CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 41725 of 2016

(Arising out of order in Appeal no. 264/2016 (STA-I), dated 27.04.2016 passed by Commissioner of Service Tax (Appeals – I), Newry Towers, 3rd Floor, Plot No.2054, I Block, II Avenue, Anna Nagar, Chennai 600 040)

Hindusthan Marine Engineering Works .... **Appellant**
3/532, 4th Cross Street
Lakshmanaperumal Nagar
Kottivakkam, Chennai 600 041

VERSUS

Commissioner of GST & Central Excise ...**Respondent**
Chennai II Commissionerate
MHU Complex, Nandanam,
Chennai 600 035

APPEARANCE :

Mr. N. Viswanathan, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER NO.40181/2026

DATE OF HEARING: 24.09.2025
DATE OF DECISION:04.02.2026

Per Mr. Ajayan T.V.

Hindustan Marine Engineering works, Chennai, the appellant herein, is aggrieved by the Order-in-Appeal No. 264/2016 (STA-I) dated 27.04.2016 passed by the Commissioner of Service Tax, (Appeals-I), whereby the Appellate Authority has upheld the Order No.29/2014 (VCES) dated 12.08.2014 passed by the Designated Authority (VCES), Service Tax, Chennai rejecting the declaration in form VCES-1 filed by the Appellant.

2. Briefly stated, the facts of the case are that the appellant filed a declaration in form VCES-1 under the Voluntary Compliance Encouragement Scheme, 2013 which stood acknowledged on 28.12.2013, declaring tax dues of Rs.39,63,652/- for the period from April 2010 to December 2012, on account of non-payment of service tax. On verification of records, the Department was of the view that the Appellant had not paid 50% of the tax dues declared on or before 30.12.2013 as was the requirement in terms of Section 107(3) of the Act read with Circular No.170/5/2013-ST dated 08.08.2013. The appellant was issued a show cause notice proposing rejection of the declaration filed by the appellant. After due process of law, the Ld. Designated Authority, vide Order No.29/2014 (VCES) ibid rejected the declaration finding that the appellant had been issued show cause notices covering the previous period on the same issue which had been adjudicated, making the declaration liable for rejection under second proviso to Section 106(1) of the Finance Act, 2013. The Ld. Designated Authority, inter-alia, found that the appellant was issued a show cause notice No.201/2010 dated 15.04.2010 towards demand of service tax on service charges realised by the appellant during the period Jan 2009 to June 2009 which was adjudicated vide the Order in Original No.17/2012 dated 28.03.2012. Therefore, the Ld. Designated Authority held that the appellant had filed the VCES declaration for nonpayment of service tax on service charges for the period April 2010 to December 31, 2012, whereas this period is subsequent to the period for the same issue for which a demand had been raised and confirmed by the Adjudicating Authority; which made the declaration liable for rejection under second proviso to Section 106(1) of the Finance Act, 2013. It was also found that the appellant had not paid 50% of the dues declared by them. Further the payment of five lakhs made vide

challans dated 24.01.2014 was beyond the due date specified under Section 107(3) of the Finance Act, 2013. It was therefore held that the declaration is liable for rejection also under Section 107(3) of the Finance Act ibid. Aggrieved, by the said rejection, the appellant had preferred the appeal before the Commissioner (Appeals) who, however, vide the impugned order rejected the appeal and upheld the order of the Ld. Designated Authority. Hence this appeal.

3. Shri. N. Viswanathan, Ld. Advocate, appearing for the appellant contended that the appellant had filed the declaration under VCES declaring the tax due at Rs.39,63,652/- pertaining to the tax collected during the period from April 2010 to December 2012 but not paid to the Government and in respect of which the appellant had not filed the ST3 returns also for the said period. Ld. Counsel contented that the VCES scheme was introduced by the government to encourage voluntary disclosure and payment of the tax at the prescribed percentage by excluding cases where tax liabilities are declared in the statutory returns by a tax payer but not paid to the exchequer and also cases where a notice or an order of determination has been issued to a tax payer in respect of any period on any issue, no declaration shall be made of tax dues on the same issue for any subsequent period [2nd proviso to Sec. 106 [1] of the Act]. He would contend that in terms of section 106 [2] of the Finance Act, 2013 it was provided that where the declaration has been made by a person against whom [a] any inquiry or investigation in respect of a service tax not levied or not paid, short levied or short paid has been initiated by way of [i] search under Sec. 82; [ii] issue of summon under Sec. 14 of the CE Act; [iii] requiring production of accounts, documents or other evidences under the Act or rules and [iv] an audit has been initiated and such inquiry, investigation or audit is pending as on 01.03.2013, then the designated authority shall, by an order recording the reasons in writing, reject such declaration. It was argued that the rejection of the declaration made by a tax payer voluntarily in terms of Sec. 106 [1] of the Finance Act, 2013 was

