Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11071 of 2015 - SMB

(Arising out of OIO-VAD-EXCUS-001-COM-044-14-15 dated 24/03/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

N J Patel Associates ....**Appellant**
Dalia Pole, Sanidev Mandir Lane,
Wadi,VADODARA
GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Vadodara-I ......**Respondent**
1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA, GUJARAT-390007

APPEARANCE:
Shri Mrugesh Pandya, Advocate Appeared for the Appellant
Smt. Sunita Menon, Superintendent(AR) Appeared for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No.10059/2025

DATE OF HEARING: 14.10.2024
DATE OF DECISION: 28.01.2025

C L MAHAR

The brief facts of the matter are that the appellant are engaged in the business of providing "Works Contract Service" and they are registered with the service tax department to this effect. The appellant had filed a Voluntary Compliance Encouragement Scheme (VCES) application on 28.12.2013 declaring their service tax dues as Rs.9,988/- to the Designated Authority namely Assistant Commissioner (Technical), Central Excise & Service Tax, Vadodara-II for availing benefit of the Voluntary Compliance Encouragement Scheme (VCES). The department is of the view that the appellant has not made a true and truthful declaration under VCES scheme and basic premises on which the declaration of the appellant was rejected as follows:-

> *"4. Whereas, it appears that the Assistant Commissioner, City Division, Vadodara-II vide the above said letter, has reported that as per the calculation sheet attached with the VCES application for the period October-2012 to December-2012, the assessee has calculated Service Tax after taking abatement of 75% and then again availed abatement on account of reverse*

charge mechanism (50% value of service). However the assessee has amended his service to Works contract on 17.01.2014; thus, it appear that the abatement availed on account of reverse charge mechanism cannot be applied for the period October-2012 to December-2012. Hence, as per the calculation sheet, taxable value after abatement of 75% comes to Rs.2,08,92,785/- and total service tax payable comes to Rs.25,82,348/; whereas the assessee has declared Rs. 9,988/- as their service tax liability under VCES, 2013. Moreover, assessee has mentioned in the calculation sheet that they have paid service tax of Rs. 12,81,186/-, however, no such challan copy was submitted by the assessee.

5. Whereas, it appears that as per scrutiny of the calculation sheet attached with the VCES application, the actual payable service tax comes as under:

Sr. No.	*Particulars*	*Amount (in Rs.)*
1.	*Gross Amount received (October'12 to December'12)*	*83571141*
2.	*Abatement amount claimed (75%) (as declared by assessee under VCES, 2013)*	*62678356*
3.	*Taxable value after availing abatement on which service tax is payable (1-2_*	*20892785*
4.	*Actual Service Tax payable*	*2582348*
5.	*Service tax "payable as declared by assessee" under VCES*	*1291174*
6.	*Service tax paid "as declared under VCES" by the assessee;*	*1281186*
7.	*Service tax declared under VCES*	*9988*

6. Whereas, on scrutiny of the VCES application and their calculation sheet submitted by the assessee along with the said application, it appears that the calculation made by the assessee is wrong where they calculated their tax liability by claiming abatement; assessee registered themselves under "Construction service other than residential complex service" and got it amended to "works contract service" of Finance Act, 1994 on 17.1.2014; thus, it appear that the said service provided by the assessee during October'12 to December'12 does not qualify for any abatement by virtue of any notification. Thus, it appears that the declaration made by the assessee under VCES, 2013, availing abatement on account of reverse charge mechanism, declaring their service tax value wrongly and their by declaring their service tax to Rs.9,988/- is incorrect; thus it appears that they have made a "substantially false" declaration under VCES, 2013."

2. Thus, on the above premises, a show cause demanding service tax of Rs.25,82,348/-, under Section 73 of the Finance Act, 1994 along with the interest as well as invoking the panel provisions was issued. The matter got adjudicated vide impugned order-in-original dated 24.03.2015, whereunder all the charges has invoked in the show cause notice has been confirmed by Adjudicating Authority. The Adjudicating Authority while deciding the matter has held as follows:-

"14. On going through the provisions under VCES, what can be construed from the scheme and provisions contained therein is that if any declaration is found, subsequent to his declaration about tax dues, to have withheld substantial tax dues deliberately, so as to avail the amnesty without being coming out with their true declaration, his declaration under VCES can be denied and the amount can be recovered forthwith. However, at times a declarant may be genuinely not aware of his actual tax dues due to ignorance or misinterpretation of provisions of Act. In such case, merely because he failed to include certain part in his tax dues, he cannot be denied the benefit of VCES scheme. However, in the instant case, evidences on record suggests that the declarant not only failed to amend their registration within 30 days of their registration, also appear to have deliberately made false declaration, under VCES, 2013.

