IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:15.05.2023

\+ **W.P.(C) 4691/2021 & CM APPL. 14460/2021**

HANS UTTAM FINANCE LIMITED ..... Petitioner

Versus

PRINCIPAL COMMISSIONER OF CENTRAL EXCISE, GOODS AND SERVICE TAX, DELHI SOUTH COMMISSIONERATE & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Anand, Senior Advocate with Mr Sameer Sood and Ms Madhumita Singh, Advocates.

For the Respondents : Mr. Zoheb Hossain, Senior Standing Counsel for CBIC.
Mr Asheesh Jain, CGSC with Mr Gaurav Kumar and Ms Ankita Kedia, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 02.03.2020 (hereafter **'the impugned order'**), whereby its declaration dated 26.12.2019 under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereafter **'the Scheme'**) was

rejected. The petitioner also impugns a demand-cum-show cause notice dated 30.12.2020 (hereafter **'the impugned notice'**) issued by the Principal Commissioner of Central Excise, Goods & Service Tax (respondent no.2) under Section 73(1) of the Finance Act, 1994 (hereafter **'the Act'**).

2. By the impugned notice, the petitioner was called upon to show cause as to why: (i) service tax amounting to ₹3,75,957/-, which was payable for the period of 2014-15 to 2017-18 (upto 30.06.2017) under the proviso to Section 73(1) of the Act should not be recovered by appropriating the said amount from the amounts paid by the petitioner on 10.04.2017 and 06.02.2019; (ii) interest amounting to ₹34,87,497/- on delayed payment of service tax for the period of 2007-08 to 2016-17 not be recovered under the provisions of Section 75 of the Act; (iii) penalty under Section 76 of the Act not be levied; (iv) penalty under Section 77 of the Act along with cess not be imposed for contravention of various provisions of the Act and for not filing the service tax returns for the relevant period; and (v) penalty under Section 78(1) of the Act not be imposed for willful suppression of facts and contravention of various statutory provisions with an intent to evade payment of service tax.

3. It is the petitioner's case that it is entitled to the benefit of the Scheme since it had made a declaration under Section 125 of the Finance Act (No.2), 2019 (declaration as contemplated under the Scheme).

4. According to the respondents, the petitioner is not entitled to the

benefit of the Scheme as at the material time, the investigation concerning the petitioner was pending and the amount of service tax was not 'quantified' within the meaning of Clause (r) of Section 121 of the Finance Act (No.2), 2019.

5. The principal controversy to be addressed in the present petition is whether the amount of service tax payable by the petitioner was quantified before the stipulated date, that is, before 30.06.2019.

Factual Context

6. The petitioner is engaged in the business of investment, banking, project management services etc., and at the material time was registered in respect of the said taxable services for the purpose of service tax under Chapter V of the Act.

7. By virtue of Chapter VI of the Finance Act, 2013, the Parliament introduced the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereafter **'the VCES'**). Under the VCES, any eligible assessee was entitled to declare the service tax due in respect of which no notice or order of determination had been issued or made under Sections 72, 73 or 73A of Chapter V of the Act, prior to March, 2013.

8. The petitioner sought to avail the benefit of the VCES and on 24.12.2013 filed a declaration disclosing an amount of ₹36,47,132/- payable as service tax under the VCES. The petitioner also paid a sum of ₹18,50,000/- prior to 31.12.2013. It was required to pay the balance amount on or before 30.06.2014. However, the petitioner failed to pay the said amount within the stipulated period. It claims

that it was facing a financial crisis and therefore, was unable to make the said payment. Consequently, the concerned authority rejected the petitioner's declaration under the VCES by a letter dated 22.09.2015.

9. On 10.12.2015, the Anti Invasion Branch of the erstwhile Service Tax Delhi-I Commissionerate conducted a search of the petitioner's premises. The petitioner states that during the search, a director of the petitioner admitted to the tax dues amounting to ₹36,47,132/- and stated that the outstanding service tax for the period up to November, 2015 was around ₹30,00,000/-.

