REGISTERED / AD

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD**

Dated: 01/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70077/2015 dated 05/11/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

SKS Asstt. Registrar

| Application | Appeal | Name and Address of Appellant |
| --- | --- | --- |
| | ST/52512/2015 | PROMIND SOLUTIONS P LTD<br>C-43, SECTOR-65<br>NOIDA(UP)-201307) |

| Name and Address of Respondent | CCE NOIDA<br>C-56/42, SECTOR 62<br>NOIDA(UP) |
| --- | --- |

Other Appellants and Respondents as per Annexure

**Copy To**

3Advocate(s) / Consultant(s): SH RAJESH CHIBBER,ADV
FA-9, NEW KAVI NAGAR
GHAZIABAD.

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

**Asstt. Registrar**
**Regional Bench, Allahabad**

[redacted]

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**<u>REGIONAL BENCH : ALLAHABAD</u>**

**<u>S.T. Appeal No.52512/15</u>**

Arising out of OIA No.NOI/SVTAX/000/APPL-I/08/2015-16 dated 23/4/2015 passed by the Commissioner (Appeals-I), Central Excise, Meerut.

**For approval and signature:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes.
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen.
4. Whether Order is to be circulated to the Departmental Authorities? : Yes.

---

M/s Promind Solutions P. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of S.Tax, Noida

RESPONDENT (S)

APPEARANCE

None for the Appellant (s)
Shri Ravindra K. Das, Deputy Commissiner (A.R.) for the Respondent

**CORAM:**

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

<u>DATE OF HEARING & PRONOUNCEMENT : 05. 11. 2015</u>

Final ORDER NO. 70077/2015

**Per Mr. Anil Choudhary :**

This is an appeal against order in appeal dated 23/4/15 passed by Commissioner appeals, custom Excise and service tax, Noida by which the application filed by the appellant under VCES was rejected upholding the order of rejection dated 11/9/14.

2 The brief facts are that the appellant filed the VCES application dated 27/12/13 for the service tax liability to the tune of Rs. 16,88,159 (Rs. 16,38,988 tax plus Rs. 22,781 education cess plus Rs.16,390 as SHE cess). Appellant also filed a copy of challan for Rs. 8,42,731 submitted with the Department on 31/12/13. The balance amount was also deposited by the appellant within the prescribed time that is, on or before 30/6/14 and intimation for the same was given to the revenue vide letter dated 14/7/14. Vide a letter dated ~~on~~ 11/9/14, for the first time, the Department informed the appellant that as per their VCES declaration, they had deposited only Rs. 8,42,731/- whereas the amount to be deposited was Rs. 8,44,080, being 50% of the service tax due. Accordingly without any opportunity of hearing, for short payment of tax by Rs.1,349/-, the VCES-I declaration was rejected.

3. Being aggrieved the appellant preferred appeal before ld. Commissioner appeals who vide the impugned order was pleased to uphold the rejection relying on the ruling of Honourable Gujrat High Court in the case of Ramilaben Bharatbhai Patel v. Union of India 2014 (35) STR 695 (Guj.), wherein the Honourable High Court have held that under the VCES's scheme, non deposit of 50% of total tax declared by

31/12/13, wherein it was pleaded that there was no deliberate default and the amount being very small, Rs. 20,148, payment with interest was offered by the applicant. Under proviso to section 107(4) of the Finance Act, 2013 providing for payment of interest for delayed payment of 2nd instalment, applicable to sub section( 4) ibid only and not to sub section (3) ibid, scheme makes no difference between tax dues which is short paid due to bonafide error and one which flows from deliberate inaction. It was also held that there is no power for relaxing or waiving the condition of depositing 50% tax dues flowing from section 107 ibid. In view of the admitted shortfall of Rs. 1349/- in payment of the first instalment on or before 31/12/13 the Commissioner Appeals upheld the order of rejection.

4. The appellant is absent in spite of service of notice which was issued on 15/10/15. Hence as the matter is small,the same is taken up for hearing and disposal with the help of learnedl D.R. Heard learned D.R. in length who relies on the impugned order.

5. Having considered the grounds of appeal and the contentions of the revenue, I find that there is no case of deliberate default on the part of the appellant. No opportunity was ever given to the appellant after the filing of the VCES application to remove the defect. It was only after the payment of 2nd (final) instalment (100%) on or before 30/6/14, when the appellant had admittedly paid hundred percent of the tax dues under the scheme, that the objection for the first time was raised by revenue vide letter cum rejection order dated 11/9/14. I find that the facts in the present case are different from the facts

Arn

before the Honourable Gujrat High Court where notice was issued prior to final payment. Accordingly I hold that there has been miscarriage of Justice in the rejection of the application under the VCES of the appellant without any oppotunity to remove the defects and further without any opportunity to be heard, the order of rejection was passed. Further there were no tax dues on the date of issue of rejection order. In this view of the matter I set aside the impugned order and allow the appeal. The VCES application of the appellant is held to be in order and deemed to be accepted under the scheme, read with the provisions of Finance act, 2013.

6. Thus, the appeal is allowed.

(Pronounced in the open Court)

mm

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**