

GAHC010193622020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/59/2021

FOKHORUDDIN ALI AHMED
A PROPRIETORSHIP FIRM WITH ITS PROPRIETOR AS FOKHORUDDIN ALI
AHMED HAVING ITS PLACE OF BUSINESS AND RESIDENCE AT VILL-
BORTALORA, P.O. DHALIGAON, DIST.- CHIRANG- 783385, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE FINANCE SECRETARY, MINISTRY OF FINANCE, DEPTT. OF
REVENUE, HAVING ITS OFFICE AT NORTH BLOCK, NEW DELHI- 110001

2:THE UNDER SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF REVENUE
NORTH BLOCK
NEW DELHI- 110001

3:DESIGNATED COMMITTEE
REPRESENTING THROUGH
PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GHY-01

4:CHIEF COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GST BHAVAN
KEDAR ROAD
GHY-01
ASSAM

5:THE ASSTT. COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GHY
ASSAM

6:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (CBIC)
REP. BY ITS CHAIRMAN
DEPTT. OF REVENUE
MINISTRY OF FINANCE
NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI- 11000

Advocate for the Petitioner : MS. M L GOPE

Advocate for the Respondent : SC, GST

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

10.08.2023

The issue involved in the instant writ petition pertains to rejection of the application of the petitioner under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

2. It appears from the said scheme which is a part of the Finance Act, 2019 that the said scheme visualizes a provision, i.e. Section 124 whereby relief was available to the declarant under the said scheme 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 more than Rs.50 lakhs, then 50% of the tax dues could be paid. It further appears from the record that the Government of

India, Ministry of Finance, Department of Revenue had issued a notification No.5/2019, Central Excise-NT dated 21.08.2019 whereby it was mentioned in Clause 3 that the declaration under Section 125 shall be made electronically at <https://cbic-gst.govt.in> in Form SVLDRS-1 by the declarant on or before 31.12.2019.

3. Ms. N. Hawelia, the learned counsel for the petitioner submitted that the said period was further extended till 15.01.2020 vide the notification No.7/2019 dated 31.12.2019. Be that as it may, the petitioner submitted its Form SVLDRS-1 on 26.12.2019 wherein details of various appeal proceedings were mentioned. Relevant herein to take note of that in service tax/75/975/2014 which pertains to duty/tax/cess for erection, commissioning and installation service of an amount of Rs.77,03,433/-, it was mentioned in the column pertaining to pre-deposit/any other deposit of duty, an amount of Rs.36,95,674/- was deposited. Pursuant to the submission of the said declaration in Form SVLDRS-1, the Designated Committee did not accept the said declaration as could be seen from the records in as much as the Form SVLDRS-3 was not issued. However, the Designated Authority issued a Form No. SVLDRS-2 wherein in respect to the said appeal as mentioned herein above, the pre-deposit/any other deposit of duty as claimed to be Rs.36,95,674/- was ascertained as Rs.23,67,960/-, and accordingly, the amount which was held to be payable by the petitioner was Rs.57,68,277.05 only. In the said Form No. SVLDRS-2, a notice of personal hearing was also given to the petitioner stating inter-alia that if the petitioner who was declarant was not agreeable with the estimated amount payable as determined by the Designated Committee, the petitioner was requested to appear for personal hearing

before the Designated Committee on 20.02.2020 at 11:30 AM at the GST Bhawan, Guwahati to explain the reason thereof. Further to that, it was also mentioned that if the petitioner wanted any other date and time of personal hearing, the petitioner may submit Form No. SVLDRS-2A. It reveals from the said Form No. SVLDRS-2 that the Designated Committee consisted of the Principal Commissioner as well as Joint Commissioner.

4. The record further reveals that the petitioner submitted the Form No. SVLDRS-2A wherein a copy of Challan was uploaded in PDF format and the indicated date preferred herein was fixed on 27.02.2020. It further reveals that the petitioner thereupon submitted a written submission in lieu of personal hearing which was received by the Officer of the Commissioner, Central Goods and Services Tax, Guwahati on 02.03.2020.

5. From a perusal of the said written submission, it appears that the only issue which the petitioner had, was that an amount of Rs.13,27,714/- which was paid vide the four challans were not taken into consideration while considering the pre-deposit payment by the petitioner. It further appears from the contents of the said written submission that the copies of the said challans were enclosed for consideration of the Designated Committee. Thereupon, it is the case of the petitioner that in the month of December, 2020, the petitioner came to learn that the application under the above mentioned claim was rejected, and as such, the present writ petition has been filed.

6. It further appears from the records that an affidavit-in-opposition has been filed by the respondents. From the said affidavit-in-opposition, it transpires that the amount of Rs.13,27,714/- was not taken into consideration on the ground that the petitioner failed to submit any proof

that the said payment was invariable relatable to the pending litigation.

7. Taking into account the above and also the challans which forms a part of the additional affidavit filed by the petitioner on 27.01.2023, this Court directs the Joint Commissioner of CGST to examine as to whether the challans enclosed therewith as Annexure-A are in respect to the pending litigations the reference of which was made in the Form No. SVLDRS-1 and file an affidavit in that regard.

8. List the matter on **31.08.2023** for further consideration.

9. The affidavit be filed by 30.08.2023.

JUDGE

Comparing Assistant