FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 09/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/71320/2017-CU[DB]** dated **09/10/2017**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70018/2016	**Goenka Motors (p) Ltd** Plot No.-83,85,hardatpur Jagatpur VARANASI UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

Copy To
3Advocate(s) / Consultant(s):

Vineet Kumar Singh,Advocate
5 Narain Nagar, Sector 11,
Indira Nagar,
Lucknow,
Uttar Pradesh

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. ST/70018/2016-CU[DB]

(Arising out of Order-in-Original No. ALD/EXCUS/000/(ST-72/14 & 156/14) 24 & 25 of 2015 dated 24/09/2015 passed by Commissioner of Central Excise, Service Tax & Customs, Allahabad)

M/s Goenka Motors (P) Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Allahabad

Respondent

Appearance:

Shri Vineet Kumar Singh (Advocate) for Appellant
Shri Mohd Altaf(Asstt. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 09/10/2017
Date of Decision : 09/10/2017

FINAL ORDER NO:-71320/2017

Per: Anil G. Shakkarwar

Present appeal is arising out of Order-in-Original No. ALD/EXCUS/000/(ST-72/14 & 156/14) 24 & 25 of 2015 dated 24/09/2015 passed by Commissioner of Central Excise, Customs and Service Tax, Allahabad.

2. Brief facts of the case are that the appellant had filed a declaration in the form VCES-I on 30.12.2013 covered by Chapter VI of Finance Act, 2013. The tax dues declared by

appellant were Rs. 20,63,618/-. On 30.12.2013, appellant deposited Rs. 12 lakhs in view of their declaration in form VCES-I. The appellant were issued with acknowledgement in the form VCES-II on 31.12.2013. Further appellant paid balance amount of Rs. 8,63,618/- vide Challan No. 00051 dated 26.06.2014 and requested the authorities to issue certificate in the form VCES-III through their letter dated 26.06.2014 as provided for in sub Section (7) of Section 107 of Finance Act, 2013. The above stated declaration was in respect of due for the period from October, 2008 to December, 2012. On 22.04.2014 Revenue issued the appellant with a show cause notice under Section 73 of Finance Act, 1994 demanding Service Tax amounting to Rs. 79,98,189/- for the period for which said declaration in form VCES-I was filed alleging that Service Tax of Rs. 79,98,189/- was short paid by the appellant. Further on 26.12.2014 appellant were issued with another show cause notice by Revenue invoking provisions of Section 111 of Finance Act, 2013 calling upon appellant to show cause notice as to why their VCES-I declaration dated 30.12.2013 should not be considered false and should not be rejected and why inadmissible Cenvat Credit of Rs. 36,54,225/- and Service Tax amounting to Rs. 38,12,575/- demanded through show cause notice dated 22.04.2014 should be recovered from them. On contest both the show cause notices were adjudicated through Order-in-Original dated 24.09.2015 wherein the entire amount demanded was confirmed and both the show cause notices were disposed. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the parties.

4. Having considered the submissions and on perusal of record and on perusal of provisions of Sections 104 to 114 covered by Chapter VI of Finance Act, 2013, we find that Section 107 of Finance Act, 2013 and Section 108 of Finance Act, 2013 are as follows :-

Section 107 – Procedure for making declaration and payment of tax dues. —

(1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014 :

PROVIDED that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an

acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

Section 108 – Immunity from penalty, interest and other proceeding. —

(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

5. We find that as provided under Section 107 of Finance Act, 2013 the appellant filed a declaration of Tax dues of Rs. 20,63,618/- on 30.12.2013. He paid Rs. 12 lakhs on 30.12.2013. He deposited balance amount of Rs. 8,63,618/- on 26.06.2014 and complied with the provisions of sub Section (3) and sub Section (4) of Section 107 of Finance Act, 2013. We, further, find that as required under sub Section (1)

of Section 108 of Finance Act, 2013 the appellant had complied with the requirements of said sub Section (1) of Section 108 ibid and, therefore, as provided under said sub Section (1) appellant had got immunity from penalty interest and any other proceedings under the Chapter. We, further, find that Section 111 of Finance Act, 2013 empowers demand to be issued under Section 73 of Finance Act, 1994. We, therefore, hold that neither the demand under Section 111 of Finance Act, 2013 nor demand under Section 73 of Finance Act,, 1994 was maintainable in view of immunity granted to the appellant by provisions of sub Section (1) of Section 108 of Finance Act, 2013. We, therefore, set aside the impugned Order-in-Original and allow appeal. Appellant shall be entitled for consequential relief as per law. The appellant is entitled to be issued with certificate in the form VCES-III.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Ankit

प्रमाणित प्रति/Certified True Copy
04/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
39, एम.जी.मार्ग, इलाहाबाद-211001
39, M. G. MARG,ALLAHABAD-211001