15. Following challan copies were produced by the assessee along with their defence submission:

Challan No.	*Challan date*	*Amount*
30042	*01.12.2012*	*90781*
30040	*01.12.2012*	*64795*
30020	*29.11.2012*	*999999*
000085	*14.05.2012*	*187327*

16. I noticed from the 'accounting code' and 'description' of the challans that these payments were made by the assesssee by classifying their service as all these pay service and not under "works contract service"; assesse paid rs. 5,500/- towards their Ist instalment of VCES, 2013 but they have not paid their IInd instalment amount which was due by 30-6-2014.

17. I notice that the assessee, in their VCES, 2013 declaration filed on 28.12.2013, declared their service tax dues as Rs. 9,988/- and submitted a calculation sheet; they have declared Rs. 8,35,71,141/- as the gross amount received by them during the period October 12 to December'12; they have claimed-75% abatement and the said abetment is permissible under Notification No. 26/2012 Service Tax dated 20-6-2012 for "construction service"; however, the assessee again availed abetment of 50% under reverse charge mechanism stating that their service category is "works contract service"; The calculation pattern shown by the assessee is as under:-

Gross amount received against service provided during the period Oct'12 to December'12	*Rs.8,35,71,141*
75% abatement claimed	*Rs.6,26,78,356*
Abatement on account of reverse charge mechanism (50% value of service)	*Rs.1,04,46,393*
Total service tax payable (Including 2% and 1% Cess)	*Rs.12,91,174*
Less: service tax paid	*Rs.12,81,186*
Service tax payable	*Rs.9,988*

18. Clause (b) of Section 66E specifies construction service as "Declared service" which defines construction of a complex, building, civil structure or a part thereof; from the copies of the work order dated 9-10-2012 produced by the assessee it is understood that the nature of service executed by the assessee in their declared period of VCES, as construction service"; during October'12 to December'12, assessee claimed 75% abatement under Notification No. 26/2012 - Service Tax dated 20-6-2012 for "construction service";"

3. Having heard both the sides, I am of the view that the Adjudicating Authority has not considered the work invoices issued by the appellant. While deciding the matter, the Adjudicating Authority has not decided whether the activity undertaken by the appellant falls under the category of "Works Contract Service" or under "Construction Service". I am also of opinion that the Adjudicating Authority while holding the subject activity falls under commercial construction service, he has also not provided the facility of the abatement of the value as provided under Notification No.13/2012-ST dated 28.06.2012 while confirming the demand of service tax. I take note of the fact that while the appellant has been claiming that activity undertaken by them falls under category of "Works Contract Service" while the department has considered the same is "Commercial Construction Service". The Circular No.170/05/2013-ST dated 08.08.2013 clearly provides that the Commissioner would "in overall facts of the case take into account the reasons he has to believe, take a judicious view as to whether a declaration is "substantially false", it is not feasible to define the term "substantially false" in precise terms, the proceedings under Section 111 would be initiated in accordance with the principles of the Natural Justice." In view of the Board's circular, the Adjudicating Authority has to categorically determine as to how a declaration made under VCES scheme is "substantially false". In this case the Adjudicating Authority has not determined whether the activity undertaken by the appellant qualified to fall under "Works Contract Service" as claimed by the appellant on the basis of work orders and invoices.

4. In view of the above facts, I hold that the matter need to be adjudicated a fresh by the Adjudicating Authority by giving a fresh opportunity to the appellant for presenting their case and submitted all the invoices and work orders for the Adjudicating Authority. After considering all the facts and the instructions issued by the boards and various other pronouncements of the

Higher Courts including the following decisions, the matter may be adjudicated a fresh:-

- M/s. NS Construction Company Versus Commissioner of Central Excise & Service Tax - 2019 (10) TMI 495 - CESTAT, Allahabad
- M/s. Shree Ganesh Traders Versus Commissioner of Central Goods and Service Tax, Excise, Customs - Udaipur - 2022 (5) TMI 749 -CESTAT, New Delhi.
- German Remadies Ltd. Versus CCE, Mumbai – 2018 (11) GSTL 180
- CCE, Tamil Nadu Versus Southern Structural Ltd. 2008 (229) ELT 487. (Supreme Court)
- Anand Nishikawa Company Ltd. 2005 (188) ELT 149 (Supreme Court).

5. In view of the above, the appeal is allowed by way of remand.

(Pronounced in the open court on 28.01.2025)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi