

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

*** * * ***

WRIT PETITION No.26035 OF 2019

Between:

M/s. Violet Event Marketing India Private limited

...Petitioner

Vs.

Union of India & 3 others

....Respondents

JUDGMENT PRONOUNCED ON:12.04.2022

HON'BLE SRI JUSTICE UJJAL BHUYAN

AND

HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

UJJAL BHUYAN, J

*** THE HON'BLE SRI JUSTICE UJJAL BHUYAN**

+Writ petition No.26035 of 2019

% 12.04.2022

Between:

M/s. Violet Event Marketing India Private limited

...Petitioner

Vs.

Union of India & 3 others

....Respondents

! Counsel for Petitioner

Dr.M.V.K. Moorthy

^ Counsel for the respondents:

Sri B.Mukherjee for R.1
Sri B. Narasimha Sarma for
R.3 and R.4.

<GIST:

> HEAD NOTE:

? Cases referred

¹ MANU/MH/1723/2020

HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
W.P.No.26035 of 2019

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Dr.M.V.K.Moorthy, learned counsel for the petitioner; Mr.B.Mukherjee, learned counsel appearing on behalf of Mr.N.Rajeshwar Rao, learned Assistant Solicitor General of India for respondent No.1; and Mr. B.Narasimha Sarma, learned counsel for respondent Nos.3 and 4.

2 By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of intimation dated 27.09.2019 of the third respondent and further seeks a direction to the respondents to consider the declaration of the petitioner as a valid declaration under the category of 'voluntary disclosure' in terms of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

3 Case of the petitioner is that it is engaged in the business of providing event management services to its clients. It had obtained service tax registration under the Finance Act, 1994 since its incorporation in the year 2009. It is stated that since its inception, petitioner was filing service tax returns and paying the due service tax.

4 However, because of financial problems, petitioner could not pay service tax for the period from April, 2016 to June, 2017. The total amount of service tax dues to be paid by the petitioner for the aforesaid period is Rs.1,72,93,758.00

5 While presenting the budget for the year 2019-2020, Government of India, Ministry of Finance introduced a scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, Central Government also notified the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 to operationalize the scheme from 01.09.2019 to 31.12.2019.

6 It is stated that Sabka Vishwas (Legacy Dispute Resolution) Scheme has facility for voluntary disclosure of tax dues. In such a case, the declarant has to pay the full tax declared but is not required to pay interest and penalty, besides being provided immunity from prosecution.

7 Petitioner filed declaration in the prescribed format online on 13.09.2019 under the category of 'voluntary disclosure' declaring service tax dues of Rs.1,72,93,758-00 for the period from April, 2016 to June, 2017. As per the procedure laid down the designated committee i.e. respondent No.4 chaired by respondent No.3 considered

the declaration filed by the petitioner. However, vide the intimation dated 27.09.2019, declaration filed by the petitioner was rejected.

8 It is stated that petitioner was not subjected to enquiry / investigation till announcement of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 on 05.07.2019. Petitioner was issued a letter on 23.07.2019 by the Superintendent (Anti-evasion) for verification of payment of service tax for the financial year 2014-15. It was not an investigation; certainly not for the period from April, 2016 to June, 2017. Subsequently, summons dated 11.09.2019 were issued to the petitioner for an enquiry for non-payment of service tax which was served upon the petitioner on 16.09.2019.

9 According to the petitioner, the letter dated 23.07.2019 and summons dated 11.09.2019 were issued only to deny the benefit of voluntary disclosure under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Contending that petitioner is eligible under the aforesaid scheme, not falling within the exclusion category, intimation dated 27.09.2019 of the third respondent has been assailed in the present writ proceeding on various grounds.

10 Respondent Nos.3 and 4 have filed counter affidavit. It is stated that Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was introduced by the Finance (No.2) Act, 2019 fixing 01.09.2019 as the

effective date of commencement of the aforesaid scheme. Thereafter, Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 came to be framed laying down the procedure for implementation of the aforesaid scheme. It is stated that Central Board of Indirect Taxes and Customs i.e. respondent No.2 had issued circulars dated 27.08.2019, 25.09.2019 and 29.10.2019 providing clarifications on various issues pertaining to the scheme in the format of frequently asked questions (FAQs) and the answers given thereto.

