IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 77022 of 2016

(Arising out of Order-in-Original No. 45-46/S.Tax/Commr/2016 dated 28.03.2016 (issued on 31.03.2016) passed by the Commissioner of Central Excise & Service Tax, 5-A, Main Road, Ranchi – 834 001)

M/s. Vedika Credit Capital Limited **: Appellant**
406, Shrilok Complex, 4th Floor, H.B. Road,
Ranchi – 834 001

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Ranchi-I Commissionerate,
5-A, Main Road,
Ranchi – 834 001

APPEARANCE:

Shri Arun Kumar Agarwal, Chartered Accountant,
Shri Ranjeet Garodia, Chartered Accountant,
Shri Rohit Kumar Agarwal, Chartered Accountant,
For the Appellant

Shri Prasenjit Das, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76541 / 2025

DATE OF HEARING: 04.06.2025

DATE OF DECISION: 18.06.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Vedika Credit Capital Limited (hereinafter referred as to as the "appellant") is a non-banking finance company ('NBFC') engaged in the business of providing personal loans, two-wheeler loans, and microfinance loans to their customers. The appellant earns interest income through the provision of such loans. Additionally, for facilitating such loans, various charges are being collected from their customers depending upon the nature of loan given.

2. Proceedings were initiated against the appellant by way of issuance of two Show Cause Notice Notices dated 04.12.2014 and 02.03.2015, wherein the following demands have been raised:

Sl No	**Demand Cum Show Cause Notice No. & Date**	**Period Involved**	**Amount of Service Tax (Including Cess) Involved (in Rs.)**
01	C. No. V (30)143/Prev/VCCL/Ran(H)/T-2/2014/8277-82 dated 04.12.2014	01.10.2007 to 31.12.2012	Rs. 1,48,28,953.00
02	C. No. V (65) 140/Vedika Cr. Capital/Adjn./Ran-I/2015/2910 dated 02.03.2015	January 2013 to March 2014	Rs. 38,30,224.00
TOTAL			Rs. 1,86,59,177.00

2.1. The said Notices were adjudicated by a common order dated 28.03.2016 (issued on 31.03.2016), wherein the Ld. adjudicating authority has passed the following order:

"(i) I confirm the demand of total service tax amounting to Rs.1,48,28,953.00 (Rs. One crore Forty eight lakh Twenty eight thousand Nine hundred Fifty three only) (including Education Cess and S. H. Ed. Cess not paid/short paid for the period from 01.10.2007 to 31.12.2012 involved in the Show Cause Notice C. No. V (30) 143/Prev/VCCL/Ran (H)/T-2/2014/18277-82 dated 04.12.2014 under Section 73 (2) of Chapter V of the Finance Act, 1994 read with Section 111 of the Finance Act, 2013 and the same is ordered for recovery from the said noticee no. 1;

(ii) I appropriate the Service Tax amount of Rs. 10,40,076.00 already deposited by the said noticee no. I under VCES, 2013 against the demand confirmed at Sl. No (i) hereinabove;

(iii) I confirm the demand of interest on the demand confirmed at Sl. No. (i) hereinabove and order for its recovery from the said noticee no. I under the provisions of Section 75 of the Finance Act, 1994 read with section 111 of the Finance Act, 2013;

(iv) I impose a penalty of Rs. 1,48,28,953.00 (Rs. One crore Forty eight lakh Twenty eight thousand Nine hundred Fifty three only) on the said noticee no. I under the provisions of Section 78 of the Finance Act, 1994 read with Section 78B of the Finance Act, 1994 and section 111 of the Finance Act, 2013. If Service Tax and interest determined at Sl. No. (i) and (m) hereinabove is paid within a period of thirty days of the date of receipt of this order the penalty shall be twenty five per cent of the penalty imposed, provided if such reduced penalty is also paid within the aforementioned period;

(v) I impose a penalty of Rs 10,000/- on the said noticee no. I under the provisions of Section 77 of the Finance Act, 1994 read with section 111 of the

