

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No. 76375 of 2019

(Arising out of Order-in-Appeal No.08/ST/BBSR-GST/2019 Dated 27.02.2019 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.)

M/s. Er. Binay Krishna Das, Managing Director
(M/s. Bivab Developers Pvt. Ltd., Bivab Gulmohar, 4th Floor,
Nayapalli, Bhubaneswar-751012, Odisha)

Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate
(Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHURY, MEMBER (JUDICIAL)

FINAL ORDER NO.75902/2023

Date of Hearing : 08 June 2023

Date of Decision : 27.06.2023

PER ANIL CHOUDHURY

The Appellant is in appeal against order of rejection rejecting the benefit of Voluntary Compliance Encouragement Scheme, 2013. The brief facts are that the Appellant is the managing director of the M/s. Bivab Developers Private Limited rendering service in the nature of construction of residential complex service, renting of immovable property service etc. Appellant is registered with the Service Tax Department being registration dated 9 November 2011.

2. The Appellant was issued an enquiry letter by the Department being enquiry letter dated 18th January 2013, requiring to produce copies of Balance-Sheet, details of receipts and services provided during the period 2008 – 2009 to 2011 – 2012. As the Voluntary Compliance Encouragement Scheme, 2013 (VCES, 2013) had been circulated under section 107 (I) of the Finance Act, 2013, the Appellant applied for settlement of its tax dues under the VCE Scheme, 2013 in the

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prescribed form VCES-1 on 01.12.2013, declaring total tax dues at Rs.23,00,135/-. A copy of the declaration was sent to the Jurisdictional Range Officer for verification, who in his verification report dated 31st December 2013 stated that a letter have been issued to the Appellant dated 18th January 2013 asking him to produce Books of Accounts, Annual Statement of Account, Copy of IT Returns for the period 2008 – 2009 to 2011-12 for assessment of Service Tax liability under Section 72 of the Finance Act 1994. Thus, submitted that an enquiry is pending against the Appellant in respect of Service Tax not levied or not paid as on 1 March 2013. Accordingly, Revenue issued Show Cause Notice dated 30th December 2013 to the Appellant stating that since the notice under section 72 of the Finance Act, 1994 have been issued dated 18th January 2013, which is prior to 1 March 2013, the Appellant is not eligible to avail the benefit of VCES, 2013. Accordingly, the Appellant was required to Show Cause as to why the declaration under VCES should not be rejected under Proviso to Section 106 of the Finance Act, 2013.

3. The Appellant challenged the Show Cause Notice in Writ Petition before Hon'ble Orissa High Court. The Hon'ble High Court disposed of the application by order dated 3rd April 2014 directing the Appellant to file reply to Show Cause Notice and further directed the Respondent's Authority to consider the issue on merits. The VCES Application was rejected on contest vide OIO dated 24th June 2014. Being aggrieved the Appellant preferred appeal before the Commissioner (Appeals) who was pleased to reject the appeal observing that the appeal is barred by limitation. On further appeal before this Tribunal, the appeal was allowed by way of remand vide Final Order NO.-77374/2017 observing that the delay was within the condonable period and accordingly this Tribunal condoned the delay and remanded the matter for decision on merits. Thereafter, the present order in appeal (impugned order) was passed dated 27 February 2019, rejecting the appeal on merits observing that the Appellant had been issued notice in January 2013 for the period 2008-09 to 2011-2012 with regard to investigation/enquiry

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which was not complied by them and as still pending as on 31st March 2013. Accordingly the VCES Application is liable to be rejected under section 106 (a)(iii) of the Finance Act, 2013.

4. Being aggrieved the Appellant is before this Tribunal.

5. It is observed that the Show Cause Notice dated 31 December 2013 is anti-dated and have been issued after more than 30 days and the same is hit by limitation vide the clarificative Circular issued by the Board being circular number No.170/05/2013-ST dated 8 August 2013. Para 12 of the Circular deals with the issue-where declarant will be given an opportunity to be heard and explain his case before the rejection of a declaration under section 106, by the Designated authority. In clarification, the Board has stated that-yes before the designated authority rejects a declaration, if any enquiry/investigation or audit was pending against the declarant as on the cut off date – 1 March 2013, an order under this section shall be passed following the principles of Natural justice.

6. To allay any apprehension of undue delay and uncertainty, it is clarified that the Designated authority, if he has reasons to believe that the declaration is covered by provisions of section 106(2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating the reasons for the intention to reject. Further, clarified that the declarant shall be given an opportunity of being heard before any order is passed by the Designated Authority.

7. This position was further reiterated and clarified vide Circular No. 174/09/2013-ST dated 25 November 2013.

8. It is also observed that it is evident from the copy of the envelop by which the SCN dated 31st December 2013 was dispatched, contains the serial number of speed post as EO-500903145IN. The Appellant obtained the certified copy of the dispatch receipt from the post office, which states that the said notice was dispatched by revenue only on 10 January 2014. Thus, dispatch of notice beyond 30 days from the date of application which is 1/12/2013, is barred by limitation, as clarified by the aforementioned Board circular.

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9. Learned AR for Revenue relies on the impugned order. It is also pointed out that a regular Show Cause Notice dated 30th September 2015 was issued to the Appellant demanding Rs.49.56 lakhs for the period 1 July 2010 to 31 March 2014.

10. Having considered the rival contentions, I find that the Show Cause Notice dated 31st December 13 is anti-dated and have been dispatched only on 10 January 2014 by speed post. I find that the Show cause Notice has been issued beyond the period of 30 days as prescribed by the Board vide clarificatory circular No. 170/05/2013-ST dated 8 August 2013 and further reiterated vide the Circular No. 174/09/2013 – ST dated 25 November 2013. Accordingly, I hold that the Show Cause Notice is bad and hit by limitation. Accordingly, I allow this appeal and set aside the impugned order. The Appellant shall be entitled to consequential benefits in accordance with law.

(Pronounced in the open court on 27.06.2023)

Sd/-

(Anil Choudhary)
Member (Judicial)

Pooja