

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/52154/2018[SM]

[Arising out of Order-in-Appeal No. 18/RK/ST/JPR/2018-19 dated 25/04/2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur –I]

Savitri Leasing & Finance Ltd. **...Appellant**
Vs.
C.C.E. & S.T., Jaipur – I **...Respondent**

Present for the Appellant : Mr. Rahul Lekhwani, Advocate
Present for the Respondent: Mr. P.R. Gupta & Mr. S. Nunthuk, DRs

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

Date of Hearing: 15.11.2018
Pronounced on : 04.12.2018

FINAL ORDER NO. 53364/2018

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 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 No. 1216 dated 01.03.2016 was served upon the appellant. Proposing the recovery of the

tax dues of Rs. 4,50,756/- alongwith interest and penalty. The said proposal was confirmed vide Order-in-Original No. 1 dated 18.05.2015. It is thereafter that the impugned Show Cause Notice no 1216 dated 01.03.2016 was issued proposing the recovery of the service tax on Rs. 4,50,756/- consequent to the rejection of the said VCES application. The said recovery has been confirmed vide the Order-in-Original dated 29.03.2017. 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 us.

2. I have heard Mr. Rahul Lekhwani, Ld. Advocate for the appellant who has submitted that the impugned Show Cause Notice has been issued consequent to the rejection of VCES –I application of the appellant. The said Order of rejection is simultaneously pending adjudication as the same has been challenged as being the invalid Order. In view thereof the initiation of present Show Cause Notice during the pendency of the Order of rejection of VCES application is nonest. It is submitted that once the appellant has already paid the impugned tax though under VCES scheme, the question of suppression of facts with intent to evade duty does not at all arise. No question of imposition of penalty also arises. It is further submitted that during the impugned period there was the confusion prevalent about the liability qua renting of immovable property services. Due to decision of **Hon'ble Delhi High Court in the case of Home Solutions Returns**

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that the tenants stopped paying the service tax with the rent which is why the appellant had not deposited the same. The said payment was received only in January 2012 whereafter the appellant filed the VCES availing the benefits of the scheme. Question of any interest liability does not at all arise. The Order under challenge is alleged to be a non-speaking order in sheer ignorance of above submissions. Accordingly is prayed to be set aside.

* except Section 77

3. Per contra, the Ld. DR has justified the Order. Para 6 thereof has been impressed upon and Appeal is prayed to be dismissed.

4. After hearing both the parties and perusing the record, I am of the opinion that prior to the impugned Show Cause Notice, another Show Cause Notice dated 25.02.2014 was served upon the appellant proposing the rejection of VCES application as was filed by him on 30.12.2013 for payment of service tax amounting to Rs. 4,50,756/- on renting of immovable property services for the period w.e.f. October, 2008 to March, 2010. The said proposal has been decided against the appellant. The demand in the impugned Show Cause Notice and the period in dispute is same. It becomes clear that the appellant has not disputed their liability of service tax amounting to Rs. 4,50,756/-, as demanded vide the present Show Cause Notice. No doubt the present Show

Cause Notice was issued during the pendency of adjudication of the prior Show Cause Notice of 25.02.2014. But apparently it was issued after the proposal of rejection was confirmed vide original adjudicating authority's order dated 18.05.2015. With the said rejection, the immunity from interest and penalty as was available to the appellant under VCES Scheme was no more available to them. Irrespective of the said rejection, the fact remains is that the service tax of Rs. 4,50,756/- stands deposited with the Department since 30.12.2013. Hence, the issuance of impugned Show Cause Notice is apparently qua the demand which stands already deposited. The deposit is with respect to the period w.e.f. October 2008 to March 2010. Deposit dated 30.12.2013 being a delayed discharge of liability for the said period, it invites the payment of mandatory interest in view of Section 75 of the Finance Act. Hence, the Adjudicating Authority is found to have committed no error while confirming the demand of interest on the aforesaid amount. However demand of the said amount is not sustainable, it being already deposited with the Department.

5. Now coming to the aspect of imposition of penalty, it is an apparently admitted fact that the Department has knowledge of non payment of the impugned demand since the year 2011. It is also being conceded by the Department that a confusion was prevalent during the impugned period qua the liability with respect to renting of immovable property services. The appellant received the service tax from his tenants for the impugned period only in January 2012. Appellants on their

own had deposited the same in the VCES Scheme. Irrespective the said deposition has been rejected, the only consequence is that the appellants are not entitled for the immunity flowing from the said scheme and the benefits thereof but the fact remains is there is nothing on part of the appellant which can be held as wilful mis-representation or wilful suppression of the facts. In absence thereof no question arises of invoking proviso 2 Section 73 of the Act for imposing penalty upon the appellant. The Order to that extent is therefore liable to be set aside.

6. As a result of entire above discussion the Order under challenge is sustainable only qua confirming the demand of interest on the amount of service tax of Rs. 4,50,756/-. Rest of the Order is set aside. Appeal stands partly allowed. The plea of limitation as impressed by appellant is not applicable, in view of the entire above discussion, as the interest is otherwise a mandatory/statutory levy in case the liability has not been discharged in time by assessee.

[Pronounced in the open Court on 04.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.