10. By a letter dated 05.01.2016, respondent no.2 asked the petitioner to submit copies of the challan of service tax payment of ₹30,00,000/- and some other records as a part of its investigation. Thereafter, by letters dated 08.02.2016 and 24.02.2016, respondent no.2 requested the petitioner to deposit the declared amount of ₹36,47,123/- along with interest and penalty.

11. The petitioner sent letters dated 07.02.2019 and 22.02.2019 informing respondent no.2 that it had deposited a total amount of ₹24,50,000/- as dues for the period of 2010-11 to 2016-17 against a total outstanding amount of ₹27,65,557/- and assured that it would deposit the balance amount within a period of ten to fifteen days. The petitioner also forwarded a reconciliation statement indicating the amount of service tax payable and the amount paid by the petitioner.

12. Thereafter by a letter dated 03.06.2019, respondent no.2 acknowledged the petitioner's letter dated 22.02.2019 and called upon the petitioner to provide copies of challan for the remaining service

tax as well as the calculation sheet indicating the interest payable on the said amount. The petitioner responded by its letter dated 26.06.2019 and furnished a calculation of its interest liability for the period of 2007-08 to 2016-17. The same also included a reconciliation statement of the service tax for the said period. According to the petitioner, it had paid an amount of ₹1,53,323/- in excess of its service tax liability, and requested the respondents that the same be adjusted towards the interest payment. Further the petitioner also requested a waiver of the balance amount of interest.

13. The Parliament enacted the Finance Act (No.2), 2019. Sections 120 to 135 (Chapter V) of the Finance Act (No.2), 2019 introduced the Scheme. By virtue of Section 120(1) of the Finance Act (No.2), 2019, the Scheme is called the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The said Scheme came into effect from 01.09.2019.

14. The Scheme is a comprehensive scheme, which covers various enactments as specified in Section 122 of the Finance Act (No.2), 2019 including the Act.

15. The Central Government has framed rules in exercise of the powers under Section 132 of the Finance Act (No.2), 2019 for carrying out the provisions of the Scheme.

16. In addition, the Central Board of Indirect Taxes and Customs (CBIC) has also issued circulars in exercise of its powers under Section 133 of the Finance Act (No.2), 2019 for the administration of the Scheme.

17. On 26.12.2019, the petitioner filed a declaration in terms of the

Scheme (application reference no. LD2612190002522) under the category, "*Investigation, Enquiry or Audit*" and sub-category, "*Investigation By Commissionerate*". In its declaration, the petitioner referred to its letter dated 22.02.2019, which disclosed the quantum of service tax liability as ₹27,65,557/-. According to the petitioner, it had deposited the entire service tax and therefore, by virtue of the Scheme, no further amount was payable.

18. On 27.12.2019, the petitioner sent a letter informing respondent no.2 that it had applied under the Scheme. Additionally, the petitioner also submitted a final service tax reconciliation statement and Form SVLDRS-I and its acknowledgement receipt. The same reflected that the petitioner had made full payment of its tax liability and had met the eligibility criteria to avail the benefits of the Scheme – waiver of the outstanding interest and penalty on service tax.

19. Subsequently, on 02.03.2020, respondent no.1, on its portal, rejected the petitioner's above-mentioned declaration under the ground "*others*" with the remarks, "*the AE branch has confirmed that the investigation has not been concluded and hence the demand has not been estimated or concluded on or before the stipulated date*".

20. Thereafter, the respondents issued the impugned notice. Aggrieved by the same, the petitioner filed the present petition.

Reasons & Conclusion

21. As noted above, the only question to be addressed in the present petition is whether the duty payable by the petitioner has been

quantified in terms of Section 121(r) of the Finance Act (No.2), 2019 (the Scheme) prior to 30.06.2019.