11 Petitioner submitted declaration in form SVLDRS-01 on 13.09.2019 under the category of 'voluntary disclosure' declaring service tax dues at Rs.1,72,93,758-00. It is stated that verification report was sought for on 25.09.2019 from the Deputy Commissioner (Anti-evasion) as regards the declaration filed by the petitioner. Deputy Commissioner submitted letter dated 26.09.2019 providing detailed verification report. In the meanwhile, a letter was addressed to the petitioner on 23.07.2019 calling for data for the year 2014-2015 based on 3rd party information. Petitioner sought for time vide letter dated 09.08.2019. Deputy Commissioner had sent e-mails dated 26.08.2019 and 04.09.2019 calling for details of petitioner's income and tax paid for the period 2014-2015, 2015-2016, 2016-2017 and 2017-2018 (up to June, 2017). Petitioner, vide e-mail dated 09.09.2019, furnished profit and loss account and balance sheet for the years 2015-2016,

2016-2017 and 2017-2018. Thereafter, responding to summons dated 11.09.2019, petitioner appeared before the concerned Superintendent (Anti-evasion) on 16.09.2019; whereafter, statement of authorised person (Managing Director) was recorded. In the circumstances, the Deputy Commissioner opined that tax payers who are subjected to enquiry or investigation or audit are not eligible to make a declaration under the aforesaid scheme. On the above basis it is stated that declaration of the petitioner could not be accepted as the petitioner was not eligible. Therefore, the intimation dated 27.09.2019 was issued. To support the above contention, reference has been made to various provisions of the Finance (No.2) Act, 2019.

12 Petitioner has filed reply to the counter affidavit of respondent Nos.3 and 4. It is stated that the declaration was made for the period from April, 2016 to June, 2017 i.e. for the years 2016-2017 and 2017-2018 (up to June, 2017). Petitioner has stated that respondent No.2 i.e. Central Board of Indirect Taxes and Customs had issued another circular dated 12.12.2019 wherein it has been clarified that in cases where notices were issued on or after 01.07.2019 declarants are eligible. In this connection, it is stated that a tax payer facing audit, enquiry or investigation on or before 30.06.2019, would not be entitled to the benefits under the said scheme. Therefore, rejection of the declaration of the petitioner is not at all justified.

13 Learned counsel for the petitioner has made elaborate reference to the provisions of the Finance (No.2) Act, 2019 as well as to the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and submits therefrom that petitioner is very much eligible to the benefits of the scheme under the category of 'voluntary disclosure'. Therefore, respondent No.3 was not at all justified in rejecting the declaration of the petitioner. To that extent he seeks quashing of intimation dated 27.09.2019. In support of his submissions, learned counsel for the petitioner has placed before the Court a memo containing various judgments of different High Courts.

14 On the other hand, Mr. B.Narasimha Sarma, learned counsel for respondent Nos.3 and 4 vehemently argues that respondents had rightly rejected the declaration filed by the petitioner, having regard to the provisions contained in Section 125 (1) (e) and (f) of the Finance (No.2) Act, 2019. There is no merit in the writ petition which should, therefore, be dismissed.

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

16 At the outset, let us briefly analyze the provisions of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (briefly, 'the scheme' hereinafter) which was introduced by the Finance (No.2) Act,

2019 and notified in the Gazette of India on 01.08.2019. While proposing the scheme, as part of her budget speech for the year 2019-2020, Finance Minister, Government of India, stated thus:

“GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than Rs.3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow the business to move on. I, therefore, propose, a Legacy Dispute Resolution scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations.”

17 Statement of object and reasons with respect to the scheme reads as under:

“The scheme is a one time measure for liquidation of past disputes of central excise and service tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The scheme shall be enforced by the Central Government from a date to be notified. It provides that eligible persons shall declare the tax due and pay the same in accordance with the provisions of the scheme. It further provides for certain immunities including penalty, interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 to those persons who pay the declared tax dues.”

18 Central Board of Indirect Taxes and Customs issued circular dated 27.08.2019 stating that the Central Government had announced the scheme as part of the union budget for the year 2019-2020. It was stated thus:-

“2. As may be appreciated, this scheme is a bold endeavour to unload the baggage relating to the legacy taxes viz. central excise tax that have been subsumed under GST and allow business to make a new beginning, and focus on GST. Therefore, it is incumbent upon all officers and staff of CBIC to partner with the trade and industry to make this scheme a grand success.

