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

WRIT PETITION (L) NO.3561 OF 2020

M/s. K. N. Rai (Proprietorship firm)
Through Kirit Kedarnath Rai ..Petitioner
Versus
Union of India & Ors. ..Respondents

Mr. Avinash Poddar a/w Ms. Deepali Kamble, for the Petitioner.
Mr. Sham Walve a/w Mr. Ram Ochani, for the Respondents.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.**

**RESERVED ON :- 16.12.2020
PRONOUNCED ON :- 07.01.2021**

Judgment and Order (Per Ujjal Bhuyan, J) :

Heard Mr Avinash Poddar, learned counsel for the petitioner
and Mr. Sham Walve, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 12.02.2020 issued by respondent No.2 rejecting the declaration of the petitioner under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and further seeks a direction to the respondents to reconsider its declaration after granting due opportunity of hearing.

3. Case of the petitioner is that it is a proprietorship firm which is engaged in providing construction services to various government, local authorities etc. under the category of “works contract services”. Petitioner

was registered as a service provider under the Finance Act, 1994.

4. Petitioner has stated that its services were exempted from service tax in view of Exemption Notification dated 20.06.2012, as amended from time to time.

5. An enquiry was initiated by the Service Tax Department against the petitioner for the period from 2014-15 to June, 2017 on the ground that services provided by the petitioner were taxable and not exempted in terms of the aforesaid notification. It is submitted that pursuant to subsequent amendments carried out in the said notification certain services which were earlier exempt became taxable with effect from

1. 04.2015. According to the petitioner it did not pay taxes for the services provided which became taxable later on after withdrawal of exemption.

6. During the enquiry petitioner submitted all the record as sought for by the authority. Statement of the proprietor Shri. Kirit Kedarnath Rai was recorded on 28.06.2019. In his statement the proprietor admitted service tax liability of Rs.1,26,54,725.00. However, because of financial crisis it could not deposit the said amount.

7. In the meanwhile, Central Government introduced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly “the Scheme” hereinafter) vide the Finance (No.2) Act, 2019 to bring to an end pending litigations of central excise and service tax under the erstwhile indirect tax regime by providing benefits to the declarants subject to eligibility.

8. Petitioner vide letter dated 06.09.2019 informed respondent No.4 about its willingness to apply under the scheme further stating that it had admitted tax liability of Rs.1,26,54,725.00 for the period from 2014-15 to 2017-18 (upto June, 2017) as quantified in the statement of the proprietor dated 28.06.2019.

9. On 21.11.2019 petitioner submitted declaration in terms of the said scheme under the category of investigation, enquiry or audit and within the sub-category of investigation by DGGI. In the said declaration petitioner mentioned the duty payable at Rs 1,25,54,725.00. Petitioner was called for personal hearing on 17.12.2019. Though petitioner sought for another date, it was not granted. Thereafter petitioner requested the authority to accept his declaration. On 12.02.2020 petitioner received a letter from respondent No.2 intimating that its declaration was rejected on the ground that quantification of the tax dues was not made final by 30.06.2019 which was the cut off date.

10. Aggrieved, present Writ Petition has been filed.

11. Respondents have filed a common affidavit. Stand taken in the affidavit is that under section 124(1)(d) of the Finance (No.2) Act, 2019 the quantum of tax due had to be quantified on or before 30.06.2019 to be eligible under the scheme where the tax dues are linked to enquiry, investigation or audit. Otherwise under section 125(1)(e) such a person would not be entitled to submit declaration and avail the benefit of the scheme. In so far the petitioner is concerned, it is submitted that

petitioner's claim for acceptance of its declaration is solely based on the statement of the proprietor recorded under section 14 of the Finance Act, 1994 before the investigating agency DGGI, Mumbai on 28.06.2019 i.e. just two days prior to the deadline for final quantification of the tax liability under the scheme. It is contended that it is impossible for the investigating agency to conclude that the liability so admitted by a declarant is the full and final liability within a period of two days. Investigation of tax evasion is an elaborate and complex process where various angles and issues would have to be examined. This consumes sufficient time. Proprietor of the petitioner was granted opportunity of personal hearing whereafter its declaration was rejected. The declaration was rejected based on the verification report furnished by the investigating agency wherein it was clearly stated that the amount of tax due had not been quantified on or before 30.06.2019. In so far petitioner's reference to letter dated 06.09.2019 is concerned, it is submitted that this letter itself is post 30.06.2019 and thus cannot be of any use to the petitioner.

12. Submissions made by learned counsel for the parties are on pleaded lines. Therefore a detailed reference to such submissions is considered not necessary. However, the submissions so made have been duly considered.

13. The issue for consideration i.e., whether a declaration made under the category of investigation, enquiry or audit under the scheme would be maintainable or not where the tax dues had to be quantified on or before 30.06.2019 is no longer *res-integra*.

14. In *Thought Blurb Vs. Union of India, 2020-TIOL-1813-HC-MUM-ST*, this Court referred to the clarifications issued by the Central Board of Indirect Taxes and Customs (briefly ‘the Board’ herein-after) dated 27.08.2019 and thereafter held as follows :-

“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, 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 of 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 of 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.”

15. Again in the case of *M/s. G. R. Palle Electricals Vs. Union of India*, 2020-TIOL-2031-HC-MUM-ST, it has been held as follows :-

“27. e 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(g)]. 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].”

* * * *

“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.”

16. The above position has been reiterated in *Saksham Facility Services Pvt Ltd Vs. Union of India, 2020-TIOL-2108-HC-MUM-ST*. This Court faced with an identical issue referred to clause (g) of paragraph 10 of the Board's circular dated 27.08.2019 and held as follows :-

“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.

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 acknowledge 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.

* * * * *

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.”

17. In the instant case it is not disputed that statement of Shri. Kirit Kedarnath Rai, proprietor of the petitioner was recorded before the Senior Intelligence Officer, DGGI, Vapi on 28.06.2019 under section 70 of the Central Goods and Services Tax Act, 2017 read with section 14 of the Central Excise Act, 1944 and section 174 of the Central Goods and Services Tax Act, 2017. In response to question No.20 he agreed that the amount of service tax liability for the period from 2014-15 to 2017-18 upto 30.06.2017 was Rs.1,26,54,725.00. Relevant portion of the aforesaid statement is extracted hereunder :-

“Q.20. Please peruse a work-sheet (Annexure-A) wherein the Service Tax liability of your firm M/s. K. N. Rai has been quantified on the basis of RA bills of taxable work orders submitted by you and as discussed and admitted hereinabove, the total Service Tax liability comes to the tune of Rs.1,26,54,725/- including all cesses for the period from 2014-15 to 2017-18 upto 30.06.2017. Please, go through the said work-sheet in detail and state whether you are completely agreed with the said Service Tax liability of

Rs.1,26,54,725/-. Please also state by what time you are paying the said liability along with applicable amount of interest.

Ans:- Yes, I have minutely gone through the said work-sheet and found it correct as per my records/documents. Further, I am completely agreed with the amount of Service Tax liability of Rs.1,26,54,725/- for the period from 2014-15 to 2017-18 upto 30.06.2017 and in admittance of the same I confirm to pay the same along with applicable amount of interest. Further, with regard to time of payment of the said Service Tax liability, I have to state and request that I need some more time since we have some financial problem but as and when we get funds we shall pay the same.”

18. From the above it is quite evident that there was a clear admission on the part of the petitioner as to its service tax liability and such admission was prior to the cut off date of 30.06.2019.

19. Thus, there is admission by the petitioner that the amount of service tax liability for the related period was Rs.1,26,54,725.00 on 28.06.2019 which was before the cut off date of 30.06.2019. As held in *Saksham Facility Pvt Ltd (supra)* the work “quantified” appearing in the scheme would mean a written communication of the amount of duty payable which would include a letter intimating duty demand or duty liability admitted during enquiry, investigation, audit or audit report and not necessarily the amount crystallized following adjudication.

20. In so far the letter dated 06.09.2019 is concerned, the same was only in reiteration of the admission made by the proprietor on

28.06.2019. Further, such an admission is to be examined not for the purpose of investigation into alleged tax evasion but for the purpose of eligibility under the scheme.

21. In such circumstances, respondents were not justified in rejecting the declaration of the petitioner under the scheme on the ground that quantification of tax dues was not made final on or before 30.06.2019.

22. That being the position, impugned order dated 12.02.2020 is hereby set aside and quashed. Matter is remanded back to respondent Nos.2 and 3 to consider the declaration of the petitioner as a valid declaration under the category of investigation, enquiry or audit in terms of the scheme and after giving due opportunity of hearing grant the consequential relief(s) to the petitioner. The above exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this order.

23. rit Petition is accordingly allowed. However, there shall be no order as to cost.

24. This order will be digitally signed by the 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