



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 7527/2021

Malik Builders, House No.305, Behind Cheerghar Masjid, Kamla Nehra Nagar, Jodhpur-342008 (Regt. No-ABFPM 1659MSD001).

Through its Sole Proprietor Sayed Malik.

-----Petitioner

Versus

1. Union of India through The Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.

2. The Commissioner of Central Goods and Service Tax-cum-Central Excise, G-105, New Bansi Industrial Area, Near Diesel Shed, Jodhpur (Raj.)

3. The Joint Commissioner-cum-Member, SVLDRS (Sabka Vishwas) (Legacy Dispute Resolution) Scheme, 2019, G-105, New Bansi Industrial Area, Near Diesel Shed, Jodhpur (Raj.)

-----Respondents

For Petitioner(s) : Mr. Jagat Tatia Advocate.

For Respondent(s) : Mr. Rajvendra Saraswat Advocate
Mr. Vipul Singhvi Advocate.

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Judgment

REPORTABLE

30/08/2022

By the Court: (Per Manindra Mohan Shrivastava, Acting CJ.)

1. By this petition under Article 226 & 227 of the Constitution of India, the petitioner has assailed the correctness, legality and validity of Communication dated 12.10.2020, by which, respondents-authorities communicated the petitioner that the declarations vide SVLDRS-01 application filed under the category of 'Voluntary



Disclosure' for relaxation of applicable interest and penalty in respect of declared service is not eligible under SVLDRS-2019. It was also communicated that SVLDRS-04 dated 07.02.2020 were issued erroneously. Therefore, SVLDRS applications having ARN Nos.-LD-3112190020439, LD-3112190020561 and LD-3112190020627 all dated 31.12.2019 are rejected and further that demand of Rs.16,40,026/- stands outstanding as such.

2. The petitioner has also sought quashing of Letter dated 28.11.2019, Internal Audit Report dated 08.01.2021 and Show Cause Notice dated 08.01.2021.

3. Factual matrix, relevant and necessary for adjudication of the controversy involved in the present petition is stated infra.

4. The petitioner-firm involved in construction activities bearing Service Tax Registration, filed an online application for availing the benefit of SVLDRS (Sabka Vishwas) (Legacy Dispute Resolution) Scheme 2019 (hereinafter referred to as 'the Scheme of 2019) before the authority on 31.12.2019 and, thereafter, on 17.02.2020, the respondents-authorities also issued the discharge certificate or full and final settlement tax dues under Section 127 of the Finance (No.2) Act of 2019 read with Rule 9 of the Scheme of 2019. Respondent-authority issued 3 ARN Number to the petitioner.

5. As disclosed in the writ petition, on 28.11.2019, i.e. before submitting application under 'Voluntary Disclosure', a letter was issued intimating initiation of proceedings for conducting Service Tax Audit by the Assistant Commissioner, Audit Circle, Jodhpur. Though, the petitioner requested the said Authority about the fact of it having availed the benefit under the Scheme of 2019, the proceedings



continued which required the petitioner to submit required record to the audit team.

6. The petitioner, as pleaded, also requested the designated Committee constituted under the Scheme of 2019 for giving opportunity of hearing before passing any adverse order, but the same was not afforded.

7. The audit proceedings eventually resulted in issuance of Internal Audit Report against the petitioner for the same period for which petitioner had filed application under the Scheme of 2019, followed by show cause notice of the even date on 08.01.2021.

8. In the meantime, the petitioner received impugned Communication dated 12.10.2020 wherein, it was mentioned that the petitioner had filed application under the category of 'Voluntary Disclosure' for relaxation of applicable interest and penalty in respect of declared service pertaining to the period from April 2016 to June 2017 for which departmental audit had already been initiated, but remained pending. In the said communication, it was further disclosed that in the 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 the discharge certificate, it shall be presumed as if declaration was never made and proceedings under the applicable Indirect Tax enactment shall be instituted. On such consideration, the authority informed that the declarations filed by the petitioner under the category of 'Voluntary Disclosure' appear to have been filed wrongly and accordingly declarations are not eligible under SVLDRS-2019. The authority was of the view that SVLDRS-04 dated 07.02.2020 were issued erroneously as correct and complete facts



were not brought to the notice of the Committee. Invoking its power under Section 129 (2)(c) of the Finance (No.2) Act, 2019, petitioner's SVLDRS applications on 3 ARN Numbers mentioned in that communication were rejected.