not contemplated therein. As regards the provisions contained in Sec. 107 [3] of the Finance Act even though the said provision mandate for payment of the 50% of the declared tax on or before 31.12.2013, sub section [4] permitted the part of the declared tax remaining to be paid, shall be paid on or before 30.06.2014 and further, the proviso appended thereto permitted the payment of the said amount till December 2014, along with interest as per the sections specified therein, to be computed for the period of delay starting from 01.07.2014. Further, it is argued, Sec. 111 *ibid* empowered only the commissioner, upon arriving at reasonable belief that the declaration made was substantially false, for reasons to be recorded in writing, serve a notice on the declarant to show cause as to why the dues not paid or short paid should not be recovered invoking Sec. 73 and 73 A of the Finance Act, 1994, that too within one year from the date of declaration.

4. The Ld. Counsel contends that therefore the designated authority lacked jurisdiction and had also gone beyond the mandate of the law by rejecting the declaration whereas the said power has been conferred on him only in the limited cases prescribed in Sec. 106 [2] of the Finance Act, 2013 and not in respect of Sec. 106 [1] of the Act. It is also argued that the fact that the provisions mandate not to refund the tax paid under the scheme with power to recover the balance tax with interest by invoking Sec. 87 of the Finance Act, 1994 clearly show that the scheme was designed in such a way to accept all declarations except those which are found substantially false or where circumstances stated in Sec. 106 [2] of Finance Act, 2013 was involved and not otherwise. It was further contended that the designated authority also failed to understand that the non-payment of the balance dues declared by him do not permit the rejection of his declaration as he had time till 30.06.2014 or with interest upto 31.12.2014 or the balance could still be recovered with interest invoking Sec. 87 of the Act in terms of Sec. 110 *ibid* whereas by his action the designated authority had prevented the appellant from availing the said benefits which is not proper or correct and which warrant the

impugned order passed by the first appellate authority refusing to consider his argument and approving the order of the designated authority totally improper and incorrect. It was also argued, and stated thus in the written synopsis filed in court on 24th September 2025 in paragraph 8 that without prejudice to any of the foregoing preliminary legal grounds, the factual reasons given by the designated authority and approved by the First appellate authority is not correct as the issues referred to in the two earlier notices are different from the issue for which he had filed the impugned declaration and in any case the said declaration not being couched by any substantial falsity warrant the impugned order to be set aside in limini. It was therefore prayed that the impugned order passed by the First appellate authority be set aside with consequential relief if any.

5. Ms. Anandalakshmi Ganeshram, Ld. Authorised Representative appearing for the Respondent, reiterated the findings of the Appellate Authority. Ld. Authorised representative contended that the scheme was to encourage voluntary compliance of stop filers and non-filers and service providers who have not disclosed their true liability in their service tax returns filed by them during the period from October 2007 to December 2012 to pay the tax dues as per the specified time frame. Ld. A.R. argued that once the appellant had failed to pay the 50% of tax dues on or before 31.12.2013, the benefit of the scheme is not available to the appellant. It was argued that the Appeal be rejected as it is without merits.

6. We have heard both sides, perused the appeal records as well as the Scheme, Circular and case laws submitted.

7. The pivotal issue that arises for our consideration is whether the rejection of the declaration filed by the appellant under the Service Tax Voluntary Compliance Encouragement Scheme, 2013 is tenable.

8. We find that the Learned Appellate Authority vide the impugned order has upheld the order of the Learned Designated Authority rejecting the declaration for noncompliance of the provisions of the VCES Scheme 2013 after rendering a finding that such rejection was fully justified. The Learned Designated Authority had rejected the declaration on two grounds; one, that the Appellant had not paid fifty percent of the declared tax dues on or before 31.12.2013 and that the payment of five lakhs made vide challans dated 24.01.2014 was beyond the said due date specified under Section 107(3) of the Finance Act, 2013. It was therefore held that the declaration is liable for rejection also under Section 107(3) of the Finance Act ibid. The other ground for rejection of the declaration was that the show cause notices covering the previous period have been issued and adjudicated which made the declaration liable for rejection under second proviso to Section 106(1) of the Finance Act, 2013.

9. Inasmuch as the arguments advanced at the Bar by the counsel for the appellant was with emphasis on the preliminary legal grounds that the rejection of the declaration by the designated authority is not legally sustainable, since the designated authority lacked jurisdiction to reject the declaration and had gone beyond the mandate of the law, we proceed to address the said issue at first.

10. It would be apposite to notice the statutory provisions of the Scheme that are relevant for determination of the issue at hand, which are as under:

" **THE FINANCE ACT, 2013 (17 of 2013)**

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CHAPTER VI
SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

Short title.

