IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH : NAGPUR.

WRIT PETITION NO.1879/2020

M/s. UCN Cable Network (P) Ltd.,
502 Milestone, Ramdaspeth, Wardha
Road, Nagpur 440 010. ..Petitioner.

..Vs..

The Designated Committee under
Sabka Vishwas Legacy Disputes Resolution
Scheme, 2019 (Commissioner of GST & Central
Excise & Joint Commissioner of GST & Central
Excise), Nagpur-I Commissionerate, GST
Bhavan, Telangkhedi Road, Nagpur 440 001. ..Respondent.

Mr. G. Natrajan, Advocate a/b Mr. Vishwajeet Singh Oberoi, Advocate for the petitioner.
Mr. S.N. Bhattad, Advocate for the respondent.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATE OF RESERVING THE JUDGMENT: 26.08.2021
DATE OF PRONOUNCING THE JUDGMENT: 04.02.2022

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Heard. **Rule**. Rule made returnable forthwith. Heard finally by consent.

2. The petitioner is a private limited company. It is engaged in providing various taxable services such as broadcasting service, cable operators service and so on and so forth. It was registered under the

erstwhile service tax regime. Due to severe financial difficulties, the petitioner could not properly discharge it's service tax liability. Some investigation was conducted by the respondent department following which a show cause notice was issued to the petitioner alleging that the petitioner failed to discharge it's service tax liability properly and improperly availed of Cenvat credit, to which the petitioner was not eligible under the Cenvat Credit Rules, 2004 and accordingly, a demand was placed upon the petitioner for payment of service tax dues and also the dues on account of improperly availed of Cenvat credit together with a demand for payment of penalty and interest as mentioned in the show cause notice. The show cause notice was issued to the petitioner on 24.4.2019. After hearing the petitioner, the show cause notice was adjudicated upon by the Commissioner of Central Tax and Central Excise, Nagpur-I Commissionerate vide order dated 29.12.2019 which the petitioner claims to have been received by him on 30.12.2019.

3. In the adjudication order, the original demand of service tax dues of Rs.43,62,79,032/- was confirmed and demand arising from disallowing of Cenvat credit was toned down considerably. As per the adjudication order, after adjusting the amount already paid against the service tax liability of the petitioner, an amount of Rs.65,22,938/- was found to be in arrears and recoverable from the petitioner.

4. While the adjudication of the show cause notice was pending, Sabka Vishwas Legacy Dispute Resolution Scheme, 2019 (hereinafter called as “Scheme, 2019” for short) came to be introduced and the relevant statutory provisions were made in Chapter V of the Finance Act, 2019 and Sabka Vishwas Legacy Dispute Resolution Rules, 2019 (“Rules, 2019” for short). The Scheme was introduced to enable the assessees settle their pending disputes in relation to service tax dues and levies under the old service tax regime, which had been later on subsumed into general sales tax regime, as one time measure so that the assessees can have peace before they make a new beginning under the new GST regime. The Scheme, 2019 was opened on 1.9.2019, and was to remain in force till 31.12.2019 initially but later on it was extended up to 15.1.2020. The Scheme provided for reliefs in terms of different percentages of tax dues by putting the tax dues into categories such as “litigation” and “arrears” categories.

5. Upon receiving the order adjudicating the show cause notice, and in view of the fact that the Scheme, 2019 was in operation, the petitioner filed his declaration in form SVLDRS-1 on 14.1.2020 under “arrears” category thinking that as the adjudication was made during the validity period of the Scheme, 2019, any declaration made by the petitioner would be considered for appropriate decision under “arrears” category and not under “litigation” category. But, that was

not to be and it was proposed by the department that the petitioner's declaration would be considered under "litigation" category and not under "arrears" category and accordingly, a show cause notice in the form SVLDRS-2 was issued to the petitioner indicating that the disputed liability was of Rs.88,97,26,968/- and the amount payable under the Scheme would be 50% of the same. The show cause notice also informed the petitioner that as the petitioner had already paid an amount of Rs.2,38,00,334/-, the amount ultimately payable by the petitioner would be Rs.42,10,63,150/-.

6. After granting personal hearing to the petitioner, adjudication was made by the respondent and amount payable by the petitioner was determined by treating the case of the petitioner as falling under "litigation" category and not under "arrears" category. This adjudication also considered the two demands, one in respect of service tax and the other in respect of disallowance of Cenvat credit and consequent recovery of the same, separately and individually, and therefore, the total payments made by the petitioner were adjusted only against the first demand and not against the second demand. The petitioner felt that his case legitimately fell under the "arrears" category and not under "litigation" category and that it was not permissible for the respondent to consider two demands, one in respect of service tax dues and the other in respect of the dues arising from recovery of disallowed Cenvat credit, individually. But, in

disregard of that, form SVLDRS-3 was issued to the petitioner. Aggrieved by it the petitioner has filed this petition.

7. The respondent, which is the designated Committee under the Scheme, 2019 for deciding the declarations under the Scheme, 2019, has opposed this petition by filing a reply. According to it, the classification of the petitioner under "litigation" category and not under "arrears" category has been rightly done by the department and, therefore, there is no scope for making any interference with the issuance of form SVLDRS-3. The reply emphasizes upon the definition of "tax dues" as given in Section 123(b) of the Finance Act, 2019 and provisions made under Section 124(a) of the Finance Act, 2019. The reply also states that any liability on account of wrong availment of Cenvat credit cannot be clubbed with service tax dues as the demands of service tax and Cenvat credit made under two different enactments cannot be clubbed together to determine tax dues, as if they are dues payable under the same statute. On these grounds, the respondent has prayed for dismissal of the petition.

8. Shri Natarajan, learned counsel for the petitioner submits that the case of the petitioner squarely falls under "arrears" category and this would be clear from the definition of "amount in arrears" as given in clause (c) of Section 121 of the Finance Act, 2019. He submits that such contention of the petitioner is duly supported by clarifications

given in Circular No.1072 dated 25.9.2019, Circular No.1073 dated 29.10.2019 and Circular No.1074 dated 12.12.2019 issued by the Central Board of Indirect Taxes and Customs, New Delhi ("CBITC" for short).

9. Shri Natarajan, learned counsel further submits that the respondent has committed an error in considering the two demands, one in respect of service tax dues and the other in respect of the dues arising from recovery of disallowed Cenvat credit individually and separately. He submits that such individual treatment is not permissible under rule 3(2) of Rules 2019. He further submits that under rule 3(2) "case" means, *inter alia*, an amount in arrears, and in this case, there being only one show cause notice, though containing two demands, one in relation to service tax dues and the other in relation to the dues on account of recovery of disallowed Cenvat credit, amount in arrears would be that total amount of duty which is ultimately found to be recoverable under the original adjudication order. Therefore, according to him, only one declaration in respect of such a show cause notice could have been filed which is also reiterated in Circular No.1071 dated 27.8.2019. But, he submits, these provisions have been ignored by the respondent in issuing the impugned demand, and arbitrarily.

10. Shri Bhattad, learned counsel for the respondent submits that

impugned notice has been properly issued by considering the relevant provisions of Scheme, 2019. He further submits that it was only as per the provisions of the Scheme, 2019 that it was found that case of the petitioner fell under "litigation" category and not under "arrears" category. He also submits that the demand of service tax dues was under Section 73 of Finance Act and demand of dues on account of recovery of disallowed Cenvat credit was under rule 14 of Cenvat Credit Rules, 2004, and these two enactments being different, the declaration filed by the petitioner could not have been considered by clubbing together these two different demands of tax dues, and that was only as per the provisions of Scheme 2019. He, therefore, submits that there is no substance in this petition.

11. Shri Bhattad, learned counsel further submits that in the case of ***Union of India V/s. Charak Fertilizers,*** *2003(154), E.L.T. 354*, the Apex Court has held that if any benefit is sought under a Scheme like the KVSS, the party must fully comply with the provisions of the Scheme and if the requirements are not met, then, on principle of equity, Court cannot extend the benefit of that Scheme. Drawing support from this decision, learned counsel for the respondent submits, as the petitioner did not fulfill the requirements of the Scheme so as to consider his case as falling under "arrears" category and further to consider his case as if separate demands have merged into one, the petition must fail.

12. As stated earlier, the grievance of the petitioner is on two counts, firstly not treating the case of the petitioner as falling under "arrears" category and secondly, treating two demands made in impugned show cause notice as separate and individual.

13. We would first consider the grievance relating to what is called by the petitioner as unfair classification of the case of the petitioner under "litigation" category, instead of "arrears" category. In order to ascertain the correctness of the claim of the petitioner, it would be necessary for us to examine the relevant provisions of the Scheme, 2019, as incorporated in Chapter V of Finance Act, 2019 and also the clarifications issued by CBITC in it's three Circulars relied upon by the petitioner. The reply of respondent also refers to Section 123(b) and Section 124(a) of Finance Act which relate to "tax dues". But, we do not think that it is necessary for us to consider those provisions as nothing would turn on them. Let us now consider the relevant provisions of the Scheme, 2019.

14. Definition of the expression "amount in arrears" is given in Section 121(c) and reliefs available under the Scheme, 2019 for this category are provided in Section 124 (1)(c). Clause (a) of Section 121 is also relevant as it offers a ground for comparison through which one can understand the distinction between "arrears" and "litigation" categories. They read as under:-

"121. Definitions. - In this Scheme, unless the context

otherwise requires, -
(a) "amount declared" means the amount declared by the declarant under section 125;
(b) ……..
(c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of -
(i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
(ii) an order in appeal relating to the declarant attaining finality; or
(iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it.

124. Relief available under Scheme. -

(1) Subject to the conditions specified in sub-section (*2*), the relief available to a declarant under this Scheme shall be calculated as follows:-
(*a*) 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,-
(*i*) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;
(*ii*) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;
(*b*) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;

(*c*) where the tax dues are relatable to an amount in arrears and-

(*i*) the amount of duty is, rupees fifty lakhs or less, then, sixty percent of the tax dues;
(*ii*) the amount of duty is more than rupees fifty lakhs, then, forty percent of the tax dues;
(*iii*) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,-

(*A*) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;

(*B*) amount indicated is more than rupees fifty lakhs, then, forty percent. of the tax dues."

15. It would be clear from the provisions made in Sections 121 and 124 that the classification of the case depends upon the reliefs which can be made available under the Scheme, 2019. These reliefs can be broadly classified as those belonging to “litigation” category and the other belonging to “arrears” category. In the former category the amount of duty is disputed or is capable of being disputed and is yet to be finalized. In the later category amount of duty is not in dispute or has become final. This can be gauged by taking the examples of categories listed in clauses (a) and (c) of Section 124(1).

16. Section 124(1)(a) is a category of cases where the tax dues are relatable to a show cause notice or one or more appeals arising out of such appeals, and pending as of 30th June, 2019. The reliefs available in this category are to the extent of 70% of the tax dues, if the amount of duty involved in the show cause notice or pending appeal is Rs.50 Lakh or less, or 50% of the tax dues if the amount of duty involved in the show cause notice or the pending appeal, as of 30th June, 2019 is more than Rs.50 Lakh. A careful consideration of this category given in Section 124(1)(a) shows that it is a category of cases which must necessarily involve an amount of duty which has not been confirmed and finalized as recoverable from the declarant. This is the reason why such a case would be broadly classified as the one falling in “litigation” category.

17. The other category given in Section 124(1)(c) is for providing

reliefs in a case where the demand of tax dues is transformed into arrears of tax dues. It lays down that where the tax dues are relatable to an "amount in arrears", the reliefs would be to the extent of 60% of the tax dues if the amount of duty is Rs.50 Lakhs or less or 40% of the tax dues if the duty is more than Rs.50 Lakhs. The expression "amount in arrears" has a well defined content in Section 121(c). It is defined as the amount of duty which is recoverable as arrears of duty under the indirect tax enactment on account of any of these three factors - (i) no appeal having been filed by the declarant against an adjudication order or an appellate order before the expiry of limitation period for filing an appeal, (ii) appellate order having attained finality, or (iii) the declarant has filed a return under the indirect tax enactment on or before 30th June 2019, wherein he has admitted that the tax liability but has not paid it. These three factors, when considered in their entirety would show that "amount in arrears" is an amount about which there is no dispute and which has been established in law or accepted by the declarant as recoverable from him for any of the reasons stated in sub-clauses (i) to (iii) of clause (c) of Section 121.

18. Thus, we find that there is a clearly discernible distinction between the reliefs available under Section 124(1)(a) and those under Section 124(1)(c). This distinction is between amount of duty not yet finalized as show cause notice is pending for some reasons on one

hand and the amount of duty having attained finality for the reason of no appeal having been filed before the expiry of the limitation period or an order passed in appeal having attained finality or the declarant having admitted his tax liability in the return filed on or before 30th June, 2019 and not having paid it on the other. In other words, a "litigation" category case would be one wherein the amount of duty has not been confirmed and has not attained finality and whereas an "arrears" category case would be the one where the amount of duty has been confirmed and has attained finality.

19. The petitioner has relied upon the three Circulars issued by CBITC on 29.10.2019, 25.9.2019 and 12.12.2019 wherein some clarifications have been issued by the CBITC throwing light upon the cases which may be filed in "litigation" category or "arrears" category. The Circulars issued by department, being in the nature of executive instructions, do not have any force of law. But, they can certainly be read to know the view of the department. When considered so, we are of the opinion that these Circulars are representative of such an opinion of the department as is consistent with the view taken by us as above. This can be seen from what is stated in a clarificatory tone in the relevant paragraphs of these Circulars. They are reproduced thus:-

Circular Number	Paragraphs
Circular No.1073, dated 29.10.2019.	Para 2(vi) - Representations have also been received that the cases where appeals were filed after 30-6-2019 should also be allowed relief

under the Scheme. It is stated that such cases are not covered per se. However, if a taxpayer withdraws the appeal and furnishes the undertaking to the department in terms of Para 2(viii) of Circular No.1072/05/2019-CX, dated 25-9-2019, they can file a declaration under the Scheme.

Circular No.1072, dated 25.09.2019.

Para 2(vii) - Section 125(1)(a) excludes cases which are under appeal and where final hearing has taken place on or before 30th June, 2019 from the purview of the Scheme. Similar exclusion has been made applicable, *mutatis mutandis*, under section 125(1)(c) to cases under adjudication. It is clarified that such cases, however, may still fall under the arrears category once the appellate or adjudication order, as the case may be, is passed and has attained finality or appeal period is over, and other requirements under the Scheme are fulfilled.

Para 2(viii) - Section 121(c)(i) define an "amount in arrears" as the amount of duty which is recoverable, inter alia, on account of no appeal having been filed by the declarant against an order or order in appeal before the expiry of the period of time for filing of appeal or the order-in-appeal having attained finality. There may be situations where the taxpayer does not want to file an appeal, even though the time period for filing of appeal is not over. It is clarified that in such cases, the taxpayer can file a declaration under the Scheme, provided he gives in writing to the department that he will not file an appeal. This declaration shall be binding on the taxpayer.

Circular No.1074, dated 12.12.2019.

Para 2(viii) – There may be cases where the show cause notice issued on or after 1-7-2019 and such cases are also not covered under any of the categories such as an enquiry or investigation or audit and tax dues having not been quantified on or before 30-6-2019. However, such cases become eligible under 'arrears' category

> depending the fulfillment of other conditions such appeal period being over or appeal having attained finality or the person giving an undertaking that he will not file any further appeal in the matter (Member's D.O. letter F. No.267/78/19/CX.8, dated 30th October, 2019). Since the main objection behind the Scheme is to liquidate the legacy cases under Central Excise and Service Tax, it would be desirable that the taxpayer in the above mentioned cases are also given an opportunity to avail its benefits. Therefore, the field formations were asked to take stock of such cases, and complete the on-going adjudication proceeding expeditiously following the due process. Further, it would also be desirable that the process of review is also carried out expeditiously in such cases so that the designated committees are able to determine the tax dues within the time stipulated under the Scheme.

20. These clarifications show that it is also the view of the department that even those cases which are excluded from the Scheme as per Section 125(1)(a) may subsequently fall under the "arrears" category once the appeal is decided or adjudication order is passed and such order has attained finality or appeal period is over but no appeal is filed and other requirements under the Scheme are fulfilled. They further show that "amount in arrears" is the amount of duty recoverable, *inter alia*, on account of no appeal having been filed by the declarant against an adjudication order or an appellate order before the expiry of the limitation period for filing the appeal or the appellate order having attained finality. They also show that even that case would be eligible for being processed under "arrears" category

where the limitation period for filing of an appeal is not over but the taxpayer gives it in writing to the department that he would not file an appeal. They also show that even the cases where appeals have been filed after 30th June, 2019 are eligible under the Scheme *per se,* but on giving of requisite undertaking by the declarant to the department in terms of para 2(viii) of Circular No.1072 dated 25.9.2019. They further show that though a case wherein show cause notice has been issued on or after 30th June, 2019 is not covered under any of the categories of the Scheme, it would still become eligible under "arrears" category if other conditions of that category are fulfilled, like adjudication of notice is done and limitation period for filing an appeal has expired and no appeal has been filed or the order in appeal has attained finality or the declarant has given the requisite undertaking.