Finance Act, 2013 for contravention of various provisions of Finance Act, 1994 as discussed hereinabove;

(vi) I impose personal penalty of Rs. 1,00,000/- (Rs. One lakh only) upon Shree Gautam Jain, Director of the said noticee no. 1 under section 78 A of the Finance Act, 1994 as much as he deliberately failed to make correct declaration under VCES, 2013 with intent to evade Service Tax;

(vii) I confirm the demand of Service Tax amounting to Rs 38,30,224/- (Rs. Thirty eight lakh Thirty thousand Two hundred Twenty four only) including Education Cess and S. H. Ed. Cess involved in the Show Cause Notice C. No. V(65)140/Vedika Cr. Capital/Adjn/Ran-1/2015/2910 dated 02.03.2015 short paid/not paid for the period from January 2013 to March 2014 under Section 73 (2) of the said Act and the same is ordered for recovery from the said noticee no. 1;

(viii) I confirm the demand of interest on the demand confirmed at Sl. No. (VII) hereinabove and order for its recovery from the said noticee no. I under the provisions of Section 75 of the Finance Act, 1994;

(ix) I impose a penalty of 10% of the amount confirmed at Sl. No. (vii) hereinabove on the said noticee no. 1 under the provisions of Section 76 read with Section 78B of the Finance Act, 1994 for failure to pay the Service Tax for the period from January 2013 to March 2014. If Service Tax and interest determined at Sl. No. (vii) and (viii) is paid within a period of thirty days of the date of receipt of this order the penalty shall be twenty five per cent of the penalty imposed hereinabove, provided if such reduced penalty is also paid within the aforementioned period;

> *(x) I impose a penalty of Rs. 10,000/ on the said noticee no. 1 under the provisions of Section 77 of the Finance Act. 1994 for contravention of various provisions of Finance Act, 1994 as discussed hereinabove."*

2.2. Aggrieved by the confirmation of the demands of duty along with interest and imposition of penalties, the appellant has filed this appeal.

3. The Ld. Counsel appearing on behalf of the appellant submit that the ld. adjudicating authority has treated the activity of provision of granting loans for two-wheeler as 'finance lease' transaction and thus has demanded service tax on the entire interest income earned by the appellant against all three types of loans. It is submitted that service taxhas been confirmed on various charges collected by them; further, demand of service tax on account legal charges under RCM have also been made in the instant case.

3.1. The appellant submits that the method of quantification of demand of service tax, except in respect of legal charges, adopted by the ld. adjudicating authority is improper and irrational.

3.2. The appellant summarized the demands confirmed in the impugned order in a tabular form which is reproduced below:

SN	Particulars	Amount (ST incl. cess) (in Rs.)	Basis of Quantification
1.	Interest income earned on loans provided for two-wheeler	59,62,660.87	Total interest income, as reflected in P&L considered, instead of only two-wheelers.
2.	Total Charges recovered for loan provided. [Total charges are approx. 5% of amount of loan disbursed]	1,16,90,596.78	Charges @ 5% calculated on the basis of 'Loans/Advances' as reflected in balance sheet instead of amount of loan disbursed during a particular period.
3.	Agreement charges recovered for loan provided	8,99,560.80	No. of customers granted loans.
4.	Legal charges (RCM)	1,06,358.42	'Legal Expenses' reflected in P&L.
Total demand (ST including cess)		**1,86,59,176.87**	

3.3.It is also the submission of the appellant that for the period from April,2010 to December,2012, they had opted for VCES,2013 vide Form VCES-1 filed vide letter dated 16.12.2013 duly acknowledged on 17.12.2013, declaring a liability of Rs. 10,40,076/-. In this regard, it is stated that the designated authority issued an acknowledgement in Form VCES-2 dated 30.12.2013; accordingly, the appellant duly made the payment of tax dues, pertaining to the above stated period, amounting to Rs. 5,20,038/- (50% of the declared liability) vide CIN 05102472812201350996 dated 28.12.2013& Rs. 5,20,038/- (balance 50% of the declared liability) vide CIN 05102472806201450702 dated 28.06.2014. It is contended that as per Section 108 of the Finance Act, 2013, the appellant was entitled to immunity from reopening of matter in any proceedings relating to the period covered by the scheme andthat as per Section 111 of the Act (supra), the Commissioner of Central Excise was empowered to serve notice to the appellant in respect of declaration made i.e. for the period from April,2010 to December,2012 if he had reasons to believe that the declaration made was substantially false. However, the appellant submits that no such notice was served to the appellant and hence the declaration filed by the appellant was a conclusive one. Reliance in this regard is placed by the appellant on the judgement of CESTAT, Mumbai in the case of *M/s. Uravi T & Wedge Lamps Pvt. Ltd. versus Commissioner of CGST, Bhiwandi, reported in 2022 (12) TMI 1296 - CESTAT MUMBAI.*

3.4. It is their further submission that the impugned Show Cause Notice dated 04.12.2014, covering the period from October,2007 to December,2012, was issued under Section 73(1) of the Finance Act, 1994.In this regard, the appellant states that Section 73(1) of the Act provides for issuance of notice within eighteen (18) months being the time-limit applicable for the period from 28.05.2012 to 13.05.2016, from the relevant date on the person chargeable with tax in cases other than fraud. Accordingly, the appellant submits that although the last date for issuance of the stated notice was 25.10.2014 (i.e., 18 months from the due date of filing of return i.e. 25.04.2013 even if the material period is considered upto March, 2013 instead of December, 2012), the same was issued on 04.12.2014 i.e. beyond the time limit prescribed under the law and hence contends that the Notice issued in this case is time barred.

3.5. It has also been contended by the appellant that theLd. Commissioner, while passing the impugned order, has travelled beyond the scope of the allegations in the Show Cause Notice, and failed to consider or deal with the detailed submissions and factual clarifications provided by the Appellant. It is thus contended that the impugned order is therefore to be set aside, without prejudice to any other submissions, legal contentions or remedies available to the appellant. In support of this claim, the appellant relied on the following decisions:

- *Commissioner of Customs, Mumbai Vs Toyo Engineering India Limited [2006 (8) TMI 184 - Supreme Court]*
- *M/S. Jai Balaji Industries Limited (Formerly Jai Balaji Sponge Limited) Versus Commissioner of Central Excise, Bolpur [2023 (5) TMI 652 - CESTAT Kolkata]*

3.6. The appellant further contends that the impugned order is a non-speaking order as the Ld. Commissioner has not considered the submissions made by them. The appellant submits that they had made the following submissions before the issuance of impugned SCN:

a) Break up of interest income earned for loans pertaining to Two-Wheelers, Personal and Micro Finance duly certified by CA – submitted on 07.11.2014.
b) Details of disbursement under Micro Finance & Two Wheelers loan along with the interest and other charges collected during the year 2008-09 to 2012-13 – submitted on 28.11.2014.

3.7.1. However, it is their plea that the ld. adjudicating authority, prior to passing of the impugned order, paid no heed to the Chartered Accountant's certificate submitted by them, certifying the break-up of interest income. Thus, they argue that the impugned order is non-speaking one, liable to be quashed. Furthermore, it has been submitted by the appellant that the CA certificate is itself valid evidence if it specifically mentioned that they have verified the records. Reliance in this regard is placed on the judgement of CESTAT, Mumbai in the case of *M/s. SBI Life Insurance Company Ltd dated 25.01.2024reported in 2024 (1) TMI 1161 - CESTAT MUMBAI.*

3.8. The appellant submits that without prejudice to their contention that interest earned on two wheelers loans provided by them is outside the purview of service tax, service tax on interest income has been calculated on the entire interest income recorded in P&L of the appellant instead of considering the interest income component in relation to two-wheelers only.

3.9. The appellant also made further submissions, which are summarized below: -

(i) Total Charges @ 5%: Service tax on various charges collected by the appellant has been calculated on the quantum of 'Loans/Advances' recorded in the balance sheet or loan disbursed during the particular year whichever is higher. 'Loans/Advances' in balance sheet denotes amount of loan outstanding as on 31st March of a particular financial year. The appellant submitted a CA certificate certifying details of interest break up for the period October, 2007 to March, 2014 and details of Disbursement of loan break upfor the period 2007-08 to 2013-14 .

(ii) Loans/Advances in balance sheet: Loans/Advances in balance sheet includes personal loans against which no separate charges are being collected by the appellant and hence to be excluded from the calculation of service tax demanded.

(iii) Agreement Charges:Service tax on agreement charges @ Rs. 500 per customer has been calculated over and above total charges and hence considered twice.

(iv) Insurance Charges: The appellant has collected these charges from their customers and has reimbursed to the insurance companies in case of loans provided for two-wheeler. Service tax on such reimbursements has also been demanded which is not in accordance with law.

(v) Quantum of disbursement of loan incorrect: The amount of disbursement of loan for the period April, 2012 to Dec, 2012 should have been considered in the SCN dated 04.12.2014. On the contrary, the amount pertaining to entire financial year i.e. upto March, 2013 has been considered for computation of total charges @ 5%.

(vi) Cum-tax benefit not allowed:The cum tax benefit was disallowed due to alleged failure to produce documentary evidence to prove that service tax was not collected by the appellant. The appellant submits that the Ld. Adjudicating Authority has not adduced any evidence to the effect that the appellant have charged and recovered the Service Tax from their customers and hence the appellant are entitled for cum-tax benefit in terms of Section 67(2) of the Finance Act 1994. Reliance is placed on the judgment of CESTAT, Kolkata in the case of *M/s. Park Hospitals vs Comm. of Service Tax, Kolkatareported in 2025 (2) TMI 419 - CESTAT KOLKATA.*

(vii) CENVAT Credit not allowed: The appellant is eligible for CENVATCredit of service tax paid on various input services which was completely ignored by the adjudicating authority.

3.10. In view of the above irregularities in quantification of service tax demand, the appellant contends that no service tax is additionally payable by the appellant for the material period.

3.11. The appellant submitted that the services provided by them are classifiable under "Banking and other financial services"; they submit that the point of dispute is categorization of loans provided by the appellant to their customers for purchase of two-wheelers into finance leasing services and the

Department is classifying the said services under the category of "Financial leasing" which means a lease transaction where- (1) contract for lease is entered into between parties for leasing of a specific asset (ii) the contract is for use and occupation of the asset by the lessee (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment, which is evident from Para 2(d) of Notification No. 26/2012-ST dated 20.06.2012. However, the appellant states that in the instant case of Loan against hypothecation of asset, it is purely and simply a case of giving certain amount of money to a borrower on Loan; the Loan may be given for a short term or Long term; during the period of enjoying the loan amount, the borrower is supposed to pay some amount as interest to the lender. It is pointed out that the ownership of the asset is always with the borrower, for which the loan may be taken by him; however, to protect the risk of non-payment of the loan amount, the asset is hypothecated to the lender, who can sell off the asset in case of failure to pay the loan amount by the borrower. Further, that during the Loan period, the asset is hypothecated to the lender, who has a lien over the asset [there is an endorsement by the lender]. It is also informed that on repayment of the full amount along with interest as per the terms of the contract, the lien over the asset is released by the lender by deleting the endorsement. In support of their above contention, the appellant submitted copy of a sample loan agreement for two-wheeler along with corresponding invoice of the dealer evidencing ownership rests with the borrower. Reliance is placed on the judgement of Division Bench of CESTAT, Kolkata in the case of *M/s Poonawalla Fincorp Ltd. (Formerly, Magma ITL Finance Ltd.) Versus Commissioner of Service Tax, Kolkata-II [2024 (2) TMI 618 - CESTAT Kolkata].*Thus, the appellant submits that the demand confirmed in the impugned order by treating the services rendered by them as 'Financial Leading Service' is not sustainable.

3.12. With regard to the imposition of penalty, the appellant submits that penalty under Section 78, vide Show Cause Notice dated 04.12.2014, is not imposable in this case. They submit that Section 78 provides forpenalty, equivalent to hundred percent amount of service tax, for failure to pay service tax for reasons of fraud, etc., leviable on the person who has been served notice under the proviso to sub-section (1) of section 73. However, it is their argument that in the instant case, as the SCN dated 04.12.2014 was issued under Section 73(1), imposition of penalty under Section 78(1) is without any statutory authority and thus liable to be dropped. It is also submitted by the appellant that the impugned Show Cause Notices were issued completely on the basis of submissions made by the appellant during the process of investigation, without a single extraneous material or information on record and hence, the allegation of wilful suppression is vague, arbitrary and bad in law.

3.12.1. The appellant additionally submits that penalty has been imposed on the Director under Section 78A of the Finance Act, 1994. In this regard, it has been contended that penalty shall not ordinarily be imposed unless the Director either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligation; further, it has not been established, either in the impugned SCNs or impugned order that the Director has acted in contumacious manner so as to impose the penalty; that the impugned order does not record any reason for which the said Director could be said to be illegally involve in the evasion of service tax. The appellant submits that Shri Gautam Jain duly co-operated during the entire investigation process as and when required which is a fact on record duly acknowledged in the impugned Show Cause Notice dated 04.12.2014; mere signature and certification in Form VCES-1 filed by the appellant cannot prove deliberate act on part of the Director to disobey the law with an intent to evade payment of tax.

3.12.2. Accordingly, the appellant submitted that the penalties imposed in the impugned order are not sustainable and prayed for setting aside the same.

4. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. Regarding the demand of Rs.59,62,661/- confirmed on the interest income earned on loans provided for two-wheeler, we observe that the ld. adjudicating authority has considered the total interest income, as reflected in P&L Account of the appellant. It is a fact that interest earned on rendering of 'Banking and Financial Services' are exempted from payment of service tax. There is no dispute on this. In this case, the dispute has arisen on

the loans rendered to purchase of two-wheelers. The Department has considered the loans rendered to two-wheeler purchase under the category of 'Financial Leasing'. However, while demanding service tax they have taken the entire interest income instead of taking the interest earned only in respect of loans granted for two-wheelers purchase.

6.1. Regarding the merits of the demand by considering the service as 'Financial Leasing', we observe that the point of dispute is categorization of loans provided by the appellant to their customers for purchase of two-wheelers into finance leasing services. The Department is classifying the said services under the category of "**Financial leasing**" which means a **lease transaction** where- (1) contract for lease is entered into between parties for leasing of a specific asset (ii) the contract is for use and occupation of the asset by the lessee (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment, which is evident from Para 2(d) of Notification No. 26/2012-ST dated 20-6-2012. However, in the instant case of Loan against hypothecation of asset, it is purely a case of giving certain amount of money to a borrower on Loan. The Loan may be given for a short term or a long term. During the period of enjoying the loan amount, the borrower is supposed to pay some amount as interest to the lender. **The ownership of the asset is always with the borrower**, for which the loan may be taken by him. However, to protect the risk of non-payment of the loan amount, the asset is hypothecated to the lender, who can sell off the asset in case of failure to pay the loan amount by the borrower. During the Loan period, the asset is hypothecated to the lender, who has a lien over the asset [there is an endorsement by the lender]. On repayment of the full amount along with interest as per the terms of the contract, the lien over the asset is released by the lender by deleting the endorsement.

6.1.1. We have perused thecopy of a sample loan agreement for two-wheeler along with corresponding invoice of the dealer, submitted by the appellant. The document indicates that the ownership of the vehicle rests with the borrower. Thus, we agree with the submission of the appellant that the said services under undertaken by the appellant cannot be categorized as "**Financial leasing**". It is a case of mere lending of money and hence the interest earned is not liable to service tax under the category of 'Financial Leasing'.

6.2. In this regard, we find it appropriate to refer to the decision of this Tribunal in the case of *M/s. Poonawalla Fincorp Ltd. (Formerly, Magma ITL Finance Ltd.) Versus Commissioner of Service Tax, Kolkata-II [2024 (2) TMI 618 - CESTAT Kolkata],*relied upon by the appellant, wherein, vide order dated 08.02.2024, while hearing the matter on a similar issue, it was held as follows:

> *"9. We observe that the Appellant enters into **financing agreements** with the customers wherein the **customers purchase the assets** in their name and approach the **Appellant** for the purpose of **financing the same**. The **ownership** of the goods vests with the **customers** and the **Appellant merely finances** the purchase of such products by the owner. The ownership solely vests*

> *with the customers and there is no clause in the agreement providing the customers an option to purchase the product at the end of payment of all installments*
>
> *9.4. In the present case, the ownership of the goods vests with the customers and the Appellant merely finances the purchase of such products by the owner. The ownership solely vests with the customers and there is no clause in the agreement providing the customers an option to purchase the product at the end of payment of all installments. Therefore, by relying on the decision of the* ***Hon'ble Supreme Court in Sundaram Finance (supra)*** *which has been relied upon in* ***Bajaj Finance case****, we hold that the* ***transaction between the Appellant and its customers*** *is* ***not hire purchase agreements*** *and* ***are merely hire purchase finance*** *agreements which is n****ot under the ambit of service tax*** *as held in the case of Bajaj Finance (supra). Accordingly, we hold that the demands of service tax along with interest and penalty confirmed in the impugned order is not sustainable and we set aside the same".*
>
> (Emphasis supplied)

6.3. Thus, by relying on the decision cited above, we hold that the demand confirmed in the impugned order by treating the services rendered by the appellant as 'Financial Leading Service' is not sustainable and hence we set aside the same.

7. Regarding the demand of service tax of Rs.1,16,90,597/-, we observe that the total charges recovered for loan provided, which are approx. 5% of amount of loan disbursed, have been taken into account to confirm the demand. In this regard, the appellant's submission is that for the period from April,2010 to December,2012, they had opted for

VCES,2013 vide Form VCES-1 filed vide letter dated 16.12.2013 duly acknowledged on 17.12.2013, declaring a liability of Rs. 10,40,076/-. The designated authority issued an acknowledgement in Form VCES-2 dated 30.12.2013. Accordingly, the appellant claims that they had duly made the payment of tax dues, pertaining to the above stated period, amounting to Rs. 5,20,038/- (50% of the declared liability) vide CIN 05102472812201350996 dated 28.12.2013& Rs. 5,20,038/- (balance 50% of the declared liability) vide CIN 05102472806201450702 dated 28.06.2014. In this regard, we note that as per Section 108 of the Finance Act, 2013, the appellant was entitled to immunity from reopening of matter in any proceedings relating to the period covered by the scheme. Moreover, as per Section 111 of the Act, the Commissioner of Central Excise was empowered to serve notice to the appellant in respect of declaration made i.e. for the period April,2010 to December,2012 if he had reasons to believe that the declaration made was substantially false. However, in this case, we observe that no such notice was served to the appellant and hence we agree with the submission made by the appellant that the declaration filed by them was a conclusive one. In support of this view, we place our reliance on the decision of the Tribunal, Mumbai in the case of*M/s. Uravi T & Wedge Lamps Pvt.Ltd. versus Commissioner of CGST, Bhiwandi, reported in 2022 (12) TMI 1296 - CESTAT MUMBAI,* to be correct, wherein it was held as follows:

> *"4.5 In **absence of any such notice for rejection**, it is but natural that appellant would act as per VCES-2 issued to him acknowledging the declaration. Appellant paid the declared liability and intimated the designated authority of the payment made. Even then the designated authority has not issued the settlement memo under Form VCES-3.*

> ***Appellant cannot be faulted*** *for the reason as stated in the impugned order.*
> *4.6 Section 111 of the Finance Act, 2013 clearly provides that in case there is some liability or the declaration made is found to be improper substantially, then a show cause notice for confirming the additional tax liability would be issued under Section 111. No such notice has also been issued.* ***In absence of notice under Section 111****, there* ***cannot be a case for rejection of the declaration*** *made by the appellant under VCES scheme. It is for the Revenue/designated authority to issue VCES scheme and* ***failure to issue the same cannot be the ground for proceeding against the appellant****. Revenue should set its record right*".
>
> (Emphasis supplied)

7.1. We observe that Section 108 of the Finance Act, 2013, provides immunity to the appellant from reopening of matter in any proceedings relating to the period covered by the scheme. Thus, we observe that as per Section 111 of the Act (supra), the Commissioner of Central Excise was empowered to serve notice to the appellant in respect of declaration made i.e. for the period from April,2010 to December,2012 if he had reasons to believe that the declaration made was substantially false. However, we observe that no such notice was served to the appellant in this case. Accordingly, we hold that the declaration filed by the appellant was a conclusive one for the period from April,2010 to December ,2012, as they had opted for the VCES,2013 Scheme. Thus, we hold that the demand confirmed in the impugned order for this period is not sustainable.

7.2. It is pertinent to note that part of the demand of Service Tax of Rs.1,16,90,597/- pertains to the period prior to April 2010. We observe that this demand pertaining to the period prior to April 2010 has been issued in the Show Cause Notice dated04.12.2014.

We find that there is no evidence brought on record to allege suppression of fact with intention to evade payment of tax. Hence, we hold that the demand confirmed by invoking the extended period of limitation is not sustainable.

7.3. We also find that part of the demand pertains to the period after December 2012 also, which is covered by the second Show Cause Notice dated 02.03.2015 pertaining to the period from January 2013 to March 2014. We observe that the appellant has not disputed the liability of service tax on this issue raised in the show cause notice dated 02.03.2015. The demand for the period after December 2012 has been issued within the normal period of limitation. Accordingly, we are of the view that the appellant is liable to pay service tax on the said services for the demand covering the normal period of limitation covered in the Notice dated 02.03.2015. As the break up figures for this period is not available, the issue is remanded back to the adjudicating authority for the limited purpose of quantifying the demand of service tax for the normal period of limitation raised in the Notice dated 02.03.2015. The adjudicating authority should give an opportunity of personal hearing to the appellant and decide the issue within a period of three months from the date of receipt of this Order. The appellant is also directed to cooperate by providing all necessary information, for finalization of the issue.

7.3.1. In this regard, we have examined the various contentions raised by the appellant as to irregularities in the demand confirmed against them, as mentioned in paragraph 3.9 (supra): -

(a) We find the request of the appellant for allowing cum duty benefit to be correct and accordingly, the adjudicating authority is required to allow the cum duty benefit to the appellant, while quantifying the demand under this category for the period from January, 2013 to March, 2014.

(b) We also observe that the appellant has claimed that they have reimbursed 'insurance charges' to the insurance companies in case of loans provided for two-wheeler and hence, we find that these charges have nothing to do with the Service Tax liability in this regard. Accordingly, the same are liable to be excluded while computing the Service Tax liability of the appellant for the period from January 2013 to March 2014 under this category.

(c) We also find that Loans/Advances in balance sheet includes personal loans against which no separate charges are being collected by the appellant and hence the same are to be excluded from the calculation of service tax demanded.

(d) No penalties are imposable on this portion of the demand, which the appellant is liable to pay, along with interest.

8. Regarding the demand of service tax of Rs. 8,99,561/- confirmed in the impugned order on the Agreement charges recovered from the customers, the appellant submits that Service tax on agreement charges @ Rs. 500 per customer has been calculated over and above the total charges and hence considered twice. We do not find any finding in the impugned order contrary to this claim made by the appellant. Accordingly, we hold that the demand confirmed under this category is not sustainable.

9. Regarding the demand of Rs.1,06,358/- confirmed in the impugned order on the legal charges reflected in the P&L Account, we observe that the appellant is liable to pay service tax on the said charges on reverse charge basis (RCM). We find that the appellant has not disputed this demand. Accordingly, we uphold the demand of service tax confirmed on this count.

10. We observe that the penalty under Section 78, sought to be levied vide Show Cause Notice dated 04.12.2014, is not imposable in this case. It is seen that Section 78 provides for penalty, equivalent to hundred percent amount of service tax, for failure to pay service tax for reasons of fraud, etc., leviable on the person who has been served notice under the proviso to sub-section (1) of section 73. However, in the instant case, as the Show Cause Notice dated 04.12.2014 was issued under Section 73(1), imposition of penalty under Section 78(1) is without any statutory authority and thus liable to be dropped. We agree with the submission made by the appellant in this regard that the impugned SCNs were issued completely on the basis of submissions made by the appellant during the process of investigation, without a single extraneous material or information on record and hence the allegation of wilful suppression is vague, arbitrary and bad in law, for which reason imposition of penalties are found to be unwarranted.

10.1. Regarding the penalty imposed on the Director under Section 78A of the Finance Act, 1994, we are of the opinion that penalty shall not ordinarily be imposed unless the director obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligation. Further, we take note of the fact that in the instant case, it has not been established, either in the impugned Show Cause Notices or impugned order, that the Director had acted in contumacious manner so as to warrant imposition of the penalty. The impugned order does not record any reason for which the said Director could be said to be illegally involved in the evasion of service tax. It is also seen from the records that Shri Gautam Jain duly co-operated during the entire investigation process as and when required which fact is also on record as duly acknowledged in the impugned Show Cause Notice dated 04.12.2014. We hold that mere signature and certification in Form VCES-1 filed by the appellant cannot prove deliberate act on part of the Director to disobey the law with an intent to evade payment of tax.

10.2. In view of the above, we hold that the penalties imposed in the impugned order are not sustainable and consequently, the same are set aside.

11. In view of the above discussions, we pass the following order:

(i) The demand confirmed in the impugned order on account of "Interest income earned on loans provided for two-wheeler" by treating the service as financial leasing, is set aside.

(ii) In respect of the demand pertaining to the issue, for which the appellant has opted for the VCES, 2013, we hold that the appellant is liable to pay Service Tax on the said services for the period covered in the Notice after December 2012, i.e., January 2013 to March, 2014.The demand confirmed in this regard for the remaining period, i.e., prior to December, 2012, is set aside. This issue is therefore remanded back to the adjudicating authority for the limited purpose of quantifying the demand of Service Tax payable by the appellant in this regard for the normal period of limitation raised in the Notice dated 02.03.2015. While computing the liability, the adjudicating authority should adopt the findings recorded under paragraph 7.3.1. of this Order supra. No penalty shall be imposable on the demand confirmed in this regard, which the appellant is liable to pay, along with applicable interest. The adjudicating authority should give an opportunity of personal hearing to the appellant and decide the issue within a period of three months from the date of receipt of this Order. The appellant is also directed to cooperate by providing all necessary information, for finalization of the issue.

(iii) The demand confirmed in the impugned order on account of "Agreement charges recovered for loan provided" is set aside.

(iv) The demand confirmed in the impugned order on account of "Legal charges" is upheld, along with applicable interest.

(v) We set aside all the penalties imposed on the appellant in the impugned order.

12. The appeal filed by the appellant is disposed on the above terms.

(Order pronounced in the open court on **18.06.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd