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

WRIT PETITION (L) NO. 4417 OF 2020

Eureka Fabricators Pvt. Ltd. .. Petitioner

Versus

Union of India & Ors. .. Respondents

WITH

WRIT PETITION (L) NO. 4416 OF 2020

Vinoo Rajendra Bakshi
Director of Eureka Fabricators Pvt. Ltd. .. Petitioner

Versus

Union of India & Ors. .. Respondents

.....

Mr. Prasannan Namboodiri a/w. Ms. Hasika Prasad for the Petitioners.

Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. J.B. Mishra for the Respondents.

.....

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

RESERVED ON : JANUARY 28, 2021.
PRONOUNCED ON : MARCH 09, 2021.

JUDGMENT : (PER : MILIND N. JADHAV, J.)

Heard Mr. Prasannan Namboodiri, learned counsel for the petitioners and Mr. Pradeep Jetly, learned senior counsel for the respondents.

2. This order shall dispose of both the writ petitions as facts are common in both petitions. Petitioner in Writ Petition (L) No.4416 of 2020 is the Director of petitioner company in Writ Petition (L) No.4417 of 2020.

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3. Writ Petition (L) No.4417 of 2020 has been filed under Article 226 of the Constitution of India for quashing of order dated 11.09.2020 passed by the respondent No.3 i.e. the Designated Committee and further seeks a direction to the respondents to settle the declaration of the petitioner dated 20.09.2019 filed under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short **"SVLDRS"**) and thus granting consequential relief(s) including refund of an amount of Rs.45,60,438.00 to the petitioner.

4. Before we advert to the submissions made on behalf of the respective parties, it will be apposite to briefly refer to the relevant facts as pleaded. For the sake of convenience, facts in Writ Petition (L) No.4417 of 2020 are considered for adjudication.

4.1. Petitioner is a manufacturing unit holding central excise registration for manufacturing of pressure vessels i.e. road tankers and storage tanks falling under tariff item No.73090090 of the first schedule to the Central Excise Tariff Act, 1985.

4.2. Intelligence input was received by officers of the headquarters of Anti Evasion Wing Thane-I Commissionerate that the petitioner was clearing pressure vessels / tanks for highly inflammable gases such as LPG, Propane, Ammonia etc. without payment of central excise duty under the guise of job work of fabrication on payment of service tax and simultaneously availing credit of central excise duty paid on the inputs which were supplied free of cost by the petitioner's clients for fabrication.

4.3. Show Cause-cum-Demand notice dated 04.10.2017 was issued to the petitioner and its Director demanding duty on clearances

effected by the petitioner without alleged payment of central excise duty fraudulently and an amount of Rs.1,66,26,967.00 was sought to the recovered from the petitioner under the provisions of section 11A(4) of the Central Excise Act, 1944 (for short "**the Central Excise Act**"). During the investigation petitioner deposited a total sum of Rs.50,00,000.00 on various dates in May and June 2017 against the aforesaid demand / duty liability.

4.4. Petitioner filed application dated 20.07.2018 for settlement before the Settlement Commission. By order dated 07.08.2018 Settlement Commission rejected the petitioner's application but granted liberty to approach the Commission after compliance with the conditions contained in section 32E of the Central Excise Act.

4.5. In the meanwhile the Joint Commissioner of CGST and Central Excise, Thane Rural passed Order-in-Original dated 31.01.2019 in adjudication confirming the demand of central excise duty of Rs.1,66,26,967.00 from the petitioner under section 11A(4), imposed equal penalty of Rs.1,66,26,967.00 under section 11AC(c) and also imposed penalty of Rs.16,50,000.00 each on the petitioner company and Mr. Vinoo Bakshi, Director under Rules 25 and 26 of the Central Excise Rules, 2002.

4.6. Petitioner filed statutory appeal against the Order-in-Original before the Commissioner (Appeals) on 12.04.2019. Simultaneously petitioner also deposited a sum of Rs.5,17,877.00 towards central excise duty and Rs.18,00,000.00 towards interest with the respondents.

4.7. By order dated 08.08.2019 Commissioner (Appeals)

rejected the appeal of the petitioner and confirmed the Order-in-Original dated 31.01.2019.

4.8. SVLDRS came into force w.e.f. 01.09.2019; petitioner filed online application in Form SVLDRS-1 on 20.09.2019 declaring the 'tax dues' under section 123(a) of the Finance Act, 2019 (for short "**the said Act**") at Rs.1,66,26,967.00 and 'amount payable' under the scheme as per section 121(e) of the said Act at Rs.9,95,606.00 after deducting and adjusting the sums of Rs.55,17,877.00 deposited towards central excise duty and Rs.18,00,000.00 deposited towards interest under section 124(2) of the said Act.

4.9. Respondent No.3 i.e. Designated Committee issued Form SVLDRS-2 on 23.10.2019 quantifying the estimated amount payable under the scheme at Rs.33,13,483.00. Petitioner appeared before the Designated Committee for personal hearing on 23.10.2019 and filed its written submissions on 29.10.2019.

4.10. Respondent No.3 i.e. Designated Committee re-issued Form SVLDRS-2 on 12.11.2019 estimating the amount payable by the petitioner under the scheme at Rs.33,13,483.00.

4.11. Petitioner submitted Form SVLDRS-2A on 12.11.2019 itself stating that the challans pertaining to two deposits namely Rs.55,17,877.00 paid towards central excise duty and Rs.18,00,000.00 paid towards interest were not considered while estimating the amount and if so considered the balance final amount payable under the scheme would be Rs.9,95,607.00 only.

4.12. However, respondent No.3 i.e. Designated Committee by order dated 18.11.2019 in Form SVLDRS-3 quantified the estimated

amount payable by the petitioner under the scheme at Rs.55,56,045.00.

4.13. Being aggrieved, petitioner filed Writ Petition No.3510 of 2019 before this Court for quashing Form No. SVLDRS-3 and for re-determination of the 'amount payable' under the scheme at Rs.9,95,607.00. By order dated 30.06.2020 this Court quashed Form No. SVLDRS-3 dated 18.11.2019 subject to the petitioner depositing the sum of Rs.55,56,045.00 with the respondents and further directed respondent No.3 i.e. the Designated Committee to give a hearing to the petitioner for estimation and computation of its liability under the scheme and pass a fresh order in accordance with law.

4.14. Petitioner complied with the said order and deposited Rs.55,56,045.00 with the respondents.

4.15. Thereafter respondent No.3 i.e. the Designated Committee passed a fresh order dated 11.09.2020 determining the amount payable under the scheme by the petitioner at Rs.46,47,860.50. This order passed by the respondent No.3 i.e. the Designated Committee is impugned in the present petition.

5. Writ petition (L) No.4416 of 2020 has been filed by the Director of Eureka Fabricators Pvt. Ltd. for the following reliefs:-

> "(a) Decide the substantial questions of law raised in the foregoing paras or such other questions as this Hon'ble Court may formulate in favour of the Petitioner;
>
> (b) Set aside the rejection of Form SVLDRS-1 dated 30.10.2019 ARN No. LD3010190000368 by Respondent No.3 and allow the Petition;
>
> (c) Issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondents to finally settle the declaration filed by the Petitioner in Form SVLDRS-1 dated 30.10.2019 ARN No. LD3010190000368 by

issuing discharge certificate in Form SVLDRS-4."

5.1. Petitioner in Writ Petition (L) No.4416 of 2020 has challenged the rejection of its SVLDRS-4 application dated 30.10.2019 by respondent No.3 i.e. the Designated Committee on the ground of ineligibility with the following remarks : 'Applicant has not discharged the amount estimated in SVLDRS-3 in the case of M/s Eureka Fabricators, which is the main notice in this case. Hence the application of personal penalty imposed on Director is liable for rejection'.

6. Respondents have filed reply affidavit refuting the contentions of the petitioner and justifying the order passed by the Designated Committee. Thus respondents seek dismissal of the writ petition.

7. Mr. Namboodiri, learned counsel appearing on behalf of the petitioner submitted that petitioner had filed its declaration / application in Form SVLDRS-1 in the category of 'Litigation' and 'sub-category of 'Appeal Pending' as on 30.06.2019. The appeal filed by the petitioner against the Order-in-Original dated 31.01.2019 was pending adjudication before the Commissioner (Appeals) as on 30.06.2019; petitioner's declaration was therefore covered under the above category specified in section 124(1)(a)(ii) of the said Act; under section 124(1)(a)(ii) read with section 123(a)(i) of the said Act, the total 'tax dues' in the petitioner's case would be Rs.1,66,26,967.00 and the relief available under the scheme would be 50% of the 'tax dues' i.e. Rs.83,13,484.00. He submitted that petitioner had during investigation and pendency of the proceedings deposited the sums of Rs.50,00,000.00, Rs.5,17,877.00 and Rs.18,00,000.00 respectively;

thus the petitioner had deposited a total sum of Rs.73,17,877.00; therefore balance amount payable by the petitioner under the scheme would be Rs.9,95,607.00 (Rs.83,13,484.00 less Rs.73,17,877.00).

7.1. He submitted that the Order-in-Original dated 31.01.2019 was challenged in its entirety before the Commissioner (Appeals) and the same was pending adjudication as on 30.06.2019; therefore the finding returned by the Designated Committee that the admission of Rs.88,16,598.00 towards central excise duty by the petitioner as appearing in the memorandum of appeal was to be considered as admitted liability and that the same was to be excluded from the benefit of the scheme cannot be countenanced in as much as the said submission made in the memorandum of appeal by the petitioner was without prejudice to the rights and contentions of the petitioner and was in the alternative; petitioner's submission of admitting central excise liability of Rs.88,16,598.00 was a 'without prejudice submission' and cannot be construed as admission of duty liability.

7.2. He submitted that respondent No.3 Designated Committee failed to consider that even admitted liability can be settled under the scheme as per section 124(1)(c) read with section 121(c) of the said Act, since even the duty liability voluntarily declared in periodical returns but not paid, are allowed to be settled; neither the scheme nor the circulars issued thereunder expressly state that any amount of admitted duty liability is to be excluded from the purview of the scheme; the exclusions under the scheme defined in section 125 of the said Act do not include 'admitted duty liability'. Hence he has prayed that the impugned order dated 11.09.2020 passed by the respondent No.3 i.e. the Designated Committee should be quashed and set aside and petitioner's SVLDRS-1 form be accepted for

settlement under the scheme.

8. PER CONTRA Mr. Pradeep Jetly, learned senior counsel appearing on behalf of the respondents while referring to the affidavit-in-reply dated 23.11.2020 filed by respondent No.3 submitted that petitioner had categorically admitted central excise duty liability of Rs.88,16,598.00 in the memorandum of appeal filed before the Commissioner (Appeals) and also in the proceedings before the Settlement Commission; application before the Settlement Commission was rejected and consequentially Order-in-Original dated 31.01.2019 attained finality. It is vehemently contended that since the petitioner had categorically admitted its central excise duty liability of Rs.88,16,598.00 and there being no dispute as regards the admitted central excise duty liability by the petitioner, the said admitted duty is recoverable from the petitioner and therefore no tax relief under the scheme can be extended to the petitioner on the said admitted duty liability; tax relief under the scheme would therefore be available only towards the remaining portion of the central excise duty i.e. Rs.78,10,369.00 (Rs.1,66,26,967.00 less Rs.88,16,598.00).

8.1. It is further contended that petitioner had admitted its duty liability in the memorandum of appeal dated 12.04.2019 filed before the Commissioner (Appeals) in paragraph No.7 of the grounds of appeal; such admission of tax liability of Rs.88,16,598.00 against the total confirmed tax liability of Rs.1,66,26,967.00 would therefore be outside the purview of the benefit to be given under the scheme and would stand excluded from the total tax liability; the disputed tax amount for the purpose of application of section 123(a) of the said Act is therefore Rs.78,10,369.00; as against this the tax dues payable by the petitioner under section 124(1)(a) is Rs.39,05,184.5; this being

the position the total tax payable is Rs.1,27,21,782.50 (admitted liability i.e. Rs.88,16,598.00 plus benefit under the scheme i.e. 39,05,184.50).

8.2. Referring to section 123(c) of the said Act it is contended that 'tax dues' means in case of a single appeal arising out of an order and pending as on 30.06.2019 before the appellate forum in respect of the total amount of duty being disputed in the appeal; since the disputed amount in the appeal pending before the Commissioner (Appeals) according to the petitioner is Rs.78,10,369.00; the application of petitioner under the category of litigation is therefore applicable only on this disputed amount as per section 123(a). Therefore, petitioner is liable to pay the final amount of Rs.16,47,860.50 as determined; Designated Committee having recalculated the amount based on the available facts as follows:-

Tax confirmed	1,66,26,967/-
Less Admitted Tax Amount	88,16,598/-
Disputed Tax Amount: Tax dues as per Section 123(a) of the Finance Act, 2019	78,10,369/-
Less: 50% of the Tax Dues as relief as per Section 124(1)(a)(ii) of the Finance Act, 2019	39,05,184.5/-
Tax payable under SVLDRS as per Section 127(4) of the Finance Act, 2019	39,05,184.5/-
Total Tax payable (Admitted Tax amount + Tax payable) i.e. (88,16,56/- + 39,05,184.5/-)	1,27,21,782.50
Less: Total Deposit of duty amount (Rs.55,17,877/- as pre deposit and Rs.55,56,045/- as per the directions of the Hon'ble High Court, Mumbai i.e. Rs.1,10,73,922/-	1,10,73,922/-
Net Amount payable	16,47,860.5/-

9. Mr. Namboodiri in his rejoinder submission stated that on the interpretation of the provisions of section 123 read with section 124 of the said Act, petitioner is infact entitled to a refund of the

differential amount of duty deposited by the petitioner which is required to be refunded to the petitioner.

10. Submissions advanced across the bar have been duly considered and also examined the materials on record.

11. Before we proceed to deal with the submissions made by the respective counsel, it will be apposite to refer to the provisions of the Finance Act, 2019 (already referred to as 'the Act' hereinafter) which are relevant in the present case.

12. Section 123(a) of the said Act states that for the purposes of the scheme, "tax dues" means the total amount of duty which is being disputed in a single appeal arising out of an order and pending as on 30.06.2019 or in the case of more than one appeal arising out of an order which are pending as on 30.06.2019 before the appellate forum. Section 123 reads thus:-

> "123. For the purposes of the Scheme, “tax dues” means—
>
> (a) where—
>
> (i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;
>
> (ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:
>
> Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;

(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) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;

(e) where an amount in arrears relating to the declarant is due, the amount in arrears."

12.1. Section 124(1) of the said Act allows a declarant relief for settlement in the case of different types of situations. Section 124(1) (a) refers to a situation of a declarant in whose case one or more appeals arising out of a show cause notice concerning tax dues are pending as on 30.06.2019; in that event if the amount of duty is Rs.50,00,000.00 or less, then 70% of the tax dues is payable but if the amount of duty is more than 50,00,000.00, then 50% of the tax dues is payable.

12.2. Section 124(2) of the said Act is also relevant in the present case considering that the petitioner had made a pre-deposit of various amounts during pendency of investigation and appeal proceedings. It states that the relief calculated under sub-section (1) of section 124 shall be subject to the condition that any amount paid as pre-deposit at any stage of the appeal proceedings or has been

deposited during inquiry, investigation or audit shall be deducted when issuing the statement indicating the amount payable by the declarant. However, the proviso to this section states that if amount of pre-deposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the Designated Committee, the declarant shall not be entitled to any relief. section 124(1)(a) and section 124(2) are extracted as under:-

> "124. (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:—
>
> (a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019,and if the amount of duty is,—
>
> (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;
> (ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;
>
> (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 the statement indicating the amount payable by the declarant:
>
> Provided that if the amount of pre deposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund."

12.3. Section 125 of the said Act relates to the eligibility and ineligibility and sub-section 1(a) thereof is relevant in the present case. Section 125(1)(a) excludes a person who had filed an appeal before the appellate forum and such appeal had been heard finally on or before 30.06.2019 from filing declaration. Section 125(1)(a) is extracted as under:-

> "125.(1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—
>
> (a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019."

13. In the backdrop of the above provisions case of the petitioner therefore needs to be examined. The impugned order dated 11.09.2020 passed by the respondent No.3 i.e. the Designated Committee proceeds on the premise that under the provisions of section 123(a) of the said Act, since the petitioner has categorically admitted its tax liability of Rs.88,16,598.00 in the memorandum of appeal, the tax liability of the petitioner under the scheme is to be computed on the balance amount and the relief of 50% of tax dues under the scheme is required to be given to the petitioner only on the said balance amount which is Rs.78,10,369.00. Respondent No.3 has arrived at the total tax payable at Rs.1,27,21,782.50 and has therefore called upon the petitioner to pay the net amount payable of Rs.16,47,860.50 after giving the petitioner the benefit of the deposit of Rs.1,10,73,922.00.

13.1. The principal reason for denial of the benefit to the petitioner is due to the alleged admission by the petitioner of its admitted duty liability in the memorandum of appeal filed before the Commissioner (Appeals) which has been relied upon by the Designated Committee. We have perused the memorandum of appeal filed by the petitioner before the Commissioner (Appeals). The relevant portion of the alleged admission of liability by the petitioner as stated in paragraph No.7 is extracted hereinbelow:-

"7. **Central Excise duty payable only in respect of 140 Pressure Vessels / Tanks:**

Without prejudice to other submissions in this ground of appeal and without admitting but assuming, the appellants submit that as per the above table as against 562 COCs issued till May, 2017, the learned Joint Commissioner failed to consider that the appellants had cleared 422 number of Pressure Vessels / Tanks on payment of appropriate Central Excise / GST and 140 number of Pressure Vessels / Tankers were cleared without payment of duty during the years 2012-13 to 2016-17. The appellants submits that the number of Pressure Vessels / Tanks which are cleared without determination of appropriate Central Excise Duty for the period 2012-2017 are only 140 and not 261 as found by the learned adjudicating authority in the impugned order. Without disputing, but adopting the assessable value and Central Excise duty as is mentioned in Annexure B to G to the Notice, the learned Joint Commissioner ought to have considered that the Central Excise duty which could have been confirmed against the appellants would be as under :

Year	Number of Pressure Vessels	Assessable Value of Clearnace (in Rs.)	Duty Admitted (in Rs.)
2012-13	Nil	6356451	785657
2012-13	19	9516755	1176271
2013-14	7	3538000	437297
2014-15	87	40802246	5043158
2015-16	27	11118245	1374215
2016-17	0	0	0
Grand Total	**140**	**71331697**	**8816598**

13.2. From the above it is seen that the paragraph No.7 begins with the words "Without prejudice to other submissions in this ground of appeal and without admitting but assuming,.....". It is the petitioner's case that without admitting but assuming the assessable value and central excise duty in respect of the number of pressure vessels / tanks which were cleared without determination of

appropriate central excise duty for the period 2012-2017 as found by the adjudicating authority, the central excise duty which could have been confirmed against the petitioner would be Rs.88,16,598.00. However it is pertinent to note that the memorandum of appeal challenges the Order-in-Original dated 31.01.2019 passed by the Joint Commissioner of CGST and Central Excise, Thane Rural Commissionerate and the confirmation of central excise duty of Rs.1,66,26,967.00 along with penalty of Rs.1,82,76,967.00 imposed under the said order in its entirety. The appeal preferred by the petitioner before the Commissioner of CGST (Appeals), Mumbai was filed on 12.04.2019 under Rule 3(2) of the Central Excise (Appeal) Rules, 2001 within the prescribed limitation period. Petitioner in the above appeal had challenged the confirmation of central excise duty of Rs.1,66,26,967.00 confirmed by the Joint Commissioner of CGST and Central Excise, Thane against the petitioner along with penalty which was the subject matter of the appeal and which was admittedly pending as on 30.06.2019. To understand the contention of the petitioner in the proper perspective, the prayer clauses as stated in the memorandum of appeal and prayed for by the petitioner after paragraph No.10 are extracted herein below:-

> "
> **PRAYER**
>
> In view of the foregoing, the appellants most respectfully pray that the Hon'ble Commissioner (Appeals) may be pleased to grant the following relief :-
>
> (a) The impugned Order-in-Original No.17/JC/ Eureka/18-19 dated 31.01.2019 passed by Joint Commissioner of Central GST & C.Excise, Thane Rural Commissionerate may be set aside in its entirety.
>
> (b) The Central Excise duty of Rs.1,66,26,967/-confirmed in the impugned order along with interest may be set aside.
>
> (c) The penalty of Rs.1,82,76,967/- imposed on the appellants in the impugned order may be set aside.

(d) Any other relief which the Hon'ble Commissioner (Appeals) may like to grant looking at the facts and circumstances of the case."

13.3. The order-in-appeal was passed on 08.08.2019 i.e. after the cut off date (i.e. 30.06.2019) by the Commissioner (Appeals), Thane. The order-in-appeal in the opening paragraph No.1 records as follows :-

"**ORDER-IN-APPEALNo.PVNS/103-104/Appeals Thane /TR/ 2019-20**

M/s Eureka Fabricators Pvt. Ltd., Plot No. F-84, Additional MIDC, Anand Nagar, Ambarnath (East), District Thane-421501 (hereinafter referred to as the 'Appellant No.1') and Shri Vinoo Bakshi, Director of said M/s Eureka Fabricators Pvt. Ltd., having same office address (hereinafter referred to as the 'Appellant No.2') have filed Two (02) appeals both dated 12.04.2019, against the impugned Order-in-Original No.:17/JC/Eureka/18-19 dated 31.01.2019 passed by the Joint Commissioner, CGST & Central Excise, Thane Rural Commissionerate. The impugned Order dated 31.01.2019 has confirmed the C. Ex duty demand of Rs.1,66,26,967/- under Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'Act'), ordered appropriation of Rs.50,00,000/- paid during investigations against this liability; imposed an equal penalty of Rs.1,66,26,967/- under Section 11 AC(C) of the Act r/w Rule 26 of the Central Excise Rules (CER), 2002; imposed payment of interest under Section 11AA of the Act; imposed penalty of Rs.16,50,000/-under Rule 25 of CER, 2002; and also imposed penalty of Rs.16,50,000/- on Shri Vinoo Bakshi, Director of M/ s Eureka Fabricators Pvt. Ltd., under Rule 26 of CER, 2002.

Since, both the above referred appeals dated 12.04.2019 are arising out of the same above said impugned Order dated 31.01.2019 and inter-related entities, for the sake of brevity I am taking up both these appeals together for consideration and decision."

13.4. In view of the above, applying the provisions of section 123(a) of the said Act, the entire duty liability of Rs.1,66,26,967.00 is to be considered as "tax dues" of the petitioner as on 30.06.2019 for the purposes of the scheme.

13.5. The finding in the impugned order dated 11.09.2020 that the petitioner has admitted its tax liability of Rs.88,16,598.00 before the Commissioner (Appeals) and the Settlement Commission against the total confirmed tax of Rs.1,66,26,967.00 which therefore needs to be excluded from computation is therefore not sustainable in view of the statutory provisions referred to hereinabove.

13.6. That apart, under section 124(1)(a)(ii) of the said Act, the relief available to the petitioner under the scheme would be 50% of the entire duty liability of Rs.1,66,26,967.00 i.e. Rs.83,13,484.00. Reliance placed on para 2 (iv) of the Circular No.1072/05/2019-CX dated 25.09.2019 to the effect that under Section 123 tax dues is the amount of duty which is the outstanding amount against the declarant and this is the net amount after deducting the dues that he has already paid in the form of pre-deposit, is not sustainable and deserves to be rejected. The clarification which is referred to and relied upon in para 14 of the impugned order is in the context of section 124(1)(c) concerning pre-deposits which have been paid and are required to be appropriated against the outstanding amount and not in the context of arriving at the amount of "tax dues" as contemplated under section 123(a) of the said Act.

13.7. In the present case petitioner has made pre-deposit of the following sums towards duty liability; viz; Rs.50,00,000.00 besides Rs.5,56,045.00 and Rs.18,00,000.00 towards interest. Further, petitioner has deposited a sum of Rs.55,56,045.00 under order dated 30.06.2020 passed by this Court in Writ Petition No.3510 of 2019 for reconsideration of the petitioner's case. The petitioner therefore has deposited the total sum of Rs.1,29,12,090.00 with the respondents,

though petitioner's deposit of Rs.55,56,045.00 on orders of the Court cannot be construed as a pre-deposit or a deposit under the scheme; therefore the proviso to sub-section (2) of section 124 would not be applicable or attracted to the said deposit. It is also settled preposition that an order of the Court can cause prejudice to none.

13.8. The deposit of duty and interest paid in terms of section 124(2) of the said Act is required to be reduced from the amount payable as tax dues under section 124(1)(a) of the the said Act. The deposit towards duty paid during investigation and during pendency of appeal proceedings in the form of pre-deposit in the present case may be appropriated and deducted from the tax dues after grant of relief under section 124(1)(a) of the said. We may also refer to the order dated 30.06.2020 which stated that on reconsideration of the petitioner's case in accordance with law, if any refund is to be given to the petitioner after deducting the applicable duty liability under the scheme, the same should be refunded within two weeks of the passing of the order.

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14. Thus on a thorough consideration of the entire matter, we are of the view that the impugned order is wholly unsustainable and is liable to be set aside. Further, following the discussions made above, it is evident that the amount payable by the petitioner under the scheme would be 50% of the tax dues less the deposits and pre-deposits which is 50% of Rs.1,66,26,967.00, Rs.83,13,484.00 less the pre-deposits and deposits i.e., Rs.73,17,877.00 (Rs,50,00,000.00 plus Rs.5,17,877.00 plus Rs.18,00,000.00). The figure comes to Rs.9,95,607.00. Since petitioner has paid Rs.55,56,045.00 as per Court's order, petitioner would be entitled to a refund of Rs.55,56,045.00 less Rs.9,95,607.00 which is Rs.45,60,438.00.

15. Accordingly, we set aside the order passed by the respondent No.3 i.e. the Designated Committee dated 11.09.2020 determining the final calculation in para No.19(d) of the said order as net amount of Rs.45,60,438.00 payable by the petitioner under the scheme.

16. Consequently, writ petition filed by the petitioner company i.e. M/s. Eureka Fabricators Pvt. Ltd. is allowed in terms of prayer clauses (b), (c) and (d) which read as under :-

> (b) Set aside Order dated 11.09.2020 in respect of SVLDRS ARN LD2009190002979 of the Respondent No.3 and allow the Petition;
>
> (c) Issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondents to finally settle the declaration filed by the Petitioner in Form SVLDRS-1 ARN LD2009190002979 by issuing discharge certificate in Form SVLDRS-4 determining the amount payable under the Scheme at Rs.9,95,606/-;
>
> (d) Issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondents to refund Rs.45,60,438/- to the Petitioner out of the amount of Rs.55,56,045/- paid by the Petitioner as per Order dated 30.06.2020 of this Hon'ble Court.

17. In view of the above order passed in Writ Petition (L) No.4417 of 2020, the companion Writ Petition (L) No.4416 of 2020 in respect of personal penalty imposed on the Director also stands allowed in terms of prayer clauses 20 (b) and (c) of the said petition, which read as under:-

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"20.

(b) Set aside the rejection of Form SVLDRS-1 dated 30.10.2019 ARN No. LD3010190000368 by Respondent No.3 and allow the Petition;

(c) Issue a writ of mandamus and/or any other appropriate writ, order or direction to the Respondents to finally settle the declaration filed by the Petitioner in Form SVLDRS-1 dated 30.10.2019 ARN No. LD3010190000368 by issuing discharge certificate in Form SVLDRS-4."

18. The respondent No.3 i.e. the Designated Committee shall issue the discharge certificate in Form SVLDRS-4 to the petitioners in the above terms after giving due consideration to the amounts of Rs.50,00,000.00, Rs.5,17,877.00, Rs.18,00,000.00 deposited by the petitioner as pre-deposit and deposit; and Rs.55,56,045.00 deposited by the petitioner under order of this court within a period of 4 weeks from the receipt of a copy of this order. Respondents shall refund the sum of Rs.45,60,438.00 to the petitioner within a period of 4 weeks after issuance of the SVLDRS-4 forum.

19. Both the writ petitions are allowed in the above terms. However, there shall be no order as to costs.

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

Ravindra M. Amberkar
Digitally signed by Ravindra M. Amberkar
Date: 2021.03.09 11:38:11 +0530