

Before Jaswant Singh & Sant Parkash, JJ.

**PRO SPORTIFY PRIVATE LIMITED THROUGH ITS
DIRECTOR SH. MUKESH KUMAR, GURGAON, HARYANA—**
Petitioner

versus

**PRINCIPAL COMMISSIONER, CENTRAL GOODS AND
SERVICES TAX, GURUGRAM, HARYANA AND ANOTHER—**
Respondents

CWP No.8341 of 2020

January 21, 2021

Constitution of India, 1950—Arts. 14 and 226—Finance Act, 2019—Ss. 121 (g) and (m), 123, 124, 125—Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019—Challenge to rejection of voluntary disclosures/ declarations under Amnesty Scheme on sole ground of initiation of enquiry—Held, improper—Petitions allowed—Any enquiry/audit/investigation initiated after the scheme came into force cannot make any person ineligible—Amnesty Scheme introduced to reduce litigation and realize pending dues—Being beneficial legislation—Scheme to be given liberal interpretation which makes it successful—Strict interpretation should be avoided—Frustrates intent and purport.

Held that, having scrutinized the rival submissions and the record of the case, we find that Government has introduced Amnesty Scheme to reduce the luggage of litigation and realize pending dues. The litigants were beneficial as they got immunity from interest and penalty and government realized dues without litigation. Though the scheme is part of taxing statute yet it is piece of beneficial legislation.

(Para 5)

Further held that, the dispute lies in narrow compass. As per respondent, declarant should not be subjected to enquiry, investigation or audit on the date of filing application, whereas as per petitioner 30th June, 2019 was cut off date for all categories and declaration could be filed in between 01.09.2019 to 31.12.2019, thus any enquiry after 01.09.2019 cannot disentitle a declarant from this beneficial piece of legislation. The foundation of argument of respondent rests upon Section 125 of the Finance Act, 2019.

(Para 6)

Further held that, Amnesty Scheme is a piece of beneficial legislation and liberal interpretation which makes the scheme successful should be advanced. Strict interpretation which frustrates intent and purport of beneficial legislation deserves to be avoided. Our opinion is fortified by recent judgment of Hon'ble Supreme Court in *Brahampal @ Sammay and another vs. National Insurance Company*, Civil Appeal No. 2926 of 2020 decided on 07.08.2020.

(Para 12)

Further held that, Section 125(1)(f) debars a person from making voluntary disclosure after being subjected to any enquiry or investigation or audit. As per respondent, the date of initiation of enquiry is irrelevant as aforesaid clause debars a person who has been subjected to enquiry. If on the date of filing declaration, some notice in form of enquiry is pending though issued after 1.9.2019, applicant is debarred. The Central Board of Indirect Taxes and Customs (for short 'Board') has issued various circulars enlarging scope of the scheme. Circular dated 29.10.2019 permits a person to file declaration who has filed appeal after 30.06.2019 though he is not otherwise entitled as per FA, 2019. Similarly, as per Para 2 (viii) of the circular dated 12.12.2019, where show cause notice has been issued on or after 1.7.2019, applicant is not eligible to opt for the scheme still application can be filed under the category of 'arrear'.

(Para 13)

Further held that, our courts are flooded with avoidable litigation and government by way present scheme has initiated step to minimise litigation and generate revenue, thus keeping in mind intent and purport of the scheme as well Board Circular, it would be appropriate to liberally interpret Section 125 of FA, 2019. It is apt to notice that in case of voluntary disclosure, as per section 124(1)(e) of the FA, 2019 no immunity from tax liability is available though immunity from 40% of tax liability is available in other categories including arrears.

(Para 15)

Further held that, the scheme came into force w.e.f. 01.09.2019, thus any enquiry/audit/ investigation initiated after aforesaid date cannot make any person ineligible because period running from 01.09.2019 to 31.12.2019 is meant for filing application and any event occurring after 01.09.2019 cannot make any person eligible or ineligible. Any other interpretation would be violative of

scheme as well article 14 of the Constitution because there would be discrimination between two persons who are similarly situated on 01.09.2019 but enquiry is initiated against any one of them.