3. Dispute resolution and amnesty are the two components of this scheme. The dispute resolution component is aimed at liquidating the legacy cases locked up in litigation at various forums whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. As may be seen, this scheme offers substantial relief to the taxpayers and others who may potentially avail it. Moreover, the scheme also focuses on the small taxpayers as would be evident from the fact that the extent of relief provided is higher in respect of cases involving lesser duty (smaller

taxpayers can generally be expected to face disputes involving relatively lower duty amounts).”

19 From the above, it is seen that second respondent i.e. Central Board of Indirect Taxes and Customs (also referred hereinafter as ‘the Board’) had conveyed to all the departmental heads that the scheme is a bold endeavour to unload the baggage relating to the legacy taxes, viz., central excise and service tax which have been subsumed under the Goods and Services Tax (GST) and to allow business to make a new beginning and to focus entirely on GST. It was emphasized that all officers and staff should partner with trade and industry to make the scheme a grand success. It was highlighted that dispute resolution and amnesty are the two components of the scheme. Dispute resolution component is aimed at liquidating the legacy cases whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. After saying so, the Board concluded as under:

“12. The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has the potential to liquidate the huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under the legacy taxes. The administrative machinery of the Government will also be able to fully focus on helping the taxpayers in the smooth implementation of GST. Thus, the importance of making this scheme a grand success cannot be overstated. The Principal Chief Commissioners/Principal Directors General/Chief Commissioners / Directors General and all officers and staff are instructed to familiarize themselves with this scheme and actively ensure its smooth implementation.”

20 Thus, from an analysis of the above, it is discernible that the scheme is a beneficial one with the prime object of unloading the baggage of pending litigations centering around service tax and excise

duty. As a onetime measure, the focus is to unload this baggage of pre-GST regime and thereby allowing business to move ahead, but at the same time, to also ensure that the administrative machinery can focus fully in the smooth implementation of GST. This is the broad picture which should be kept in mind while considering a declaration seeking amnesty under the scheme. Therefore, a liberal view embedded with the principles of natural justice is called for. The approach should be to ensure that the scheme is successful.

21 Chapter V of Finance (No.2) Act, 2019, contains the scheme; as a matter of fact, Sections 120 to 135 under Chapter V comprises the scheme.

22 Section 121 provides for the definitions. As per Clause (g) “audit” has been defined to mean, any scrutiny, verification and checks carried out under the indirect tax enactment other than an enquiry or investigation and will commence when a written intimation from the Central Excise officer regarding conduct of audit is received. While Clause (i) defines “declaration” to mean a declaration filed under Section 125, under Clause (h) a “declarant” would mean a person who is eligible to make a declaration and file such declaration under Section 125. As per Clause (k) “designated committee” means the committee referred to in Section 126. “Enquiry” or “investigation” has

been defined under Clause (n). It includes search of premises; issuance of summons; requiring the production of accounts, documents or other evidence; and recording of statements.

23 “Tax dues” in the context of the scheme is defined in Section 123. From a perusal of Section 123, it can be said that a declaration can be made by a declarant under any one of the five heads:-

(1) Pendency of appeal as on 30.06.2019,

(2) Where a show cause notice issued under any one of the indirect tax enactments as mentioned in the scheme has been received by the declarant on or before 30.06.2019,

(3) Where an enquiry or investigation or audit is pending against the declarant, the duty payable thereunder having been quantified on or before 30.06.2019,

(4) Voluntary disclosure by the declarant, and

(5) Arrears.

24 Section 124 deals with the reliefs available under the scheme. As per Clause (e) of Sub-Section (1) of Section 124, where the tax dues are payable on account of a voluntary disclosure by the declarant, then no relief would be available with respect to tax dues.

25 Eligibility of persons to make a declaration under the scheme is provided for in Section 125. As per Sub-Section (1), all persons shall be eligible to make a declaration under the scheme except in the eight circumstances (a to h) mentioned thereunder. As per Clause (e) of Sub-Section (1) of Section 125, a person who has 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 30.06.2019. Clause (f) is also relevant. It says that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit or having filed the return under the concerned indirect tax enactment wherein he has indicated an amount of duty as payable but has not paid it would also not be eligible.

26 While Sub-Section (1) of Section 126 says that correctness of a declaration made by a declarant would be verified by the designated committee, composition and functioning of the designated committee is provided for in Sub-Section (2). As per proviso to Sub-Section (1) no such verification shall be made in a case where a voluntary disclosure of an amount of duty has been made by the declarant.