104. This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Definitions.

105. (1) In this Scheme, unless the context otherwise requires,—
(a) "Chapter" means Chapter V of the Finance Act, 1994;
(b) "declarant" means any person who makes a declaration under sub-section (1)
of section 97;
(c) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
(d) "prescribed" means prescribed by rules made under this Scheme;
(e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.
(2) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

Person who may make declaration of tax dues.

106. (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter
has been issued or made before the 1st day of March, 2013:
Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return:
Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.
(2) Where a declaration has been made by a person against whom,—
(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of—

(i) search of premises under section 82 of the Chapter; or
(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or
(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or
(b) an audit has been initiated,
and such inquiry, investigation or audit is pending as on the 1st day of March, 2013,
then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Procedure for making declaration and payment of tax dues.
107. (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.

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No refund of amount paid under the Scheme.

109. Any amount paid in pursuance of a declaration made under sub-section (*1*) of section 107 shall not be refundable under any circumstances.

Tax dues declared but not paid.

110. Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Failure to make true declaration.

111. (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

(2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.

(3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may

be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply."

11. We notice that genesis of the Scheme is in the Finance Bill 2013 (Bill No.18 of 2013) as introduced in the Lok Sabha on 28th February 2013, to give effect to the financial proposals of the Central Government for the financial year 2013-2014. It is in Chapter VI of the Finance Bill 2013 that the Service Tax Voluntary Compliance Encouragement Scheme 2013 has been laid out. The memorandum to the Finance Bill 2013, under Service Tax, in paragraph V titled " Amnesty Scheme for Non filers and stop filers", has stated as under:

> "**To encourage voluntary compliance and broaden the tax base, it is proposed to provide one time amnesty** by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, **to the stop filers, non-filers or non-registrants or service providers (who have not disclosed true liability in the returns filed by them during the period from October 2007 to December 2012) who pay the "tax dues"**. Details of the scheme are available in Chapter VI of the Finance Bill, 2013. The scheme will be operational from the date on which the Finance Bill, 2013 receives the assent of the President**." (emphasis supplied)**

12. The Finance Bill received the assent of the President on 10th May, 2013 and the VCES came into effect from the said date. Bearing the above in mind, we proceed to deal with the preliminary legal grounds raised by the Ld. Counsel for the appellant.

13. It was contended that the power conferred on the designated authority to reject the declaration is confined only to the limited cases prescribed in Section 106 (2). A perusal of section 106 reproduced above, would show that it deals with persons who may make declaration of tax dues. Sub-section (1) of Section 106 spells out the tax dues in respect of which any person can declare and specifies such tax dues to be those in respect of which no

notice or an order of determination under Section 72,73 or 75 of Chapter V of the Finance Act, 1994 has been issued or made before 1st March, 2013. The first proviso to sub-section(1) makes a person who has furnished return under Section 70 and disclosed his true liability, but not paid the disclosed amount of service tax or part thereof, ineligible to make a declaration for the period covered by the said return. The second proviso to sub-section (1) further provides that where a notice or order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

14. In other words, the first proviso which makes a person who has furnished his return disclosing his true liability but has not paid the disclosed amount or part thereof ineligible and the second proviso which bars a person from making a declaration of his tax dues on an issue for the subsequent period, in case on the very same issue any notice or order of determination has been made, makes it amply clear that the intent of the Government was to exclude such of those persons who have already come to the notice of the Department as defaulters. Thus, sub-section (1) of Section 106 and its two provisos, are evidently intended to rope in only non-filers or non-registrants or stop filers or service providers who have not disclosed true liability in the returns filed by them during the period from October 2007 to December 2012 and thereby to encourage voluntary compliance and broaden the tax base.

15. The sub-section (2) of Section 106 further stipulates that in case declarations have been made by a person against whom actions as specified therein have already been initiated and such inquiry, investigation or audit is pending as on 1st March 2013, then the designated authority shall, by an order and for reasons to be recorded in writing, reject such declaration. In other words, sub-section (2) only spells out the action that a designated authority has to take when a person, despite an ongoing investigation or enquiry that continues to be pending on 1st March 2013, files a

declaration. The mere stipulation of a course of action that the designated authority has to take in certain circumstances, to our mind, does not in any manner curb, restrict or bar the designated authority from exercising his powers to reject a declaration which he finds to be not in consonance with the mandatory stipulations of the scheme. Equally, the fact that the Scheme in sub section (1) of Section 111 specifies a particular circumstance where the Commissioner of Central Excise may serve notice; namely, when he has reason to believe that the declaration made by a declarant under the Scheme was substantially false; does not lend itself to an interpretation that the Commissioner can issue a notice only in the said circumstance and not for any other reason related to the Scheme. That is to say, we are of the view that merely because VCES specifies certain situations in which an authority can act, that in itself does not mean that the authority is otherwise prohibited from taking any action if he finds the declarant in violation of any other mandatory stipulation of the scheme. In this context, we notice that the law has been laid down by a constitution bench of the Apex Court in *Matajog Dubey* v. *H. C. Bhari* - 1955 (2) SCR 925, where it has been held as under:

