IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 897 OF 2020

Quant Broking Pvt Ltd.)
having its registered office at Reliance)
Centre Off Western Express Highway,)
Santacruz (East), Mumbai 400 055) ….Petitioner

V/s.

1. Union of India)
The Joint Secretary, Department of Revenue)
Ministry of Finance having it Office at)
Udyog Bhavan, New Delhi – 110 001)

2. Central Board of Indirect Taxes & Customs)
Department of Revenue, Ministry of Finance)
having its office at Udyog Bhavan,)
New Delhi 110 001)

3. Designated Committee under Sabka)
Vishwas (Legacy Dispute Resolution))
Scheme, 2019, Through its members,)
13th Floor, Air India building, Marine Drive)
Nariman Point, Mumbai 400 021)

4. Principal Commissioner CGST & CX)
Mumbai South Commissionerate, 13th floor)
Air India Building, Marine Drive,)
Nariman point, Mumbai 400 021)

5. Assistant Commissioner of CGST & CX)
Mumbai South Commissionerate, 13th floor)
Air India Building, Marine Drive,)
Nariman point, Mumbai 400 021) ..Respondents

Mr. Gopal Mundra a/w Mr. Parth Parikh i/b Economic Laws Practice for Petitioner
Mr. P. S. Jetly, Senior Advocate a/w Mr. J. B. Mishra, Ms Sangeeta Yadav and Mr. Dhananjay Deshmukh for Respondents

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CORAM : K.R. SHRIRAM &
PRITHVIRAJ K. CHAVAN JJ
DATED : 6th JUNE 2022

(ORAL JUDGMENT PER K.R. SHRIRAM J.) :

1 Petitioner is a member of various stock exchanges including National Stock Exchange and Bombay Stock Exchange and undertakes trading in shares, currencies and derivatives instruments as a stock broker for its clients. Petitioner discharges service tax on the brokerage / commission received from the clients towards rendition of services of stock broking services to its domestic and foreign clients. Petitioner also undertakes trading on its own account as well.

2 In 2019, Government of India introduced a scheme called “Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (the scheme) under Chapter V of the Finance Act 2019 (Finance Act). The scheme was applicable to various enactments as mentioned under Section 122 of the Finance Act and that included the Finance Act 2004, Finance Act 2007, Finance Act 2015 and Finance Act 2016. Under the scheme, all persons were eligible to make a declaration to settle under the Scheme except those specifically excluded under Section 125 of the Finance Act. As per the scheme, the eligible person would make a declaration under the scheme, which shall be considered by the designated committee under Section 126 of the Finance Act and the designated committee would issue a statement under Section 127 of the Finance Act. How much will be the tax due and payable under the scheme is provided for under Section 123 of the Finance Act.

3 Petitioner had filed such declaration under the scheme. The declaration has been accepted but according to petitioner, respondents have not given credit to certain amounts which, according to petitioner, has been paid. If such credit has been given, there will be no further amount payable by petitioner and in fact there will be surplus amount with the Government, which Government need not refund by virtue of Section 124 of the Finance Act. The amount which according to petitioner that had to be adjusted was about Rs.5,37,25,305/-.

4 Before petitioner filed the declaration under the scheme, respondent No.5, who is Assistant Commissioner of CGST and Central Excise, by a letter dated 19th March 2015 had raised objections regarding non payment of service tax on brokerage received from foreign clients / foreign institutional investors for the period 1st July 2012 to 30th September 2014 and non reversal of CENVAT credit attributable to exempt activity of trading of securities, as per the provisions under Rule 6 of the Credit Rules. In response to the objections, petitioner paid tax Rs.6,86,85,255/- (Rs.1,49,59,950/- in cash and the balance of Rs.5,37,25,305/- by reversal of credit in Service tax returns filed for the period April 2015 to September 2015). Thus, according to petitioner it paid tax of Rs.6,86,85,255/- towards reversal of credit attributable to exempted services of trading of securities in terms of CENVAT credit Rules 2004. Petitioner submitted further communication dated 15th October 2015 to respondent no.5 outlining the detailed working.

