IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 96 OF 2022

Nabeel Construction Pvt. Ltd.,

… Petitioner

Versus

1. Union of India, through its
Secretary, Department of Revenue,
Ministry of Finance, Government of
India, North Block, New Delhi – 110001.

2. The Designated Committee – I (SVLDRS)
[Comprising of the Principal Commissioner
or Commissioner and Additional Commissioner
or Joint Commissioner], CGST & Central Excise,
Commissioner – Thane, Navprabhat Chambers,
Ranade Road, Dadar (West), Mumbai – 400028.

3. The Principal Additional Director General,
Directorate General of GST Intelligence,
Mumbai Zonal Unit, N.T.C. House, III Floor,
N.M. Road, Ballard Estate, Mumbai – 400001. … Respondents

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Mr. Abhishek A. Rastogi a/w Mr. Pratyushprava Saha and Ms. Kanika Sharma i/by M/s. Khaitan & Co. for the Petitioner.
Mr. Pradeep S. Jetly, Senior Advocate a/w Mr. Jitendra B. Mishra for the Respondents.

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CORAM: R. D. DHANUKA AND
S. M. MODAK, JJ.

RESERVED ON : 10th JANUARY, 2022
PRONOUNCED ON : 21st JANUARY, 2022

JUDGMENT (*Per R.D. Dhanuka, J.)* :-

. Rule. Mr. Jetly, learned senior counsel for the respondents waives service. By consent of parties, writ petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for a writ of certiorari for quashing and setting aside the order of Designated Committee-I (comprised of respondent nos. 2 and 3) communicated through email dated 14th February, 2020 whereby rejecting the SVLDRS-1 Declaration dated 30th December, 2019 filed by the petitioner. The petitioner also prays that the proviso to Rule 6(2) read with Rule 6(3) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 (for short 'the said Scheme') be read down and to accept the Declaration filed by the petitioner as the valid Declaration under Section 125 of the said Scheme and for other reliefs.

3. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

4. The petitioner is engaged in providing construction services of

commercial or industrial buildings and civil structures, other than residential complexes. It is the case of the petitioner that in the month of February 2019, an enquiry for investigation was narrated by the Directorate General of GST Intelligence, Zonal Unit, Mumbai. During the course of the investigation, the petitioner submitted copies of the documents for the period 2013-14 (from October 2013 to March 2014), 2014-15, 2015-16 and 2016-17 (from April to June 2017), on demand, to the officers of the respondent no.3. Mohd. Azhar Ali, Director of the petitioner tendered his statement before the Senior Intelligence officer of the respondent no.3 on 28th February, 2019. It is the case of the petitioner that during the course of the said statement, the Director of the petitioner declared and admitted the total tax liability of Rs.1,28,88,541/-. A portion of the said amount was subsequently confirmed as Rs.1,26,62,148/- in the show-cause notice dated 26th September, 2020. The petitioner paid an amount of Rs.30 lakhs prior to the recording of the said statement dated 28th February, 2019 and Rs.60 lakhs after recording the said statement in two installments.

5. On 5th August, 2019, the Central Government launched the said Scheme after its incorporation as the Chapter V of the Finance (No.2) Act, 2019. The said Scheme was brought into force w.e.f. 1st September, 2019.

6. The Central Board of Indirect Taxes and Customs (for short 'CBIC') issued a circular dated 27th August, 2019 explaining and qualifying the said Scheme. The petitioner proposed to avail the benefits i.e. reliefs in tax dues, interest and penalty etc and filed a Declaration dated 30th December, 2019 under the category – 'Investigation or Enquiry' and sub-category – 'Investigation by DGGI' for the duty type – 'Service Tax'. It is the case of the petitioner that when the petitioner filed the said Declaration dated 30th December, 2019, the enquiry or investigation was still in progress against the petitioner and was pending against the petitioner. The amount was clearly included within the scope of 'tax dues'.

7. In the said Declaration filed in Form SVLDRS-1 by the petitioner, an amount of Rs.1,28,88,541/- was declared by the petitioner as tax dues which was declared and admitted in the statement of Mohd. Azhar Ali, Director recorded on 28th February, 2019. The petitioner showed a deposit of Rs.90 lakhs against the said tax dues of Rs.1,28,88,541/- and also showed the 'amount payable' as defined under the provisions of Clause (e) of Section 121 of the Scheme, 2019 i.e. tax dues less tax less tax relief (@ 50% of tax dues), after adjusting the said deposit of Rs.90,00,000/- and declared as '0'

zero. It is the case of the petitioner that as per the said Scheme, the petitioner was required to pay an amount of Rs.64,44,270/- against which the petitioner had already paid a sum of Rs.90 lakhs i.e. sum of Rs.25,55,729/- in the excess of the final amount payable by the petitioner which amount is non-refundable under the said Scheme.

8. The petitioner made a representation before the respondent no.2 on 31st January, 2020 and gave a detailed explanation as to why the said Declaration filed by the petitioner on 30th December, 2019 should be accepted. The petitioner requested for an opportunity of personal hearing in compliance with the principles of natural justice, if the respondent no.2 did not agree to the said submissions made by the petitioner in the said representation before deciding the said issue.