> "Where a power is conferred or a duty imposed by statute or otherwise, ***and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions*****, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution**. If in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. **The true position is neatly stated thus in Broom's Legal Maxims, 10th Ed., at page 312 : "It is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command.**" **(emphasis supplied)."**

16. Hence, we are of the firm opinion that the fact that VCES enumerates certain situations in which the authority is required to act in a particular manner for the stated reasons, no doubt, would require the authority to act only in the manner specified in such situations, and not in any other manner in so far as such situations are concerned. But, in the absence of any express inhibition of the powers of the Designated Authority, there is no fetter on the inherent power vested in such authority if it finds that the declarant has otherwise violated the stipulations of the scheme to take appropriate action by way of rejecting the declaration filed by the declarant. Therefore, we reject the proposition canvassed by the Ld. Counsel for the appellant, namely, that the power to reject the declaration is only conferred on the Commissioner that too in case of any substantial false declaration in terms of Section 111 and certainly not by the designated authority whose powers for rejection of declaration is restricted to cases listed in Section106 (2) only and that therefore the present rejection is improper.

17. In the instant case the Ld. Designated Authority has rejected the declaration on two grounds: on the ground that the Appellant had not paid fifty percent of the declared amount on or before 31.12.2013 and also on the ground that the appellant could not have filed such a declaration given the prohibition in the second proviso to sub-section (1) of Section 106 which bars a person from making a declaration of his tax dues on an issue for the subsequent period, in case on the very same issue any notice or order of determination has been made.

18. It is the contention of the Ld. Counsel for the appellant that the non -payment of the balance dues declared by the appellant does not permit the rejection of the declaration as the appellant had time till 31.12.2014 or the balance could still be recovered with interest invoking Section 87 of the Act in terms of Section110 ibid. We are unable to concur with the said proposition. Section 107 prescribes the procedure for making the declaration and payment

of tax dues. When we examine Section 107 of the Scheme ibid, we find that sub-section (3) mandates that the declarant shall, on or before the 31st day of December, 2013, pay not less than fifty percent of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority. Further, sub-section (4) then provides that 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. The proviso to sub-section (4) further stipulates that where the declarant fails to pay ***the 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, for the period of delay starting from 1st day of July, 2014.

19. Thus, there are specified time frames in the sub-sections of the said section 107 that mandate the extent of payments to be made by the stipulated dates. The first mandated time limit is the 31st of December 2013, as prescribed in sub-section (3) of Section 107, on or before which date the declarant has to not only necessarily pay not less than fifty percent of the declared tax dues, but also must submit proof of such payment to the designated authority. Subsequent to such payment of the minimum fifty percent of the declared tax dues, sub-section (4) of Section 107 then provides that 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. Thus, it is only the balance of the tax dues or part thereof that is pending payment, post the payment of fifty percent of the declared tax dues, that has to be paid on or before 30th June 2014. However, in case the declarant is unable to make good the pending payment due after the initial payment of fifty percent of the tax dues before the 30th day of June, 2014, then the proviso to sub-section (4) of Section 107 stipulates that where the declarant fails to pay ***the said tax dues or part thereof on or before the said date,*** i.e. 30th June 2014, he shall pay the same on or before the 31st day of December, 2014 along with interest

thereon, at such rate as is fixed, for the period of delay starting from 1st day of July, 2014. Thus, the scheme itself specifies the leeway that it accords for payments in the consecutive sub-sections (3) and (4) and proviso to the sub-section (4), contingent on the satisfactory compliance of the payments within the time frames specified therein.

20. If the propositions that are put forth by the Ld. Counsel for the appellant were to hold good, then the Designated Authority will have no authority to reject the application even if the mandated fifty percent of the tax dues is not deposited before 31st December 2013, since, according to the Ld. Counsel, he has authority under the scheme only to reject the declarations in the situations spelt out in Section 105 (2) of the VCES. Even the Commissioner of Central Excise, according to the Ld. Counsel, has authority under Section 111(1) of the scheme only to reject declarations if he has reasons to believe that the declaration made by a declarant under this Scheme was substantially false and thus he too is disempowered to reject the declaration where the declarant has not deposited the mandated fifty percent of the tax dues before 31st December, 2013. On the contrary, according to the Ld. Counsel, even if the declarant fails to adhere to the timeline and make the payment of fifty percent of the declared tax dues before 31st December 2013, he is still at liberty to deposit the tax dues at his sweet will till 31.12.2014 and in case the Declarant does not still do so, only then can the Department recover the same with interest invoking Section 87 of the Act in terms of Section110 ibid.

