IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/40857/2016

(Arising out of Order-in-Appeal No. 16/2016 dated 22.1.2016 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore)

M/s. The Narasimha Mills Appellant

Vs.

CCE, Coimbatore Respondent

Appearance

Ms. Pramila Viswanathan, Advocate and
Shri V. Ravindran, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **25.10.2017**

Final Order No. 42372/2017

The narration of chronology of events in this case is necessary to understand the brief facts of the case.

2. The appellant was issued a letter dated 13.7.2011 by the department directing them to pay service tax on renting of immovable property service. Thereafter, a show cause notice dated 8.2.2012 was issued demanding service tax along with interest and also proposing to impose penalty which the appellant replied. After adjudication, Order-in-Original dated

28.3.2013 was passed confirming the demand of service tax along with interest and also imposed penalties under sections 77 and 78 of the Finance Act, 1994 and dropped the proposal to impose penalty under section 76. The appellant filed appeal before the Commissioner (Appeals) and also appeared for personal hearing. Thereafter, Order-in-Appeal dated 27.8.2013 was passed upholding the confirmation of demand but modified to the extent of deducting the property tax paid by the appellant from the total demand.

3. Meanwhile, the appellant opted to avail the Voluntary Compliance Encouragement Scheme (VCE Scheme) and filed declaration dated 27.9.2013 before the Assistant Commissioner of Central Excise, Coimbatore. A revised VCES was filed basing upon the order passed by Commissioner (Appeals). Show cause notice dated 23.10.2013 (the said show cause notice is referred to as the proceedings II hereafter) was issued proposing for rejection of VCES application. Vide order dated 15.11.2013, the appellant was informed that the VCES application has been dismissed. Against the said order of rejection of VCES application, the appellant filed appeal on 24.1.2014 before Commissioner (Appeals) and the same was returned to the appellant on 11.2.2014 stating that there is no provision under the scheme to file appeal. Against such decision, the appellant filed writ petition before the Hon'ble High Court of Madras and vide order dated 11.6.2015, the

Hon'ble High Court directed the Commissioner (Appeals) to dispose of the appeal against rejection of VCES declaration on merits. Thereafter, Order-in-Appeal No. 16/2016 dated 22.1.2016, which is impugned in the present appeal, was passed by the Commissioner (Appeals) rejecting the VCES application. The present appeal is filed against the rejection of VCES application.

4. On behalf of the appellant, ld. counsel Ms. V. Pramila and Shri V. Ravindran argued the matter. Ld. Counsel Shri V. Ravindran was fair enough to concede that no appeal has been filed before the Tribunal against the Order-in-Appeal dated 27.8.2013 by which the demand of service tax was upheld by the Commissioner (Appeals). He submitted that the present appeal is only an order passed by the Commissioner (Appeals) who has rejected the VCES application holding that the appellant's application for VCES declaration cannot be considered as per the norms of the said scheme. The period involved is April 2007 to March 2011. The service of renting of immovable property became taxable with effect from1.6.2007 and the leviability of tax was given retrospective effect with the amendment brought forth in 2010. That there was much confusion with regard to the levy of service tax on renting of immovable property especially on the background of the decision passed by the Hon'ble Delhi High Court in the case of Home Solutions Retail Ltd. Vs. Union of India – 2011 (21) STR

109 (Del.). That the matter is still pending before the Hon'ble Apex Court. The appellant had paid the service tax, however, interest remains unpaid. He pleaded that the demand, interest and the penalties may be interfered so that the appellant is absolved of the liability to pay the same.

5. Against this, the ld. AR Shri Arul C. Durairaj pointed out that the present appeal is filed against the order passed by the Commissioner (Appeals) which originated by filing a VCES application. The appellant has not filed appeal before the Tribunal against the Order-in-Appeal passed by Commissioner (Appeals) dated 27.8.2013 by which the Commissioner (Appeals) had upheld the demand of service tax, interest and the penalties imposed by giving a modification of deducting the property tax paid by the appellant. That therefore the order passed by the Commissioner (Appeals) with regard to the demand of service tax has attained finality. That on such score, the present appeal which is against the rejection of VCES application cannot be used as a platform for intervening with the service tax demand, interest or penalties which have been confirmed.

6. Heard both sides.

7. On perusal of records, it is seen that the present appeal is filed against the order of the Commissioner (Appeals) in pursuance to the direction of the Hon'ble High Court to dispose of the appeal filed on the rejection of VCES application. The

discussions in the said order is only with regard to grounds on which the appellant is not eligible to be considered for the VCES scheme. The Commissioner (Appeals) has observed that since the show cause notice was issued for the period prior to the period covered under the scheme, would make the appellant ineligible to file a declaration under the scheme. Thus, Commissioner (Appeals) vide the impugned order, in this appeal, upheld the rejection of VCES declaration filed by the appellant. As rightly conceded by the ld. counsel for the appellant and also pointed out by the ld. AR, the present appeal not being an appeal against the order passed by Commissioner (Appeals) confirming the demand, interest or penalties but only against the rejection of VCES application, I am of the view that the appeal does not have any merit with regard to the submissions and grounds of appeal put forward by the appellant to set aside the demand, interest and the penalties.

8. In the result, the appeal is dismissed.

(Dictated and pronounced in open court)

Sulekha Beevi

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
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सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/CHENNAI