

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P.(T) No. 2422 of 2020**

Ms. Vassu Enterprises Through Its Proprietor

Shri Ganesh Kr. Agiwal

.....

Petitioner

Versus

The Union of India Through its Secretary Ministry

Of Finance Department of Revenue & Ors.

.....

Respondents

With**W.P.(T) No. 1405 of 2020**

Ms. Alope Dutta Through its Proprietor Alope Dutta

.....

Petitioner

Versus

The Union of India Through its Secretary Ministry

of Finance Department of Revenue & Ors.

.....

Respondents

With**W.P.(T) No. 1436 of 2020**

Ms. Om Prakash Kashyap Through Its

Proprietor Om Prakash Kashyap

.....

Petitioner

Versus

The Union of India Through The Central

Board of Indirect Taxes and Customs & Ors.

.....

Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh**Hon'ble Mr. Justice Deepak Roshan**Through Video Conferencing

For the petitioners : Mr. Sumeet Gadodia, Adv.

(in all cases)

For the Respondent : Mr. Amit Kumar, Adv.

(in W.P.(T) No.2422 of 2020)

For the Respondent : Mr. P.A.S.Pati, Advocate

(in W.P.(T) Nos. 1405 and 1436 of 2020)

6/03.01.2022 Petitioners in all these writ petitions are seeking the benefit of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 under Chapter-V of the Finance (No.2) Act 2019 (No. 23 of 2019) brought into effect on 1st September 2019 by notification dated 1st August 2019. The Section 125 of the Scheme prescribes eligibility to make a declaration and reads as under:-

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

(a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;

(b) who have been convicted for any offence punishable under any provision of the indirect tax enactment

for the matter for which he intends to file a declaration;

(c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;

(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(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;

(g) who have filed an application in the Settlement commission for settlement of a case;

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.

The petitioners have relied upon the Circular No. 1074/07/2019-CX issued by the Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India dated 12th December, 2019 which is enclosed as Annexure-7 to W.P.(T) No. 1436 of 2020.

In the first writ petition as per the case of the respondent the final hearing of the show cause notice had taken place before 30th day of June 2019, though the order in original was passed on 9th July, 2019. The petitioner had made declaration on 30th December, 2019 (Annexure-6) under “category litigation”.

In W.P. (T) No. 1405 of 2020, pursuant to an enquiry / investigation a show cause notice was issued on 25th July, 2018 and as per the case of the respondent it was finally heard before 30th June, 2019, though the order in original was passed on 11th July, 2019.

In W.P. (T) No. 1436 of 2020, the demand-cum-show cause notice was issued on 28th October, 2019 (Annexure-1) and the order in original was passed on 14th January, 2020 against which petitioner did

not prefer any appeal and instead filed a declaration under SVLDRS-1 on 14.01.2020 within the extended period as per the notification dated 31st December 2019 (Annexure-6).

The case of the first two petitioners have been entertained under the Scheme of 2019.

Relevant provisions of Section 125 prescribing the eligibility criteria need to be referred to in this regard.

Petitioners in the first two writ petitions are primarily aggrieved by the computation of the amount payable and in the 3rd case the petitioner has been denied the benefit of the scheme on the ground that the Revenue was intending to file an appeal.

In the brief background facts of the respective writ petitions noted hereinabove, the issue which has cropped up during course of hearing is whether the circular dated 12th December, 2019 falls within the scope of the scheme of 2019 and in particular the eligibility condition prescribed under Section 125 thereof. The legislature had consciously prescribed a cutoff date of 30th June, 2019 which are referable to on a plain reading of Sections 123, 124 and 125 read with Section 121 (a), (c), (h) and (i) in particular.

Learned ASGI for Union of India and learned counsel for CBIC appearing in the respective writ petitions shall take instructions on this issue and submit their response by the next date.

Let the matter appear after three weeks. List it on 27.01.2022.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)

Fahim/Amardeep/