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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th February, 2025

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W.P.(C) 4644/2021 & CM APPL. 14299/2021

DALJEET SINGH GILL

.....Petitioner

Through: Mr. Mohit Kumar Hasija, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Premtosh K. Mishra (CGSC) with
Mr. Manish Vashist & Ms. Sanya
Kalsi, Advs. for UOI.
Mr. Atul Tripathi, SSC, CBIC.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Articles 226 and 227 of the Constitution of India, *inter alia*, challenging the Show Cause Notice dated 31st December, 2020 passed by the Deputy Commissioner, Central Tax, Goods and Services Tax, Gurugram.
3. It is the case of the Petitioner-Daljeet Singh Gill that he is running a business under the name and style of M/s Dharti Putra Infotech Inc., which provides Consultation (Business Auxilliary Services). The Petitioner is stated to have failed to deposit the service tax pertaining to the Financial Year 2015-2016 and 2016-2017 w.e.f. 1st April, 2017 to 30th June, 2017.
4. To remedy this situation, the Petitioner applied for resolution of his past disputes as a one time measure under the **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019** (hereinafter "*the Scheme*"). However, as per the Petitioner the Respondents have rejected the Petitioner's plea to resolve its



disputes without providing any reason. Hence, the present petition.

5. On 30th December, 2019 the Petitioner applied to avail the benefit of the Scheme *via* Application Reference No. LD3012190011883, and declared the tax liability of Rs.11,26,937/-. According to the Petitioner, the said application was rejected on 8th January, 2020 *vide* an email from the Respondents. The said e-mail received by the Petitioner reads as under:

“Dear taxpayer, your SVLDRS Form for the ARN No.LS3012190011883 has been rejected”

6. The Petitioner again applied on 15th January, 2020, however, the second time also the application under the Scheme was rejected on 27th January, 2020.

7. It is stated that an employee of the Petitioner visited the office of the Respondent sometime in January, 2020. He was handed over a copy of notice bearing *C. No. CGST-GGM/Div East-2/R-40/ CBDT 16-17/06/19-20*. The said notice was stated to have been signed on 09th October, 2019, however, the date mentioned in the notice was “...12.2019”. The said notice is extracted hereunder for reference:



भारतसर्कार/ GOVERNMENT OF INDIA
वित्तमंत्रालय/ MINISTRY OF FINANCE
कार्यालयउप/ सहायकआयुक्त/ OFFICE OF THE DEPUTY/ ASSISTANT COMMISSIONER
मंडल- पूर्व 2, जीएसटी, गुरुग्राम / DIVISION - EAST 2, GST, GURUGRAM
प्रथममल, मुदितस्क्वायर, प्लॉट -24, सेक्टर -32, गुरुग्राम - 122001
1ST FLOOR, MUDIT SQUARE, PLOT-24, SECTOR-32, GURUGRAM - 122001

C. No. CGST-GGM/Div East-2/R- 40/CBDT 16-17/06/19-20

Date - .12.2019

The Manager (Taxation)/Finance
ST No/ST Reg No- AAGPG8249RST001
DALJEET SINGH GILL
GALLERIA TOWER, 920-B, DLF PHASE-IV, GURGAON DLF QUTB
ENCLAVE, GURGAON, HARYANA, 122002

Sub - Enquiry on mismatch in Service Tax and Income Tax return (ITR) for FY 16-17 - reg
Dear Taxpayer,

With reference to the above mentioned subject, it is highlighted that, analysis of Service Tax and ITR Returns filed by you/your organization for the FY 2016-17 revealed difference in reported figures in terms of Gross Value of Services, Income and TDS. There appears to short payment of Service Tax as per the return filed during the said period. You are therefore required to provide the following documents to examine the above -

34. Copy of ST 3, ITR and 26AS for the FY 2016-17.
35. Copy of Balance sheet and Profit and loss account for the FY 16-17 and reconciliation thereof with the ST 3 return.
36. Reconciliation of Gross values as reported ST 3 return, ITR and TDS for the period April 2016 to March 2017.

Kindly provide the details within 10 days of receipt of this letter.

TC
AS

(Superintendent)
Range-40, GST Gurugram

8. Again on 15th September, 2020 the Petitioner received an e-mail from the Respondents with three documents attached thereto, which showed that certain queries have been raised in respect of the Petitioner's company's Service Tax Account.

9. According to the Petitioner, the impugned show cause notice was then issued on 31st December, 2020 claiming that the Petitioner was liable to pay service tax of Rs.11,26,937/- along with penalty. A reply was sent by the Petitioner, however, under the said show cause notice proceedings is stated to be pending.

10. A perusal of the counter-affidavit would show that the department relies upon the said three notices as also Clause 125(1)(e) and 125(1)(f) of the



Scheme to disqualify the Petitioner under the Scheme. The said notices as also the email communication have been perused by the Court. Clearly, these notices do not appear to have been part of the initial email rejecting the application of the Petitioner.

11. On 10th December, 2024, after having perused the counter affidavit, since there was a doubt as to whether the notices under Clauses 125(1)(e) and 125(1)(f) of the Scheme under which the Petitioner was disqualified, were sent to the Petitioner or not, the Court had directed as under:

“11. Accordingly, it is directed as under:

(a) The Petitioner shall produce the original copy of both the e-mails in order to confirm that there was no attachment to the said e-mails. The Department shall also produce the emails to show if there was any attachment.

(b) The Department shall also produce any proof of service of these notices at pages 11 to 14 with the counter-affidavit and the date when the said notices were served upon the Petitioner.”

12. Pursuant to the above order, certain printouts from Yahoo mail were filed by the Petitioner. However, no document was filed by the Department. Accordingly, upon request, on 27th January, 2025 one more opportunity was again given.

13. Mr. Tripathi, Id. Sr. Standing Counsel today submits that a short affidavit has been filed yesterday *i.e.*, 19th February, 2025. The same is, however, not on record. A hard copy has been handed across to the Court, as per which, again, it becomes clear that the October, 2019 notice which has a dispatch date of 7th October, 2019, has no proof of service.

14. Mr. Tripathi, Id. Sr. Standing Counsel for the Department further



submits that though there may be a dispatch register, the original would not be available and there is no proof available with the Department, as on date, of dispatch of the letter or service upon the Petitioner.

15. When such is the position, the Petitioner's disqualification under the Scheme would not arise inasmuch as under Clauses 125(1)(e) and 125(1)(f) of the Scheme, unless and until there was a pending investigation, the Petitioner could not have been disqualified under the same. The said clauses are extracted hereunder:

"125. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:— [...]

(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;"

16. Further, the import of Clause 125(1)(f) has been clarified by the Central Board of Indirect Taxes and Customs (hereinafter "CBIC") vide Circular dated 25th September, 2019 reads as under:

"(vi) Section 125(1)(f) bars a person from making voluntary disclosure after being subjected to an enquiry or investigation or audit. Further, what constitutes an enquiry or investigation or audit has also been defined [Sections 121(g) and 121(m)]. A doubt has been



expressed as to whether benefit of the Scheme would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department, while quoting authority of Section 14 of the Central Excise Act, 1944 etc. It is clarified that the Designated Committee concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the provisions of Section 125(1)(f) are attracted in such cases.”

17. Since there is no proof on record that there was any investigation on the date when the Petitioner applied to avail the benefit under the Scheme and the fact that the orders disqualifying the Petitioner which have been passed are also completely unreasoned and one-line orders, this Court is of the opinion that the Petitioner is entitled to relief. However, the scheme is no longer operational. Under these circumstances, it is directed that the declaration of tax liability of Rs.11,26,937/- be accepted by the Department.

18. Subject to the said amount being deposited within a period of one month, the impugned show cause notice dated 31st December, 2020 shall stand quashed. If the said amount is not deposited within one month, the impugned show cause notice dated 31st December 2020 shall automatically revive and the Petitioner is permitted to file a reply to the same. The proceedings under the impugned show cause notice would then proceed in accordance with law.

19. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 20, 2025/Rahul/ms