Before Jaswant Singh & Sant Parkash, JJ.

LOYALTY SOLUTIONS AND RESEARCH PRIVATE LIMITED, GURUGRAM-122003, HARYANA —*Petitioner*

versus

UNION OF INDIA AND OTHERS —*Respondents*

CWP No.8350 of 2020

February 18, 2021

Constitution of India, 1950 – Art. 226 – Writ petition – Finance Act, 2019 – Ss. 123 to 125 – Amnesty Scheme – Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 – Waiver of interest and penalty under the Scheme – Rule 6A of the CESTAT (Procedure) Rules, 1982 – Tax laws – Rule of strict interpretation - Hyper-technical approach - Beneficial legislation – Interpretation of – On facts, four show-cause notices issued raising demand of service tax which was decided by a common order-in-original dated 18.04.2018 – The respondent dropped partial demand, however confirmed demand of remaining amount of tax along with interest and imposed penalty – 5th show cause notice issued by respondent for the period Oct.2016 to June 2017 – The petitioner preferred single appeal against the order-in-original before the Customs Excise and Service Tax Appellate Tribunal – During pendency of appeal petitioner deposited entire amount of service tax as confirmed by the order-in-original – The respondent filed cross-appeal whereby partial demand was confirmed – Amnesty Scheme 2019 introduced – The petitioner filed two applications seeking waiver of interest and penalty under the Scheme – One application was with respect to the pending appeal before the Tribunal, and the other with respect to the 5th show cause notice – Designated Committee under the Scheme rejected the declaration with respect to the appeal filed before the Tribunal on the ground that petitioner filed single declaration with respect to four show cause notices, whereas in terms of Rule 3(2) of SVLDR Rules, 2019 he was bound to file separate application for each show cause – Challenge to – Declaration with respect to 5th show cause notice was accepted –Held, the issue of one declaration in relation to single pending appeal under Rule 3 (2) of SVLDR Rules was no longer res integra – The co-ordinate Bench in CWP 10804 of 2020 dealt with the question and opined that the application cannot be rejected on hyper-technical ground that four separate declarations were not filed

– The view of the co-ordinate Bench was followed and petition allowed – Further held, the respondent's plea that rule of strict interpretation would apply and there was no equity in taxation, was also not maintainable – Petitioner filed single appeal before the Tribunal against the common order as per procedure of Rule 6A of the CESTAT (Procedure) Rules, 1982 – The Rule permits filing of single appeal in respect of more than one show cause notice – Filing of appeal is a substantial right whereas filing of declaration under the Amnesty Scheme is mere procedural formality which is maintainable when essential conditions as prescribed in Ss. 123 to 125 of the Finance Act, 2019 are complied with – These conditions are complied with by the petitioners, thus they cannot be denied the relief claimed – The Amnesty Scheme is not a piece of legislation, instead, it is a piece of beneficial legislation for Union as well as dealers/assesses – It was launched to minimize litigation – The hyper-technical approach of officials is contrary to the intent and purport of the beneficial Scheme and the mandate of the Parliament – It is settled law, if a person is eligible to one or another benefit, he should not be denied the same on procedural or technical grounds – Petition allowed.

Held that, to supplement the aforesaid findings, we find it appropriate to notice that the petitioners in view of Rule 6A of the CESTAT (Procedure) Rules, 1982 filed single appeal before the Tribunal against the common order passed by Adjudicating Authority in respect of different show cause notices involved herein. The Rule 6A of 1982 Rules reads as under:-

" RULE 6A. The number of appeals to be filed. —

Notwithstanding the number of show cause notices, price lists, classification lists, bills of entry, shipping bills, refund claims/demands, letters or declarations **dealt with in the decision or order appealed against, it shall suffice for purposes of these rules that the appellant files one Memorandum of Appeal against the order or decision of the authority below,** along with such number of copies thereof as provided in rule 9.

Explanation. — (1) In a case where the impugned order-in- appeal has been passed with reference to more than one orders-in-original, the Memoranda of Appeal filed as per Rule 6 shall be as

many as the number of the orders-in-original to which the case relates in so far as the appellant is concerned.

(2) In case an impugned order is in respect of more than one persons, each aggrieved person will be required to file a separate appeal (and common appeals or joint appeals shall not be entertained)".

[Emphasis Supplied]

(Para 9)

Further held that, from the reading of above quoted Rule, it is evident that with respect of one order, single appeal irrespective of number of show cause notices may be filed. The petitioners undisputedly had filed single appeal with respect to more than one show cause notices. Filing of appeal before Tribunal is a substantial right whereas filing of declaration under Amnesty Scheme is mere procedural formality as declaration is maintainable if eligibility conditions are complied with which are enumerated under Section 123 to 125 of the Finance Act, 2019. Indubitably, the petitioners are complying with all the eligibility conditions. Thus, the Petitioners cannot be denied the relief claimed.

(Para 10)

Further held that, to be fair to the counsel for the respondent, we deal with his argument that intention of legislature cannot be gone into if language is plain and unambiguous especially in taxation matters. The scheme in question is not a piece of taxation legislation, instead, it is a piece of beneficial legislation for Union as well dealers/assessee. The Government is getting revenue without litigation and assessee is getting immunity from partial tax liability as well as interest and penalty, thus there is win-win situation for both sides. The Amnesty Scheme was launched to minimize litigation and respondent seems to unnecessarily dragging the matter. The hyper technical approach of the officials/authorities is contrary to the intent and purport of the beneficial scheme and the mandate of the Parliament. The Finance Act has excluded various categories of persons from the scheme and it is undisputed that petitioners fall within category of eligible persons. It is settled law even under taxation that if a person is eligible to one or another benefit, he should not be denied said benefit on procedural or technical grounds. The requirement of strict compliance of conditions is necessary to ascertain eligibility, however procedural formalities need not to be strictly complied with. Filing of one or more declarations has been prescribed by Rules whereas

conditions of eligibility have been prescribed by Finance Act, 2019. The filing of separate declaration is not even condition whereas it is sort of procedure. Once an assessee complies with conditions prescribed by Finance Act, 2019 and no prejudice is caused to the revenue by filing of single declaration instead of multiple, we do not find any reason to deny benefit on the ground of non-compliance of any condition which is purely procedural in nature. Our findings are fortified by recent judgment of Hon'ble Supreme Court in ***L & T Housing Finance Ltd. Versus Trishul Developers and another (2020) 10 SCC 659***, wherein it has been held that an action cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the person is able to show any substantial prejudice. In the present case, no prejudice has been or would be caused to the Revenue and if at all, severe prejudice would be caused to the petitioner in case his prayer is not accepted, in the light of the object of the Amnesty Scheme by permitting adoption of hyper technical approach.

(Para 11)

Tarun Gulati, Sr. Advocate, assisted by
S/Sh. Sandeep Chilana and
Tushar Sharma, Advocates
for the petitioner (in CWP No. 8350 of 2020)

S/Sh. Nikhil Gupta and
Rishab Singla, Advocates
for the petitioner (in CWP No. 8755 of 2020)

Sunish Bindlish, Advocate
for the respondents.

JASWANT SINGH, J.

(1) By this common order, the instant two writ petitions bearing ***CWP Nos. 8350 & 8755 of 2020***, involving identical issue(s), are disposed of. The petitioners through instant petitions under Article 226 of the Constitution of India are seeking quashing of orders dated 24.02.2020 **(Annexure P-19 in CWP No. 8350 of 2020)** and order dated 15.01.2020 **(Annexure P-18 in CWP No. 8755 of 2020)** whereby the declarations filed by the petitioner(s) under Amnesty Scheme have been rejected by Designated Committee.

(2) For the sake of convenience, the facts are borrowed from **CWP No. 8350 of 2020**. The respondent on the same set of allegations though for different periods issued four show cause notices raising

demand of service tax which came to be decided by common Order-in-Original No. 25- 28/COMMR/PKL/RS/2018 dated 18.04.2018 **(Annexure P-7)**. The respondent dropped partial demand, however confirmed demand of remaining amount of tax alongwith interest and further imposed penalty. The respondent issued 5th Show Cause Notice dated 27.12.2018 **(Annexure P-6)** for the period October, 2016 to June, 2017. The petitioner preferred single appeal against common Order-in-Original dated 18.04.2018 **(P-7)** before Customs Excise and Service Tax Appellate Tribunal, Chandigarh (for short 'Tribunal'). During the pendency of appeal before the Tribunal, the petitioner deposited entire amount of service tax as confirmed by aforesaid Order-in-Original. The respondent filed cross appeal against same Order-in- Original whereby partial demand was confirmed.

(3) For the liquidation of pending disputes and realize outstanding tax/arrears, the respondent through Finance Act, 2019 introduced Amnesty Scheme known as Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The petitioner filed two applications under Amnesty Scheme seeking waiver of interest and penalty because 100% amount of tax stood already paid. One application dated 24.12.2019 was filed with respect to appeal pending before Tribunal and another dated 24.12.2019 for 5th pending Show Cause Notice dated 06.03.2019.

(4) The Designated Committee constituted under Amnesty Scheme vide impugned order dated 24.02.2020 **(P-19)** rejected declaration filed with respect to appeal pending before Tribunal on the ground that petitioner has filed single declaration with respect to four show cause notices whereas petitioner in terms of Rule 3 (2) of SVLDR Rules, 2019 was bound to file separate application for each show cause notice. The respondent accepted declaration with respect to 5th show cause notice.

(5) Counsel for the petitioner contended that the petitioner has rightly filed single application with respect to four show cause notices because as per **Rule 6A of CESTAT (Procedure) Rules, 1982** single appeal is maintainable irrespective of number of show cause notices if common order is passed. The object of scheme is to reduce pendency of litigation and realize outstanding dues. As per scheme, a declarant is entitled to waiver of tax which may extend to 70% if amount of tax/duty is Rs. 50 Lakh or less. If a declarant files multiple declarations with respect to multiple show cause notices or appeals, he is entitled to immunity of 70% of tax if the amount involved is upto Rs. 50 Lakh

whereas entitlement of immunity comes to 50% if amount involved is more than Rs. 50 Lakh. In this way, in case of filing of single application for more than one show cause notices, there are all possibilities of amount involved being increased to more than Rs. 50 Lakh, thus a declarant is not beneficiary in filing single application instead of multiple. In ***CWP No. 8755 of 2020***, the petitioner has claimed that amount of tax involved in one show cause notice was less than Rs. 50 lakh, thus they would have got waiver of 70% instead of 50% had they filed separate application. The object of scheme is to reduce litigation and realize outstanding dues, thus Amnesty Scheme is not a piece of taxation legislation whereas it is a piece of beneficial legislation, therefore, intent of scheme deserves to be looked into. Rule 3(2) of SVLDR Rule, 2019 requires filing of separate declaration in case of pendency of show cause notice whereas in case of pendency of appeal, there is no such requirement as appeal arises from order and one order may adjudicate any number of show cause notices. In the present case, single order was passed though four numbers i.e. 25-28 were assigned yet there is no bifurcation of show cause notice viz-a-viz number quoted in order-in-original.

(6) Counsel for the respondent contended that as per different judgments of Hon'ble Supreme Court including judgment in ***Bharat Sanchar Nigam Limited*** versus ***ACIT-Manu/ID/0462/2016, Hemalatha Gargya*** versus ***CI***[1], rule of strict interpretation would apply and there is no equity in taxation. The respondent authorities cannot be directed to act contrary to law. The Designated Authority which is creature of Statute cannot act beyond the provisions of the Scheme. The language of Rule 3(2) is quite clear and unambiguous, thus there is no question to look into intention of the legislature. Section 125(2) of the Finance Act, 2019 provides that declaration shall be made in such electronic form as may be prescribed and Rule 3(2) has prescribed separate declaration for each show cause notice, thus declaration has been rightly rejected.

(7) Having scrutinized the rival arguments and the record of the case, we find that issue involved is no more *res integra*. The Coordinate Bench of this Court in ***CWP No. 10804 of 2020*** has dealt with question in hand and vide order **dated 25.09.2020** has in relevant Paras 6 to 14 held as under:-

" 6. Accordingly, the petitioner filed an application

[1] (2003) 259 ITR 1 (SC)

in form SVLDRS 1 on 30th December, 2019 reflecting its 'tax dues' as Rs. 26,68,220.50 and making a pre- deposit of Rs. 6,67,056/-.

7. It is this application that has now been rejected by the impugned order on the ground that Petitioner ought to have filed four separate declarations/applications.

8. The Court notes that the requirement under Rule 3 (2) of the Rules is that a separate application is to be filed for each 'case'. The Explanation thereunder defines a 'case' as under:-

"(a) a show cause notice or one or more appeal arising out of such notice which is pending as on the 30th June, 2019 or

(b) an amount in arrears; or

(c) an enquiry or investigation or audit where the amount is quantified on or before the 30th June, 2019; or

(d) a voluntary disclosure".

9. It is, thus, seen in the present case that as on 30th June, 2019, the four SCNs were not pending. In fact, these had been adjudicated and one consolidated order was passed in the four SCNs by the Additional Commissioner, Central Excise. Likewise, one consolidated order was passed by the Appellate Authority in the combined appeal. This has further led to one appeal being filed before the CESTAT. The Petitioner is, therefore justified in contending that in relation to the single pending appeal before the CESTAT one declaration is required to be filed even in terms of Rule 3 (2) of the SVLDRS Rules. The Court is, therefore, unable to appreciate why on a hyper-techincal ground that four separate declarations were not filed, the Petitioner's application under the SVLDRS should have been rejected.

10. Mr. Sourabh Goel, Senior Standing Counsel, appearing for the Respondents draws the attention of the Court to the definition of 'order' in Section 121 (o) of the Finance Act, as "an order of determination under any of indirect tax enactment, passed in relation to a show cause notice issued under such indirect tax enactment".

> 11. The Court finds merit in the plea of Mr. Amar Pratap Singh, learned Counsel for the Petitioner that in the above circumstances Section 13 (2) of the General Clauses Act, 1897 can be invoked in terms of which the "words in the singular shall include the plural, and vice-versa".
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> 12. Viewed from any angle, this Court is of the considered opinion that in the present case the Petitioner's application ought not to have been rejected only on the ground that one declaration, and not four, was filed on 30th December, 2019.
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> 13. In addition to this, the Court notes that the Respondents have not disputed the averment of the Petitioner that if four separate declarations were to be filed, the Petitioner might have to pay only Rs. 13,34,110/-, whereas in terms of the declaration now filed, the Petitioner has agreed to pay Rs. 26,68,220.50.
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> 14. For all the aforementioned reasons, the impugned order dated 21st February, 2020 is hereby set aside. A direction is issued to the Respondents to decide the Petitioner's declaration/application in form SVLDRS 1 afresh within a period of eight weeks and communicate the decision thereon to the Petitioner within one week thereafter. "

(8) Counsel for the respondent on being confronted could not differentiate facts of present case from aforesaid judgment of this Court, however pleaded that department is in the process of filing SLP before Hon'ble Supreme Court. Mere intention to file SLP or filing of SLP is no ground to keep the matter pending or form any opinion different from opinion of coordinate bench of same strength, thus we respectfully follow aforesaid judgment and find it appropriate to allow present petition.