9. The petitioner was communicated with the decision vide email dated 14th February, 2020 by the respondent no.2 thereby rejecting the said Declaration filed by the petitioner dated 30th December, 2019 without providing an opportunity of Personal hearing. The petitioner made another representation on 16th March, 2020 to the respondent no.2 requesting to provide an opportunity of personal hearing. The said request was however

rejected by the respondent no.2 vide letter dated 10th August, 2020.

10. On 10th August, 2020, the respondent no.2 notified the rejection of the said Declaration filed by the petitioner. On 26th September, 2020, the respondent no.2 issued a show-cause notice-cum-demand notice to the petitioner, demanding various amounts towards interest, penalty, service tax and calling upon the petitioner to show-cause as to why the action proposed in the said show-cause notice should not be taken against the petitioner. The petitioner thus filed this writ petition *inter-alia* praying for various reliefs.

11. Mr. Abhishek A. Rastogi, learned counsel for the petitioner invited our attention to the various documents annexed to the writ petition. It is submitted that under Section 125 of the said Scheme, the petitioner was eligible to make a Declaration. He relied upon Section 125(1)(e) of the said Scheme and would submit that the amount of duty involved had been already quantified in this case on or before 30th June, 2019. He invited our attention to the definition of the term ‘quantified’ under Section 121(r) of the said Scheme and submits that during the course of enquiry, the statement of one of the Director was recorded by the respondent no.2. He submits that in reply to the question no. 9 of the said statement, the said Director of the

petitioner was asked whether he knew what is service tax liability upto 30th June, 2017 of the petitioner, he admitted that the total service tax liability was Rs.1,28,88,541/-. The said witness also submitted a signed copy of the worksheet quantifying the service tax liability till 30th June, 2017. He also relied upon the answer to the question no. 10. When the said Director was asked as to when he was going to pay the short paid service tax liability, he replied that after visit of the Senior Intelligence Officer to the premises of the petitioner, the petitioner had made a payment of Rs.30 lakhs and submitted GAR-7 challan for the same. He further stated that the petitioner would pay balance service tax amount before 31st March, 2019. He stated that he had nothing more to say. He confirmed that the said statement was given voluntarily without any force or coercion.

12. Learned counsel for the petitioner invited our attention to the circular dated 27th August, 2019 issued by the CBIC, New Delhi clarifying the said Scheme. He relied upon Clause 10(g) of the said circular and submitted that the tax dues were quantified in the investigation or enquiry on or before 30th June, 2019 and thus Section 121(r) defining the terms ‘quantified’ under the said Scheme was satisfied.

13. Learned counsel for the petitioner invited our attention to 'Frequently Asked Questions (FAQs) issued by the Central Government under the said Scheme and more particularly answer to question no. 53. He submits that the said answer to said question no. 53 is contrary to the provisions of the said Scheme including the clarifications already issued by circular dated 27th August, 2019. It is submitted that in any event, the modified amount of the tax dues even according to the respondents was less than the amount admitted and quantified by the petitioner during the course of recording the statement by the Investigating Officer. Learned counsel for the petitioner placed reliance on the following judgments :-

(a) The Judgment of this Court in case of ***Saksham Facility Services Pvt. Ltd. v/s. Union of India, 2021 (47) G.S.T.L. 228 (Bom.)***.

(b) The Judgment of this Court in case of ***Viztar International Pvt. Ltd. v/s. Union of India, 2021 (47) G.S.T.L. 341 (Bom.)***.

(c) An unreported Judgment of this Court in case of ***M/s. G. R. Palle Electricals v/s. Union of India & Ors.*** in Writ Petition (Stamp) No. 3485 of 2020.

(d) The Judgment of this Court in case of ***Metro Developers v/s. Union of India and Ors., 2021 SCC OnLine Bom 6061.***

(e) The Judgment of this Court in case of ***RS HR Team Solutions Private Limited and Anr. v/s. Union of India and Ors., 2021 SCC OnLine Bom 234***.

(f) The Judgment of this Court in case of ***Jai Sai Ram Mech &***

Tech India P. Ltd. v/s. Union of India, 2021 (47) G.S.T.L. 244 (Bom.).

(g) The Judgment of this Court in case of ***Sabareesh Pallikere v/s. Jurisdictional Designated Committee, Thane, 2021 (48) G.S.T.L. 240 (Bom.)***.

(h) The Judgment of this Court in case of ***Suyog Telematics Ltd. v/s. Union of India, 2021 (47) G.S.T.L. 346 (Bom.)***.

(i) The Judgment of this Court in case of ***Eminence Container Lines and Anr. v/s. Union of India and Ors., 2021 (3) TMI 133.***

(j) The Judgment of this Court in case of ***JSW Steel Ltd. v/s. Union of India and Ors., 2021 SCC OnLine 3584.***

14. Learned counsel for the petitioner invited our attention to the Judgment delivered by Division Bench of this Court on 21st October, 2021 in case of ***JSW Steel Limited v/s. Union of India and Ors.*** in Writ Petition No. 970 of 2020 and would submit that even the said judgment would assist the case of the petitioner on this issue.

15. Learned counsel for the petitioner invited our attention to an unreported judgment of this Court in case of ***Thought Blurb v/s. Union of India and Ors.*** delivered by a Division Bench of this Court on 27th October, 2020 in Writ Petition No. 870 of 2020 and more particularly in paragraph 47 to 54 of the said judgment and submitted that the rejection of an application summarily without rendering any opportunity of hearing to the Declarant

was in violation of principles of natural justice. The rejection of application (Declaration) will lead to various civil consequences for the Declarant as they would have to face all the consequences of enquiry, investigation or audit. It is submitted that this Court after considering the statement made by the Hon'ble Finance Minister deduced from the statement of objects and reasons, the respondent ought to have taken a liberal interpretation to the scheme as its intent was to unload the objector from legacy dispute under Central Excise and Service Tax and from allow the business to make a fresh beginning.

16. Mr. Jetly, learned senior counsel for the respondents on the other hand invited our attention to the impugned order dated 14th February, 2020 rejecting the said Declaration form submitted by the petitioner. He relied upon the communication dated 10th August, 2020 recording the reasons for rejection of the said Declaration form submitted by the petitioner. He submits that the petitioner was clearly informed that the investigation was still going on and the respondents were yet to quantify the tax liability, thus the amount admitted in the statement cannot be said to be final. He submits that the Designated-I Committee had sought clarification from the DGGI, Mumbai in which it was once again reported that the investigation was still

going on and that they were yet to quantify the liability and hence the amount admitted in the statement could not be said to be final. Learned senior counsel placed reliance on Section 121 of the said Scheme and more particularly the definition of 'quantified' defined under Section 121(r). He relied upon Section 123 of the said Scheme which provides as to what the 'tax dues' means for the purpose of the said Scheme. He relied upon Section 123(c) in support of the submission that 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 30th June, 2019 would be considered as 'tax dues'. He submits that in this case, the show-cause notice for recovery of service tax, interest and penalty was issued much later than 30th June, 2019 i.e. on 26th September, 2020. The petitioner thus cannot be allowed to contend that the service tax dues were already quantified prior to 30th June, 2019.

17. Learned senior counsel placed reliance on Section 125(e) of the said Scheme and would submit that only such persons who had submitted to enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30th June, 2019, it would not be eligible to make a Declaration.

18. Learned senior counsel placed reliance on Section 127 of the said Scheme and would submit that the statement of the Director recorded by the investigating officer would not amount to quantification of tax dues.

19. Learned senior counsel for the Revenue invited our attention to paragraphs 52 to 55 of the judgment of this Court in case of ***Thought Blurb*** (supra) and made an attempt to distinguish the said judgment on the ground that the facts before this Court in the said judgment were totally different.

20. Learned senior counsel invited our attention to paragraph 11 of the show-cause notice dated 26th September, 2020 issued by the respondents and would submit that the said show-cause notice itself would clearly indicate the tax dues, penalty and the interest quantified for the first time. The petitioner was thus not at all eligible to apply under the said Scheme on the premise that tax dues was already quantified in the statement made by the Director of the petitioner.

21. Mr. Rastogi, learned counsel for the petitioner in his rejoinder arguments submits that no hearing was rendered to the petitioner by the respondents before rejecting the Declaration form submitted by the

petitioner or even pursuant to the representation made by the petitioner.

22. Learned counsel for the petitioner once again invited our attention to Section 125 of the said Scheme and would submit that it is not necessary that investigation should be concluded prior to 30th June, 2019. Even if the investigation was pending on the said cut-off date, in view of the fact that the tax liabilities already having been quantified, the petitioner was eligible to apply under the said Scheme.

23. Learned counsel for the petitioner invited our attention to the averments made in paragraph 14 of the said affidavit-in-reply filed by the respondents admitting that the amount in the Declaration form filed by the petitioner and in the show-cause notice was different. The amount quantified by the respondents in the show-cause notice showed the amount lesser than the amount admitted and quantified by the petitioner. The Court has to take liberal view in the matter under the said Scheme. The stand taken by the respondents is totally against the object, purpose and the intent of the said Scheme.

24. It is submitted by the learned counsel for the petitioner that under section 125(1) of the said scheme, the categories of persons who are eligible

to make Declarations under the said scheme are provided. Under section 125 (1)(e) of the said scheme, the persons who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry of investigation or audit has not been quantified on or before the 30th June, 2019 are dealt with. Learned counsel for the petitioner vehemently urged that the past dues, interest and penalty etc. were claimed by the petitioner under the category - “Investigation or Enquiry” and sub-category “Investigation by DGGI” for the duty type” service Tax which is covered under the terms of section 123 (c) of the Finance Act (No.2), 2019 and this Declaration filed by the petitioner concerning the enquiry or investigation was still in progress and therefore, pending against the declarant. The amount is clearly included within the scope of “tax dues” as defined under section 123(c) of the said scheme.

25. It is submitted that the expression “tax dues” under section 123(c) of the said scheme, amount to duty payable which has been quantified on or before the 30th day of June, 2019. He submits that the stand taken by the respondents in the letter dated 10th August, 2020 was an after thought and shall not be accepted by this Court. The petitioner had already filed the declaration on 30th December, 2019. He submits that the respondents cannot

be allowed to urge that the tax dues must be deemed to be "quantified" only after finalization of the audit, investigation and issuance of show cause notice. Section 125 (1)(e) of the said scheme does not contemplate that the investigation must be completed. Section 125(1)(e) deals with a situation when a person has been subjected to an enquiry or investigation or audit. He submits that the said provision does not provide that the tax liabilities should have been finally determined on or before 30th June, 2019.

26. Learned counsel placed reliance on paragraph 18 of the judgment of this Court in case of ***Eminence Container Lines and Anr. vs. Union of India & Ors.*** delivered on 25th February, 2021 in Writ Petition (Lodging) No.4994 of 2020 in support of the submission that the eligibility under the said scheme would not depend upon the quantification of the tax dues on completion of the investigation by issuing show cause notice or the amount that may be determined upon adjudication.

27. Learned counsel for the petitioner submits that the day of issuance of the show cause notice by the respondents cannot be considered as the date of quantification. The quantification in the statement made on 28th February,

2021 and the declaration dated 30th December, 2019 under the said scheme happened much before issuance of the show cause notice dated 26th September, 2020. He submits that since the amount reflected in the show cause notice was lesser than the admitted amount in the statement made by the director of the petitioner, the benefit under the said scheme cannot be denied to the extent, amount admitted in the statement.

28. It is submitted that the stand taken by the respondents in the affidavit in reply and more particularly in paragraph 4 that the respondent no.3 had conveyed to the respondent no.2 about the on going investigation and that the investigation was pending vide letter dated 14th February, 2020 is incorrect. The said information was conveyed on 10th August, 2020 and not 14th February, 2020. On 14th February, 2020, the application of the petitioner was already rejected by the respondents.

29. Learned counsel for the petitioner invited our attention to a judgment delivered by a Division Bench of this Court in case of ***JSW Steel Limited*** (supra) and distinguished the said judgment on the ground that the petitioner before this Court in the said judgment did not admit the liability whereas

the liability was declared, admitted and quantified by way of statement of Mohd.Azhar Ali, who was a director of this petitioner recorded on 28th February, 2019. He submits that in the said judgment, the petitioner could not establish that the tax dues were quantified. He submits that the said judgment in case of ***JSW Steel*** Limited (supra) is thus distinguishable. It is submitted that the judgment of this Court in case of ***JSW Steel Limited*** (supra) acknowledged that an admission made in the statement before the Investigating Officer could be considered as quantification of claim under the scheme and that such admission shall not factually in the said judgment in case of ***JSW Steel Limited*** (supra).

30. In support of this submission, he relied upon paragraph 22 of the judgment of this Court in case of ***M/s.G.R. Palle Electricals*** (supra) and would submit that even this too is a judgment of identical facts in hand holding that the statement made by the proprietor of the said petitioner therein recorded by the investigating authority admitting the service tax liability would be eligible to file Declaration under the said scheme. This Court also considered question nos.3 and 45 of the "Frequently Asked Questions" in the said judgment.

31. It is submitted by the learned counsel for the petitioner that after adverting to the judgment of this Court in case of ***Thought Blurb*** (supra), this Court in the said judgment in case of ***G.R. Palle Electricals*** has held that a liberal view embedded with the principles of natural justice is called for. The approach should be to assume that the scheme is successful. The focus is to unload the baggage of pending litigations centering around the service tax, excise duty, pre-GST regime and thereby allow the business to move ahead but at the same time also to ensure that the administrative machinery can focus fully on the smooth implementation of GST.

32. Learned counsel for the petitioner placed reliance on the judgment of this Court in case of ***Suyog Telematics Limited*** (supra) in support of the submission that this Court in the said judgment had considered the stand taken by the department in the affidavit in reply that the statement of the petitioner was recorded before the service tax authorities wherein the director of the petitioner had confessed that the service tax liability was Rs.12,24,99,843/- and held the evidence as admissible quantification under the said scheme which was prior to the cut off date. This Court accordingly held that the decision of the respondents in declaring the petitioner as ineligible is unjustified.

REASONS AND CONCLUSION :

33. It is not in dispute that pursuant to the summons issued on 15th November, 2019 investigation was initiated against the petitioner by DGGI Mumbai. In pursuance to the said summons, statement of Mohd.Azhar Ali, director was recorded on 28th February, 2019. A perusal of the said statement of the said director recorded on 28th February, 2019 by the Senior Intelligence Officer, DGGI, Mumbai, Zonal Unit clearly indicates that the said director on behalf of the petitioner, had stated that it was his responsibility to give true and correct statement. The said enquiry was deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code, according to which using false and fabricated statements in the proceedings with an intention is an offence punishable under section 193 of the Indian Penal Code. He also admitted that he had understood that his statement would be binding on him and the petitioner and the same could be used as evidence.

34. The said director of the petitioner in reply to question 9, 'whether he knew what was service tax liability upto 30th June, 2017 of the petitioner', the director of the petitioner answered in affirmative and stated that he knew that the total service tax liability was of Rs.1,28,88,541/-. He further

admitted that though the petitioner had charged and collected the service tax through their clients regularly, petitioner could not discharge the same to the Government exchequer. He submitted the signed copy of the worksheet quantifying the service tax liability till 30th June, 2018. He informed that the profit and loss account figures were inclusive of service tax. In question no.10, the said investigating officer asked ”when you are going to pay the short paid service tax liability ?”. The said director of the petitioner stated that after the visit of the said Senior Intelligence Officer to the premises of the petitioner, the petitioner made a payment of Rs.30 lakhs and submitted the GAR-7 challan for the same and stated that petitioner would pay the balance service tax amount on or before 31st March, 2019. He lastly stated that he had nothing more to add and that he confirmed the said statement recorded by the Senior Intelligence Officer given by him voluntarily without any force or coercion.

35. A perusal of the said statement makes it clear that the said director of the petitioner was specifically asked about the service tax liability of the petitioner upto 30th June, 2017 and in reply to the said specific question, he admitted the tax liability in the sum of Rs.1,28,88,541/- The said Senior Intelligence Officer asked further question as to when the petitioner would

pay the short paid service tax liability in continuity to reply to question no.9. The said director informed that the petitioner had already made payment of Rs.30 lakhs and was submitting GAR-7 challan for the same and would pay the balance service tax amount on or before 31st March, 2019. It is not in dispute that the petitioner thereafter paid further sum of Rs.60 lakhs after recording the said statement on 28th February, 2019 vide challan dated 5th March, 2019 and 12th March, 2019, totalling to Rs.90 lakhs. The said statement made by the director of the petitioner on behalf of the petitioner was issued in terms of section 14 of the Central Excise Act read with section 83 of the Finance Act.

36. The respondents have not disputed the fact that the said statement was made by the petitioner through its director during the course of investigation carried out by the respondents against the petitioner. In the show cause – cum – notice dated 26th September, 2020 i.e. much after rejection of the said Declaration filed by the petitioner under the said scheme, it was also recorded that the said Mohd.Azhar Ali (Director) of the petitioner was called upon to appear before the Senior Intelligence Officer on 28th February, 2019 to tender the evidence by way of statement. The petitioner had submitted the copies of the income tax returns of various periods and

also copies of service tax returns. In paragraph 3.3 of the show cause notice, a reference was made to the statement made by the said director on 28th February, 2019. It is clearly stated in the show cause notice that the petitioner had admitted the service tax liability of Rs.1,28,88,541/- for the period from October, 2013 to June, 2017 and that their profit and loss account figures were inclusive of service tax.

37. A perusal of the affidavit in reply filed by the respondents in this writ petition more particularly in paragraph 5 indicates that the respondents have admitted that in the statement recorded on 28th February, 2019, the petitioner had declared and admitted the service tax liability of Rs.1,28,88,541/- for the period 1st October, 2013 to 30th June, 2017 and had also started making payments of service tax voluntarily. The service tax liability admitted and declared by the petitioner in the statement dated 28th February, 2019 was its disclosure. The respondents however contended that the said statement was not verified by the officer of the respondent no.3 due to pending scrutiny of the documents and verification of correctness of the liability declared by the petitioner. It is further contended that since the investigation was not complete on or before 30th June, 2019, the petitioner was not eligible for the said scheme.

38. It is not in dispute that even according to the said show cause notice issued by the respondents, the amount of service tax quantified by the respondents was less than the amount admitted by the petitioner.

39. We shall now decide whether the impugned orders passed by the respondents are in violation of the principles of natural justice or not.

40. It is not in dispute that the impugned orders have been passed without rendering any personal hearing to the petitioner. This Court in case of ***Thought Blurb*** (supra), after dealing with the provisions of the said scheme has held that summary rejection of the application under the said scheme without rendering any opportunity of hearing to the declarant would be in violation of the principles of natural justice. The rejection of the application (Declaration) will lead to adverse civil consequences for the declarant as he would have to face consequences of enquiry or investigation or audit. It is held that it is axiomatic that when a person is visited by adverse civil consequences, principles of natural justice like notice and hearing would have to be complied with. Non-compliance to the principles of natural

justice would impeach the decision making process, rendering the decision invalid in law.

41. In our view, the issue as to whether the tax liability of the petitioner, was already quantified prior to the cut off date or not in the statement of the director of the petitioner recorded by the investigating officer during the course of enquiry or whether the quantify of tax dues determined by the respondents in the show cause notice or not itself was an issue which required personal hearing. If personal hearing would have been rendered to the petitioner, it could have pointed out admission of the quantification of tax dues of the petitioner during the course of recording statement of the director by the investigating officer and not disputed by the respondents.

42. In our view, rejection of the Declaration under the said scheme filed by the petitioner without rendering a personal hearing to the petitioner, leads to adverse civil consequences for the petitioner as the petitioner would have to face the consequences of enquiry or investigation or audit. The impugned orders are in gross violation of the principles of law laid down by this Court in the case of ***Thought Blurb*** (supra) would apply to the facts of this case.

We do not propose to take a different view in the matter. Karnataka High Court in case of ***M/s.Kiran Borewells*** (supra) has taken the same view as taken by this Court in case of ***Thought Blurb*** (supra). We are in respectful agreement with the view taken by the Karnataka High Court in case of ***M/s.Kiran Borewells*** (supra).

43. Similar view is taken by the Delhi High Court in case ***Seventh Plane Networks Limited vs. Union of India*** (supra) relied upon by the learned counsel for the petitioner. We are in respectful agreement with the view taken by the Delhi High Court in the said judgment.

44. We shall now decide the issue as to whether the petitioner was eligible to make a Declaration under the said scheme and would fall under one of the categories of the persons who are eligible to make such Declaration under section 125(1) of the said scheme or not ?

45. Section 125(1)(e) of the said scheme provides that a person who has been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been

quantified on or before 30th June, 2019 is not eligible to make a Declaration under the said scheme. In this case, the tax dues were quantified by the petitioner in the statement of its director Mohd.Azhar Ali recorded by the investigating officer on 28th February, 2019. The term "notified" used in clause (e) of section 125(1) of the said scheme is defined under clause (r) which reads thus :

> (r) "quantified", with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment."

46. We have perused the circular dated 27th August, 2019 issued by the CBIC clarifying the term "quantified" in paragraph 4(a) and 10 (g). In paragraph 4(a), it is clarified by CBIC that for all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved, if it is Rs.50 lakhs or less and 50% if it is more than Rs.50 lakhs. The same relief is available for cases under investigation and audit where the duty involved is quantified and communicated to the party or admitted by him in a statement on or before 30th June, 2019.

47. In paragraph 10(g), it is further clarified cases under an enquiry, investigation or audit where the duty demand has been quantified on or

before the 30th June, 2019 are eligible under the scheme. Section 121(r) defines "quantified" as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that such written communication will include a letter intimating duty demand, or duty liability admitted by the person during enquiry, investigation or audit ; or audit report etc.

48. A perusal of question no.53 of the "Frequently Asked Questions" issued by the Central Government of the said scheme clearly states that even if the amount quantified under enquiry, investigation or audit before 30th June, 2019 gets modified subsequently due to any such assessee, he/she shall be entitled to file a Declaration under the said SVLDR scheme. In our view, conjoint reading of the term "quantified" used in section 125(1) read with clause clause (e) of the said scheme and paragraph 4(a) and 10(g) of the circular dated 27th August, 2019 issued by CBIC makes it clear that even if the tax dues are admitted in the statement made by the assessee on or before 30th June, 2019, it would satisfy the term "quantified" within the meaning of clause (r) of section 121 of the said SVLDR scheme. The respondents in this case have clearly admitted that the petitioner had admitted the said tax dues in the statement made by the petitioner through

its director on or before 30th June, 2019 before the investigating officer. The circular issued by CBIC clarifying the term "quantified" is binding on the respondents.

49. A perusal of the Declaration form filed by the petitioner indicates that the petitioner had claimed the relief in tax dues, interest and penalty under the category (Investigation or Enquiry) and sub-category "Investigation by DGGI" for duty type, "service tax" which is duly covered in terms of section 123(c) of the Finance Act (No.2) 2019 and has been rightly quantified as "tax dues". In our view, there is no substance in the submission made by the learned senior counsel for the respondents that the petitioner was not eligible to file the said Declaration on 30th December, 2019 on the ground that the investigation was still going on and that the respondent no.3 was yet to quantify the final liability of tax.

50. A perusal of section 123(c) of the said Scheme also clearly indicates that 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 30th June, 2019 would fall

within the term “tax dues” under the said section 123(c) of the said scheme. In our view, the submission made by the learned senior counsel for the respondent is contrary to plain meaning of term “quantified” read with paragraph 4(a) and 10(g) of the circular dated 27th August, 2019 issued by CBIC, clarifications in Frequently Asked Questions and more particularly question no.53 and section 123(c) of the said scheme. For the purpose of eligibility under section 125(1)(e) completion of investigation is not necessary as a condition precedent for the purpose of eligibility under the said scheme. None of the provisions under the said scheme contemplates that the investigation should be completed and tax liability should have been finally determined.

51. This Court in case of ***Eminence Container Lines and Anr.*** (supra) after adverting to the judgment of this Court in case of ***G.R. Palle Electricals*** (supra) and in case of ***Saksham Facility Private Limited*** (supra), in case of ***Sabareesh Pallikere*** (supra) and in case of ***Thought Blurb*** (supra) has held that what is relevant under the scheme is an admission of tax dues or duty liability by the declarant before the cut off date which need not be of the exact figure upon determination by the authorities post 30th June, 2019. In that matter, this Court had considered the situation where the

petitioner no.2 in his statement before the Senior Intelligence Officer on 12th June, 2019 had admitted the gross service tax liability of Rs.1,73,12,978/-. The petitioner no.2 however while admitting the said amount did not include the service tax on Ocean Freight on which the petitioner claimed exemption.

52. This Court held that when there is provision of granting personal hearing in a case where the declarant disputes the estimated amount, it would be in complete defiance of logic and contrary to the very object of the scheme to reject a Declaration on the ground of being ineligible without giving a chance to the declarant to explain as to why its Declaration should be accepted and relief under the scheme be granted. This Court held that when an authority relies upon a document, copy of the same should be made available to the aggrieved party so that the aggrieved party can respond to such document and effectively makes its defence. Non-furnishing of report dated 20th February, 2020 to the persons was held to be in violation of the principles of natural justice vitiating the impugned decision taken. The principles laid down by this Court in the said judgment of ***Eminence Container Lines and Anr.*** (supra) squarely apply to the facts of this case.

53. This Court in case of ***Sabareesh Pallikere*** (supra) held that all that would be required for being eligible under the said scheme is a written communication which will mean a written communication of the amount of duty payable including a letter intimating the duty demand or duty liability admitted by the person concerned during enquiry, investigation or audit or audit report etc. Under the said scheme, quantification need not be on completion of investigation by issuing show cause notice or the amount that could be determined upon adjudication. In that case also, the assessee had admitted the total service tax liability in the first statement recorded before the Intelligence Officer. This Court accordingly after considering the said statement and on interpretation of section 121 (r) of the Finance Act (No.2) of 2019 and answer to the questions 3 and 45 of "Frequently Asked Questions", held that a view can legitimately be taken that the requirement under the scheme is admission of the tax liability by the declarant during enquiry, investigation or audit report.

54. It is held that it is not necessary that the figures on such admission should have Mathematical precision or should be exactly the same as the subsequent quantification by the authorities in the form of show cause

notice etc. post 30th June, 2019. The object of the scheme is to encourage persons to go for settlement who had *bonafidely* declared outstanding tax dues prior to the cut off date of 30th June, 2019. It is held that the fact that there could be discrepancy of figure but the tax dues admitted by the person concerned prior to 30th June, 2019 and subsequently quantified by the departmental authorities, would not be material to determine the eligibility to file Declaration in terms of the scheme under the category of enquiry, investigation or audit. What is relevant is admission of tax dues or due liability by the declarant before the cut off date. In our view, the petitioner has fulfilled the said requirement and therefore, was eligible to make a Declaration in terms of the scheme under the said category. Rejection of a Declaration filed by the petitioner on the ground of being not eligible is thus perverse and not justified. The facts before this Court are identical to the facts before this Court in case of ***Sabareesh Pallikere*** (supra). We are bound by the principles laid down in the said judgment. We do not propose to take a different view in the matter.

55. This Court in case of ***Sabareesh Pallikere*** (supra) and ***Viztar International Private Limited*** ((supra) has held that for eligibility under the said SVLDRS, the quantification need not be on completion of investigation

as claimed by the petitioner therein. This Court in case of ***Sai Ram Mech & Tech India Private Limited*** (supra) considered identical facts where the petitioner had made a statement before the Superintendent (Prev.) CGST and Central Excise, Palghar Commissionerate under sections 70 and 174 of the Central Goods and Services Tax Act, 2017 read with section 14 of the Central Excise Act, 1944 and section 83 of the Finance Act, 1994. In that matter, the director of the assessee was put a question by the Superintendent as to what was service tax liability of the petitioner for the period under the provisions and when the petitioner was going to discharge such liability. In response to that question, the director stated that though he did not have exact figure of liabilities at that point of time but he admitted that the net service tax liability for the period under consideration would be Rs.40 to Rs.45 lakhs subject to verification of books of account which liability he undertook to pay as per the time line given in his answer.

56. This Court noticed in the said judgment that upon conclusion of investigation, Commissionerate of CGST and Central Excise, Palghar had issued show cause notice cum demand notice to the petitioner on 26th June, 2020 wherein a reference was made to the said statement of the director of the assessee therein recorded on 9th April, 2019 admitting the net service tax

liability for the period under consideration approximately at Rs.40 to Rs.45 lakhs. This Court noticed that the admission of the petitioner of net service tax liability of Rs.40 to Rs.45 lakhs broadly corresponds to the figure disclosed by the petitioner in the Declaration i.e. Rs.43,67,500. This Court accordingly was pleased to set aside the order passed by the authority and remanded the matter back to the authority to consider Declaration of the petitioner therein afresh as a valid Declaration in terms of the scheme under the category investigation, enquiry and audit and thereafter grant consequential relief to the petitioner therein after granting an opportunity of hearing to the petitioner and to pass speaking order with due communication to the petitioner.

57. In our view, the facts in this case are better than the facts before this Court, in case of ***Sai Ram Mech & Tech India Private Limited*** (supra). In this case in the statement of the director of the petitioner, he had declared the tax dues in response to specific question of investigating officer, quantified total service tax liability of Rs. 1,28,88,541/- and had also produced signed copy of the worksheet quantifying service tax liability till 30th June, 2017. In the said statement, the said director had further stated that the profit and loss account figures of the petitioner were inclusive of the

service tax. The principles of law laid down in case of ***Sai Ram Mech & Tech India Private Limited*** (supra) applies to the facts of this case. We do not propose to take a different view in the matter.

58. Similar view has been taken by this Court in case of ***Suyog Telematics Limited*** (supra) wherein this Court had considered the statement made by the director of the petitioner during the course of investigation admitting the service tax liability and confirmation of the said statement having been made by the petitioner in the affidavit in reply filed by the authority and held the petitioner therein eligible to apply under the said scheme.

59. This Court in case of ***Thought Blurb*** (supra) has considered the objects and reasons and the purpose of introducing the said Sabka Vikas (Legacy Dispute Resolution Scheme, 2019) framed by the Government of India. The Government took cognizance of the fact that GST had completed two years. An area that concerns was that there were huge pending litigations from pre-GST regime. More than 3.75 lakhs crores were blocked in litigations in service tax and excise. There was need to unload this

baggage and allow the business to move on and accordingly proposed a Legacy Dispute Resolution scheme that would allow quick closure of those litigations. The Finance Minister urged that the trade and business to avail this opportunity and be free from Legacy litigations.

60. A perusal of the statement of objects and reasons of the said scheme indicates that the scheme was a one time measure for liquidation of past disputes of Central Excise and service tax as well as ensure the disclosure of unpaid taxes by a person eligible to make a Declaration. It provides that eligible persons shall declare the tax due and pay the same in accordance with the provisions of the scheme. It further provides for certain immunities including penalty, interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1944 to those persons who pay the declared tax dues.

61. Central Board Indirect Tax and Customs accordingly issued circular dated 27th August, 2019 to implement the objects and purposes of closing litigations from pre-GST regime quickly and to grant benefit to the business of availing of the said opportunity. Central Board of Indirect Tax

and Customs conveyed to all the department heads of the scheme that an endeavour to be taken to unload the baggage relating to the legacy taxes viz. Central excise and service tax that have been subsumed under GST and allow business to make a new beginning and focus on GST. It was emphasized that all the officers and staff of CBIC to make this scheme a grand success. The dispute resolution and amnesty are the two components of the scheme. The dispute resolution component is aimed at liquidating the legacy cases locked up in litigation at various level whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues.

62. It was further stated in the said circular that the said scheme had the potential to liquidate the huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under the legacy taxes. The administrative machinery of the Government will also be able to fully focus on helping the taxpayers in the smooth implementation of GST. The importance of making this scheme a grand success cannot be overstated. The authorities are instructed to familiarize themselves with the scheme and actively ensure its smooth implementation.

63. The provisions of the said scheme have been interpreted by this Court in case of ***Capgemini Technology Services Limited vs. Union of India MANU/MH1428/2020*** and observed that the scheme had the twin objectives of liquidation of past disputes pertaining to the subsumed taxes on the one hand and disclosure of unpaid taxes on the other hand. The concerned authorities should keep in mind the broad picture while dealing with a claim under the scheme.

64. This Court in the judgment in the case of ***Thought Blurb*** (supra) accordingly reiterated the principles laid down by this Court in case of ***Capgemini Technology Services Limited*** (supra) and also followed the principles laid down by the Delhi High Court in case of ***Vaishali Sharma vs. Union of India, MANU/DE1529/2020*** and held that a liberal interpretation has to be given to the scheme as its intent is to unload the baggage relating to legacy disputes under central excise and service tax and to allow the business to make a fresh beginning.

65. In our view, the view taken by the respondents is not only contrary to various principles of law laid down by this Court in catena of decisions

referred to aforesaid but also contrary to the objects and reasons and the intent of the Central Government in introducing the said scheme for the benefit of the assessee and to bring them out of litigation forever pending under pre-GST regime. The view taken by the respondents thus deserves to be quashed and set aside with the order of remand.

66. We pass the following order -

a). The impugned order passed by the Designated Committee-I communicated through email dated 14th February, 2020 thereby rejecting SVLDRS-I Declaration dated 30th December, 2019 filed by the petitioner is quashed and set aside. The matter is remanded back to the Designated Committee to consider the said Declaration dated 30th December, 2019 filed by the petitioner in terms of the scheme as valid Declaration under the category “investigation, enquiry and audit” and grant consequential reliefs to the petitioner after providing due opportunity of hearing to the petitioner before finally deciding the issue. The Designated Committee-I shall pass a speaking order with due intimation to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

b). In view of the impugned order passed by the Designated Committee having been quashed and set aside with the order of remand, the respondents shall not take any further steps pursuant to the show cause notice dated 26th September, 2019. The show cause notice does not survive. The order that would be passed by the Designated Committee-I shall be communicated to the petitioner within one week from the date of passing the order.

c). Writ petition is allowed in aforesaid terms.

d). Rule is made absolute accordingly.

e). No order as to costs. Parties to act on the authenticated copy of this order.

[S. M. MODAK, J.] **[R. D. DHANUKA, J.]**