9. The petitioner submitted representation on 20.10.2020 wherein, he referred to frequently asked questions and answers released by CBEC and requested to allow the application filed under the Scheme of 2019. As no relief was granted, this petition came to be filed not only aggrieved by rejection of declarations and denial of relief under the Scheme of 2019, but also against audit report and show cause notice.

10. Learned counsel for the petitioner contended that the petitioner had duly submitted the application seeking benefit of the Scheme of 2019 and the petitioner was also issued discharge certificate. Rejection by invoking powers under Section 129(2)(c) of the Finance (No.2) Act, 2019 is illegal and erroneous in law because petitioner is not covered under any of the exception categories enumerated in Section 125 of the Finance (No.2) Act, 2019. Pointed submission is that all persons except those, who have been excluded under any of the Clauses (a) to (h) are eligible to make declaration under the Scheme for reliefs stated therein. Rejection of petitioner's declaration by categorising it as person making 'Voluntary Disclosure' after being subjected to audit is based on patent misreading and misconstruction of the said provision. He would submit that it is not a case where the petitioner was subjected to an enquiry or investigation or audit on or before 30.06.2019 where the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30.06.2019. The benefit of the Scheme of 2019 could not be denied on



the basis that audit proceedings were initiated vide Communication dated 28.11.2019 as this is subsequent to the cut off date 30.06.2019. It is the contention of learned counsel for the petitioner that the objective of the Scheme of 2019 was to bring to an end pending litigations pertaining to Service Tax and Central Excise. The Scheme has twin objectives of liquidation of past disputes pertaining to Central Excise and Service Tax on the one hand and disclosure of unpaid taxes on the other hand, the primary focus is to unload the baggage of pending litigations in respect of Service Tax and Central Excise from pre-GST regime so that the business can move on, which is also the view expressed by the Board vide its Circular dated 27.08.2019 wherein, all the officers and staff working under the Board were called upon to partner with trade and industry to make the Scheme a grand success which in turn will enable the administrative machinery to fully focus in the smooth implementation of GST.

11. Further contention is that the Scheme of 2019 being a beneficent Scheme, the reasons and object behind promulgation of the Scheme of 2019, liquidation of past disputes pertaining to taxes on the one hand and disclosure of unpaid taxes on the other hand so as to unload the baggage of pending litigations, the provision requires liberal interpretation so as to advance the objective of the enactment and not to frustrate the same. Therefore, it is contended, Clause (f) of Sub-section (1) of Section 125 of the Finance (No.2) Act, 2019 as also the statutory Scheme of 2019 is to be read along with Clause (e). Therefore, the petitioner could not be held ineligible for declaration and benefits under the Scheme of 2019 because the audit proceedings



were initiated after 30.06.2019 which remained pending till filing of application on 31.12.2019.

12. Further submission of learned counsel for the petitioner is that the petitioner anticipating adverse action against it in view of pending audit proceedings, had already requested the authorities to afford it an opportunity of hearing, but such opportunity was also not granted and decision was taken to reject declarations holding the petitioner ineligible to seek the benefit of the Scheme of 2019, therefore, respondents' action is vitiated due to violation of principles of natural

13. Learned counsel for the petitioner stressed upon the frequently asked questions and answers released by CBEC, referred to in representation dated 20.10.2020, in particular clarifications on FAQ Nos.10 and 39 to submit that answers to those FAQs clarify that benefit of the Scheme of 2019 could be denied and declaration could be rejected only in those cases where a person 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. As in the case of the petitioner, audit proceedings were drawn only after 30.06.2019, as clarified in answers to FAQs, the petitioner was not ineligible to avail the benefit of the Scheme of 2019.

14. As the petitioner was not only entitled to benefit of the Scheme of 2019 on the basis of declaration made by it and a discharge certificate was also issued in its favour on 07.02.2020, the audit proceedings initiated vide Letter dated 28.11.2019, Internal Audit Report dated 08.01.2021 and Show Cause Notice dated 08.01.2021 were not maintainable against the petitioner and for that reason alone,



such proceedings, audit report and show cause notice are also liable to be quashed.

15. In support of his submission, learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court in the cases of **Tata Engineering and Locomotive Co. Ltd. Versus The State of Bihar and Another, (2000) 5 Supreme Court Cases 346** & **M/s Yashi Constructions Versus Union of India & Others, (Petition for Special Leave to Appeal (c) No.2070/2022)** decided on 18.02.2022 and the decisions of the Bombay High Court in the cases of **New India Civil Erectors PVT. LTD. Versus Union of India, 2021 (48) G.S.T.L. 17 (Bom.)** & **Thought Blurb Versus Union of India, 2020 (43) G.S.T.L. 499 (Bom.)**.

16. Per-contra, learned counsel appearing for the respondents would submit that the petitioner had applied for benefit of the Scheme of 2019 under 'Voluntary Disclosure' on 31.12.2019. However, before that, audit proceedings were initiated vide Letter dated 28.11.2019 requiring the petitioner to provide necessary documents to conduct the audit of the petitioner-firm. Thus, the audit enquiry was taken up by the department prior to filing of SVLDRS application dated 31.12.2019. The petitioner avoided to furnish necessary documents and information so as to delay audit and avoid completion of audit proceedings and audit report. While submitting declaration seeking benefit of the Scheme of 2019, the petitioner deliberately suppressed this crucial information that even before submission of declaration on 31.12.2019, the petitioner was subjected to audit and was avoiding to submit necessary documents and information for completion of audit proceedings. Therefore, discharge certificate was issued on 07.02.2020



erroneously for want of correct and complete facts. The petitioner was excluded from the purview of the Scheme of 2019 in view of its being a person covered under Clause (f) of Sub-Section (1) of Section 125 of the Said Scheme. When it was brought to the notice of the respondent by the CGST (Audit), Jodhpur that 'Voluntary Disclosure' made by the petitioner pertains to the period from April 2016 to June 2017 for which departmental audit has already been initiated, but remained pending due to non submission of documents, in view of the powers under Section 129 (2)(c) of the Finance (No.2) Act, 2019, petitioner's SVLDRS applications on 3 ARN Numbers were rejected, which is in accordance with law.

17. Learned counsel for the respondents would further submit that where a person seeks benefit of the Scheme of 2019 under 'Voluntary Disclosure' after being subjected to audit, in terms of Clause (f) of Sub-Section (1) of Section 125 of the Scheme of 2019, he stands excluded from the benefit of the Scheme of 2019. The answers to FAQs, referred to by the petitioner have been wrongly interpreted and there is nothing in answers to any of the FAQs much less answers to FAQ Nos.10 and 39 to even remotely suggest that the petitioner would be eligible to make declaration under the 'Voluntary Disclosure' category as per Section 125(1)(f)(i) of the Scheme of 2019 and on the contrary, answer is otherwise that in such cases where a person has been subjected to an enquiry or investigation or audit under Indirect Tax enactment and if he wants to make a 'Voluntary Disclosure', he would not be eligible to make a declaration under the 'Voluntary Disclosure' category as per Section 125 (1)(f)(i) of the Scheme of 2019. Answer to question No.39 would not mean that where a person



has received an intimation for audit, enquiry or investigation after 30.06.2019, he would not be ineligible to make a 'Voluntary Disclosure' and get the benefit of the Scheme of 2019. As the petitioner is clearly excluded being one falling in category stated in Clause (f) under Sub-Section (1) of Section 125 of the Scheme of 2019, which is a forgone conclusion, on the face of the statutory Scheme, the petitioner is not entitled to any relief only on the ground of violation of principles of natural justice though, it was not entitled to such hearing as the petitioner itself is guilty of suppression of material facts that before submission of 'Voluntary Disclosure' on 30.06.2019, admittedly, audit proceedings were initiated vide Letter dated 28.11.2019 requiring the petitioner to submit documents so that audit could be completed.

