of ineligibility clarifying that the said application could not be

accepted under the 'arrears' category as the case had been remanded back to the competent authority for decision in the month of November, 2019; the date on which the declarant had filed its declaration i.e., on 15.01.2020, the issue had not yet attained finality, therefore, the declaration was rejected.

14.3. After referring to various provisions of the scheme, it is stated that the scheme was initially in force for the period from 01.09.2019 to 31.12.2019 for filing of declaration by the intending declarants. Subsequently, the said period was extended to 15.01.2020.

14.4. Referring to section 125(1) of the Finance (No.2) Act, 2019, it is contended that a person who had filed an appeal before the appellate forum and whose appeal had been heard finally on or before 30th day of June, 2019 would be ineligible to make a declaration. Likewise, a person who had been issued a show cause notice under an indirect tax enactment and the final hearing had taken place on or before 30th day of June, 2019 would be ineligible to make a declaration.

14.5. Reference has also been made to the circular dated 12.12.2019 of the Central Board of Indirect Taxes and Customs (briefly 'the Board' hereinafter) wherefrom it is contended that for the purpose of eligibility under the scheme in respect of categories such as litigation etc., the relevant date is 30.06.2019. In a case under audit / investigation / enquiry where tax dues had been quantified on or before 30.06.2019 and a show cause notice is issued after 30.06.2019 or in a case which was under appeal as on 30.06.2019 and may attain finality in view of appeal period being over; in all such cases, eligibility would be decided with regard to the relevant date i.e., 30.06.2019. Likewise, to be eligible under the 'arrears' category, the declaration must satisfy the definition of 'amount in arrears' as defined in section 121 of the Finance (No.2) Act, 2019.

14.6. Similarly, reference has been made to rule 3 of the *Sabka Vishwas* (Legacy Dispute Resolution) Scheme Rules, 2019 (briefly 'the Rules' hereinafter) wherefrom it is contended that if final hearing with regard to any matter in adjudication or appeal had taken place on or before 30.06.2019 then the declarant would be ineligible to proceed further under the 'litigation' category.

14.7. In so far order of CESTAT is concerned, respondents have contended that CESTAT had remanded the matter back to the adjudicating authority for a fresh decision confining the decision only to the ground of limitation. Therefore, it would be erroneous to take the view that the matter is back to show cause notice stage.

14.8. Thus, designated committee rightly found petitioner No.1 to be ineligible and rejected its declaration. There being no merit in the writ petition, the same should be dismissed.

15. Mr. Shah, learned counsel for the petitioners has referred to both the rejection orders dated 13.01.2020 as well as 30.01.2021 and submits that on both counts respondents have fallen in error. The declaration under the litigation category was erroneously rejected on the ground of ineligibility by holding that as per section 125(1)(a) of the Finance (No.2) Act, 2019, the appeal filed by the petitioners before the CESTAT was finally heard before 30.06.2019. Referring to various provisions of the scheme more particularly to sections 124(1)(a) and 125(1) of the Finance (No.2) Act, 2019, he submits that as on the date of passing of the impugned order, the appeal was disposed of by setting aside the order-in-original and remanding the matter back to the adjudicating authority for a decision afresh. Therefore, though the appeal was finally heard on a date prior to 30.06.2019, on the date of consideration of the declaration not only no appeal was pending, there was no order-in-original as the initial order-in-original was set aside by the CESTAT. Therefore, all that remained was the show cause notice. If that be so,

then the declaration of the petitioner under the litigation category was very much maintainable and rejecting the same on the ground of ineligibility is clearly erroneous. That apart, he submits that no opportunity of hearing was granted to the petitioners before such rejection. If an opportunity of hearing was granted to the petitioners, they would have explained to the designated committee that petitioner No.1 is eligible to file the declaration under the litigation category and, therefore, the declaration was maintainable.

15.1. In so far the second impugned order dated 30.01.2020 is concerned, designated committee rejected the subsequent declaration filed by petitioner No.1 under the arrears category on the ground that the case has been remanded back for decision by the competent authority in the month of November, 2019; the date on which the declarant had filed the declaration i.e., 15.01.2020 the issue had not yet attained finality. While assailing such rejection as being contrary to the provisions of the scheme, Mr. Shah has pointed out that the ground given for rejecting the subsequent declaration runs contrary to the reasons given for rejecting the first declaration. If the designated committee could assess the status of the declarant *vis-a-vis* arrears category as on the date of filing the declaration i.e., 15.01.2020 which is beyond the cut-off date of 30.06.2019, it is beyond comprehension as to why similar yardstick was not applied while examining eligibility of petitioner No.1 under the litigation category. In either event, the designated committee has rejected the declarations of petitioner No.1 in violation of the principles of natural justice by not granting hearing.

15.2. Mr. Shah has placed before the Court two compilations containing provisions of the scheme and the related circulars as well as several judgments. He has particularly relied upon a decision of this Court in *Jyoti Plastic Works Private Limited Vs. Union of India* decided on **05.11.2020** and contends that even in a situation which may not be strictly covered by the scheme, a reasonable and pragmatic approach has

to be taken to ensure that the scheme is successful.

16. Opposing the prayer of the petitioners, Mr. Kantharia, learned counsel for respondent Nos.2 and 3 has referred to the averments made in the reply affidavit of the respondents and submits that rejection of both the declarations by the designated committee is legal and valid. Designated committee has acted strictly in conformity with the Finance (No.2) Act, 2019 and rightly rejected the declarations of the petitioners. Referring to section 125(1)(a) of the Finance (No.2) Act, 2019, he submits that a person who had filed an appeal before the appellate forum and such appeal had been finally heard on or before 30th day of June, 2019 would be ineligible to make a declaration under the scheme. In so far petitioners are concerned, the show cause notice was issued on 24.12.2014. This resulted in passing of order-in-original by the Principal Commissioner on 16.06.2015. This was challenged by petitioner No.1 before CESTAT by filing appeal. The appeal was finally heard on 10.05.2019 i.e., before the cut-off date of 30th day of June, 2019. Therefore, it is evident that under section 125(1)(a), petitioner No.1 was not eligible to make a declaration under the litigation category because the final hearing in the appeal had taken place on or before 30.06.2019.

16.1. In so far rejection of the subsequent declaration of petitioner No.1 under the arrears category is concerned, he submits that the arrear amount had not been quantified following disposal of appeal by the CESTAT on 08.11.2019. In this connection, he has referred to the definition of “amount in arrears” as provided in section 121(c). He, therefore, prays for dismissal of the writ petition.

17. Submissions made by learned counsel for the parties have received the due consideration of the Court.

18. At the outset, we may consider the first declaration of petitioner No.1 dated 12.12.2019 under the litigation category which was rejected

by the designated committee on 13.01.2020. However, before dilating on this aspect of the matter, it would be apposite to briefly state the undisputed facts of the case.

19. In May, 2014, an investigation was initiated against the petitioners by the Directorate General of Central Excise Intelligence alleging that the goods supplied by the petitioners to industrial / institutional consumers through distributors were not covered under the exemption provided in rule 3 of the Legal Metrology (Packaged Commodity) Rules, 2011 and, therefore, excise duty was payable on such goods on MRP basis under section 4A of the Act. At the stage of investigation, petitioners paid Rs.1,65,00,000.00 under protest

20. Following the investigation, show cause notice dated 24.12.2014 was issued to petitioner No.1 for recovering the differential excise duty payable by petitioner No.1 along with interest and penalty. Reply was submitted by the petitioners. djudicating authority gave a hearing to the petitioners. However, the adjudicating authority passed order-in-original dated 16.06.2015 confirming the demand of differential central excise duty amounting to Rs.4,06,47,261.00 along with interest and penalty in respect of goods cleared during the period from 01.12.2009 to 31.08.2014.

21. Petitioners challenged the said order-in-original dated 16.06.2015 by filing appeal before CESTAT, being Excise Appeal No.86805 of 2015. The appeal was finally heard by the CESTAT on 10.05.2019. However, by order dated 08.11.2019, CESTAT set aside the order-in-original dated 16.06.2015 and remanded the matter back to the original authority for a fresh decision after hearing the petitioners. While according to the respondents, CESTAT had confined re-hearing by the original authority upon remand to the question of limitation only, petitioners have contended that CESTAT had set aside the order-in-original and thereafter had remanded the matter for *de novo* decision.

22. Before we dilate on provisions of the scheme and the first declaration filed by petitioner No.1, we may examine the order passed by CESTAT.

23. From a perusal of the order dated 08.11.2019, it is seen that in the appeal, petitioner No.1 had challenged the order-in-original on the ground of erroneous computation in determining duty liability resulting in higher duty liability; impropriety in imposition of penalty etc. However, at the time of hearing, it was primarily argued that the show cause notice dated 24.12.2014 was barred by limitation. Therefore, the duty liability etc. beyond the period of limitation could not have been levied. CESTAT noted that the adjudicating authority had passed the order-in-original cursorily and thereafter disposed of the appeal in the following terms:-

> "9. Limitation is to be decided on the facts of each case. The appellate authorities can only adjudge whether the facts have been appreciated properly and applied against established law. The adjudicating authority does not appear to have applied its mind to this essential aspect that has a bearing on the outcome of the process initiated by the show cause notice. In the circumstances, we consider it appropriate to set aside the impugned order and remand the matter back to the original authority for a fresh decision on this sole aspect after granting an opportunity to the appellant to be heard on all the submissions made before us."

23.1. Thus from the above, it is seen that CESTAT came to the conclusion that the adjudicating authority did not apply its mind to the essential aspect of limitation which has a bearing on the outcome of the process initiated by the show cause notice. Therefore, the impugned order-in-original was set aside and the matter was remanded back to the original authority for a fresh decision on the point of limitation after granting an opportunity to the appellant (petitioner No.1 herein) to be heard on all the submissions made in the appeal.

24. What therefore transpires from the above is that firstly, the order-in-original dated 16.06.2015 has been set aside. When the original order passed by the primary authority is set aside by the appellate authority, the legal consequence would be that the original order would cease to remain on record. It would stand erased from the record as if it was never passed. The second aspect is that the question of limitation was found to be the main point by CESTAT because it goes to the root of the demand. If this is upheld then the demand would not survive; but if it is negatived then the demand can certainly be assailed on other grounds since the order-in-original dated 16.06.2015 no longer subsists. This means that the petitioners have been reverted to the stage of hearing by the adjudicating authority on the show cause notice, reply to which was filed by the petitioners. But this hearing after remand has not taken place till date. In the meanwhile, central government introduced the scheme through the Finance (No.2) Act, 2019.

25. Since we are examining the first declaration of petitioner No.1, we may confine our analysis to only the relevant portions of the scheme having a bearing on the said declaration. Section 124 of the Finance (No.2) Act, 2019 deals with reliefs available under the scheme. Section 124(1)(a) says that subject to the conditions specified in sub-section (2), the relief available to a declarant under the scheme where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice is pending as on 30th day of June, 2019 shall be calculated in the following manner:-

(i) if the amount of duty is Rs.50 lakhs or less, then 70% of the tax dues;

(ii) if the amount of duty is more than Rs.50 lakhs, then 50% of the tax dues.

25.1. As per sub-section (2), the relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at

any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit shall be deducted when issuing a statement indicating the amount payable by the declarant. However, as per the *proviso* if the amount of pre-deposit exceeds the amount payable by the declarant as determined by the designated committee, the declarant shall not be entitled to any refund.

25.2 Section 125 deals with eligibility to make declaration. Sub-section (1) opens with the expression that all persons shall be eligible to make a declaration under the scheme except those excluded. In other words, section 125(1) has been worded in such a manner that eligibility is the norm and ineligibility is the exception. It says that all persons shall be eligible to make declarations except those who are excluded under clauses (a) to (h). Clause (a) says that a person who has filed an appeal before the appellate forum and such appeal was heard finally on or before the 30th day of June, 2019 would not be eligible to make a declaration.

25.3. Therefore, as per the above clause, if a person had filed an appeal before the appellate forum and if such appeal was finally heard on or before 30th day of June, 2019, he would not be eligible to make a declaration under the scheme.

26. Having noticed the above, we may now advert to the first declaration of petitioner No.1. It was filed on 12.12.2019 under 'litigation' category with sub-categorization under the heading 'show cause notice involving duty pending'. This was rejected on the ground of ineligibility with the remarks that in terms of section 125(1)(a), the appeal was finally heard before 30.06.2019.

27. Though for the moment we are not examining the subsequent declaration of petitioner No.1, for the purpose of analysing the ground of rejection of the first declaration, we may refer to the ground of rejection

of the subsequent declaration dated 15.01.2020 which was under the arrears category. This declaration was also rejected on the ground of ineligibility with the remark that the said declaration could not be accepted under the arrears category as the case has been remanded back for decision by the competent authority in the month of November, 2019; the date on which the party had filed the declaration i.e., 15.01.2020, the issue had not yet attained finality.

27.1. This would go to show that though 30.06.2019 was fixed as the cut-off date to determine eligibility under the scheme, nonetheless the designated committee had taken into consideration relevant factors post 30.06.2019 at the time of making its decision as to eligibility of the declarant.

28. At this stage, we may also point out that the Board has prepared a set of Frequently Asked Questions (FAQs) on various aspects regarding applicability of the scheme. Question No.5 of FAQs and the answer thereto read thus:-

> "**Q5.** I have filed an appeal before the appellate forum [Commissioner (Appeals) / CESTAT] and such appeal has been heard finally on or before the 30th day of June, 2019. Am I eligible for the Scheme?
>
> **Ans.** You are not eligible to make a declaration under the Litigation category. However, once the order in appeal is passed, you can file a declaration under the arrears category provided the appeal has attained finality or the appeal period is over or you give an undertaking to the department that you will not file any further appeal in the matter. This will also be subject to the completion of the due process of review of the order in appeal by the department."

28.1. The question is that if the declarant had filed an appeal before the appellate forum and such appeal was finally heard on or before 30th day of June, 2019; whether the declarant would be eligible to make a declaration under the scheme? The answer given is that while the declarant would not be eligible under the litigation category but once the

order in appeal is passed (which presumably is post 30.06.2019), the declarant can file a declaration under the arrears category provided the appeal has attained finality or further appeal period is over or that the declarant gives an undertaking that he would not file any further appeal. This would go to show that final hearing of the appeal on or before 30th day of June, 2019 is not the only decisive factor in determining eligibility. According to the Board, post 30.06.2019, the declarant can still make a declaration under the arrears category once the order in appeal is passed whereby the matter has attained finality or the declarant gives an undertaking that he would not file any further appeal or the period for filing further appeal is over. While question No.5 and the answer given thereto throw some light that post 30.06.2019 developments can be taken into consideration while determining eligibility, it still does not deal with a situation as in the present case where the appellate forum sets aside the order-in-original and remands the matter back to the adjudicating authority for a fresh decision.

29. A somewhat similar situation is contemplated in question No.6 and the answer provided thereto in FAQs. The same is extracted hereunder:-

> "**Q6.** hat is the scope under the Scheme when adjudication order determining the duty / tax liability is passed and received prior to 30.06.2019, but the appeal is filed on or after 01.07.2019?
>
> **Ans.** Such a case is not eligible under the Litigation category. However, such a person may choose to withdraw the appeal, and furnish to the department an undertaking not to file any further appeal in the matter. In this case, he can make a declaration under the Arrears category."

29.1. The question posed is what would be the position when adjudication order was passed and received prior to 30.06.2019 but appeal is filed on or after 01.07.2019. Answer given by the Board is that in such a case, the declarant would not be eligible under the litigation category. However, if the declarant withdraws the appeal and gives an

undertaking not to file further appeal, he can make a declaration under the arrears category. Here also, post 30.06.2019 development is a relevant factor which can be taken into consideration to determine eligibility.

30. The situation which arises in the present case is not covered by the eligibility exclusions under sub-section (1) of section 125 or under any of the provisions of the scheme. This is so because though the appeal of petitioner No.1 was heard by CESTAT on 10.05.2019 (which was certainly prior to 30.06.2019), it was finally disposed of subsequently on 08.11.2019. While disposing of the appeal, CESTAT set aside the order in original dated 16.06.2015 and remanded the matter back to the adjudicating authority for *de novo* decision on the show cause notice dated 24.12.2014 firstly by confining to the point of limitation. Therefore, though the appeal was heard on 10.05.2019, by the subsequent order of CESTAT dated 08.11.2019 the said hearing held on 10.05.2019 was rendered redundant reverting the petitioner back to the stage of show cause notice at the stage of adjudication. This was the position when petitioner No.1 filed its declaration under the litigation category and which facts were available on record when the designated committee decided the said declaration on 13.01.2020. If petitioner No.1 was at the stage of show cause notice with no fresh adjudication order then certainly it would be eligible to file declaration under the litigation category.

31. In *Thought Blurb Vs. Union of India*, **2020 (10) TMI 1135**, a Division Bench of this Court after examining the budget speech of the Hon'ble Finance Minister while introducing the scheme as well as considering the statement and objects of the scheme and the views expressed by the Board held that a liberal view is required to be taken to make the scheme successful. It was held as under:-

> "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."

32. Similarly, in *Jyoti Plastic Works Private Limited Vs. Union of India* and other connected cases decided on **05.11.2020**, a Division Bench of this Court took note of the objective of the scheme and thereafter took the view that a reasonable and pragmatic approach has to be adopted. It was held thus:-

> "46. Thus having regard to the objective of the scheme, in a case of this nature, a reasonable and pragmatic approach has to be adopted so that a declarant can avail the benefits of the scheme; a declarant who seeks benefit under the scheme cannot be put in a worse off condition than he was before making declaration under the scheme. That would defeat the very purpose of the scheme."

33. Thus, in the light of the discussions made above, we are of the view that decision of the designated committee i.e., respondent No.2 dated 13.01.2020 rejecting the declaration of petitioner No.1 under the litigation category on the ground of ineligibility was not correct and is liable to be interfered with. Since we have arrived at this finding, it would not be necessary for us to proceed to the subsequent declaration under the arrears category and its rejection by respondent No.2 on 30.01.2020.

34. Accordingly, we set aside the decision of respondent No.2 dated 13.01.2020 and remand the matter back to respondent No.2 to take a fresh decision in accordance with law after giving due opportunity of hearing to

the petitioners by treating its declaration dated 12.12.2019 under the litigation category as a valid declaration. The date, time and place of hearing shall be intimated to the petitioners by respondent No.2 who shall pass a speaking order within a period of six weeks from the date of receipt of a copy of this judgment and order.

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

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

Minal Parab