IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70042/2015-ST[SM]

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPL-I/79/2015-16 dated 18/06/2015 passed by Commissioner (Appeals-I), Central Excise, Meerut)

Commissioner of Service Tax, Noida **Appellant**

Vs.

Shri S K Singh

S/o Late Shri Heeri Singh **Respondent**

Appearance:

Shri Sandeep Kumar Singh (Dy. Commr.) AR for Appellant
Shri Rishi Raj Kapoor (Advocate) for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/02/2018
Date of Decision : 08/02/2018

FINAL ORDER NO. – 70391/2018

Per: Anil G. Shakkarwar

The present appeal is filed by Revenue against Order-in-Appeal No. NOI/SVTAX/000/APPL-I/79/2015-16 dated 18/06/2015 passed by Commissioner (Appeals-I), Central Excise, Meerut.

2. The short issue in the present appeal is whether the show cause notice issued by Additional Commissioner after

filing the application for VCES 2013 by respondent is sustainable.

3. Brief facts of the case are that the respondent was a partner of partnership firm and the said partnership firm rented out immovable property. A show cause notice dated 17th January, 2014 was issued to the partner calling upon him to show cause as to why service tax amounting into Rs.18,42,521/- for the period from 16/02/2009 to 30/09/2013 should not be recovered. The said show cause notice was adjudicated through Order-in-Original dated 28/01/2015 wherein on page 9 the Original Authority has recorded that the partnership firm M/s Singh Automobile had gone for VCES scheme and had paid 50% of tax liability from 16th February, 2009 to 31st March, 2012 amounting to Rs.7,39,906/- on 30th December, 2013 and that the balance was deposited on 31st December, 2014. Further certificate in the proforma VCES-3 was issued for liability up to 31st March, 2012. In spite of taking the above submissions into consideration Original Authority confirmed the demand and impose equal penalty. Aggrieved by said order, respondent preferred appeal before Learned Commissioner (Appeals). The Learned Commissioner (Appeals) has held that the said Order-in-Original did not sustain for the period from 16/02/2009 to 31/03/2012. Aggrieved by the said order Revenue is before this Tribunal.

4. Heard the Learned A.R. who has submitted that the agreement was entered into by the partner whereas the VCES-3 application was filed by partnership firm.

5. Learned counsel for the respondent has submitted that for the period subsequent to 01/01/2013 up to 30/09/2013, they have accepted the impugned Order-in-Appeal and paid the required service tax in compliance to impugned Order-in-Appeal.

6. Having considered the submissions of both sides and on perusal of records I find that the show cause notice was issued on 17th January, 2014 by Additional Commissioner after the application in VCES scheme was filed by the partnership firm on 30th December, 2013. Therefore, as on 30th December, 2013 the issue was covered by the provisions of Finance Act, 2013 wherein under Section 111 of Finance Act, 2013, it is provided that when the application for VCES has been admitted for the period for which such application has been admitted the jurisdiction to issue show cause notice lies only with the Commissioner. After having come to know about the said facts of filing of VCES application during passing of Order-in-Original, it was responsibility of the Original Authority to close the proceedings since he did not have jurisdiction to adjudicate. The Original Authority has failed to understand the provisions of law. I therefore, hold that the said show cause notice dated 17/01/2014 is not

sustainable under the provisions of Section 111 of Finance Act, 2013.

7. I, therefore, dismiss the appeal filed by Revenue.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Akp