(9) To supplement the aforesaid findings, we find it appropriate to notice that the petitioners in view of Rule 6A of the CESTAT (Procedure) Rules, 1982 filed single appeal before the Tribunal against the common order passed by Adjudicating Authority in respect of different show cause notices involved herein. The Rule 6A of 1982 Rules reads as under:-

> **" RULE 6A. The number of appeals to be filed. — Notwithstanding the number of show cause notices**,

price lists, classification lists, bills of entry, shipping bills, refund claims/demands, letters or declarations **dealt with in the decision or order appealed against, it shall suffice for purposes of these rules that the appellant files one Memorandum of Appeal against the order or decision of the authority below,** along with such number of copies thereof as provided in rule 9.

Explanation. — (1) In a case where the impugned order-in- appeal has been passed with reference to more than one orders-in-original, the Memoranda of Appeal filed as per Rule 6 shall be as many as the number of the orders-in-original to which the case relates in so far as the appellant is concerned.

(2) In case an impugned order is in respect of more than one persons, each aggrieved person will be required to file a separate appeal (and common appeals or joint appeals shall not be entertained)".

[Emphasis Supplied]

(10) From the reading of above quoted Rule, it is evident that with respect of one order, single appeal irrespective of number of show cause notices may be filed. The petitioners undisputedly had filed single appeal with respect to more than one show cause notices. Filing of appeal before Tribunal is a substantial right whereas filing of declaration under Amnesty Scheme is mere procedural formality as declaration is maintainable if eligibility conditions are complied with which are enumerated under Section 123 to 125 of the Finance Act, 2019. Indubitably, the petitioners are complying with all the eligibility conditions. Thus, the Petitioners cannot be denied the relief claimed.

(11) To be fair to the counsel for the respondent, we deal with his argument that intention of legislature cannot be gone into if language is plain and unambiguous especially in taxation matters. The scheme in question is not a piece of taxation legislation, instead, it is a piece of beneficial legislation for Union as well dealers/assessee. The Government is getting revenue without litigation and assessee is getting immunity from partial tax liability as well as interest and penalty, thus there is win-win situation for both sides. The Amnesty Scheme was launched to minimize litigation and respondent seems to unnecessarily dragging the matter. The hyper technical approach of the officials/authorities is contrary to the intent and purport of the beneficial scheme and the mandate of the Parliament. The Finance Act

has excluded various categories of persons from the scheme and it is undisputed that petitioners fall within category of eligible persons. It is settled law even under taxation that if a person is eligible to one or another benefit, he should not be denied said benefit on procedural or technical grounds. The requirement of strict compliance of conditions is necessary to ascertain eligibility, however procedural formalities need not to be strictly complied with. Filing of one or more declarations has been prescribed by Rules whereas conditions of eligibility have been prescribed by Finance Act, 2019. The filing of separate declaration is not even condition whereas it is sort of procedure. Once an assessee complies with conditions prescribed by Finance Act, 2019 and no prejudice is caused to the revenue by filing of single declaration instead of multiple, we do not find any reason to deny benefit on the ground of non-compliance of any condition which is purely procedural in nature. Our findings are fortified by recent judgment of Hon'ble Supreme Court in ***L & T Housing Finance Ltd.*** versus ***Trishul Developers and another***[2], wherein it has been held that an action cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the person is able to show any substantial prejudice. In the present case, no prejudice has been or would be caused to the Revenue and if at all, severe prejudice would be caused to the petitioner in case his prayer is not accepted, in the light of the object of the Amnesty Scheme by permitting adoption of hyper technical approach.

(12) In view of our above findings, **present petitions** deserve to be allowed and accordingly **allowed**. The impugned orders dated 24.02.2020 **(Annexure P-19 in CWP No. 8350 of 2020)** and order dated 15.01.2020 **(Annexure P-18 in CWP No. 8755 of 2020)** are hereby quashed and the respondents are **directed** to issue discharge certificate subject to compliance of other conditions by the petitioners within four weeks from the date of receipt of copy of this order.

Tribhuvan Dahiya

[2] (2020) 10 SCC 659