27 Section 127 provides for issue of statement by the designated committee. As per Sub-Section (1) where the amount estimated to be payable by the declarant as estimated by the designated committee equals the amount declared by the declarant, then the designated committee shall issue a statement in electronic form indicating the amount payable by the declarant within the period prescribed. Sub-Section (2) deals with a situation where the amount estimated by the designated committee to be payable by the declarant exceeds the

amount declared by the declarant, then the designated committee shall issue an estimate of the amount payable by the declarant in the prescribed form and within the prescribed period. In terms of Sub-Section (3), after issue of the estimate under Sub-Section (2), the designated committee shall give an opportunity of being heard to the declarant before issuing the statement in terms of Sub-Section (4). As per the proviso, on sufficient cause being shown by the declarant only one adjournment may be granted by the designated committee. Sub-Section (4) says that after hearing the declarant a statement in electronic form indicating the amount payable by the declarant shall be issued within a period of 60 days from the date of receipt of the declaration. Once such a statement is issued, Sub-Section (5) says that the declarant shall make the payment electronically within 30 days from the date of issue of such statement. Sub-Sections (6) and (7) deal with withdrawal of appeal and writ petition with which we may not be concerned presently. Finally, under Sub-Section (8), on payment of the amount indicated in the statement of designated committee, the designated committee shall issue a discharge certificate in electronic form within 30 days of such payment.

28 Rectification of arrears is provided for in Section 128.

29 Section 129 (1) says that every discharge certificate with respect to the amount payable under the scheme shall be conclusive as to the matter and time period stated therein. It is clarified that upon such discharge certificate being issued, a declarant shall not be liable to pay any further duty, interest or penalty with respect to the matter and time period covered in the declaration; the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration; and no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment. However, as per Clause (c) of Sub-Section (2), in a case of voluntary disclosure, where any material particulars furnished in the declaration is subsequently found to be false within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.

30 Section 132 is the rule making provision whereas, under Section 133, the Board has been conferred the power to issue orders, instructions and directions to the authorities from time to time.

31 It may be mentioned that Central Government had issued notification dated 21.08.2019 appointing 01.09.2019 as the date on which the scheme came into force.

32 In exercise of the powers conferred under Section 132, Central Government has framed the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019.

33 The Board issued another circular dated 12.12.2019. Referring to the previous circulars dated 27.08.2019, 25.09.2019 and 29.10.2019, it was mentioned that subsequently Board had received further references from field formations as well as from the trade seeking certain clarifications about the scheme. After considering the same Board issued the clarifications vide the above circular. In paragraph No.2 (v) it was clarified that for the purpose of eligibility under the scheme in some of the categories, such as, litigation, audit/enquiry/investigation etc, the relevant date is 30.06.2019. Two instances were mentioned. As per first instance, in a case under audit/investigation/enquiry where the tax dues have been quantified on or before 30.06.2019, a show cause notice is issued after 30.06.2019. Similarly, a case which was under appeal as on 30.06.2019 may attain finality in view of appeal period being over etc.

Board has clarified that the eligibility with respect to a category in such cases shall be as it was on the relevant date i.e. 30.06.2019.

34 Board has also issued clarifications in the form of answers given to FAQs. Question No.1 is, who is eligible to file declaration under the scheme. The answer given thereto is that 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 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 a show cause notice 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 made on or before 30.06.2019, and
- e. who wants to make a voluntary disclosure.

35 Reverting to the facts of the present case, petitioner had filed the declaration under the 'voluntary disclosure' category. In the declaration form we find that petitioner had mentioned the category as voluntary disclosure detailing service tax dues of Rs.1,72,93,758-00 for the period from 01.04.2016 to 31.03.2017.

36 Having noticed the above, we may now advert to the impugned intimation dated 27.09.2019. It says that petitioner had filed a

declaration in form SVLDRS-01 on 13.09.2019 under the category of 'voluntary disclosure'. The following particulars were declared:-

- | | | | |
|------|----------------------|---|-------------------|
| i. | Duty type | - | Service Tax. |
| ii. | Details of service | - | Event management, |
| iii. | Disclosed tax amount | - | Rs.1,72,93,758-00 |

