

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11637 of 2020**

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M/S SHABNAM PETROFILS PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

MR HASIT DAVE(1321) for the Petitioner(s) No. 1,2

PRIYANK P LODHA(7852) for the Respondent(s) No. 1,2,3,4

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE**Date : 24/02/2022****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

“(A) That Your Lordships be pleased to issue an appropriate writ, order or direction in the nature of a writ of Mandamus and or any other appropriate writ, order or direction, deemed fit and proper quashing and setting aside the Rejection of Petitioner’s Declaration in Form SVLDRS dated 15.12.2019, and directing them to accept and clear the same.

(B) Pending hearing and final disposal of the present petition, Your Lordships be pleased to direct the respondent, their servants and agents to consider their application/declaration as pending and issue them further SVLDRS Form 4, disposing their declaration as accepted, pending the final disposal of this petition.

(C) Your Lordships be pleased to grant ex-parte ad-interim relief in terms of Para 12 (B) above, pending the issuance of notice and further hearing of this petition;

(D) Any other and further reliefs that may be deemed fit in the facts and circumstances of the case may also please be granted."

2. The writ applicant, namely, M/s. Shabnam Petrofils Pvt. Ltd., Surat is engaged, inter alia, in the manufacture of partially oriented polyester yarn/POY, texturized yarn, grey fabrics and knitted fabrics from the POY, falling under the Chapters 54 and 60 respectively of the Central Excise Tariff Act.

3. It appears from the materials on record that a show-cause notice dated 28th March, 2019 came to be issued to the writ applicants by the Principal Commissioner, Surat dated 28th March, 2019, calling upon the writ applicants to show-cause as to why;

i) Central Excise Duty amounting to Rs.10,25,14,149/- (Rupees Ten Crore Twenty Five Lakh Fourteen Thousand One Hundred Forty Nine Only) should not be recovered from them under section 11A(4) of the Central Excise Act, 1944 as detailed in Annexure-A to this show-cause notice;

ii) Interest at appropriate rate on the amount mentioned at SL. No.(ii) above should not be demanded and recovered from them under section 11AA of the Central Excise Act, 1944;

iii) Penalty should not be imposed on M/s. SPPL

under rule 25 of the Central Excise Rules, 2002 read with section 11AC(1)(c) of the Central Excise Act, 1944;

iv) Penalty should not be imposed on Shri Rafiq Ibrahim Memon, director of M/s.SPPL, under rule 26 of the Central Excise Rules, 2002."

4. It appears that during the pendency of the adjudication proceedings, the Ministry of Finance introduced a scheme in the form of Sabka Visvas Legacy Dispute Resolution Scheme (for short "the SVLDRS") with effect from 01.09.2019 for various indirect taxes and its pending litigations and or enquiries, investigations and cases etc. to be foreclosed upon deposit of 30% or 50% tax dues determined under the same and thereby waiving all the penalties, interest and prosecutions.

5. The writ applicants applied under the SVLDRS on 10.11.2019 declaring an amount of Rs.5,12,57,074.50 as payable being 50% of the total duty demand in the show-cause notice referred to above of Rs.10,25,14,149/-. It is the case of the writ applicants that since an amount of Rs.8,08,91,649/- out of the amount indicated in the show-cause notice was paid from the current account (PLA) and Cenvat Credit Account (RG 23) upon clearances of POY by Unit-I and Cenvat Credit of which was not availed at the relevant point of time by the Units 2 and 3 respectively in view of the Notification No.30/2004, the amount of Rs.8,08,91,649/- was shown as already deposited for the purpose of the duty payment under the scheme.

6. The declaration made by the writ applicants under the scheme came to be rejected by the Designated Committee of the SVLDRS on 15.12.2019 under the form SVLDRS-3 essentially on the ground that the amount of Rs.8,08,91,649/- could not have been shown as already deposited against the demand made in the show-cause notice.

7. It appears that in the meantime, the adjudication proceedings culminated in a final order passed by the Commissioner, Central Excise & CGST, Surat dated 05.08.2020, The operative part of the order reads thus;

“ORDER

7. *In light of the above, I pass the following order:*

(i) I confirm demand and order recovery of Central Excise Duty amounting to Rs.9,11,62,953/- (Rupees Nine Crores Eleven Lakh Sixty Two Thousand Nine Hundred and Fifty Three only) from M/s.Shabnam Petrofils Private Limited, Block No.258, Village-Karmala, Taluka: Olpad, District: Surat, under Section 11A(4) of Central Excise Act, 1944;

(ii) I confirm and order to recover interest at the applicable rate on delayed payment of Central Excise duty as confirmed at S. No.(i) above from M/s. Shabnam Petrofils Private Limited, Block No.258, Village-Karmala, Taluka: Olpad, District:Surat, under Section 11AA of Central Excise Act, 1944:

(iii) I impose a penalty of Rs.9,11,62,953/- (Rupees Nine Crores Eleven Lakh Sixty Two Thousand Nine Hundred and Fifty Three only) on M/s. Shabnam

Petrofils Private Limited, Block No.258, Village-Karmala, Taluka: Olpad, District:Surat, under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944;

(iv) I imposed penalty of Rs.25,00,000/- (Rupees Twenty Five Lakh Only) on Shri Rafiq Ibrahim Memon, Director of M/s. Shabnam Petrofils Private Limited, Block No.258, Village-Karmala, Taluka: Olpad, District:Surat, under Rule 25 of the Central Excise Rules, 2002.

8. In terms of Section 11AC(1) (c) of Central Excise Act, 1944, the amount of penalty imposed under the said section at para 7(iii) above shall be reduced to 25% of duty payable as determined at Para 7(i) above if M/s. Shabnam Petrofils Private Limited, Block No.258, Village-Karmala, Taluka: Olpad, District:Surat makes payment of duty and interest as confirmed at para 7(i) and 7(ii) above and also the reduced amount of penalty within 30 days of date of communication of this order.”

8. Mr. Deven Parikh, the learned senior counsel assisted by Mr. Hasit Dave, the learned advocate appearing for the writ applicants pointed out that the aforesaid order-in-original passed by the Commissioner, Surat is now a subject matter of challenge before the Tribunal in appeal.

9. Thus, the picture that emerges as on date is that on one hand, the writ applicants want to question the legality and validity of the decision taken by the Designated Committee to reject the declaration under the scheme and on the other hand, there is an appeal filed by the writ applicants against the order in original passed by the

Commissioner, Surat.

10. We are of the view that we should allow the Tribunal to proceed with the hearing of the appeal and decide the same on its own merits. We request the Tribunal to give some priority to the appeal filed by the writ applicants and see to it that the same is disposed of expeditiously.

11. So far as the challenge by the writ applicants to the order passed by the Designated Committee, rejecting the declaration is concerned, the same shall be looked into at the time of final hearing of the present writ application.

12. Rule returnable on 22nd June, 2022. Mr. Priyank Lodha, the learned standing counsel appearing for the respondents, waives service of notice of rule for and on behalf of the respondents.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

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