21. The thrust of the provisions under our consideration and which are found in Section 121(c) and Section 124(1)(c) is upon the amount of duty having become finally recoverable on account of it's admission by the declarant or for the reason of declarant not filing an appeal before the expiry of the limitation period or the appellate order having attained finality. This is also clear from above referred clarifications. These clarifications while explaining as to which case would fall under "arrears" category, we find, do not even whisper about the amount of duty which can be disputed or which is under dispute. They only

underline that amount of duty which is the amount finally recoverable. These clarifications are only consistent with provisions made in Section 121(1)(c) and Section 124(1)(c) read with Section 125 of the Finance Act, 2019.

22. Discussion thus far made would show that a case could be put in "litigation" category if the amount of duty claimed by the department has not attained finality or has not been admitted by the declarant as recoverable from him and that a case can be placed in "arrears" category where the amount of duty has attained finality on account of appeal having been not filed before the expiry of the limitation period or the appellate order having attained finality or the amount of duty having been admitted by the declarant. This is the only possible conclusion which can be made upon careful reading of the aforestated provisions of the Scheme, 2019 together with clarifications in the aforestated three Circulars issued by the department.

23. Once the distinction between "litigation" category and "arrears" category is understood, no difficulty would arise in comprehending the category under which the case of the petitioner would fall. The petitioner was issued show cause notice on 24.4.2019 well before the cut-off date of 30th June, 2019 but, the show cause notice was adjudicated upon by an order passed on 29.12.2019. On the date on

which the adjudication order was passed, the Scheme, 2019 was operational. Against this adjudication order, the petitioner could have filed an appeal as the limitation period of 90 days was available. But, the petitioner did not file any appeal and chose to file declaration in form SVLDRS-1 as the Scheme, 2019 was operational. The intention was obvious. It was to off-load the baggage; it was to settle the dispute arising from it's past legacy of defaults, once and for all, so that it could make a new beginning under new GST regime. Adjudication of the show cause notice during the validity period of the Scheme, 2019 in this case is what transformed it into a case under "arrears" category which otherwise would have continued to be in "litigation" category. It would have been a different thing if show cause notice dated 24.4.2019 was not adjudicated upon during the validity period of the Scheme, 2019. But, that was not to be. It was adjudicated upon at a time when the Scheme was operational and, therefore, as per the provisions made in Section 121(c) read with Section 124(1)(c), the petitioner was entitled to file his declaration under "arrears" category and his declaration ought to have been considered only in this category. His such entitlement further drew strength from the clarifications given in the CBITC Circulars dated 25.9.2019, 29.10.2019 and 12.12.2019, which we have already discussed at length in the earlier paragraphs. Therefore, the action of the respondent in treating declaration filed by the petitioner as falling under "litigation" category instead of "arrears" category is contrary to

the provisions of the Scheme and hence not permissible in law. On this count, the action of the department needs to be quashed and set aside.

24. It may be stated here that a statutory scheme like the Scheme, 2019 is remedial in nature. It has two dimensions of opportunity and amnesty; opportunity to settle the dispute once and for all, and amnesty to past sins in a regulated manner. It enables a defaulter to off-load burden of his past by paying unpaid taxes with a view to starting afresh with a clean slate. On payment of the tax dues determined under the Scheme, certain benefits in the form of waiver of interest, fine, penalty and immunity from prosecution are conferred. The whole focus is on unloading of the baggage of pending litigation arising from disputes relating to pending liability to pay service tax and excise duty. With such a nature of the Scheme, 2019, which is remedial, a liberal interpretation of the provisions of the Scheme is required to be made. It is for the reason that settled canons of interpretation of statues tell us that a remedial or beneficial statute receives liberal and wider interpretation (Union of India V/s. Prabhakaran Vijaya Kumar and others, (2008) 9 SCC 527). It would then mean that the words of such a statutory scheme must be so construed as to give the most complete remedy which the phraseology of the scheme will permit (See In re Hindu Women's Rights to Property Act, AIR 1941 PC 72) or otherwise, the purpose of the

Scheme may not be achieved, or the mischief, if we may say so, sought to be remedied, would continue. It would also mean that if two interpretations are possible, that interpretation which frustrates not, but accomplishes most the remedy must be embraced. It, therefore, follows that while understanding the Scheme and applying it's provisions, it must not happen that a declarant is pushed into a worst scenario than before. A declarant cannot be made to encounter a situation where he would find that he was happily placed before making a declaration under the Scheme. But, here if we consider the demand made in impugned form SVLDRS-3, and determination made in order adjudicating it, we would find that it is much more than the amount of dues finally determined in original adjudication order deciding the show cause notice. In other words, the impugned form SVLDRS-3 has transposed petitioner from a small bonfire to a big blaze. Settled principles of interpretation of statutes; we have already discussed which one of them applies here, would not let this happen. This is one more reason why we would say that the case of the petitioner falls in "arrears" category and not in "litigation" category, and the phraseology of the Scheme, 2019 permits such an interpretation.

25. Our such view also receives support from what is held by a coordinate Bench of this Court at Principal Seat Mumbai in Writ

Petition No.818/2020 (Jyoti Plastic Works Private Limited V/s Union of India and others) with connected matters decided on 5th November, 2020 and reported in 2020-TIOL-1874-High Court-Bombay High Court-Central Excise. The relevant observations of the Division Bench appear in paragraphs 33 and 40 of the judgment. They are extracted as below:-

> *"33. …….The scheme has the twin objectives of liquidation of past disputes pertaining to central excise and service tax on the one hand and disclosure of unpaid taxes on the other hand. As an incentive, those making the declaration and paying the declared tax verified and determined in terms of the scheme would be entitled to certain benefits in the form of waiver of interest, fine, penalty and immunity from prosecution. After a threadbare analysis of the relevant provisions of the scheme, this Court held that the basic thrust of the scheme is to unload the baggage of pending litigations centering around service tax and excise duty. Focus is to unload this baggage of the pre-GST regime and allow business to move ahead. Therefore, a liberal interpretation has to be given to the scheme. This is the broad picture which the officials have to keep in mind while considering a declaration under the scheme seeking amnesty. The approach should be to ensure that the scheme is successful and therefore, a liberal view embedded with the principles of natural justice is called for……*
>
> *40. 40. In this connection we may refer to the maxim reformatio in peius. It is a latin phrase meaning a change towards the worse i.e., a change for the worse. As a legal expression it means that a lower court judgment is amended by a higher court into a worse one for those appealing it. In many jurisdictions, this practice is forbidden ensuring that an appellant cannot be placed in a worse position as a result of filing an appeal. When the above phrase is prefixed by the words 'no' or 'prohibition', which would render the maxim as no reformatio in peius or prohibition of reformatio in peius, it would denote a principle of*

procedure as per which using a remedy available in law should not aggravate the situation of the person who avails the remedy. In other words, a person should not be placed in a worse position as a result of filing an appeal. No reformatio in peius or prohibition of reformatio in peius is a part of fair procedure and thus by extension can also be construed as part of natural justice. It is not only a procedural guarantee but is also a principle of equity."

26. In the case of **Nidhi Gupta V/s. Union of India**, 2020 (34) G.S.T.L. 61 (Del.), a Division Bench of Delhi High Court has taken a view that cut-off date of 30th June, 2019 is not applicable to a case which is covered under rule 3(b), which is a case of an amount being in arrears and that means, in a case where show cause notice is issued prior to the cut-off date of 30th June, 2019 but adjudication order is issued after the cut-off date and declarant has given it in writing that he does not wish to file an appeal against the adjudication order, the declaration can be filed in "arrears" category under the Scheme, 2019, if the period of it's validity has not expired. This view is consistent with the view taken by us hereinabove.

27. Shri Bhattad, learned counsel for the respondent, relying upon the law laid down in the case of Union of India V/s. Charak Pharmaceuticals (supra), which is followed by a coordinate Bench of this Court in the case of National Construction Company V/s. Designated Committee under Sabka Vishwas Legacy Dispute Resolution Scheme, 2019, Writ Petition No.4130/2020, decided on

26th July, 2021, submits that if any benefit is sought under the Tax Relief Scheme, the party must fully comply with the provisions of the Scheme, and if there is no such compliance, Courts cannot extend the benefit of the Scheme on the principle of equity. There can be no two opinions about the law so declared by the Apex Court. But, in this case, while considering the facts in the light of the provisions of the Scheme, 2019, we have found that the petitioner does comply with the requirements of the Scheme and even the respondent does not dispute this proposition. The dispute is about which out of the two provisions of the Scheme would apply to the declaration filed by the petitioner. In the opinion of the department, the declaration ought to have been treated as falling under "litigation" category and in the eye of the petitioner his declaration ought to be considered as having been filed under "arrears" category. This dispute, for the reasons stated above, is already resolved by us holding that petitioner's declaration cannot be treated as falling under "litigation" category and that it is the one which is covered by "arrears" category proper.