21. Suffice to say, we are of the considered view that the Ld. Counsel's propositions are misconceived. As can be seen from the scheme and the provisions of the memorandum reproduced above, the VCES, 2013 is undoubtedly an Amnesty Scheme with a specific purpose and is intended for declarants who satisfy the stipulations laid down therein. Time lines and the extent to which payments have to be made have been clearly stated in Section 107. The Scheme does not provide either the Revenue or the Declarant to

amend or alter the time lines specified therein or the respective quantum of payment to be made, at their discretion. Therefore, these provisions have to be strictly interpreted, and the time limit specified in the Scheme have to be strictly adhered to by the declarant. For this Tribunal to hold that, even if the mandated fifty percent of the tax dues has not been deposited before 31.12.2013, the appellant can make these payments belatedly, as has been canvassed by the Ld. Counsel, would tantamount to this Tribunal sanctioning variations in the Scheme, which this Tribunal undoubtedly is not empowered to do. In any event, it is beyond cavil that the appellant has not deposited the fifty percent of the tax dues by the date of 31.12.2013 as mandated in Section 107 (3), and has only paid five lakhs of the declared tax dues of Rs.39,63,652/- and that too only on 24.01.2014. The plea of the Appellant is that it was prevented from adhering to the time line specified due to severe financial hardship, which incidentally, remains a mere averment sans any evidence. Be that as it may, we find that the scheme does not allow for any variance on this count and the stipulations therein are inviolable. In our considered opinion, the nonpayment of fifty percent of the declared tax dues by the specified date of 31.12.2013 would in itself disentitle the appellant from availing the benefit of the VCES Scheme.

22. We notice that our aforesaid view is in line with the position in law as laid down by the Honourable High Court of Gujarat in ***Ramilaben Bharatibhai Patel v. Union of India, 2014 (35) STR 695 (Guj),*** wherein it has been held as under:

> "4. The scheme, thus, requires a declarant to deposit the tax dues of 50% by a certain date. It is only after the full deposit that under sub-section (1) of Section 107, the declaration would be accepted and the designated authority would acknowledge the discharge of dues of the declarant in the prescribed format. Under the circumstances, the petitioner not having fulfilled the essential requirement of the scheme, the authority committed no error in rejecting such declaration.

5. The learned counsel for the petitioner, however, raised two fold contentions. He firstly contended that the shortfall was due to a bona fide calculation error. The amount involved was very small. He secondly contended that under Section 110,
the tax short-paid could be recovered with interest, but the declaration itself cannot be rejected.
6. To our mind, neither of the two contentions can be accepted. **The scheme makes no difference between tax dues which are short-paid due to bona fide error and one which flows from deliberate inaction. There is no power for waiving or relaxing the condition of depositing 50% tax dues flowing from Section 107. It would not be possible for this Court to exercise writ jurisdiction to direct the authority, in plain terms, which the statutory provision does not permit.**
7. **Coming to the second contention, the scheme envisages depositing tax dues in two stages. Only after the taxes are fully deposited stage-wise that the declaration under Section 107 would be accepted. Section 110 only pertains to recovery of the taxes declared, but not paid. This provision has no bearing on the invalidity of declaration when the declarant fails to deposit the taxes as provided in sub-sections (3) and (4) of Section 107. If we interpret Section 110, as urged by the learned counsel for the petitioner, that it encompasses both the cases of delay in depositing the taxes at the first stage of sub-section (3) of Section 107 and second stage of sub-section (4) of section 107, the proviso to sub-section (4) would be rendered wholly redundant. If as suggested, shortfall in the taxes could be accepted after charging interest under Section 110, there was no need to make special proviso for extending time for depositing the remaining of the taxes under sub-section (4) of Section 107. Further, Section 110 pertains to compulsory recovery of taxes with interest. Sub-sections (3) and (4) of Section 107 refer to voluntary tax deposit by a declarant in terms of the scheme. Both these operate in separate fields.**
8. In the result, the petition is dismissed." **(emphasis supplied)**

23. The Hon'ble High Court of Calcutta in CST v. ***Parjiat Vyapar Pvt. Ltd, 2016 (41) STR 809 (Cal)***, has also held to the same effect, namely, that 50% of the declared tax dues have to be paid by

31st December,2013, to be entitled to the benefit of the VCES. The said decision is seen maintained as reported in ***Parijat Vyapar Pvt. Ltd. v. Commissioner - 2018 (16) G.S.T.L. J78 (S.C.)***. Likewise, in ***Manpreet Engg & Construction Co v. Union of India, 2016 (44) STR 384 (Jhar),*** the Hon'ble High Court held that the benefit of VCES will not be available to the petitioner therein. We profitably reproduce from relevant portions of the Judgement as under:

> "(II) In view of the aforesaid provisions of VCES, 2013, this petitioner declared service tax liabilities for the period running from October, 2007 to December, 2012 amounting to Rs. 3,48,39,667/-.
>
> As per Section 107(3) as quoted above, at least 50% of this liability shall be deposited on or before December, 2013. Thus, the petitioner was liable to deposit Rs. 1,74,19,834/-, whereas he deposited Rs. 1,14,20,000/-. Thus, there was a short-payment of Rs. 60,00,000/-.
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> It further appears from the facts of the case that this petitioner-declarant under the VCES, 2013 gave a post-dated cheque on 31st December, 2013 for Rs. 60,00,000/- to the respondents. This post-dated cheque was of 30th January, 2014, which was encashed on 5th February, 2014. *Thus, admittedly, this petitioner-declarant has not deposited 50% of the service tax liability on or before December, 2013, which is a violation of Section 107(3) of the Finance Act, 2013*. It is submitted by the counsel for the petitioner that there was no *mala fide* intention on their part and a liberal interpretation of the VCES, 2013 is to be made by the court and the petitioner may be given the benefit of the VCES, 2013 because remaining was paid before 31st December, 2014.
>
> We are not accepting this argument mainly for the following reasons :
>
> (a) The VCES, 2013 is already a liberal scheme floated for those declarants, who have committed breach of the taxing statute, especially in payment of Service Tax. Thus, the scheme itself is a liberal approach of the Union of India to encourage voluntary declaration.
>
> (b) Looking to the clauses of the VCES, 2013, especially, 107 thereof, the payment of the service tax liability is divided into two instalments. First instalment is of minimum 50% to be paid on or before 31st December, 2013, whereas the remaining amount of the service tax liability is to be discharged by the assessee-declarant on or before 30th

June, 2014. This is the second liberal approach in the scheme floated by the Union of India.

(c) In the second instalment also, which was to be paid on or before 30th June, 2014, if any declarant has got any difficulty he can make the payment on or before 31st December, 2014, but, *in this eventuality the payment shall be made with interest*. This is the another liberal approach of the Union of India as provided under the VCES, 2013.

(d) ***The scheme is nothing but a policy decision of Union of India and this court will be extremely slow and careful in making further liberal interpretation of the VCES, 2013, because this court is not sitting in appeal against the said scheme nor this court can replace an existing scheme with a better one***. The clauses of VCES, 2013 cannot be changed by this court. ***If Section 107(3) directs the declarant to make the payment of at least 50% of the service tax so declared under sub-section (1) of Section 107, to be paid on or before December, 2013, court cannot give further instalment in the first instalment to the effect that part of the payment can be made on or before 31st December, 2013 and the remaining amount can be paid later on***.

This is not permissible while exercising powers under Article 226 of the Constitution of India.

(III) It appears on perusal of VCES, 2013 that the clauses of the Scheme are drafted very clearly and they are bereft of any ambiguity. What is to be paid that has already been mentioned in Section 107. We cannot replace all these sections. **In a taxing statute interpretation ought to be made strictly. Court can neither replace all these clauses of VCES, 2013 nor further instalments can be given by the court in exercise of powers under Article 226 of the Constitution of the India. The so called theory argued by the counsel for the petitioner, viz. 'substantial compliance' has no place in a taxing statute, otherwise every declarant or assessee will partly comply with a scheme or provision of the taxing statute and will say that there is substantial compliance, which will lead to nothing but chaos and court cannot be a party to this.**

(IV) **Likewise, 'No prejudice' theory in the payment of taxes cannot be advanced by the erring assessee or erring declarant. There is no question of any prejudice caused to the Union of**

India and once the clauses of the VCES, 2013 is violated, the declarant is not entitled to get benefit of the said scheme.

xxxx

(VI) These aspects of the matter have been properly appreciated by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur while passing the order dated 7th April, 2014. It ought to be kept in mind that whenever such voluntary discloser Scheme is floated, further leniency should not be given by the court to the declarant apart from what has been provided under the scheme, otherwise, there will be no end of liberal approach. Moreover, payment of tax has a direct nexus with the budget of the country. There are fixed dates for payment of taxes. Realisation of taxes after due date is a matter of policy decision of the Union of India. Hence this court will not extend the period for the payment of tax dues unless the scheme in question gives that liberty to the declarant.

As stated hereinabove, in the facts of the present case, so far as the payment of first instalment is concerned, which was minimum 50% of the tax dues so declared was to be paid on or before 31st December, 2013 and there is no provision under the VCES, 2013 for relaxation in the payment of first instalment. So far as second instalment is concerned, it was to be paid on or before 30th June, 2014. However, there is slight leniency in the payment of second instalment, viz. if the second instalment is not paid before 30th June, 2014, the declarant can make the payment on or before 31st December, 2014, but, with interest. Thus, this petitioner-declarant has committed a breach of Section 107(3) of the VCES, 2013 in making the payment of first instalment and hence, he is not entitled to get the benefits provided under this scheme.

(VII) As submitted by the counsel for the petitioner, some errors might have been committed by the department in case of one or two declarant, *but no benefit of those errors can be extended to the present petitioner because there is no equality in illegality committed by this respondent*.

4**. As a cumulative effect of the aforesaid facts and reasons, there is no substance in this writ petition, as no error has been committed by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur, while passing the order dated 7th April, 2014, hence, this writ petition is hereby dismissed**." **(emphasis supplied)**

The said decision is seen maintained as reported in ***Manpreet Engineering and Construction Co. v. Union of India - 2017 (47) S.T.R. J160 (S.C.).***

24. Moreover, Section 107 is the Section that prescribes the procedure for making the declaration and payment of tax dues. Section 107(1) allows a person to 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 and after a declarant makes payments as per the time lines prescribed in the sub-sections of Section 107, Section 107(7) stipulates that 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. We are therefore of the considered view that the Designated Authority has inherent powers to reject the declaration if the declarant does not make the mandated payment of fifty percent of the tax dues within the date of 31.12.2013 specified in Section 107 (3) so long as there is adherence to the principles of natural justice and the appellant is afforded an opportunity of hearing. Admittedly in the instant case the appellant has been issued an SCN No.23/2014 (VCES) dated 24.01.2014 in this regard and it is only after due process of law that the Designated Authority has passed the order which has since been upheld vide the impugned order by the Appellate Authority and therefore the said rejection of the appellant's declaration cannot be faulted. As noticed above, it is a similar rejection that has been upheld by the Hon'ble Jharkhand High Court in the decision in ***Manpreet Engg & Construction Co v. Union of India, 2016 (44) STR 384 (Jhar)*** reproduced above. We have already noticed the law laid down by the constitution bench of the Apex Court in *Matajog Dubey* v. *H. C. Bhari* - 1955 (2) SCR 925. We, therefore unhesitatingly hold that the Designated Authority, who has been entrusted with the task of receiving the declaration and issuing discharge, also has inherent

powers to scrutinize and act if such declarations are not found conforming with the stipulations in the VCES. All such powers that are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the scheme effective, need not always have to be explicitly spelt out in the scheme.

25. For the aforesaid reasons, we are also unable to subscribe to the Ld. Counsel's contention, namely, that the provisions mandating not to refund the tax paid under the scheme with power to recover the balance tax with interest by invoking Section 87 of the Finance Act clearly shows that the scheme was designed in such a way to accept all declarations except those which are couched by substantially false declaration or where section 106 (2) of Finance Act, 2013 is involved and not otherwise. At this juncture it is also apposite to note what has been held by the Hon'ble High Court of Gujarat in the decision in ***Ramilaben Bharatibhai Patel v. Union of India, 2014 (35) STR 695 (Guj),*** as reproduced above, namely***, "****If as suggested, shortfall in the taxes could be accepted after charging interest under Section 110, there was no need to make special proviso for extending time for depositing the remaining of the taxes under sub-section (4) of Section 107. Further, Section 110 pertains to compulsory recovery of taxes with interest*".

26. We also note that even in the Circular No.170/5/2013-ST dated 8th August, 2013 produced by the Ld. Counsel for the appellant, which circular has been issued on the subject of clarifications with respect to the Service Tax VCES, the clarification given by the Central Board of Excise and Customs, at Sl.No.16 of the table therein, is as under:

S No.	**Issues**	**Clarification**
16	What is the consequence if a declarant fails to pay at least 50% of declared amount of tax	One of the conditions of the Scheme [Section 107 (3)] is that the declarant shall pay at

	dues by the 31st December 2013 ?	least an amount equal to 50% of the declared tax dues under the Scheme on or before the 31.12.2013. Therefore, if the declarant fails to pay at least 50% of the declared tax dues by 31st Dec, 2013, he would not be eligible to avail of the benefit of the scheme.

27. We now proceed to examine the second ground on which the declaration of the appellant came to be rejected, namely that the appellant could not have filed such a declaration given the prohibition in the second proviso to sub-section (1) of Section 106 which bars a person from making a declaration of his tax dues on an issue for the subsequent period, in case on the very same issue any notice or order of determination has been made. Ld. Counsel for the appellant has contended that the said finding is factually incorrect. We have perused the order in original No.17/2012 and find that the Appellate Authority has rightly observed that one of the issue covered vide the said OIO is non payment of service tax collected by the appellant but not remitted to the Government during the period from January 2009 to June 2009 and non filing of ST 3 returns for the period October 2008 to March 2009. Concededly, the appellant had filed the declaration under VCES declaring the tax due at Rs.39,63,652/- pertaining to the tax collected during the period from April 2010 to December 2012 but not paid to the Government and in respect of which the appellant had not filed the ST3 returns also for the said period. Therefore, we are of the view that the Declaration filed by the Appellant in respect of the service tax not paid for the period from April 2010 to December 2012, is a declaration that has been made for the subsequent period on the same issue in respect of which an order of determination has been passed, i.e., the Order in Original No.17/2012, and thus it attracts the bar under second proviso to Section 106(1) of the VCES. Hence we hold that the declaration has been rightly rejected by the Designated Authority and the

Appellate Authority has not committed any error in upholding such rejection. We find that the decision submitted by the Ld. Counsel for the Appellant in the case of Assistant Commissioner v Frankfinn Aviation Services Pvt Ltd, 2020(41) GSTL J 51 (SC), whereby the Apex Court dismissed the SLP preferred against the Delhi High Court Judgement as reported in ***2014 (34) STR 165 (Del)*** is distinguishable as the outcome was premised on facts different from the facts of the instant case. The Delhi High Court has noticed the facts of the case in para 2 and the relevant portions are as under:

"2………The petitioner relies upon Section 106 and 107 of the Scheme and submits that it furnished the requisite declaration so as to enable the authorities to accept it and grant the benefit. **It is also contended that the petitioner deposited 50% of the amount due before the time stipulated, i.e., 31-12-2013**. The petitioner is aggrieved by the order of the Assistant Commissioner/designated authority VCES dated 5-3-2013 whereby its declaration or application seeking onetime benefit was rejected. The order is premised upon the existence of the dispute concerning the previous period between 10-9-2004 - 27-2-2010 before the CESTAT."

28. Thereafter, the relevant portion of the said decision of the Hon'ble High Court of Delhi, where the Hon'ble High Court states the basis of its decision, is as under:

"**6.** It is evident that the Scheme was introduced to give benefit of one time amnesty or relief to Service Tax defaulters or those who had not paid their dues fully. In its terms, the assessment as to the liability has to be made and if the declaration or application is found to be in order and compliant with the provisions, the authority would accept the application and grant immunity from prosecution and also exempt interest and penalty liability. Keeping in mind the spirit of the Scheme, certain safeguards and conditions have been indicated. **The first and perhaps foremost one is that the applicant should deposit 50% of the admitted liability with the declaration itself on or before 31-12-2013 and the balance should be paid latest by 31-12-2014.** The second is in respect of the subject matter that there should be no issue pending or determined before any of the tax authorities or Tribunals for adjudication. The object of this is to avoid multiplicity and reopening of settled matters. If one keeps this objective in mind, the second proviso is to be construed strictly. **The main provision, i.e., Section 106 enables the filing of the declaration subject to the pre-condition of a pre-deposit**. It is settled law that a proviso merely carves out an exception from the operation of the main provision. The second proviso of Section 106(1) is no exception to that rule. This proviso when it alludes to 'any issue' must, therefore, mean that the issue as to Service Tax liability or quantum of liability itself for a particular period must be pending before the Tribunal or some of the tax authorities or should have been determined. As long as in respect of the particular distinct period, the subject matter of declaration or application is not pending or determined, the main part of Section 106(1) would prevail. In the present case, there is no dispute that the subject matter of the declaration or liability is for the period of 1-4-2012 to 31-12-2012. The order in question also does not show any different facts. Therefore, the view of the designated authority that the pendency of the issue or question of the petitioner's liability for a past period when it sought to avail the advantage of the exemption notification bars the remedy under Section 106 is clearly in error."

29. As is evident from the aforesaid reported Judgement of the Delhi High Court, the petitioner therein was aggrieved by the rejection of a declaration premised upon the existence of the dispute concerning the previous period between 10-9-2004 - 27-2-2010 before the CESTAT, whereas the declaration had been filed by the said petitioner for the period 01-04-2012 to 31-12-2012. Thus evidently since the dispute pending before the CESTAT was for a period even prior to the period of October 2007 to December 2012 specified in the VCES, the Delhi High Court held the rejection to be unsustainable. Be that as it may, there can be no quarrel with the proposition of law laid down therein, in so far as the requirement of deposit of 50% of the declared dues was concerned. Unlike in the present case, the petitioner therein had also complied with this mandate of the Scheme.

30. In view of our discussions above, we are of the considered view that the impugned order does not warrant any interference as it has rightly upheld the order of the Designated Authority rejecting the VCES declaration filed by the Appellant.

The appeal is dismissed as devoid of merits.

(Order pronounced in open court on 04.02.2026)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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