18. In support of his submission, learned counsel for the respondents has placed reliance on a Circular dated 29.10.2019 (not filed by the respondents) and order dated 18.02.2022 of the Hon'ble Supreme Court in SLP No.2070 of 2022 (M/s. Yashi Constructions Versus Union of India and Others).

19. We have given our anxious consideration to the elaborate submissions made by the learned counsel for the respective parties, perused the relevant provisions of law referred to by both the parties and particularly the Scheme of 2019 and various decisions relied upon by the respective parties.

20. It would be apposite to examine the relevant Scheme of 2019 and the background in which such a Scheme was introduced.

21. (Sabka Vishwas) (Legacy Dispute Resolution) Scheme, 2019 was introduced by the Finance (No.2) Act, 2019, which was notified in the Gazette of India, Extra Ordinary on 01.08.2019. Statement of objects



and reasons with which the Scheme was introduced was that 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. It was further provided that the Scheme shall be enforced by the Central Government from a date to be notified. The statement of objects and reasons further declared that the Scheme provides that eligible person shall declare the tax due and pay the same in accordance with the provisions of the Scheme of 2019. It was also stated that the Scheme provides certain immunities including reliefs against 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.

22. While proposing the Scheme as part of her budget speech in the year 2019-20, Hon'ble Finance Minister, Government of India stated as follows:-

"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."

23. Further the Central Board of Indirect Taxes and Customs had also issued Circular on 27.08.2019 informing all the Principal Chief Commissioners/Chief Commissioners/Principal Director Generals and Director Generals that the Central Government had announced the



Scheme as part of Union Budget for the year 2019-20 and the authorities were also informed about the notification of (Sabka Vishwas) (Legacy Dispute Resolution) Scheme Rules 2019.

24. Clauses-2 & 3 of the said Circular dated 27.08.2019 mentioned that the Scheme is bold endeavour to unload the baggage relating to the legacy taxes viz. Central Excise and Service Tax that have been subsumed under GST and to allow business to make a new beginning and to focus on GST. It was, therefore, highlighted that it is incumbent upon all officers and staff of the CBIS to partner with the trade and industry to make the Scheme a grand success.

25. Further more under para-3 thereof, it was stated that the dispute resolution and amnesty are the two components of the Scheme of 2019. While the dispute resolution component is aimed at liquidating the legacy cases locked up on the litigations at various forums, the amnesty component gives an opportunity to those, who have failed to correctly discharge their tax liability to pay the tax dues. It was further stated that the Scheme offers substantial reliefs to the tax payers and others, who may potentially avail it. The circular also highlighted that the Scheme also focuses on the small tax payers as would be evident from the fact that the extend of relief provided is higher in respect of cases involving lesser duty (smaller tax payers can generally be expected to face disputes involving relatively lower duty amounts).

26. Even Hon'ble Finance Minister, Government of India while proposing the Scheme as part of her budget speech in the year 2019-20 stated that huge pending litigations from pre-GST regime are areas of concern and, therefore, there is need to unload this baggage and allow the business to move on and thereby urged the trade and



business to avail the opportunity and to be free from the legacy litigation.

27. In view of what has been referred to herein above, it is clear that the Scheme has twin objectives of liquidation of past disputes pertaining to Central Excise and Service Tax on the one hand and disclosure of unpaid taxes on the other hand, the primary focus is to unload the baggage of pending litigations in respect of Service Tax and Central Excise from pre-GST regime so that the business can move on.

28. However, by express provision contained in Section 125 of the Finance (No.2) Act, 2019, certain category of persons were clearly excluded from the benefit of the Scheme. Section 125 of the Finance (No.2) Act, 2019, being relevant for our purpose is reproduced herein 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;

(f) a person making a voluntary disclosure,—

(i) after being subjected to any enquiry or investigation or audit; or



(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;

(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.

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.

29. Therefore, express exclusion of certain category of persons clearly depicts the legislative intention that the benefit of the Scheme is not available for those, who are within the mischief of exception clause. All other persons, who are not within the said exception as

engrafted under Section 125 of the Finance (No.2) Act, 2019 would be eligible to make declaration under the Scheme and certainly in those cases, where the persons are eligible for declaration, their declarations would be required to be processed in terms of provisions contained in Sections 126 to 130 of the Finance (No.2) Act, 2019, which includes verification of declaration, issuance of a statement by designated Committee, rectification of errors and finally issuance of discharge certificate as conclusive of matter and time period. Restrictions of the Scheme have been engrafted in Section 130 of the Finance (No.2) Act, 2019.

