CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 53174 Of 2016

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-316-16-17 dated 20.09.2016 passed by the Commissioner (Appeals-I), office of the Commissioner (Appeals-I) Customs, C.E. & S.T. Bhopal, M.P)

M/s. M P Entertainment And Developers Pvt Ltd ....**Appellant**
Plot No. 304, 299,299-A,
Scheme No. 54, PU-4, A.b. Road,
Indore (MP)

Versus

Principal Commissioner, Central Excise, Customs And Service Tax-Indore ...**Respondent**
Post Box No. 10, Manik Bagh Road,
Manik Bagh Palace,
Indore,
Madhya Pradesh-452001

APPEARANCE:

Mr. Arvind Singh Chawla, Chartered Accountant for the Appellant
Shri Harshvardhan & Shri P.K. Sinha, Authorized Representatives for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/ Decision: November 22, 2022

FINAL ORDER NO. 51115 / 2022

JUSTICE DILIP GUPTA

An interesting issue relating to interpretation of the expression "true liability" in the first *proviso* to section 106 of the Finance Act, 1994[1] relating to Service Tax Voluntary Compliance Encouragement

1. **the Finance Act**

Scheme 2013[2] contained in Chapter VI of the Finance Act arises in this appeal.

2. The appellant claims that as it had not made a true declaration of the service tax dues in the return filed by it for the period April, 2012 to September, 2012, it filed a declaration on 19.12.2013 under section 107 of the Finance Act enhancing the liability for the said period from Rs. 64,67,443/- to Rs. 66,98,098/-. The department however, denied the benefit for the said period to the appellant and so the present appeal has been filed.

3. To appreciate the contentions advanced by Shri Arvind Singh Chawla, learned counsel appearing for the appellant and Shri Harshvardhan, learned authorized representative appearing for the department, it would be appropriate to reproduce the relevant provisions of the Finance Act.

4. Section 106 of the Finance Act is reproduced below:

> "**106. Person who may make declaration of tax dues**
>
> **(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

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2. **the 2013 scheme**

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."

5. The term "tax dues" has been defined in section 105(e) of the Finance Act in the following manner:

"**105(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."

6. The relevant portion of section 107 of the Finance Act is reproduced below:

"**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.”

7. It would also be useful to refer to the Circular dated February 28, 2013 issued by the Tax Research Unit of the department on the 2013 Scheme and it is as follows:

> “6.1 A new scheme is proposed to be introduced to encourage voluntary compliance with the following main features:
>
> (i) The scheme can be availed of by non-filers or stop-filers or persons who have **not made a truthful declaration in their return.** However it will not be applicable to persons against whom any inquiry or investigation is pending by the issue of search warrant or summon or by way of audit;
>
> (ii) the defaulter will be **required to make a truthful declaration of all his pending tax** dues (from October 1, 2007 to December 31, 2012) and pay at least half of that before December 31, 2013; remaining half to be paid by:
>
> (a) June 30, 2014 without interest; or
>
> (b) by December 31, 2014 with interest from July 1, 2014 onwards;
>
> (iii) on compliance with all the requirements the person will have immunity from interest (as specified), penalties and other proceedings;”
>
> **(emphasis supplied)**

8. In the instant case, the appellant had earlier reflected the following amount as payable in the service tax returns for the period April, 2012 to September, 2012;

Return Period	**Amount Payable (Rs.)**
Apr-12 to Jun-12	31,87,750
Jul-12 to Sep-12	32,80,023
Total Payable	64,67,773

9. In the declaration filed by the appellant under the 2013 Scheme on 19.12.2013 for the period October, 2011 to December, 2012, the amount was indicated as Rs. 1,05,31,854/-. It needs to be noted that for the period from April 2012 to September 2012, the tax payable was mentioned as Rs. 64,67,773/- but in the declaration, the tax payable was mentioned as Rs. 66,98,098/-. The breakup is as follows:

Period under VCES	**Amount (Rs.)**
Oct-11 to Mar-12	04,86,111
Apr-12 to Sep-12	66,98,098
Oct-12 to Dec-12	34,70,645
Total	1,05,31,384

10. It is not in dispute that the declaration was acknowledged by the Department on December 24, 2013 for an amount of Rs. 1,05,031,854/-. It is also not in dispute that the appellant had deposited the amount under the 2013 Scheme in the following manner:

Period	**Amount (Rs.)**
Till 31-12-2013	52,65,926
Till 30-06-2014	52,65,928
Total	1,05,31,854

11. The appellant received a notice dated January 07, 2014 to explain why tax dues to the extent of tax dues declared for Rs. 64,67,773/- for the period of April 2012 to September 2012 in terms of provisions of section 106 of the Finance Act, 2013 which had been shown in ST-3 returns as service tax payable for the respective period, be not rejected. The appellant filed a reply dated January 09, 2014 in response to the aforesaid notice contending that as the appellant had not indicated the true liability in the service tax returns, he was doing

so pursuant to section 106(1) of the Finance Act. The Assistant Commissioner, by order dated April 04, 2014, did not accept the contention advanced on behalf of the appellant and rejected the declaration to the extent of Rs. 64,67,773/- out of Rs. 01,05,31,854/- for the reason that it did not fall within the provisions of section 105 and section 106 of the Finance Act. The relevant portion of the order is as follows:

> "12. *****
>
> I therefore find that provisions of Section 106(1) of the Finance Act, 2013 read with provisions of Section 105 allows only that part of service tax due or payable under "tax dues" which has not been declared in ST-3 return under section 70 of the Chapter and such left out part will constitute part of "tax dues" and the declarant taking the shelter of provisions of Section 106 can not dispute the amount of service tax assessed & declared by them in their St-3 under the garb of true liability. Once the return has been filed under Section 70, the provisions relating to recovery of confirmed dues shall apply. **The declarant can avail the benefit of VCES in respect of that part of tax dues which are not disclosed by them truly, and in the instant case, the amount over & above Rs. 64,67,773/- would only form part of term "not disclosed truly" and thus VCES-1 declaratino dated 19.12.2013 filed for Rs. 10,531,854/- (a) is rejected to the extent of Rs. 64,67,773/- for the reason that same does not fall within the provisions of Section 105 & 106 of the Finance Act, 2013. And remaining amount to the tune of Rs. 40,64,081/- (1,05,31,854-64,67,773) is accepted under VCES scheme.**
>
> **(emphasis supplied)**

12. Feeling aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals) who, by order dated September

20, 2016, dismissed the appeal and the relevant observations are as follows:

> "The Appellants in the instant case filed a returns for period ended June-12 and Sep-12 with liabilities amounting to Rs. 64,67,773/- and the declaration VCES-1 has already included this amount. Thus the appellant has declared his true liability of tax in his ST-3 returns filed for the period of June-12 and Sep-12 which debars the Appellant from benefit of VCES scheme.
>
> **I find that the Appellant has already disclosed his true liability of Service tax in the ST-3 returns to the tune of Rs. 64,67,773/-. Thus he has not fulfilled the conditions of Section 106 of the Act ibid, therefore the amount so declared in ST-3 return does not come under in the ambit of VCES scheme.** Ones the return has been filed under Section 70 ibid, the provision relating to recovery of confirmed dues shall apply and therefore in the impugned order, VCES-1 dt 19.12.2013 has been rightly rejected by the adjudicating authority. The Order of High Court and other case Laws referred by the Appellant does not help them due to clear violation of said provision as discussed above.
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> 8. In view of above discussions the Appeal filed by the Appellant is dismissed and the impugned order is upheld."
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> **(emphasis supplied)**

13. Shri Arvind Singh Chawla, learned counsel for the appellant placed the provisions of section 106 of the Finance Act and contended that in terms of the first proviso to section 106(1), the appellant had correctly filed the declaration since the appellant had not disclosed the **true tax liability** when he had earlier filed the service tax return for the period April, 2012 to September, 2012. In this connection learned counsel elaborated that the service tax dues disclosed at Rs. 64,67,773/- in the service tax return earlier filed did not disclose the

true liability and that is why the appellant had disclosed the true liability at Rs. 66,98,098/- in the declaration filed under section 107(1) of the Finance Act.

14. Learned authorized representative appearing for the department however, supported the order and submitted that it was clearly a case where the appellant had filed the service tax return disclosing the liability and section 106(1) of the Finance Act does not permit an assessee to file a declaration by merely increasing the liability.

15. The submissions advanced by learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

16. It is under sub-section (1) of section 106 of the Finance Act that any person can declare his tax dues in respect of which no notice or an order of determination under section 73A has been issued or made before the first day of March, 2013. However, the first proviso provides that any person who has furnished return under section 70 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 a declaration for the period covered by the said return. Thus, it is only in a case where a person has disclosed his true liability but has not paid the disclosed amount of service tax or any part thereof that a person would not be eligible to make a declaration for the period covered by the return. A person who claims that he has not disclosed his true liability in the return and has not paid the amount can, therefore, file a declaration under section 107(1) of the Finance Act. Some emphasis has to be placed to the word "true" occurring before "liability" in the first proviso to section 106 of the Finance Act. If the word "true" was

not there, then of course the contention advanced by learned authorized representative appearing for the department would have been accepted as it would be a case of disclosure of the liability. The legislature has consciously used the word 'true' before 'liability' to enable such a person who had filed the service tax returns disclosing the liability and had not paid the service tax to file a declaration if such a person believed that the liability disclosed in the return was not the **true liability**. In the present case, as noticed above, the appellant claimed that it had not disclosed the **true liability** in the service tax return earlier filed for the period April, 2012 to September, 2012 and it is for this reason that the **true liability** was disclosed in the declaration filed by the appellant under section 107(1) of the Finance Act.

17. The conclusion drawn by the Commissioner in the impugned order that since the amount of Rs. 64,67,773/- disclosed in the return was included in the amount of Rs. 66,98,098/- declared by the appellant, the appellant would not be justified in including this amount of Rs. 64,67,773/- in the declaration is apparently not in accordance with the provisions of section 106 of the Finance Act. If a true liability is disclosed subsequently by a person it is obvious that the amount earlier declared in the return would be included and it would not disentitle a person from including this amount in the declaration filed under section 106(1) of the Finance Act. There cannot be two amount towards tax dues.

18. In our considered opinion, the appellant is clearly entitled to claim the entire amount of Rs. 01,051,31,384/- in the declaration filed

under section 107(1) of the Finance Act and the view of the Commissioner to the contrary cannot be accepted.

19. The order dated September, 2016 placed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Order dictated and pronounced in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

Sb, Shreya