28. The second dimension of the grievance is about not processing the declaration filed by the petitioner as single document and erroneously splitting it into two different demands of taxes, one in relation to service tax dues and the other in relation to recovery of disallowed Cenvat credit. According to learned counsel for the

petitioner, this is against the provisions made in rule 3(2) of Rules, 2019 read with clarification appearing in paragraph 10(h) of Circular No.1071 dated 27.8.2019 issued by CBITC, which is disagreed to by learned counsel for the respondent. Learned counsel for the respondent submits that the demands of service tax and Cenvat credit raised upon the petitioner were referable to two different enactments, the first under the Finance Act, 1994 and the other under Cenvat Credit Rules and, therefore, they cannot be clubbed together to determine the tax dues, as if they are arising under the same statute.

29. Considering the provisions made in rule 3(2) of Rules, 2019 and also the clarification given by the Central Board in it's Circular No.1071 dated 27.8.2019, it is not possible to accept the contention of learned counsel for the respondent and for the reasons stated in ensuing paragraphs we reject it.

30. Let us now consider rule 3(2), which reads thus:-

> *3(2) A separate declaration shall be filed for each case.*
> *Explanation. - For the purpose of this rule, a "case" means -*
> *(a) a show cause notice, or one or more appeal arising out of such notice which is pending as on the 30th day of 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 day of June, 2019; or*
> *(d) a voluntary disclosure."*

31. It would be clear from the above provisions that a separate case must be filed in respect of each of the four categories listed in clauses (a), (b), (c) and (d) of rule 3(2). It would also be clear that when a case is filed under any one of these categories, within that category the case is required to be considered and dealt with as if it is a single case and there cannot be any further breaking of the case on the basis of several demands made in the show cause notice. Once a case travels from the category of show cause notice ("litigation category") under clauses (a) and (c) to the category under clause (b) which is of a "an amount in arrears" (arrears category) and the declaration is made under the category listed in clause (b) of rule 3(2), it would have to be treated as one single case for the purpose of Rules, 2019, no matter the show cause notice contained two demands of taxes, one under Finance Act, 1994 and the other under Cenvat Credit Rules, 2019. This is because, rule 3(2) segregates cases, as can be seen from clauses (a) to (d), not on the basis of demands made in the show cause notice or what kind of liabilities are revealed in the enquiry or investigation or disclosed in voluntary disclosures, but on the basis of categories listed in clauses (a) to (c) thereof and considers declaration filed in any of the categories as forming one case, for the purpose of rule 3(2).

32. Even CBITC entertains same opinion which is disclosed by the

clarification given in paragraph 10(h) of it's Circular dated 27.8.2019 which reads thus:-

> *"10. Further, the following issues are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder:*
> *(a) ....*
> *(b) .....*
> *(c) .....*
> *(d) ....*
> *(e) .....*
> *(f) ......*
> *(g) ....*
> *(h) Rule 3(2) of the Sabka Vishwas (Legacy dispute Resolution) Scheme Rules, 2019 provides that a separate declaration shall be filed for each case. Many a times a show cause notice covers multiple matters concerning duty liability. It is clarified that a declarant cannot opt to avail benefit of scheme in respect of selected matters. In other words, the declarant has to file a declaration for all the matters concerning duty liability covered under the show cause notice."*

33. Thus, even on the second aspect of the challenge made in this petition, we find that the respondent has fallen in error in not treating the declaration filed by the petitioner as constituting one single case in the category of "amount in arrears" and by considering two demands in the show cause notice, one relating to service tax dues and the other in relation to recovery of disallowed Cenvat credit, separately and individually, something not permitted under Rules, 2019. On this count as well, we find that the action of respondent is illegal and, therefore, deserves to be quashed and set aside.

34. In the result, the petition is **allowed** in terms of prayer clause (ii).

The respondent is directed to reconsider the case of the petitioner in the light of the observations made herein-above and in accordance with law as expeditiously as possible. Rule accordingly. No costs.

JUDGE **JUDGE**

Tambaskar.