

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

Service Tax Appeal No. ST/52834/2018 [SM]

[Arising out of Order-in-Appeal No. 53 (RK) ST/ JPR/2018-19 dated 31.05.2018 passed by the Commissioner (Appeals), DGGSTI, Jaipur]

Savitri Leasing & Finance Ltd.

...Appellant

Vs.

C.C.E. & CGST

...Respondent

Present for the Appellant : Mr. Rahul Lekhwani, Advocate

Present for the Respondent: Mr. K. Poddar & Mr. S. Nunthuk, DRs

Coram:HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 15.11.2018

Pronounced on : 03.12.2018

FINAL ORDER NO. 53345/2018

PER: RACHNA GUPTA

The appellant herein are engaged in providing renting of immovable property services and have got themselves registered on 26.02.2007. The appellant under Voluntary Compliance Encouragement Scheme dated 30.12.2013 had filed VCES-I declaring the tax dues of Rs. 4,50,756/- against renting of immovable property services for the period w.e.f. 01.10.2008 to 31.03.2010 vide challan No. 50518 dated 28.12.13. On examination of the said VCES-I, the Department observed that the tax dues declared by the appellant were for the subsequent period on the same issue for which a show Cause Notice dated 04.01.2011 for the period w.e.f. 01.01.2009 to 31.03.2010 had already been issued. Accordingly, a Show Cause Notice dated 25.02.2014 was

issued proposing the rejection of the said VCES-I. The said proposal was confirmed vide Order-in-Original No. 1 dated 18.05.2015. It is thereafter that another Show Cause Notice No. 1216 dated 01.03.2016 was issued proposing the recovery of the service tax on Rs. 4,50,756/-. The said recovery has been confirmed vide the Order-in-Original dated 22.05.2018. Being aggrieved, the Appeal in hand have been filed. The said rejection of VCES was confirmed vide Order-in-Original No. 1 dated 18.05.2015. Being aggrieved the appeal was preferred before Commissioner(Appeals) who vide Order No. 53 dated 31.05.2018 has upheld the Order of rejection. Still being aggrieved Appeal is before this Tribunal.

2. I have heard Mr. Rahul Lekhwani, Ld. Advocate for the appellant who has mentioned that the VCES-I of appellant has been rejected by the Department relying upon second proviso to Section 106(1) of Finance Act, 2013 on the ground that it involved the same issue for the subsequent period as of that involved in Show Cause Notice dated 04.01.2011, consequent to audit conducted in case of the assessee. It is submitted that the issue for the Show Cause Notice dated 04.01.2011 and for the present Show Cause Notice dated 25.02.2014 is absolutely different except that both the Show Cause Notices are about the liability of renting of immovable property services by the appellant. It is impressed upon that the same category of service cannot be considered as the same issue which has been wrongly interpreted by the Department. It is further submitted that the Show Cause Notice is otherwise beyond the

normal period of one year of the limitation and there was no intention of the appellant to evade the duty, extended period could not be invoked. Show Cause Notice is therefore barred by time and thus is liable to be set aside on this ground itself. Appeal is accordingly prayed to be allowed.

3. Mr. PR Gupta, Ld. DR while rebutting these arguments has submitted that there is no wrong interpretation on the part of the adjudicating authority below as alleged vide the previous Show Cause Notice of the year 2011. The liability of the appellant on account of renting of immovable property services for the same period for which the VCES has been filed was issued. The VCES has rightly been held to be covered under proviso 2 of Section 106. Appeal is prayed to be dismissed.

4. After hearing both the parties before proceeding further Section 106 of Voluntary Compliance Encouragement Scheme (VCES), 2013 is to be looked into. It reads as follows:

"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 any 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."

Section 106 is an enabling provision which deals in a situation where a particular class of assessee is liable to take

advantage of the VCES Scheme and submit a declaration. Under this Section, any person may declare his tax dues in respect of which no notice or an Order of determination under Sections as mentioned above has been issued or made before first day of March 2013. It further provides that where a notice or Order of determination has been issued to any person that person is debarred to avail the benefit of Scheme. Ld. Counsel for the appellant has challenged the Order alleging that the adjudicating authority below has given a wrong interpretation of the word "any issue" and "same issue" as used in Section 106. The term 'issue' has nowhere being defined in the Finance Act 1944, or even in the Central Excise Act, 1994. Tribunal being a quasi-judicial authority can well rely upon the Civil/ Criminal Procedural Codes in the situations of ambiguity as the one in hand. Order 14 of Civil Procedure Code is about settlement of issues. Rule 1 sub-rule 1 thereof says that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Sub-rule 3 thereof says that each material proposition affirmed by one party and denied by other shall form the subject of distinct issue. In the present case, Show Cause Notice dated 04.01.2011 was issued to the appellant calling him upon to pay the service tax liability qua renting of immovable property services for the period w.e.f. 01.01.2009 to 31.03.2010. Vide the impugned VCES-I, the appellant has declared his tax dues of Rs. 4,50,756 against the renting of immovable property services for the period w.e.f. 01.10.2008 to 31.03.2010. This perusal makes it clear that it is not merely that the category of

service rendered is same but the allegation of not discharging the tax liability for rendering the said service and that the period for the alleged default is also same. Thus it becomes clear that a notice has already been issued to the appellant in respect of the same issue for the same period for which the appellant made the declaration under VCES-I. In view thereof I am of the firm opinion that the said declaration is prohibited under proviso 2 to Section 106(1) of VCES 2013. The Adjudicating Authority below are held to have committed no error while rejecting the said VCES Scheme. Order is held to have no infirmity. Appeal is accordingly dismissed.

5. The argument of the appellant for Show Cause Notice to be barred by time are also held to be not sustainable because the time limit for issuing notice under 101 of VCES will be applicable if and only if the assessee is entitled to file the VCES. Once it is apparent on record that rejection of VCES of appellant is correct due to a wrong declaration and non compliance of statutory provision. There is no need to look into the issue of limitation. As a result, I hold that there is no infirmity. Appeal is dismissed.

[Pronounced in the open Court on 03.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.