22. At the outset, it is relevant to note that the Scheme was introduced to settle the legacy cases. The Finance Minister of India, in her speech in the Parliament, had expressed concern regarding the huge backlog of pending litigations from the pre-GST (Goods and Services Tax) regime. She stated that an amount exceeding ₹3.75 lakh crore was blocked in litigation in service tax and excise, which required unloading for business to continue. The objective of the Scheme was to allow quick closure of pending litigations centering around service tax and excise duty.

23. Section 122 of the Finance Act (No.2), 2019 stipulates twenty-nine separate enactments, which were covered under the Scheme. Further, by virtue of Clause (c) of Section 122 of the Finance Act (No.2), 2019, the Central Government was empowered to include, by a notification in the official gazette, any other enactment within the scope of the Scheme.

24. Section 123 of the Finance Act (No.2), 2019 defines the expression "tax dues" as under:

> "123. For the purposes of the Scheme, "tax dues" means—
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> (a) where—
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> (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;
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> (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.

Illustration 1: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.1000 and amount of penalty of Rs.100. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs.1000 and hence the tax dues are Rs.1000.

Illustration 2: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.900 and penalty of Rs. 90. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs.900.

Illustration 3: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs. 900 and penalty of Rs. 90. The declarant files an appeal against this order of determination. The departmental appeal is for an amount of duty of Rs. 100 and penalty of Rs. 10. The amount of duty which is being disputed is Rs. 900 plus Rs. 100 i.e Rs. 1000 and hence tax dues are Rs. 1000.

Illustration 4: The show cause notice to a declarant was for an amount of duty of Rs. 1000. The order was for an amount of duty of Rs.1000. The declarant files an appeal against this order of determination. The first appellate authority reduced the amount of duty to Rs. 900. The declarant files a second appeal. The amount of duty which is being disputed is Rs. 900 and hence tax dues are Rs. 900;

(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."

25. It is apparent from the above that the expression "tax dues" is defined in wide terms. It encompasses dues that were mentioned in show cause notice(s) or were subject matter of disputes before various authorities. It also includes dues that were voluntarily disclosed by an assessee without the same being subject matter of any enquiry or dispute. Further, it covers arrears in respect of which there was no dispute or any pending litigation. More importantly, it also covers cases where enquiry, investigation or audit were pending but the dues had been quantified.

26. Section 125(1) of the Finance Act (No.2), 2019 posites that all persons, except those as stipulated, would be eligible to make a declaration under the Scheme.

27. Section 125(1) of the Finance Act (No.2), 2019 is set out below:

"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;

(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;

(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;

> (d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;
>
> (e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;
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> (f) a person making a voluntary disclosure,—
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> (i) after being subjected to any enquiry or investigation or audit; or
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> (ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;
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> (g) who have filed an application in the Settlement Commission for settlement of a case;
>
> (h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944."

28. It is apparent from the above that the legislative intent in enacting Chapter V of the Finance Act (No.2), 2019 (the Scheme) was to maximize the sweep of the Scheme. It was to cover all situations where tax was payable except those cases, which were expressly excluded.

29. Clause (c) of Section 123 of the Finance Act (No.2), 2019, which covers cases where enquiry, investigation or audit is pending, must be interpreted bearing the aforesaid legislative scheme in mind. In terms of Clause (c), the "tax dues" in cases where enquiry, investigation or audit was pending against a declarant meant the amount of duty payable under any indirect tax enactment, which was quantified on or before 30.06.2019**.**

30. The expression "quantified" has been defined under Section 121(r) of the Finance Act (No.2), 2019 as under:

> "121. In this Scheme, unless the context otherwise requires, —
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> *** *** ***
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> (r) ''quantified", with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment;"

31. It is obvious that Clause (c) of Section 123 of the Finance Act (No.2), 2019 covers cases where the matter had not reached the final determination, as it concerns cases where enquiry, investigation or audit is pending. It follows that the term "quantified" used in the context of amount of duty payable, in those cases, cannot mean the tax payable as finally determined as a result of conclusion of any audit, enquiry or investigation. It must necessarily mean a case where enquiry, audit or investigation is pending but the quantification of the tax dues is ascertainable from a written communication on record. In this context, it is important to note that Clause (r) of Section 121 of the Finance Act (No.2), 2019 does not stipulate that the written communication, in which the amount of duty payable under the indirect tax enactment is quantified, must emanate from the concerned tax department; it is equally acceptable that the said amount of tax due is mentioned in a written communication emanating from the taxpayer or even a third party subject to the same being a part of the record.

