IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 52261 of 2016

[Arising out of Order-in-Appeal No 74/ST/Appeal-II/MK/GGN/2016 dated 4.5.2016 passed by the Commissioner of Service Tax (Appeals II), Delhi]

M/s. Luminous Power Technologies Pvt. Ltd. **Appellants**

Vs.

Commissioner of Service Tax Delhi II **Respondent**

Appearance:
Shri Hemant Bajaj, Advocate for the Appellants
Shri K Poddar, AR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 29.08.2017

FINAL ORDER NO. 56816 /2017

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein the declaration made on 16.12.2013 under Voluntary Compliance Encouragement Scheme Rules, 2013, was rejected.

2. The facts of the case are that in compliance of Voluntary Compliance Encouragement Scheme (VCES), the appellant filed a declaration on 16.12.2013 by declaring a sum of Rs. 17,23,528/- to

be paid by the appellant under that scheme. On 27.1.15, a letter was issued to the appellant to file certain documents and the proof of payment of amount under VCES scheme. In reply to the said letter, the appellant filed undertaking showing payment of 15,47,739/- under VCES scheme. On the premise that as the amount of Rs.1,75,789/- has already paid by the appellant on 01.06.2013 and interest thereon of Rs. 69,454/- for the difference on 29.6.2013. Therefore, the said amount is not payable by the appellant. On the basis of that undertaking, as the appellant has declared the amount of Rs.17,23,528/- under VCES whereas they have paid an amount of Rs. 15,47,739/-, it was held that they are not entitled to the benefit of VCES. Aggrieved from the said, the appellant is before me.

3. Learned Counsel for the appellant submits that the appellant themselves has declared a sum of Rs. 1,75,789/- on 1.6.2013 and paid the said amount of service tax and also paid interest on the said amount on 29.6.2013 and have voluntarily filed a declaration. Therefore, they are entitled for benefit of VCES scheme. He also submits that before rejecting their claim, a show cause notice was required to be issued and admittedly no show cause notice was issued to the appellant. Therefore, the impugned order is not sustainable and benefit of VCES is to be granted to the appellant.

4. He also relied on the case law of ***Renuka Mangal Seva Kendra vs. CCE, Aurangabad [2016-TIOL-921-CESTAT-Mum.***

5. On the other hand, learned AR opposed the contention of the learned Counsel and submitted that it is an admitted fact that the appellant filed the declaration of Rs. 17,23,528/- whereas they have paid the tax of Rs.15,47,739/- . Therefore, they have not complied the provisions of VCES. In that circumstances, benefit under VCES is rightly denied. He submits that as the appellant wrote a letter to the department on 16.2.2015, which implies that they were having show cause notice and not replied to that otherwise they have not written the letter. When the fact was in the knowledge of the appellant, therefore, they were not required to issue a show cause notice in writing as verbal charges was in the knowledge of the appellant. He also submits that the case law relied upon by the appellant has no relevance to the facts of this case.

6. Heard the parties. Considered the submissions.

7. As per the VCES, in this case, the sole allegation against the appellant is that they have not made true declaration, therefore, the benefit of VCES has been denied to them as per section 111 of the Finance Act, 2013, which is extracted below:

> ***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.*

8. I find that, as per the above provisions, the Commissioner of Central Excise has the reason to believe that declaration made by the appellant under this scheme is false, therefore, the reasons to be recorded in writing is wrong. Serving the notice to the appellant with regard to such declaration requiring him to show cause why he has not paid or short paid. Section 111 (1) to (2) of the Act further provides no information shall be taken under subsequent after expiry of one year from the date of declaration.

9. In this case, it is an admitted fact that no show cause notice in writing in compliance to section 111 of the Act has been issued to the appellant. Further, the mandate of section 111(2) is that after one year from the expiry of date of declaration, no action shall be taken.

10. Admittedly, as no show cause notice has been issued to the appellant, in that circumstances, the declaration filed by the appellant is required to be accepted. Therefore, the impugned order deserves no merits, hence set aside.

11. As a result, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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