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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.76005 of 2015

(Arising out of Order-in-Original No.07/Commr./ST-I/Kol/2015-16 dated 31.07.2015 passed by Commissioner of Service Tax I, Kolkata)

M/s Shanti Services
(Block B/4-226, Kalyani, Dist.-Nadia, Pin-741235)

Appellant

VERSUS

Commissioner of Service Tax I, Kolkata
(180,Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :

Ms.Micky Chowdhury & Shri B.N.Paul, both Advocates for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHENICAL)

FINAL ORDER NO.76747/2024

DATE OF HEARING : 26.08.2024
DATE OF DECISION : 26.08.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the adjudicating authority while adjudicating the show-cause notice has gone beyond the scope of show-cause notice by considering the application filed by the appellant under VCES Scheme.

2. The ld.Counsel for the appellant submits that the adjudicating authority has not considered the payment made by the appellant after issuance of show-cause notice and the same are required to be considered as payment in terms of VCES Scheme. Therefore, their application filed under VCES Scheme, is not required to be rejected. In

that circumstances, it is prayed by the appellant that the impugned order be set aside and the application filed under VCES Scheme be admitted.

3. On the other hand, the ld.A.R. for the Revenue drew our attention to the fact that in this case VCES Scheme was introduced on 10.05.2013 and the appellant applied for VCES Scheme on 23.07.2013, which was rejected vide order dated 25.07.2014 and the said order has not been challenged by the appellant before this Tribunal or any other authorities as it has been held by the Hon'ble Bombay High Court that the order passed under VCES Scheme is an appealable order in the case of Dr.Yeshwant Dhume Vs. Assistant Commissioner of Service Tax, Panaji reported in 2019 (369) ELT 181 (Bom.). Therefore, he prayed that the order of rejection under VCES Scheme attained finality. In that circumstances, the adjudicating authority was required to consider the issue on merit, but the adjudicating authority failed to do so. Therefore, the matter is required to be re-considered by the adjudicating authority on merit of the show-cause notice.

4. In rebuttal to the arguments advanced by the ld.A.R. for the Revenue, the ld.Counsel for the appellant relied upon the following judgments :

(i) Sadguru Constructions Co. Vs UOI reported in 2014(36)5.T.R.3 (Guj) ;

(ii) Apna Awas Construction Pvt. Ltd. Vs Chief Comm. Of Cus., C,EX & S.T., Patna reported in 2019(26)G.S.T.L.289(Pat) ;

(iii) Dr.Yeshwant Dhume vs Assistant Commissioner Service Tax, Panajji reported in 2019 369 E.LT.181(Bom.) ;

(iv) Premier Associates vs The Assistant Commissioner of Service reported in (2018) 49 GSTR 1(KARN).

5. Heard both the parties and considered the submissions.

6. We have gone through the decisions placed by the ld.Counsel for the appellant, which mandate that the order of rejection of VCES Scheme is an appealable order. Admittedly, the said order dated 25.07.2014 is the subject matter of this appeal before us.

7. In that circumstances, the order dated 25.07.2014 passed by the preceding period rejecting VCES Scheme, has become final in the impugned order. The ld.Adjudicating authority has gone beyond the scope of the show-cause notice. Therefore, we set aside the impugned order and remand the matter back to the adjudicating authority for deciding the show-cause notice on its own merit.

8. In the result, the appeal is disposed off by way of remand.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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