32. Having stated the above, we also find merit in the contention that the amount of tax dues mentioned in any unilateral communication sent by the assessee, which is disputed or not accepted by the Department, cannot be considered as quantification of the 'tax due' even though it may be mentioned in a written communication forming a part of the record of the pending proceeding. It is essential

that the amount as mentioned in the written communication has some credibility and is not disputed by the concerned department. It should, in a sense, represent a consensus regarding the duty payable by the taxpayer. Clearly, in cases where the Department is proceeding on the basis of certain quantification, although not mentioned in any written communication issued by the Department but admitted by the taxpayer in writing; the same would satisfy the definition of the term "quantified" under Section 121(r) of the Finance Act (No.2), 2019.

33. The circulars issued by the CBIC, in exercise of the powers under Section 133 of the Finance Act (No.2), 2019 for administration of the Scheme, also support the aforesaid interpretation. In this regard, it is relevant to refer to the Circular dated 27.08.2019 (Circular No.1071/4/2019 – CX.8) issued by the CBIC to explain the provisions of the Scheme. The CBIC had explained that there are two components of the Scheme – Dispute Resolution and Amnesty. Whereas the Dispute Resolution component is aimed at liquidating the legacy cases locked up in litigations in various forums; the Amnesty component is intended to give an opportunity to those who have failed to correctly discharge their liability to pay the tax dues. Further, it was stated that the scope of discretion is kept to the minimum. Paragraph 9 of the said Circular is relevant and reads as under:

> "9. Moreover, the scope of discretion has been kept to the minimum by linking the relief under this Scheme to the duty amount which is already known to both the Department and the taxpayer in the form of a show cause notice / order of determination or a written communication. The calculation of relief itself will be automated. Even in case of voluntary disclosure, no verification will be carried out by the Department. Still in the eventuality the declarant seeks

> the opportunity of being heard, the decision would be taken only after giving him this opportunity."

34. In addition to explaining the intent and scope of the Scheme, the CBIC had also clarified certain issues in the context of the provisions of the Finance Act (No.2), 2019 and the rules made thereunder. In regard to cases under enquiry, investigation and audit, the CBIC had clarified as under:

> "(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."

35. It is clear from paragraph 9 of the aforesaid Circular that tax dues would be quantified where the duty amount is known to the Department and the taxpayer in the form of a written communication. It is also apparent from the above that the legislative intent is to include the 'tax dues' that were known to the Department and the taxpayers, within the cover of the Scheme, even though the enquiry, investigation or audit for final determination of the dues was pending.

36. The CBIC had also clarified aspects concerning the Scheme in the form of responses to frequently asked questions. The responses of the CBIC to question nos.1 and 45 are relevant and the same are set out below:

> **"Q 1.** Who is eligible to file declaration under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019?
>
> **Ans.** Any person falling under the following categories is eligible, subject to other conditions, to file a declaration under the Scheme:

(a) Who has a show cause notice (SCN) for demand of duty/tax or one or more pending appeals arising out of such notice where the final hearing has not taken place as on 30.06.2019.

(b) Who has been issued SCN for penalty and late fee only and where the final hearing has not taken place as on 30.06.2019.

(c) Who has recoverable arrears pending.

d) Who has cases under investigation and audit where the duty/tax involved has been quantified and communicated to him or admitted by him in a statement on or before 30th June, 2019.

(e) Who wants to make a voluntary disclosure.

Q 45. 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."

[emphasis added]

37. Mr. Hossain, the learned counsel for the Revenue, had contended that tax duties could not be considered as quantified unless determined by the concerned authority. He had also referred to the decisions of the Co-ordinate Benches of this Court in ***Chaque Jour HR Services Pvt. Ltd. v. Union of India: 2020 SCC OnLine Del 2632*** and in ***Karan Singh v. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme & Anr.: 2021 SCC OnLine Del 3353*** in support of his contention.

38. In ***Chaque Jour HR Services Pvt. Ltd. v. Union of India*** (*supra*) a Co-ordinate Bench of this Court had, *inter alia*, referred to the Circular dated 27.08.2019 and observed as under:

"16. By virtue of the aforesaid circulars, the respondents have clarified that the benefit of the Scheme can also be given to those cases where the duty involved is quantified by way of an admission

> made by the declarant in a statement made on or before 30th June, 2019."

39. However, the Court in that case found that there was a discord between the total dues as contemplated by the Department and those which the petitioner in that case had assured to pay. In the said context, the Court observed that purposive interpretation of the Scheme was required, and the Scheme could not be interpreted in a manner, which would run counter to its objective. In the said case, the Court found that although some dues were admitted by the declarant, the same did not cover the entire dues. Therefore, the object of the Scheme to put an end to the disputes would not be achieved. Accordingly, the Court repelled the contention that an admission of liability to pay some part of the dues could be considered as the amount of duty payable for the purpose of Section 121(r) of the Finance Act (No.2), 2019.

40. In ***Karan Singh v. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme & Anr.*** (*supra*) the Court found merit in the submission of the Revenue that unilateral quantification by the petitioner by writing letters and communications, would not render him eligible for the benefits of the Scheme. Undeniably, a unilateral submission which is not accepted by the Department cannot be considered as quantification of tax. For the purpose of Section 121(r) of the Finance Act (No.2), 2019, it is necessary that the taxpayer and the Department are in some sense *ad idem* as to the amount of duty payable. As explained by the CBIC in its Circular dated 27.08.2019, the relief under the Scheme is limited to "*the duty*

amount which is already known to both the Department and the taxpayer" in the form of a written communication.

41. The decision in ***Chaque Jour HR Services Pvt. Ltd. v. Union of India*** (*supra*) is of no assistance to the Revenue in the facts and circumstances of this case. There is no cavil with the proposition that admission of part of dues would not qualify as "tax dues" for the purpose of Section 123(c) of the Finance Act (No.2), 2019; under Section 123(c) "tax dues" would mean the entire amount of duty payable under indirect tax enactment as quantified.

42. In ***K.N. Rai (Proprietorship firm) through Kirit Kedarnath Rai v. Union of India & Ors.: 2021 SCC OnLine Bom 15***, a Division Bench of the Bombay High Court had rejected the Revenue's contention that the tax dues had not been quantified as the same had not been determined by the Department. In that case, the statement of the proprietor of the petitioner (Sh. Kirit Kedarnath Rai) was recorded by the Senior Intelligence Officer. The Bombay High Court found that the questions posed and the responses of the assessee clearly indicated quantification of the tax dues. The relevant extract of the statement of the proprietor of the petitioner in that case, as referred to by the Bombay High Court, is set out below:

> "17.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."

43. The Bombay High Court found that there was a clear admission on the part of the petitioner and that the tax dues were quantified in terms of Section 121(r) of the Finance Act, 1994. It is also relevant to refer to the decision of the Bombay High Court in ***Thought Blurb v. Union of India & Ors.:2020 SCC OnLine Bom 1909***. In that case, the Bombay High Court had referred to the Circular dated 27.08.2019 and held that, in terms of the letters written by the petitioner / taxpayer, the tax dues were quantified before the relevant date. The relevant extract of the said decision is set out below:

"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.
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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.
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> 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."

44. A similar view was also expressed by the Bombay High Court in ***G.R. Palle Electricals v. Union of India & Ors.: 2020 SCC OnLine Bom 3137*** and ***Saksham Facility Services Private Limited v. Union of India & Ors.: 2020 SCC OnLine Bom 3591***. In a later decision in ***Jai Sai Ram Mech & Tech India P Ltd. v. Union of India & Ors.: 2021 SCC OnLine Bom 221***, a Division Bench of the Bombay High Court referred to its earlier decision and observed as under:

> "16. 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."

45. We are in respectful agreement with the aforesaid view of the Bombay High Court. It is not necessary that the tax dues be finally quantified by the Department. An admission of the liability in any written communication or in a statement recorded by the Department is required to be accepted as tax dues, for the purpose of Section 123(c) read with Section 121(r) of the Finance Act (No.2), 2019. However, it is essential that the said dues are not disputed by the Department and that the Department is proceeding on the basis of such quantification. Clearly, in cases where the Department is not in agreement with the amount of tax as mentioned by the taxpayer in any communication, the dues as quantified in such communication(s) cannot be accepted as 'quantified' for the purpose of the Scheme. However, a written communication or a statement by the Department, determining the amount of duty, is not necessary for a taxpayer to be eligible to make a declaration under the Scheme.

46. The observation in ***Karan Singh v. Designated Committee Sabka Vishwas Legacy Dispute Resolution Scheme & Anr.*** (*supra*) must also be read in their context. The Court had explained that the amount mentioned in the communication issued by the taxpayer could not alone be the measure for interpretation of the concept of quantification. The duty liability would also require to be determined by the Department. However, the said observations cannot be read to mean a final determination by the Department or a determination that is reflected in any written communication issued by the Department. It would suffice that the Department does not contest the tax dues as

quantified by the taxpayer in its communication. As noted above, Section 123(c) of the Finance Act (No.2), 2019 is only applicable where enquiry, audit or investigation is pending. There is no question of final determination by the Department prior to conclusion of the said proceedings. Thus, the Revenue's contention that the expression "quantified" under Section 121(r) of the Finance Act (No.2), 2019 would necessarily mean the duty as finally determined by the Department for the purpose of Section 123(c) of the Finance Act (No.2), 2019 is unmerited.

47. We may now proceed to examine the facts of this case bearing the aforesaid principles in mind.

48. In the present case, the petitioner had filed a declaration on 24.12.2013 under the VCES declaring that a service tax of ₹36,47,132/- was due on account of service tax, education cess and higher education cess. The petitioner had also paid ₹18,50,000/- pursuant to the declaration made under the VCES.

49. However, the benefit of the VCES was denied to the petitioner for the reason that it had failed to pay the balance amount within the stipulated period. Subsequently, on 10.12.2015, an Anti Evasion Branch of the Service Tax Department conducted a search on the premises of the petitioner. On the said date, the statement of Sh. Divya Dipti Chopra (one of the Director's of the petitioner company) was recorded. He has referred to the declaration made under the VCES and the disclosure that ₹36,47,132/- was due and payable. He had also disclosed the petitioner's total turnover and had

acknowledged that service tax of approximately ₹30,00,000/- including interest would be payable up to November, 2015.

50. Thereafter, by a letter dated 05.01.2016, the office of respondent no.2 called upon the petitioner to deposit a sum of ₹30,00,000/- including interest and also furnish certain details including copies of the challan evidencing payment of ₹30,00,000/-, copies of the returns for the Financial Years 2010-11 to 2015-16, copies of the balance sheets, statement of reconciliation of service tax liability with the balance sheets, details of interest, and a copy of the CENVAT register for the period of 2010-11 to 2014-15.

51. Thereafter, by a letter dated 08.02.2016, the Assistant Commissioner of Service Tax, Division-I, called upon the petitioner to discharge the tax dues along with applicable interest and penalty within a period of three days, failing which, action would be initiated against the petitioner.

52. There is no dispute that the petitioner has furnished the requisite details as required. It is material to note that by a letter dated 22.02.2019, the petitioner forwarded copies of the challans dated 22.02.2019 evidencing payment of ₹1,00,000/- as part payment of the service tax outstanding for the period of 2010-11 to 2016-17. The petitioner also claimed that it had deposited a sum of ₹24,50,000/- for the period of 2010-11 to 2016-17 against the total outstanding of ₹27,65,557/- and assured that the balance would be cleared within the period of ten to fifteen days' time. The petitioner also forwarded the reconciliation statement in respect of the service tax liability

indicating that the total service tax payable was ₹27,65,557/- against which payment of ₹24,50,000/- had been made in five installments. The details of which was also set out in the statement.

53. The respondent acknowledged the said letter and by a letter dated 03.06.2019 called upon the petitioner to provide the challans for the remaining service tax. The said letter reads as under:

> "F.No.DL-I/ST/AE/Inq/Gr-5/226/2015 Dated 03.06.2019
>
> To
>
> Shri Shyam Kishore, Director,
> M/s Hansuttam Finance Ltd.,
> H-57, Cannaught Circus,
> New Delhi-110001.
>
> Sir,
>
> **Subject: Service Tax investigation against M/s Hansuttam Finance Limited – reg.**
>
> Please refer to your letter dated 22.02.2019 on the above mentioned subject.
>
> In this regard, you are requested to provide the copy of Challans of remaining Service Tax. Further, you are also requested to provide calculation sheet of Interest liability and deposit the same as soon as possible, so that the investigation might be concluded.
>
> Sd/-
> Superintendent
> Anti Evasion, Group-4
> Central Excise & Service Tax, Central Tax"

54. The petitioner responded by a letter dated 26.06.2019, enclosing therewith a service tax reconciliation statement for a period of ten

years with effect from 2007-08 to 2016-17 and the interest liability sheet. The service tax reconciliation sheet indicated that the petitioner's total service tax liability for the said period amounted to ₹41,46,677/- against which the petitioner had paid a sum of ₹18,50,000/- on 31.12.2013 and ₹24,50,000/- thereafter. Thus, according to the petitioner, it had paid a sum of ₹1,53,323/- in excess and requested that the same be adjusted against the interest liability. The statement of interest calculation indicated that a sum of ₹26,15,435/- was due and payable. The petitioner requested that the sum of ₹1,53,323/- be adjusted from the said amount and quantified the balance interest payable as ₹24,62,112/-.

55. Thereafter, the petitioner sent a letter dated 15.07.2019, once again enclosing therewith the service tax reconciliation statement and the service tax interest calculation sheet. The petitioner further requested that the interest accrued on the outstanding amount up to the completion of the VCES period be waived.

56. It is relevant to note that the respondents had never disputed or doubted the statements submitted by the petitioner. On the contrary, it is apparent that the respondents had accepted the said statements. As noticed above, by the letter dated 03.06.2019, the petitioner was called upon to provide the calculation sheet of the interest liability and to deposit the same so that the investigation may be concluded. Respondent no.1 had not questioned the calculation of the service tax.

57. It is also material to note that the impugned notice also proceeds on the basis of the dues as quantified by the petitioner. The respondents have calculated the amount of tax payable on the basis of the balance sheets of the petitioner as ₹41,46,688/-, which is materially similar to the computation as furnished by the petitioner (with the difference of ₹11/- only).

58. In view of the above, it is clear that the tax dues had been quantified as required under Section 121(r) of the Finance Act (No.2), 2019.

59. The impugned order rejecting the petitioner's declaration on the ground that "*investigation has not been concluded and hence the demand has not been estimated or concluded on or before the stipulated date*" is unsustainable. The Scheme does not exclude taxpayers in respect of whom investigations have not been concluded; it expressly includes taxpayers in respect of whom investigation, enquiry or audit is pending.

60. In view of the above, the petition is liable to be allowed. The respondents shall process the petitioner's declaration in accordance with the Scheme. Since the impugned notice has been issued to the petitioner on the premise that the petitioner's dues have not been settled, the same also is set aside.

61. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 15, 2023
'gsr'