5 Subsequently, three show cause notices dated 18th March 2016, 28th April 2017 and 22nd February 2019 were issued by respondent no.5 alleging non payment of Service tax on brokerage received towards service provided to foreign clients and non reversal CENVAT credit attributable to the exempted activity of trading of securities provided by petitioner and imposition of applicable interest and penalty thereto. As per the show cause notices, petitioner was given credit for Rs.1,49,59,950/- that was paid in cash but respondent no.5 did not allow appropriation of the amount of Rs.5,37,25,305/- paid by reversal of credit. Certain other demands were also raised. Petitioner responded to the show cause notices following which respondent no.4 the Principal Commissioner of CGST and Central Excise passed an order dated 29th March 2019. By the said order, a portion of the demand raised in the show cause notices was set aside but other portions were upheld. In the order passed by respondent no.4, respondent no.4 held that petitioner failed to furnish CENVAT credit register showing payment of Rs.5,98,45,284/- at the time of filing reply to the show cause notice or at the time of hearing and accordingly, the contention of adjustment of Rs.5,98,45,284/- against alleged tax demand was dismissed. Aggrieved by the said order, petitioner filed an appeal before the Customs Excise Service Tax Appellate Tribunal (CESTAT). This appeal was pending disposal on 30th June 2019. This date of 30th June 2019 is relevant because under Sub Section (1) of Section 125 of the Finance Act, persons who have filed the appeal before the Appellate Forum and such appeal has been heard finally

on or before 30th June 2019, were not eligible to make a declaration. Since petitioner's appeal was still pending as on 30th June 2019, petitioner was entitled to make declaration under the Scheme. Petitioner's eligibility is not in question.

6 Petitioner, in view of the introduction of the scheme decided to take advantage of the scheme because the scheme, *inter alia*, provides waiver of partial tax demand and for certain immunities from penalty, interest or any other proceedings including prosecution in respect of specified legal disputes pending disposal as on 30th June 2019. Section 124 of the Finance act 2019 also provides that every declarant under the scheme shall be entitled to a relief equal to 50% of the total tax dues and waiver of interest and penalty in an appeal pending as on 30th June 2019, where the amount of duty demand is in excess of Rs.50 Lakhs.

7 Section 124(2) of the Finance Act 2019 provides that any amount paid as pre-deposit at any stage of the appellate proceedings under the Indirect Tax enactment or as deposit during enquiry, investigations or audit shall be deducted while computing the total amount payable by the declarant. Respondent no.2, which is Central Board of Indirect Taxes and Customs, issued a circular dated 12th December 2019 by which, it clarified that even such amounts paid after issuance of show cause notice but before adjudication should be adjusted / deducted when issuing the statement indicating the amount payable by the declarant. Respondent no.2, prior thereto, had issued circular dated 27th August 2019, in which it clarified that

in certain matters, tax may have been paid by utilising the input credit, and the matter is under dispute. In such cases, the tax already paid through input credit shall be adjusted by the designated committee at the time of determination of the final amount payable under the Scheme. This circular also provides that though the scheme provides a period of 60 days for the designated committee to decide on a declaration filed by a taxpayer, a speedier disposal is expected by the board. The circular further stated that as the duty amount is already known in the form of a show cause notice/order of determination or a written communication or order in appeal or disputed amount in appeal, and the tax relief will be calculated by the system automatically, where these particulars are found to be correct as per the declaration filed and the records available with the department, such cases must also be finalised within 15 days of the filing of the declaration. In fact, the circular indicates the designated committee is expected to consider the declaration with the documents filed and to examine whether the particulars are found to be correct not only as per the declaration but also as per the records available with the department and for this purpose, if the declarant seeks an opportunity of being heard personally, the decision should be taken only after giving the declarant a personal hearing.

8 It is petitioner's case that in the declaration, petitioner had mentioned that the duty amount payable was Rs.11,29,74,928/- and the amount deposited was Rs.8,73,19,575/-. Therefore, as per Section 124 of the

Finance Act, petitioner was to pay only 50% of Rs.11,29,74,928/- and since petitioner had already paid Rs.8,73,19,575/-, no further amount was payable by petitioner. Petitioner also agrees that it is not entitled to any refund under the Finance Act of the amount of Rs. 3,08,32,111/- being the difference between Rs.8,73,19,575/- and Rs.5,64,87,464/- which is 50% of the duty payable.

9 Respondent no.3, which is the designated committee, issued Form No.3 being a statement under Section 127 of Finance Act, by which it accepted the tax dues was Rs.11,29,74,928/- as declared by petitioner. 50% tax relief petitioner was entitled was Rs.5,64,87,464/-. But respondent no.3 gave credit of only Rs.2,39,66,528/- as paid by petitioner and declared that petitioner was to pay the balance amount of Rs.3,25,20,936/-. Prior to issuance of statement in Form-3, respondent no.3 had given a personal hearing to petitioner, in which petitioner explained as to how it was entitled to credit of Rs.8,73,19,575/- but petitioner's submissions were not accepted. The reasons according to respondent no.3 was as under:

> *"1. The proceedings of SVLDRS do not envisage setting aside of any finding already recorded by the adjudicating authority. The adjudicating authority in para 39.8 already rejected adjustment of CENVAT credit claimed to be made in their CENVAT credit register. This finding can be set aside only in appeal / denovo adjudication.*
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> *2. Interest cannot be adjusted against the duty dues. Pre-deposits is always of duty involved in term of section 35 F of Central Excise Act, 1944 in cases, where duty and penalty / interest is disputed."*

10 According to Mr. Mundra, as per the scheme and the circulars issued, respondent no.3 was expected to find whether the particulars as submitted

by petitioner in the declaration was correct and respondent no.3 should have also examined the records available with the department and not simply dismissed petitioner's submissions by saying that whether petitioner is entitled to the credit can be examined only in the appeal / denovo adjudication. Mr. Mundra also relied upon two judgments of this court in ***Code Engineers Pvt. Ltd. Vs. Union of India***[1] and ***Thought Blurb Vs. Union of India & Ors.***[2] Relying on these judgments, Mr. Mundra submitted that a conjoint reading of sub Section (1) of Section 126 of the Finance Act and sub Rule (1) of Rule 6 of Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules 2019 makes it clear that declaration made by the declarant shall be verified by the designated committee and such verification shall be based on particulars furnished by the declarant as well as the records available with the department, which would include show cause cum demand notice or order in original as the case may be. Mr. Mundra further submitted that to verify means to confirm or establish truth or truthfulness. Mr. Mundra submitted that, therefore, respondent no.3 ought to have examined whether petitioner had really made payment as per the reversal of credit amounting to Rs.5,37,25,305/-.

11 Mr. Jetly submitted that if petitioner's submissions were to be accepted, then what in effect petitioner is submitting is that respondent no.3 should actually dispose of the appeal filed by it pending before CESTAT and that is not the purport of the scheme. Mr. Jetly submitted that petitioner is

1. 2021 (46) GSTL 400 (Bom.)
2. 2020 (43) GSTL 499 (Bom)

not rendered remedy less and if petitioner is unhappy with the statement issued by respondent no.3, petitioner can withdraw the declaration and pursue the appeal which is pending before the CESTAT. Mr. Jetly submitted that the petition has to be dismissed.

12 Having considered the scheme and rules framed under the scheme, one thing is very clear that it is the intention of Union of India also to put an end to a litigation where the declarant wants to put an end to. Any person can be a declarant except those excluded under Section 125 of the Finance Act. In our view, having considered the various provisions of the scheme alongwith circulars issued by respondent no.2, one thing that is certain is any amount paid either in cash or by virtue of input credit should be reduced at the time of determination of the final amount payable under the scheme. As held by this court in *Code Engineers Pvt Ltd.* (Supra) the crucial word is "verify" used in Section 126(1) of the Finance Act and Sub Rule (1) of Rule 6 of the Rules. Verify would mean to confirm or establish the truth or truthfulness of statement made in the declaration. Paragraphs 32 to 38 of Code Engineers Pvt Ltd. (Supra) reads as under:

> *"32. From a careful analysis of the above, it is quite evident that the scheme has been introduced primarily for liquidation of past disputes pertaining to central excise and service tax so that trade and industry can move ahead so also the tax administration which can then fully focus on the smooth implementation of goods and services tax (GST). Basic thrust is to unload the baggage of pending litigations centering around service tax and excise duty which stood subsumed in GST. As an incentive those making the declaration and paying the declared tax verified and determined in terms of the scheme would be entitled to certain benefits in the form of reduced tax liability, waiver of interest, fine, penalty and immunity from prosecution. This is a beneficial scheme for settlement of legacy disputes. Therefore, the officials while considering declarations made under the scheme must have the broad*

picture in mind. 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.

33. Section 126 deals with designated committee. As per sub-section (1), the designated committee shall verify correctness of the declaration made by the declarant under section 125 in such manner as may be prescribed. However, as per the proviso, no such verification shall be made in a case of voluntary disclosure. Sub-section (2) deals with composition and function of designated committee.

33.1. So from sub-section (1) of section 126, we find that designated committee is mandated to verify correctness of the declaration made by a declarant in such manner as may be prescribed.

34. In exercise of the powers conferred by sub-sections (1) and (2) of section 132 of the Act, central government has made the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (briefly 'the Rules' hereinafter). While rule 5 deals with constitution of designated committee, rule 6 deals with verification by designated committee and issue of estimate etc. Sub-rule (1) is relevant. It says that the declaration made under section 125, except in a case of voluntary disclosure, shall be verified by the designated committee based on the particulars furnished by the declarant as well as records available with the department.

35. A conjoint reading of sub-section (1) of section 126 and sub-rule (1) of rule 6 makes it clear that declaration made by a declarant shall be verified by the designated committee. Such verification shall be based on particulars furnished by the declarant as well as the records available with the department which would include show cause-cum-demand notice or order-in-original, as the case may be.

36. The crucial word appearing in sub-section (1) of section 126 which finds its resonance in sub-rule (1) of rule 6 is 'verify'. What is the meaning of or connotation of the word "verify"? As per Concise Oxford English Dictionary, Indian Edition, "verify" means to make sure or demonstrate that something is true, accurate or justified; swear to or support a statement by affidavit. Black's Law Dictionary, Eighth Edition, has defined the word "verify" to mean-
1. to prove to be true; to confirm or establish the truth or truthfulness of; to authenticate.
2. To confirm or substantiate by oath or affidavit; to swear to the truth of.

37. It is a settled principle of interpretation that words and expressions used in a legislation must take their colour from the context in which they appear. For ascertaining the true meaning of words and expressions used in a legislation, it is therefore necessary that the legislation must be read or understood as a whole.

38. We have already analyzed the object and purport of the scheme by adverting to the speech of the Hon'ble Finance Minister, statement of

> *objects and reasons and circular of the Board dated 27.08.2019. From the above, it is evident that the central focus of the scheme is settlement of legacy disputes by giving incentives to the declarant subject to eligibility. The designated committee, therefore, has to perform its duty of verifying correctness of the declaration keeping the above objective in mind. The verification required to be carried out by the designated committee is certainly not an adjudicatory exercise or an appellate exercise. Viewed in the above context and keeping in mind the object of the scheme, verification of a declaration by the designated committee cannot be confined to the show cause-cum-demand notice or to the order-in-original. Mandate of the designated committee is to verify correctness of the declaration based on the particulars furnished by the declarant as well as the records available with the department."*

13 Therefore, the obligation of respondent no.3 is to verify the truth or truthfulness of the declaration made by petitioner. In our view, that would also include verification of petitioner's statement in the declaration that it has paid Rs.8,73,19,575/- including Rs.5,37,25,305/- by reversal of credit in service tax returns filed for the period April 2015 to September 2015. Mr. Mundra, as stated earlier, submitted that petitioner had given proof and details to respondent no.3 during the personal hearing. If that was the case, respondent no.3 ought to have verified the truthfulness of petitioner's statement whether the amount of Rs.5,37,25,305/- by reversal of credit in service tax returns was correct. By verifying this truthfulness would not, in our view, amount to disposing or hearing the appeal filed by petitioner on merits. Respondent no.3 should not take such pedantic approach and should keep in mind the purpose behind introducing the scheme, i.e., liquidation of past disputes so that the business can move ahead and the tax administration can also focus on the smooth implementation of the goods and services tax.

14 In the circumstances, we hereby quash and set aside the statement dated 23rd January 2020. Respondent no.3 is directed to consider all documents and records submitted by petitioner including proof of payment of Rs.5,37,25,305/- alongwith records available with the department and issue a fresh statement under Section 127 of the Finance Act. Before issuing any such statement, respondent no.3 shall grant a personal hearing to petitioner, notice of which shall be given atleast 7 working days in advance.

15 We make it clear that we have not made any observations on the merits of petitioner's submissions that it is entitled to credit of Rs.5,37,25,305/-. That respondent no.3 shall consider independently.

16 Petition accordingly stands disposed. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.) (K.R. SHRIRAM, J.)