CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 51389 OF 2017

[Arising out of the Order-in-Appeal No. 441 (AK) ST/JPR/2016 dated 23/11/2016 passed by The Commissioner (Appeals), Central Excise and Customs, Jaipur.]

Principal Commissioner **...Appellant**
CGST South Commissionerate,
2nd & 3rd Floor, Bhikaji Cama Place,
New Delhi – 110 066.

Versus

M/s Delhi Development Authority, **...Respondent**
Vikas Sadan, INA, Sarojini Nagar,
New Delhi – 110 023.

APPEARANCE:

Dr. Radhe Tallo, authorized representative for the Department
None for the respondent.

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50685/2023

DATE OF HEARING/DECISION : 15.05.2023

P. ANJANI KUMAR

The respondent, M/s Delhi Development Authority, New Delhi, are registered with Service Tax Department for provision of various services; the respondents were recovering license fee from shops, hotels, covered parking areas, open land leased to petroleum companies, CNG/PNG stations. On the basis of an audit conducted on the records of the respondent, department observed that the services provided by the respondent are covered under the taxable category "Renting of Immovable Property Services" under Section 65 (90a) of Finance Act, 1994, and that the respondents did not discharge applicable service tax. Accordingly, a show cause notice[1] dated 24.10.2013 demanding service tax of Rs. 6,67,48,423/- along with interest and proposing to impose penalties was issued to the respondent. Commissioner of Service Tax, Delhi II vide order dated 06.04.2017 has dropped the proceedings initiated by the SCN cited above. Revenue is in appeal against the impugned order.

2. Revenue's appeal is on the ground that the adjudicating authority erred in dropping the demand consequent upon deposit of service tax under Voluntarily Compliance Encouragement Scheme[2] for the period 01.04.2008 to 31.12.2013 and 01.01.2013 to 31.03.2013; the respondent themselves have calculated the tax liability and deposited the service tax of Rs. 12,09,58,530/- under VCES for the period 01.04.2008 to 31.02.2012 and Rs. 3,58,86,886/- for the period 01.01.2013 to 31.03.2013; the adjudicating authority erred in dropping the demand of duty which was voluntarily paid by the respondent.

3. Learned authorized representative appearing for the Revenue submits that the respondent have filed the declaration under VCES 2013; VCES-2 has been issued to the respondent on

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[1] **SCN**
[2] **VCES**

payment of 100% tax dues for the period 01.04.2008 to 31.03.2013. He submits that though the SCN is liable to be dropped, Commissioner should have appropriated the amounts paid by the respondent themselves.

4. None appeared for the respondent.

5. Heard learned authorized representative for the Revenue and perused the records of the case.

6. We find from the records of the case that the adjudicating authority records finding to the effect that the respondent filed a declaration under VCES-2013 on 18.11.2013 and VCES-2 (acknowledgement of declaration) was issued to them on 18.11.2013; the respondent claim that they did not receive any VCES-3; no order for rejection also has been received. Commissioner has observed that as the audit of the records of the respondent was conducted on 21, 21 and 24 June, 2013, the respondent was eligible for opting for VCES as no enquiry, investigation or audit has been initiated were pending against them as on 01.03.2013; they have made payment of 100% tax dues on 21.11.2013; the Designated Authority did not issue VCES-3 within 7 working days from the date of furnishing of details of payment of tax dues in full under sub-Section (vii) of section 107 of the Act. Commissioner rightly held that under the circumstances that he did not have any other option, but to accept the declaration of the respondent. As the respondent discharged service tax liability under VCES 2013, they shall get

immunity from penalty, interest and other proceedings and, therefore, the SCN was dropped. Adjudicating authority further finds that as the demand raised for the period 01.01.2013 to 31.03.2013 also stands paid by the respondents, the demand is liable to be dropped.

7. From the above, we find that there is no infirmity in the order passed by the adjudicating authority. We find that the adjudicating authority has correctly held that as 100% service tax stands paid by the respondent under VCES, the proceedings initiated vide above SCN do not survive. The authorized representative submits that the adjudicating authority erred in dropping the demand for the period beyond the VCES i.e. for the period 01.01.2013 to 31.03.2013; and the adjudicating authority should have appropriated the tax already paid.

8. We find that the SCN was issued demanding service tax of Rs. 6,67,48,423/- whereas the appellants have paid on their own account Rs. 12,09,58,530/- plus Rs. 3,58,86,886/-. As such there was no way that Commissioner could have confirmed a lesser amount than the amount paid by the appellants. Moreover, we find that the appellants have paid 100% tax under VCES 2013; the payment was not rejected by designated authority and in terms of section 109 of VCES 2013, the assessee is not entitled for any refund. Under the circumstances appropriation of duty is an empty formality. Moreover, appropriation of total amount paid under the VCES 2013 would have been beyond the scope of SCN.

Therefore, we find that Commissioner has correctly dropped the demand and to that extent we find that there is no legal infirmity in the order.

9. Accordingly, Revenue's appeal is rejected.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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