(Para 16)

Jagmohan Bansal, Advocate
for the petitioner(s) (in both cases).

Tajender K. Joshi, Advocate
for the respondents (in CWP No. 8341 of 2020).

Sourabh Goel, Advocate
for the respondents (in CWP No. 9132 of 2020)

JASWANT SINGH, J.

(1) By this order, both the writ petitions bearing CWP Nos. 8341 of 2020 & 9132 of 2020 involving common issue(s) are disposed of. The petitioners through instant petitions are seeking quashing of orders whereby their different declarations filed under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (for short ‘Amnesty Scheme’) have been rejected on the sole ground that department has already initiated enquiry prior to the date of filing declaration. The Amnesty Scheme was introduced by Finance Act, 2019 (for short ‘FA, 2019’).

(2) For the sake of convenience, facts are borrowed from CWP No. 8341 of 2020. The petitioner during 2016-17 neither filed service tax returns nor paid service tax as required under Finance Act, 1994. The petitioner on the introduction of aforesaid Amnesty Scheme filed declaration dated 31.12.2019 under ‘voluntary disclosure’ category. The respondent vide order dated 22.02.2020 (**Annexure P-8**) rejected declaration holding that petitioner has already been subjected to an enquiry, thus declaration under category of ‘voluntary disclosure’ is not maintainable.

(3) Counsel for the petitioner contended that declaration was filed on 31.12.2019 and letter dated 14.10.2019 which is basis of alleged enquiry was never served upon the petitioner and further any enquiry initiated after 1.9.2019 i.e. date of commencement of scheme is irrelevant. With respect to different categories of applicants, 30th June’ 2019 has been notified as cut- off date but with respect to voluntary category no cut-off date has been prescribed, thus 31.8.2019 must be considered as relevant date because declaration could be filed in between 1.9.2019 to 31.12.2019.

(4) Counsel for the respondents vehemently pleaded that 30th June' 2019 has been notified as cut-off date for different categories of applicants under Section 123 and 125 of Finance Act, 2019 and no date has been notified for the category of 'voluntary disclosure', therefore petitioners are ineligible to benefit of amnesty scheme even though enquiry was initiated after 1.9.2019 i.e. date of commencement of scheme.

(5) Having scrutinized the rival submissions and the record of the case, we find that Government has introduced Amnesty Scheme to reduce the luggage of litigation and realize pending dues. The litigants were beneficial as they got immunity from interest and penalty and government realized dues without litigation. Though the scheme is part of taxing statute yet it is piece of beneficial legislation.

(6) The dispute lies in narrow compass. As per respondent, declarant should not be subjected to enquiry, investigation or audit on the date of filing application, whereas as per petitioner 30th June' 2019 was cut-off date for all categories and declaration could be filed in between 01.09.2019 to 31.12.2019, thus any enquiry after 01.09.2019 cannot disentitle a declarant from this beneficial piece of legislation. The foundation of argument of respondent rests upon Section 125 of the Finance Act, 2019. Sections 123, 124 and 125 are relevant for the disposal of present controversy, which are reproduced as under:-

Section 123 Tax Dues. —For the purposes of the Scheme, "tax dues" means-

(i) where a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

(ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

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

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

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

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

(b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice :

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;

(c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on

or before the 30th day of June, 2019;

(d) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;

(e) where an amount in arrears relating to the declarant is due, the amount in arrears.

Section 124. Relief available under the Scheme:

(1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:—

(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(c) where the tax dues are relatable to an amount in arrears and,—

(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;

(iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—

(A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of the tax dues;

(d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is —

(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;

(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of pre-deposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

Section 125. Declaration under the scheme-

(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.

(7) From the reading of above quoted sections and other provisions of the Amnesty Scheme, the contents and reach of the scheme are culled out as below:

(a) Any person may file declaration (i) if show cause notice or appeal is pending adjudication except where final hearing has already concluded on or before 30.6.2019 (ii) if liability has become arrears (iii) if duty liability on account of enquiry/audit/investigation has already been quantified on or before 30.6.2019 (iv) **as voluntary disclosure provided he has not been subjected to enquiry/audit/investigation.**

(b) Sub-clause (ii) of clause (f) of Section 125(1) inhibits a person from filing declaration under voluntary disclosure who has already filed returns disclosing liability whereas definition of ‘**arrears**’ includes such persons and section 124(1)(c)(iii) is extending immunity, thus there is stark contradiction between aforesaid clauses of Section 124 and 125 of FA, 2019.

(iii) Scheme came into force w.e.f. 1.9.2019 and any persons could file declaration on or before 31.12.2019.

(iv) Section 125 does not prescribe any date with respect to

eligibility of any person, however 30th June' 2019 has been specifically notified for different categories of declarations.

(8) Expression enquiry/investigation as well audit has been defined under Section 121(g) and (m) of FA, 2019. Section 121(g) and (m) read:

Section 121(g) “audit” means 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 conducting of audit is received;

(m) “enquiry or investigation”, under any of the indirect tax enactment, shall include the following actions, namely:-

(i) search of premises;

(ii) issuance of summons;

(iii) requiring the production of accounts, documents or other evidence;

(iv) recording of statements;

(9) As per above quoted sub-sections of Section 121 (containing definition of different expressions), enquiry, investigation or audit commences on search of premises, issuance of summons, requiring production of documents or recording of statement or written intimation from central excise officer.

(10) The petitioner in CWP No. 8341 of 2020 has contended that alleged letter dated 14.10.2019 was never served upon them and in CWP No. 9132 of 2020 has contended that alleged summons dated 17.12.2019 was served after rejection of first declaration filed under the category of ‘arrears’ though before filing of fresh application filed under the category of ‘voluntary disclosure’. It would be apt to notice here that respondent has not enclosed copy of letter dated 14.10.2019 with reply and petitioner has pointed out this fact in Petition as well replication.

(11) Without going into question of receipt or non-receipt of notice, before or after filing of first/second declaration, we find that present petitions deserve to be allowed on the ground that notices/summons initiating enquiry/investigation were issued after 1.9.2019 i.e. date of commencement of the scheme. No cut-off date for different persons like convicted for any offence under the Indirect Tax,

arrears, voluntary disclosure etc. has been prescribed. The scheme as per notification No.5/2019-C.E. (N.T.) dated 21.8.2019 came into force w.e.f. 01.09.2019 and declaration could be filed till 31.12.2019. It means for most of the persons, 30th June' 2019 was considered as relevant date and for the category of 'arrears' there was no restriction, however as per respondent voluntary disclosure was not permitted even though enquiry has been initiated after 1.9.2019. Section 125 of FA, 2019 debars few persons from filing declaration but does not prescribe any date though for some categories like pending show cause notice, pending appeal etc. 30.6.2019 has been notified as cut-off date. Had there been intention of the legislature to consider status of a person under the voluntary disclosure category, instead of date of commencement of scheme, as on date of filing declaration, it would have been so provided in Section 125 or any other Section of the FA, 2019. In the absence of any such provision, it would be contrary to the scheme and intent of legislature to hold that status of a person as on date of filing declaration is relevant. The scheme came into force w.e.f. 1.9.2019, thus on the said date right/liabilities, eligibility and non-eligibility stood frozen. If as contended by respondent is upheld, there would be different dates of eligibility for every person who files declaration under the category of 'voluntary disclosure'. Thus, contention of respondent being untenable does not appeal to us.

(12) Amnesty Scheme is a piece of beneficial legislation and liberal interpretation which makes the scheme successful should be advanced. Strict interpretation which frustrates intent and purport of beneficial legislation deserves to be avoided. Our opinion is fortified by recent judgment of Hon'ble Supreme Court in *Brahampal @ Sammay and another* versus *National Insurance Company, Civil Appeal No. 2926 of 2020* decided on **07.08.2020**.

(13) Section 125(1)(f) debars a person from making voluntary disclosure after being subjected to any enquiry or investigation or audit. As per respondent, the date of initiation of enquiry is irrelevant as aforesaid clause debars a person who has been subjected to enquiry. If on the date of filing declaration, some notice in form of enquiry is pending though issued after 1.9.2019, applicant is debarred. The Central Board of Indirect Taxes and Customs (for short 'Board') has issued various circulars enlarging scope of the scheme. Circular dated 29.10.2019 permits a person to file declaration who has filed appeal after 30.6.2019 though he is not otherwise entitled as per FA, 2019. Similarly, as per Para 2(viii) of the circular dated 12.12.2019, where

show cause notice has been issued on or after 1.7.2019, applicant is not eligible to opt for the scheme still application can be filed under the category of 'arrear'. Para 2(vi) of circular dated 29.10.2019 and Para 2(viii) of the circular dated 12.12.2019 extracted:

Para 2 (vi) of circular dated 29.10.2019:

(vi) Representations have also been received that the cases where appeals were filed after 30.06.2019 should also be allowed relief under the Scheme. It is stated that such cases are not covered per se. However, if a taxpayer withdraws the appeal and furnishes the undertaking to the department in terms of Para 2(viii) of Circular No. 1072/05/2019-CX dated 25.09.2019, they can file a declaration under the Scheme.

Para 2 (viii) of the circular dated 12.12.2019:

(viii) There may be cases where the show cause notice were issued on or after 01.07.2019 and such cases are also not covered under any of the categories such as an enquiry or investigation or audit and tax dues having not been quantified on or before 30.06.2019. However, such cases eligible under 'arrears' category depending the fulfilment of other conditions such appeal period being over or appeal having attained finality or the person giving an undertaking that he will not file any further appeal in the matter (Member's D.O. letter F.No. 267/78/19/CX.8 dated 30th October, 2019). Since the main objective behind the Scheme is to liquidate the legacy cases under Central Excise and Service Tax, it would be desirable that the taxpayer in the above mentioned cases are also given an opportunity to avail its benefits. Therefore, the field formations were asked to take stock of such cases, and complete the on-going adjudication proceeding expeditiously following the due process. Further, it would also be desirable that the process of review is also carried out expeditiously in such cases so that the designated committees are able to determine the tax dues within the time stipulated under the Scheme.

(14) The above quoted circulars make intention of the Government clear and lucid. Board has permitted those persons to file declaration who are excluded by Section 125 of the FA, 2019 like hearing of show cause notice or appeal has concluded on or before

30.6.2019 or show cause notice is issued after 30.6.2019 though duty was not quantified on or before 30.6.2019. There is no circular on record which clarifies that no enquiry should be pending on the date of filing declaration though as per our opinion it would have been contrary to the scheme.

(15) Our courts are flooded with avoidable litigation and government by way present scheme has initiated step to minimise litigation and generate revenue, thus keeping in mind intent and purport of the scheme as well Board Circulars, it would be appropriate to liberally interpret Section 125 of FA, 2019. It is apt to notice that in case of voluntary disclosure, as per section 124(1)(e) of the FA, 2019 no immunity from tax liability is available though immunity from 40% of tax liability is available in other categories **including arrears**.

(16) The scheme came into force w.e.f. 01.09.2019, thus any enquiry/audit/investigation initiated after aforesaid date cannot make any person ineligible because period running from 01.09.2019 to 31.12.2019 is meant for filing application and any event occurring after 01.09.2019 cannot make any person eligible or ineligible. Any other interpretation would be violative of scheme as well article 14 of the Constitution because there would be discrimination between two persons who are similarly situated on 01.09.2019 but enquiry is initiated against any one of them.

(17) In the light of above findings, we find that present **petitions** deserve to be allowed and accordingly **allowed**. The impugned orders are hereby set aside.

Shubreet Kaur