37 It is stated that the declaration of the petitioner was scrutinized by the designated committee to determine eligibility. Reference has been made to Section 125 (1) (f) of the Finance (No.2) Act, 2019 wherefrom it is stated that a person making voluntary disclosure under the Act after being subjected to any enquiry or investigation or audit or having filed the return under the indirect tax enactment wherein he has indicated an amount of duty as payable but has not paid it, shall not be entitled to make such declaration. It is stated that designated committee had examined report of Anti-evasion Branch dated 23.07.2019 and found that departmental investigation into evasion of tax by the petitioner had been initiated on 23.07.2019. In this connection summons dated 11.09.2019 was issued under Section 70 of the Central Goods and Services Tax Act, 2017. According to the designated committee, the declaration was filed by the petitioner subsequent to the date of initiation of such investigation by the department. Accordingly, designated committee found that provisions of Section 125 (1) (f) would be attracted thereby making the

petitioner ineligible under the scheme. Therefore, designated committee decided to reject the declaration of the petitioner.

38 From the impugned intimation dated 27.09.2019 what is discernible is that petitioner had filed declaration under the category of 'voluntary disclosure'. But invoking the provisions of Section 125 (1) (f), designated committee declared the petitioner to be ineligible under the scheme and therefore rejected the declaration. However, interestingly in the intimation dated 27.09.2019 there is no mention or reference to the time period in respect of which the voluntary disclosure was made.

39 As we have already seen, Section 125 of the Finance (No.2) Act, 2019, deals with eligibility to make a declaration under the scheme. Sub-Section (1) is couched in broad and positive language. It says that all persons are eligible to make a declaration under the scheme except those covered by the situations from (a) to (h). Though in the impugned intimation it is stated that declaration of the petitioner was rejected under Section 125 (1) (f), Mr. B.Narasimha Sarma, learned counsel for the respondents tried to justify the same by referring to the provisions of Section 125 (1) (e) as well.

40 Let us deal with both the provisions. Section 125 (1) (e) says that a person who has 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 30.06.2019 shall not be eligible. First and foremost, this is the provision which would be attracted when a declarant makes a declaration under the category 'investigation / enquiry / audit' and therefore would not be applicable to a declarant making a declaration under the category 'voluntary disclosure'. Nonetheless, if we minutely analyse the provision of Section 125 (1) (e), we find that it has got two parts. As per the first part, the person making a declaration should be subjected to an enquiry or investigation or audit. In other words, at the time of making the declaration the declarant must be facing an enquiry or investigation or audit. The second part is, the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before 30.06.2019. Therefore, the second part says that the amount of duty relatable to such enquiry or investigation or audit being faced by the declarant at the time of making declaration had not been quantified on or before 30.06.2019. These two parts are joined by the word 'and'. The word 'and' appearing in Section 125 (1) (e) is conjunctive inasmuch as it joins the two parts of the said provision. As a consequence, the provision has to be read in continuum i.e. as a whole. Read so, it would mean that at the time of filing the declaration, the declarant must be subjected to an enquiry or investigation or audit

and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30.06.2019. In other words, the enquiry or investigation or audit should be pending as on 30.06.2019.

41 Insofar Section 125 (1) (f) is concerned, a person would be ineligible to make a declaration in terms of the scheme under the category 'voluntary disclosure' after being subjected to an enquiry or investigation or audit; or having filed the return under the indirect tax enactment wherein he has indicated an amount of duty as payable but has not paid it. Thus, Section 125 (1) (f) also has two parts. As per the first part, the declarant should not be subjected to any enquiry or investigation or audit at the time of making the declaration under the category 'voluntary disclosure'. The second part is that if a person had filed the return under the concerned indirect tax enactment wherein he has indicated an amount of duty as payable but has not paid it. Then he would not be eligible to make a declaration under the category of 'voluntary disclosure'. Thus, the two parts visualize two different situations. One is being subjected to any enquiry or investigation or audit at the time of making the declaration under the category of 'voluntary disclosure'. The other is that the person had filed the return under the relevant indirect tax enactment wherein he has mentioned the amount of duty as payable but has not paid it.

Evidently, the two situations are different and therefore the word 'or' has been used as a disjunctive.

42 There is one more aspect. If we look at Section 129, we find that once a discharge certificate is issued under the scheme, the same shall be conclusive as to the matter and time period stated therein. In other words, for the said time period the declarant would not be liable to pay further duty, interest or penalty or liable to be prosecuted. That apart, no matter and time period covered by the declaration shall be reopened. Therefore, the time period mentioned in the discharge certificate which is relatable to the time period mentioned in the declaration assumes significance and becomes very crucial. Therefore, the enquiry or investigation or audit referred to in Section 125 (1) (e) and Section 125 (1) (f) must relate to the time period mentioned in the declaration and should be pending as on 30.06.2019. If the enquiry or investigation or audit does not relate to the time period as mentioned in the declaration, that cannot act as an ineligibility for the declarant.

43 Petitioner had filed the declaration under the category of 'voluntary disclosure' on 13.09.2019 for the period 01.04.2016 to 31.03.2017. As on the relevant date i.e. 30.06.2019, petitioner was not facing any enquiry or investigation or audit for the said period. Petitioner was, for the first time, asked by the Superintendent (Anti-

evasion) vide letter dated 23.07.2019 to submit the information mentioned therein for the purpose of verification for the financial year 2014-2015. As mentioned in the impugned intimation, the said letter was issued following receipt of report on 23.07.2019 from the Anti-evasion Headquarters. However, in the summons dated 11.09.2019 the period of enquiry is not mentioned. In the subject it is mentioned that the summons pertain to certain enquiry for non-payment of service tax. The summons being so vague would have to be read together with the letter dated 23.07.2019. On a conjoint reading of the two it would mean that the verification pertains to the period 2014-2015. Therefore, on due consideration, it cannot be said that petitioner was subjected to any enquiry or investigation or audit as on 30.06.2019 and pertaining to the period covered by the declaration at the time of making the declaration.

44 Interestingly, if we minutely look at the provisions of the scheme, we find that in the case of a declaration under the category 'voluntary disclosure' no relief is available to the declarant with respect to the tax dues for the period for which the declaration is made. However, such a declarant shall not be liable to pay interest or liable to be prosecuted under the concerned indirect tax enactment with respect to the matter and time period covered in the declaration. In fact, in a case of voluntary disclosure, proviso to Sub-Section (1) of Section 126 makes

it very clear that no verification shall be made by the designated committee. Section 129 (2) (c) further says that in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false within a period of one year of issue of discharge certificate, it shall be presumed that no such declaration was ever made. Consequently, proceedings under the applicable indirect tax enactment shall be instituted.

45 That being the position, respondent Nos.3 and 4 were not at all justified in rejecting the declaration of the petitioner.

46 Before parting with the record, there is one more aspect which we would like to advert. This relates to the aspect of natural justice. As we have noticed above, under Sub-Sections (2) and (3) of Section 127, in a case where the amount estimated by the designated committee exceeds the amount declared by the declarant, then an intimation has to be given to the declarant. However, before insisting on payment of the higher amount determined by the designated committee, the declarant is required to be afforded an opportunity of hearing by the designated committee. If in a situation where the amount estimated by the designated committee is in excess of the amount declared by the declarant, an opportunity of hearing is required to be given by the designated committee to the declarant,

then we are of the view that it would be in complete defiance of logic and contrary to the very object of the scheme to outrightly reject a declaration on the ground of ineligibility without affording an opportunity to the declarant to explain as to why his declaration should be accepted and relief under the scheme should be extended to him. Rejection of a declaration will lead to adverse civil consequences for the declarant as he would have to face the consequences of enquiry or investigation under the relevant indirect tax enactment. It is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be complied with. Therefore, summary rejection of a declaration without affording any opportunity of hearing to the declarant would be in violation of the principles of natural justice.

47 As has been held by a division bench of the Bombay High Court in **Thought Blurb Vs. Union of India**¹, non-compliance to the principles of natural justice by the designated committee while rejecting a declaration would impeach the decision making process rendering the decision invalid in law.

48 For all the aforesaid reasons, the impugned intimation dated 27.09.2019 being wholly unsustainable is set aside and quashed. The

¹ MANU/MH/1723/2020

matter is remanded back to respondent Nos.3 and 4 who shall consider the declaration of the petitioner afresh in terms of the scheme as a valid declaration under the category of 'voluntary disclosure'. While doing so, the said respondents shall provide an opportunity of hearing to the petitioner and thereafter pass a speaking order in accordance with law with due communication to the petitioner. The above exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

49 Writ petition is accordingly allowed. However, there shall be no order as to costs. As a sequel, miscellaneous petitions if any pending in this writ petition shall stand closed.

UJJAL BHUYAN, J.

A.VENKATESHWARA REDDY, J.

Dt:12.04.2022

*L.R. Copy be marked.
B/o Kvsn*