30. The exception clauses, as carved out in Section 125(1) of the Finance (No.2) Act, 2019 which are intended to exclude from the benefit of the Scheme of 2019, certain category of persons, are required to be construed strictly and there is no scope for liberal interpretation of the exception clauses. It is only when a person is not covered in any of the exception clauses as enumerated therein, he



becomes entitled for verification and grant of relief on the basis of declaration given by him in accordance with the Scheme. In other words extending benefit of the Scheme to those, who are expressly excluded from the benefit of the Scheme of 2019, would be against the legislative intention, as stated in the statutory policy.

31. Amongst various categories of persons, who have been expressly excluded from the purview of the Scheme, one of the category is of those, 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 30.06.2019, as provided in Clause (e) of Sub-Section (1) of Section 125 of the Finance (No.2) Act, 2019.

32. Just after that clause, another Clause (f) is incorporated which deals with yet another separate and distinct class of persons making 'Voluntary Disclosure' after being subjected to any enquiry or investigation or audit or those persons making a 'Voluntary Disclosure' having filed a return under Indirect Tax enactment wherein, he has indicated an amount of duty as payable, but has not paid it.

33. Clause (e) & Clause (f), as mentioned herein above are two distinct and separate categories. While in Clause (e), a cut off date of 30.06.2019 has been provided, the legislature, while excluding a person making a 'Voluntary Disclosure' has not provided the same cut off date i.e. 30.06.2019 in Clause (f).

34. On a plain reading of Clause (f) as stated, where a person seeks benefit of the Scheme by making a 'Voluntary Disclosure', after being subjected to any enquiry or investigation or audit, he also stands excluded from the benefit of the Scheme. This certainly would include



a person, who after promulgation of the policy has been subjected to any enquiry or investigation or audit and only thereafter, he submits declaration seeking benefit of the Scheme of 2019. The provisions contained as above, are unequivocally clear and unambiguous and does not leave any scope to entertain any doubt.

35. The aforesaid constructive interpretation becomes clear upon perusal of SVLDRS-1 referable to declaration under Section 125 of the Finance (No.2) Act, 2019 read with Rule 3 of the (Sabka Vishwas) (Legacy Dispute Resolution) Scheme Rules, 2019, column 8 which is in the form of questionnaire is as below:-

8. Please answer Yes or No:

1.	Have you been convicted for an offence for the matter for which this declaration is being made? [Note : If you answer YES to this question, you are ineligible to proceed further under the Scheme.]	Yes <input type="checkbox"/> No <input type="checkbox"/>
2.	Have you filed an application in the Settlement Commission for the case for which this declaration is being made? [Note : If you answer YES to this question, you are ineligible to proceed further under the Scheme.]	Yes <input type="checkbox"/> No <input type="checkbox"/>
3.	Are you seeking to make this declaration with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944 (specified petroleum and tobacco products)? [Note : If you answer YES to this question, you are ineligible to proceed further under the Scheme.]	Yes <input type="checkbox"/> No <input type="checkbox"/>
4.	Are you seeking to make this declaration with respect to a show cause notice of refund/erroneous refund? [Note : If you answer YES to this question, you are ineligible to proceed further under the	Yes <input type="checkbox"/> No <input type="checkbox"/>



	<i>Scheme.]</i>	
5.	<p>Whether final hearing with regard to a matter in adjudication or appeal has taken place on or before 30.06.2019 for the matter for which this declaration is being made?</p> <p>[Note : If you answer YES to this question, you are ineligible to proceed further under the LITIGATION category.]</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>
6.	<p>Have you been subjected to any audit under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 in respect of the goods/services or both for which this declaration is being made?</p> <p>[Note : If you answer YES to this question, you are ineligible to proceed further under the VOLUNTARY DISCLOSURE category.]</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>
7.	<p>Have you received any written communication from a Central Excise Officer with regard to any audit to be conducted?</p> <p>[Note : If you answer YES to this question, you are ineligible to proceed further under the VOLUNTARY DISCLOSURE category.]</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>
8.	<p>Have you been subjected to any enquiry or investigation under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 in respect of the goods/services or both for which this declaration is being made by way of any of the following:</p> <p>(a) search of premises</p> <p>(b) issuance of summons</p> <p>(c) requiring the production of accounts, documents or other evidence</p> <p>(d) recording of statements</p> <p>[Note : If you answer YES to this question, you are ineligible to proceed further under the VOLUNTARY DISCLOSURE category.]</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>
9.	<p>Have you filed any return for the period for which declaration is being made showing the amount of</p>	Yes <input type="checkbox"/> No <input type="checkbox"/>



	duty to be payable but not having paid it? [Note : If you answer YES to this question, you are ineligible to proceed further under the VOLUNTARY DISCLOSURE category.]	
10.	Have the tax dues with regard to the matter under enquiry, investigation or audit NOT been quantified on or before 30.06.2019? [Note : If you answer YES to this question, you are ineligible to proceed further under the INVESTIGATION, ENQUIRY OR AUDIT category.]	Yes <input type="checkbox"/> No <input type="checkbox"/>

36. The questionnaire is formulated keeping in view various exception clauses under Sub-Section (1) of Section 125 of the Finance (No.2) Act, 2019. Question No.8 clearly requires the declarant to disclose whether he has been subjected to any enquiry or investigation under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 in respect of the goods/services or both for which declaration is being made by way of search of premises, or issuance of summons, or requiring the production of accounts, documents or other evidence or recording of statement.

37. The note appended thereto makes it clear that if the answer is yes, the declarant is ineligible to proceed further under the 'Voluntary Disclosure' category.

38. In view of the above, it is crystal clear that a person making 'Voluntary Disclosure' after being subjected to any enquiry or investigation or audit is clearly ineligible to avail the benefit of the Scheme of 2019 and, therefore, ineligible to proceed further under the 'Voluntary Disclosure' category.

39. The facts floating on the surface and not disputed in the present case are that vide Communication dated 28.11.2019, the petitioner



was intimated regarding conduct of Service Tax Audit under E.A. 2000. Petitioner was duly informed that the Internal Audit Group 10 Circle, Jodhpur comprising of stated officials therein has been deputed by the Commissioner to take up the Service Tax audit under E.A. 2000 of the accounts/records for the last five years of petitioner's unit/organization. It was clearly stated that the Internal Audit of Service Tax record/returns/accounts is to be conducted under E.A. 2000. The petitioner was requested to furnish enumerated documents from the last five years or from the date of last audit, whichever is later within a week to the concern office. Petitioner has not disputed regarding the same, but as pleaded by it in the petition, it requested the authorities to stay its hands even though, no declaration under 'Voluntary Disclosure' category was submitted by the petitioner.

40. Indisputably, petitioner submitted its declaration under 'Voluntary Disclosure' category only on 31.12.2019. In the Internal Audit Report dated 08.01.2021, it has been concluded that the petitioner has been held liable for payment of various dues along with interest and penalty on various heads.

41. It has been clearly stated in Para-4 thereof that though, the petitioner was requested to provide financial documents to conduct the audit vide Letter dated 28.11.2019 followed by reminders and summons on various dates, ultimately, petitioner provided copy of balance sheet, income tax returns and other relevant documents only on 04.01.2021.

42. It would thus be clear that the petitioner fell within the mischief of Clause (f) of Sub-Section (1) of Section 125 of the Finance (No.2) Act, 2019 and was thus, not entitled to avail the benefit of the Scheme



of 2019 by submitting a declaration. The petitioner suppressed this most material fact of it having been subjected to audit proceedings vide intimation dated 28.11.2019 while submitting its declaration on 31.12.2019. This apparently was to mislead the authorities by withholding relevant information, upon disclosure of which, its declaration was not liable to be proceeded further. The petitioner by such suppression, procured benefit by way of issuance of discharge certificate. As soon as this fact was brought to the notice of the authorities, provisions of Section 129 (2)(C) of the Finance (No.2) Act, 2019 were invoked. The provision clearly states 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 the discharge certificate, it shall be presumed as if declaration was never made and proceedings under the applicable Indirect Tax enactment shall be instituted. That is what was stated in Communication dated 12.12.20220 and the authority rightly concluded that the declaration filed by the petitioner under the category of 'Voluntary Disclosure' appears to have been filed wrongly as audit had already been initiated. Resultantly, SVLDRS applications were cancelled.

43. Reliance placed on clarification by way of answers about FAQ No.10 and FAQ No.39, is completely misplaced. Question No.10 and answer to the same is as below:-

"Q10. I have been subjected to an enquiry or investigation or audit under indirect tax enactment and I want to make a voluntary disclosure regarding the same. Am I eligible for the Scheme?



Ans. No, you are not eligible to make a declaration under the voluntary disclosure category as per section 125(1)(f)(i)."

44. A bare perusal of the said answer shows that where a person subjected to an enquiry or investigation or audit under Indirect Tax enactment and if he wants to make a 'Voluntary Disclosure' regarding the same, he will not be eligible to make a declaration under the 'Voluntary Disclosure' category, reference made to Section 125 (1)(f) (i) of the Finance (No.2) Act, 2019,

45. Similarly question No.39 and answer to the same is as below:-

Q39. I have received an intimation for audit, enquiry or investigation on or before 30-6-2019. Can I make a voluntary disclosure of my liability?

Ans. No. If intimation for audit, enquiry or investigation has been received by you on or before 30-6-2019 then you cannot make a voluntary disclosure of your liability under the Scheme."

46. The FAQ is with reference to a case where intimation for audit enquiry or investigation has been received on or before 30.06.2019. There also the answer is negative that the person cannot make 'Voluntary Disclosure' of liability under the Scheme. Question 39 related to a different situation where a person has received an intimation for an enquiry or investigation on or before 30.06.2019.

47. The aforesaid two frequently FAQs and answers to that do not support the case of the petitioner at all.

48. Learned counsel for the petitioner has placed reliance upon the decision of the Bombay High Court in the case of **Thought Blurb Versus Union of India (Supra)**. In the aforesaid decision, Scheme of 2019 was examined and it was observed that the Scheme has an objective of liquidation of past disputes pertaining to the subsumed on



the one hand and disclosure of unpaid taxes on the other hand and further that the Scheme was intended to unload the baggage of huge pending litigations from pre-GST regime through a legacy dispute resolution mechanism. It was also observed that the approach should be to ensure that the Scheme is successful and, therefore, a liberal view embedded with the principles of natural justice is called for. With such an interpretation of a Scheme, declaration of the petitioner therein under the Scheme of 2019 was examined. Application of the petitioner was rejected on the ground of ineligibility with the remark that tax dues were not finalised as on 30.06.2019.

49. Therefore, the issue raised in that case was different. On factual score, that was not a case dealing with a case like the present one in hand.

50. The petitioner has placed reliance upon the another decision of the Bombay High Court in the case of **New India Civil Erectors Pvt Ltd Versus Union of India (Supra)**. However, for the reasons stated herein above and the interpretation placed upon statutory Scheme of 2019, particularly interpretation of various exception clauses including Clause (f) of Sub-Section (1) of Section 125 of the Finance (No.2) Act, 2019, we find ourselves unable to subscribe to the view taken in that case that the enquiry or investigation or audit referred to in clause (f) (i) would necessarily have to be initiated on or before 30.06.2019.

51. Once we have considered the statutory Scheme based on admitted facts on record and thereby reached at the conclusion based on our own reading of clause (f) of Sub-Section (1) of Section 125 of the Finance (No.2) Act, 2019, in our considered opinion, as also in view of the foregone conclusion, only on the ground that the



opportunity of hearing was not afforded to the petitioner, we are not inclined to interfere with the decision of the respondents in rejecting petitioner's declaration holding ineligible to avail the benefit of the Scheme of 2019.

52. The subsequent challenge to the legality and validity of audit proceedings, internal audit report and show cause notice must also fail.

53. In the result, the petition, being devoid of any substance, deserves to be dismissed.

54. Accordingly, the petition is dismissed.



(MADAN GOYAL VYAS),J

Sanjay Kumawat-37

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

