

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70001 of 2025

(Arising out of Order-In-Appeal No.234-ST-APPL-LKO-2021, dated-08.09.2021 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

M/s Vardhman Electronics

.....Appellant

(1/130, Suhag Nagar
Firozabad, Uttar Pradesh 283203)

VERSUS

Commissioner, CGST & C.E., Agra

....Respondent

(113/4 Sanjay Place, Agra, Uttar Pradesh 282002)

APPEARANCE:

Ms. Stuti Saggi, Advocate & Shri S.P.Ojha, Consultant for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70854/2025

DATE OF HEARING : 05.12.2025
DATE OF DECISION : 05.12.2025

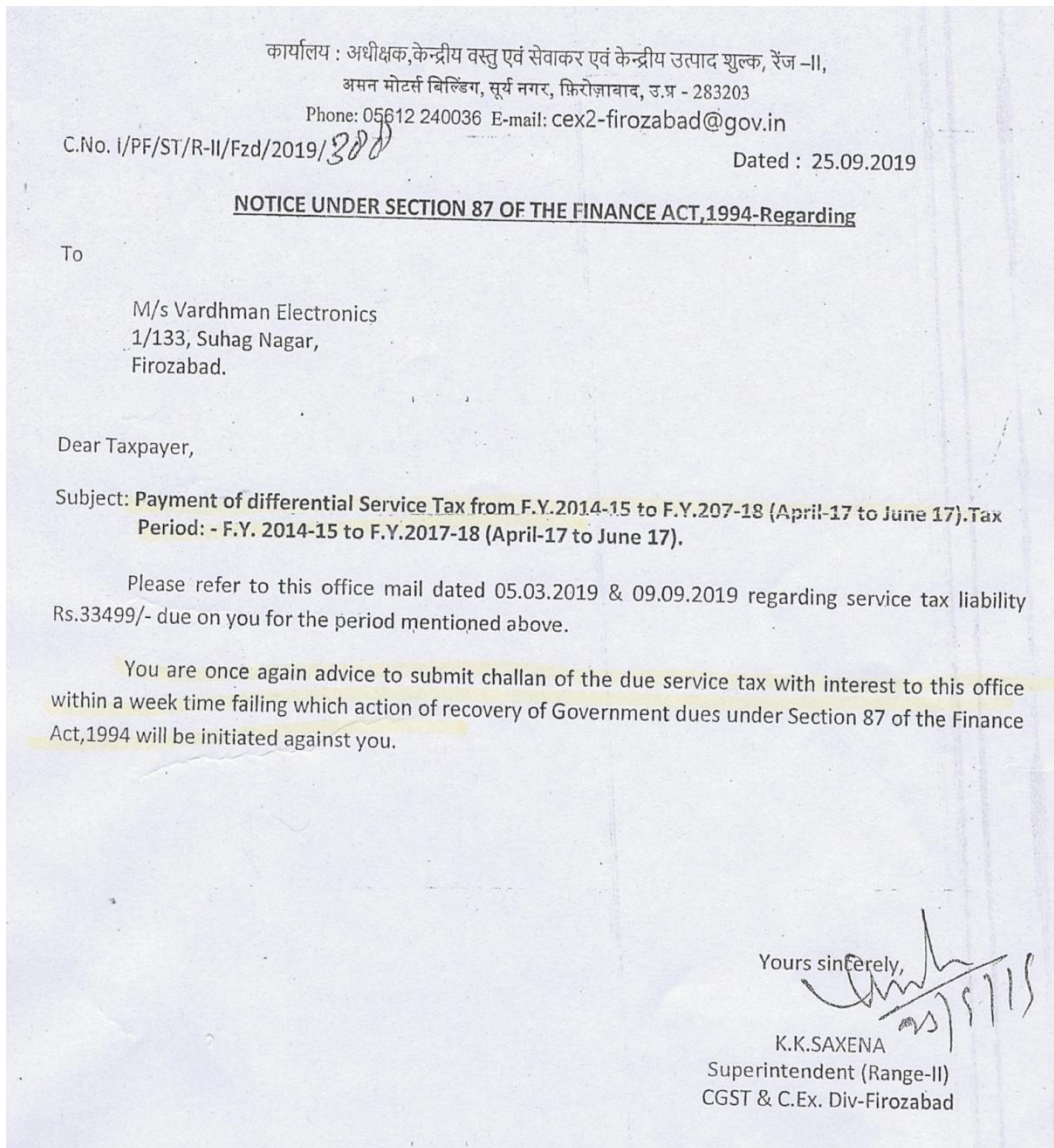
P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal No.234-ST-APPL-LKO-2021, dated 08.09.2021 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow.

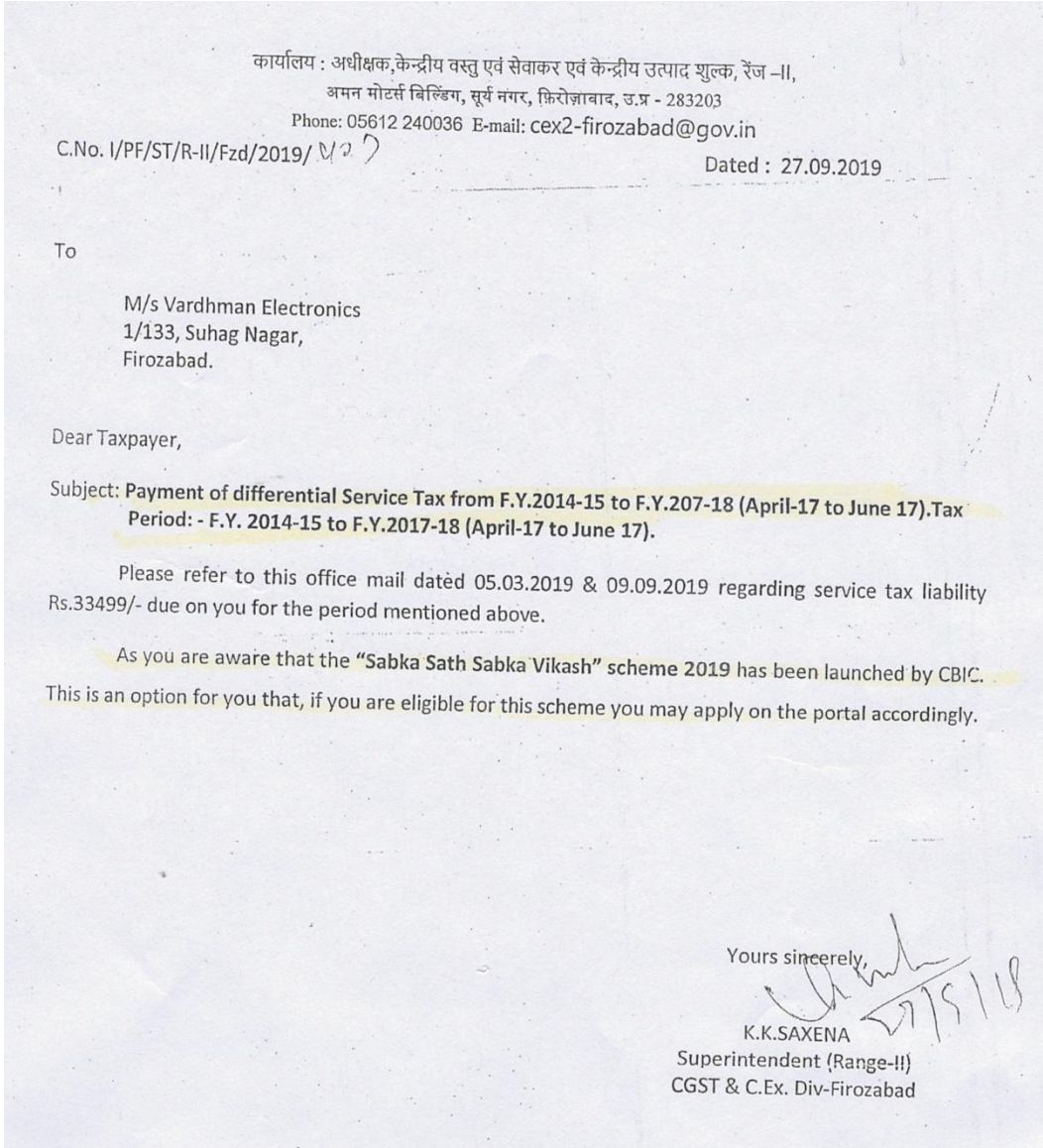
2. The facts of the case in brief are that the Appellant M/s Vardhman Electronics, Firozabad is registered with the Service Tax Department under the category of "Maintenance and Repair Services" and are franchisee of M/s Johnson Controls Hitachi Air Conditioning India Ltd., M/s Sony India Pvt. Ltd., M/s L.G. Electronics India Private Ltd. & M/s Tekcare India Pvt. Ltd. and were accordingly engaged in providing repair and maintenance

service of various electronic appliances to the customers of these companies during the Financial Year 2014-15.

3. Service Tax Returns were filed by the Appellant-Assessee and on the basis of the ST-3 Returns filed; a notice under Section 87 of the Finance Act, 1994 dated 25.09.2019 was received by the Assessee issued by the Superintendent (Range-II), Firozabad for payment of differential Service Tax in view of the scrutiny of the ST-3 Returns filed by the Assessee. The letter is reproduced for better appreciation of facts and for ready reference:-




4. Subsequently, on 27.09.2019 another letter was issued to the Assessee apprising him regarding Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The letter is reproduced below for ready reference:-



5. On the basis of the above two letters, the Assessee opted for the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and completing the various procedures and steps as required, a final discharge certificate for Full and Final Settlement of Tax Dues under section 127 of the Finance (No. 2) Act, 2019 read with Rule 9 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in Form SVLDRS 4 dated 26.06.2020 was issued which covered the period from Financial Year 2014-15 to Financial Year 2017-18 (upto June 2017).

6. Subsequently, a communication dated 05.12.2024 was received which reads as under:-


GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER (APPEALS)
CUSTOMS, CGST & CENTRAL EXCISE
CGST BHAWAN, GROUND FLOOR,
7-A, ASHOK MARG, HAZRATGANJ, LUCKNOW
PHONE : 0522-2304771, FAX : 0522-2304772

*Recd on
10/12/2024
Ann-2 P19*

C. No. 21-ST/APPL/LKO/2021 / 4775 Dated: 05.12.2024

DIN-20241253AU0000222AFA

To,

M/s Vardhman Electronics,
 Prop. Pramod Jain,
 1/130, Suhag Nagar, Firozabad.

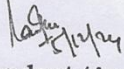
Sub:- Request to provide Original Order in Appeal No. 234-ST/APPL/LKO/2021 dated 08.09.2021 passed in the case of M/s Vardhman Electronics, 2/143, Suhag Nagar, Firozabad-reg.

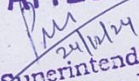
Kindly refer to your letter dated 08.11.2024 on the above subject matter requesting therein to provide the Original copy of Order-in-Appeal No. 234-ST/APPL/LKO/2021 dated 08.09.2021.

In this regard, it is to inform that the copy of Order-in-Appeal No. 459-234-ST/APPL/LKO/2021 dated 08.09.2021 passed in respect of appeal No. 21-ST/2021 dated 12.02.2021 was sent by this office on the address "M/s Vardhman Electronics, 2/143, Suhag Nagar, Firozabad" as mentioned in the form ST-4 but the same has been returned undelivered by the postal authorities.

As per your request vide letter dated 08.11.2024, the original copy of the O-I-A is being sent to your above new address alongwith this letter.

Encls: As above


Superintendent (Appeals)
 Customs, CGST & Central Excise,
 Lucknow

ATTESTED

 24/12/24
Superintendent
CGST Division-II, Agra

7. It is the case of the Appellant-Assessee that they never received the Show Cause Notice¹ dated 13.0.2019 and the impugned Order-In-Appeal dated 08.09.2021. It is also the case of the Appellant that since the SCN dated 13.09.2019 was never received by them, there was no occasion to include the proposed demand in the application for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

¹ SCN

8. Learned Advocate appearing on behalf of the Appellant vehemently argued that once SVLDRS Form 4 has been issued by the Designated Authority for the tax period Financial Year 2014-15 to Financial Year 2017-18 (upto June 2017), it is not open to demand Service Tax amounting Rs.1,79,763/- for the tax period of Financial Year 2014-15 stating that the same is for the same tax period but for the different matters, hence excluded preview of Para 129(2)(b)(ii) of Chapter V- Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

9. In support of her submissions she relied on the order of the Hon'ble Madras High Court in the case of M/s Padmavathi Srinivasa V/s Joint Commissioner, GST & Central Excise, Chennai in W.P.No.11797 of 2021 and W.M.P.No.12551 of 2021 reported at (2024) 17 Centax 356 (Mad.).

10. Learned Departmental Representative justified the impugned order and submitted that when the Order-In-Original was received by the Assessee, it is not understood that how the SCN was not received by them.

11. Heard both the sides and perused the appeal records.

12. I find that the dispute in the present appeal is regarding adjudication of the SCN dated 13.09.2019 after issuance of the discharge certificate for Full and Final Settlement of Tax Dues under section 127 of the Finance (No. 2) Act, 2019 read with Rule 9 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 in FORM SVLDRS 4.

13. I find that the issue in the present appeal is no more res-integra and the facts of the present case are squarely covered by the above decision of the Hon'ble Madras High Court wherein it was held that once the Discharge Certificate is issued by the Designated Committee it is not open to proceed with adjudication. The relevant paras are reproduced below for ready reference:-

"8.9 *The submission of the Revenue by placing reliance on 129(2)(c) of the Scheme that if the declaration contains false particulars it would then be open to proceed with adjudication ignoring the Discharge Certificate issued by the Designated Committee cannot be sustained in view of the fact the Central Excise Officer would include an Assistant Commissioner or any other officer of the Central Excise department whereas the designated committee comprises of a Commissioner, Joint Commissioner and Additional Commissioner. Resultantly, to understand that the Discharge Certificate issued by the designated committee could be revoked, cancelled or discarded by an officer of a lower rank would result in distortion of institutional and administrative hierarchy a consequence which ought to be avoided. In this regard it may be relevant to refer to the judgment in the case of M/s.Muthu Metals v. State of Tamil Nadu reported in 1993(3) M.T.C.R.:*

"On a careful consideration of the submission in the light of the governing position of law, we are of the view that there is nothing in the provisions of the Act or the Rules or the scheme underlying assessment and levy of tax which disables a particular authority in the hierarchy who is otherwise entitled to and empowered to exercise powers under sections 16 and 16-A of the Act from exercising such powers merely because the original assessment under section 12 came to be made by an officer of a higher rank or status in the administrative hierarchy. The exercise of powers under sections 16 and 16-A of the Act is equally an independent one on distinct and separate material or for reasons and the validity or otherwise of such exercise has to be adjudicated on the basis of any infirmity of its own and not with reference to the exercise of powers said to have been made under section 12 of the Act. But, we are also of the view that the same may not be the position when a particular claim of the assessee has been considered and allowed for exemption or concessional levy by the assessing

authority under section 12, and the same turnover is sought to be subjected to tax thought for any reason falling within the ambit of powers under sections 16 or 16-A of the Act. In such cases, at any rate, principle of propriety as well as administrative discipline ad observance of official decorum requires that an officer of equal or superior rank alone should undertake such an exercise and not an officer of an inferior rank otherwise it would lead to absurd results and a mockery of the grades of officers in the hierarchy."

(iii) Conflicting Orders - on the same subject:

Unless and until the Discharge Certificate is revoked or cancelled permitting a parallel adjudicating proceedings on the basis that the adjudicating authority is of the view that the declaration contains false particulars may result in plurality of orders on the same subject, a result frowned upon by the Supreme Court and which ought to be avoided. In this regard it may be relevant to refer to the following Judgments:

(i) NGEF Ltd. v. Chandra Developers (p) Ltd. and another reported in (2005) 8 SCC 219:

"It is difficult to accept the submissions of the learned counsel appearing on behalf of the respondents that both the Company Court and BIFR exercise concurrent jurisdiction. If such a construction is upheld, there shall be chaos and confusion. A company declared to be sick in terms of the provisions of SICA, continues to be sick unless it is directed to be wound up. Till the company remains a sick company having regard to the provisions of

sub-Section(4) of Section 20, BIFR alone shall have jurisdiction as regards sale of its assets till an order of winding up is passed by a Company Court.

46. It is inconceivable that in law not only will the approval have to be taken from both the courts; in case of any private sale, the Company will have to obtain the consent of both the Company Court and BIFR. While interpreting the provisions of the two statutes, the court cannot remain oblivious of the fact that in a given case, possibility of a conflict in the orders passed by the two courts may arise, which must be avoided."

(ii) Commissioner of Customs v. Sayed Ali and another reported in (2011) 3 SCC Cases 537 :

"20. From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose

inasmuch as the test contemplated under section 2(34) of the Act is that of specific conferment of such functions.

21. Moreover, if the Revenue's contention that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a "proper officer" in terms of Section 28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, inasmuch as all officers of Customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be "proper officers". In our view, therefore, it is only the officers of Customs, who are assigned the functions of assessment, which of course, would include reassessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under section 28 of the Act."

9. *From the above discussion I am of the view that the impugned order is liable to be set aside for the following reasons :*

- (a) *Once the Discharge Certificate is issued by the Designated Committee it is not open to proceed with adjudication.*

- (b) *The authority/power to revoke or cancel the Discharge Certificate on the premise that the material particulars furnished in the Discharge Certificate is false, lies with the exclusive jurisdiction of the Designated Committee.*
- (c) *To assume Adjudicating Authority/Central Excise Officers to have the power to revoke or cancel Discharge Certificate issued by the Designated Committee which may comprise of officers superior in rank to that of the Central Excise Officers carrying out adjudication would result in distortion of Administrative/Institutional Hierarchy.*
- (d) *In the absence of the Discharge certificate being revoked/cancelled by the Designated Committee, adjudication by the Central Excise officers could result in plurality of orders on the same subject conflicting with each other, which ought to be avoided.*

10. *In view of the above, the impugned order is set aside and the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed."*

14. In view of the abovementioned judgment of the Hon'ble High Court, the impugned order cannot be sustained and is set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)