IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. ST/87041,87042,87044,87045/2015

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-0058 to 0062/15-16 dt. 30.06.2015 passed by the Commissioner of Service Tax, Pune)

Marvel Landmarks Pvt. Ltd. : **Appellant**
Marvel Dwelling Pvt. Ltd.
Marvel Sigma Homes Pvt. Ltd.
Marvel Omega Builders

VS

Commissioner of Service Tax-I, Pune : **Respondent**
Appearance

Shri Gajendra Jain, Advocate for Appellant

Shri M.K. Sarangi, Jt. Commr. (A.R) for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of hearing : 27/02/2018
Date of decision : 17/05/2018

ORDER NO. A/86425-86428/2018

Per : Ramesh Nair

The fact of the case is that the appellant filed VCES declaration, the same was proposed to be rejected on the ground that vide letter dt. 28.08.2012 addressed to M/s. Marvel Reality inquiry was initiated against all the appellants. Therefore the case does not fall under the VCES Scheme as per Section 106 (2) of Finance Act, 2013. Accordingly, the adjudication order was passed whereby the adjudicating authority dropped all the proceedings initiated under notice dt. 28.1.2014 and accepted the VCES declaration. Being aggrieved by the said order the

Revenue filed appeals before the Commissioner (Appeals), who set aside the aforesaid order and allowed the appeal of the Revenue therefore the appellants are before us.

2. Shri Gajendra Jain, Ld. Counsel appearing on behalf of the appellant at the outset submits that as per the name of the appellants, it can be seen that none of the appellant is M/s. Marvel Realtors. All the appellants are different entities therefore letter issued to M/s. Marvel Realtors cannot be construed as inquiry initiated against the appellants, on this ground itself the order of the Commissioner (Appeals) is not sustainable. He further submits that the inquiry against all the appellants and other companies were going on. The Board also clarified thatwhere the inquiry is of general nature and not specific to a particular case of the particular company, the inquiry cannot be said to be an inquiry which is specified under Section 106 of the Scheme. In this regard he placed reliance on the following judgments:

(i) Narasimha Mills Pvt. Ltd. Vs. Commr. Of C. Ex. (Appeals), Combatore 2015 (39) S.T.R. 795 (Mad.)
(ii) Barnala Builders & Property Consultants Vs. Dy. C.C.E. & S.T., Dera Bassi 2014 (35) STR 65 (P & H)
(iii) Siddhi Vinayaka Enterprises Pvt. Ltd. Vs.CST 2016-TIOL-1325-CESTAT-DEL
(iv) Abhi Engineering Corporation Vs. CCE 2015-TIOL-2197-CESTAT-MUM
(v) L V Construction & Company Vs. CC. CE & ST 2016-TIOL-159-CESTAT-MUM
(vi) Shri B. R. Ajit Vs. CC, CE & ST 2015-TIOL-1905-CESTAT-BANG.

3. Shri M.K. Sarangi, Ld. Jt. Commissioner (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that though the letter dt. 28.8.2012 was addressed to M/s. Marvel

Realtors which is a group company, the same was acknowledged by the appellant and reply was also filed. Therefore even if the name was wrongly mentioned the finding regarding the inquiry was acknowledged by the appellant therefore the inquiry was initiated against the appellant and the same was pending before 1.3.2013.

4. We have carefully considered the submissions made by both the sides. We find that the limited issue to be decided is that the letter dt. 28.8.2012 issued to M/s. Marvel Realtors can be considered as initiation of the inquiry contemplated under Section 106 of the Act. We find that all the appellants are private limited company and partnership firm in different names. Therefore the letter addressed to the M/s. Marvel Realtors cannot be considered as service of this letter to all the appellants. Even though the letter was issued, on this technical lapse on the part of the Revenue it cannot be said that the inquiry contemplated under Section160(2) of the Finance Act was initiated. Secondly this Tribunal in the case of M/s. L.V. Construction & Company relying on the Board Circular No.170/5/2013-ST dt. 08.08.2013 held that where the information is sought of roving nature even though communication regarding information quoted Section 14 of the Act. The provisions of Section 106(2)(a) shall not attract. The finding of the said order is reproduced below:

"5. I have carefully considered the submissions made by both sides.

6. The fact of the case is not under dispute that against both the appellants the DGCEI issued letter dated 17/1/2013 and 19/2/2013 asking for some information and documents related to their taxable activity. In the said letter it was mentioned that information is called for *under Section 14 of the Central Excise Act, 1944, the said letters are reproduce below:*

GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
'ARTMENT OF REVENUE, CENTRAL BOARD OF EXCISE AND CUSTOMS,
DIRECTORATE GENERAL OF CENTRAL EXCISE INTELLIGENCE,
MUMBAI ZONAL UNIT, III FLOOR, NTC HOUSE, 15, N. M. ROAD,
BALLARD ESTATE, MUMBAI-400 001.

22-22642820 Fax : 022-22663013

DGCEI/ MZU/ I&IS'D'/ 12(4)07/2013 /503 Date : 17.01.2013

nt & Company
o.301, Falgoon Apartment,
o.5, Vanjari Nagar, Near Govt. Medical College
ır, M.S- 440 012

men,

Sub: Service Tax enquiry –Reg.

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This office has initiated enquiry against various Service Tax assessees. In this ction, it is requested that the following information/documents may please be this office within 7 days from the date of receipt of this letter.

Copy of balance sheets and 3CD statements for the financial years 2008-09 to 2011-12.

One copy of Agreement/ Work order of each of the contractor/party involving contract value more than 10 Lakhs.

Details of payments received from each of the contractor/party mentioned above.

Copy of ST-3 returns filed with Service Tax department.

The above information is called for under Section 14 of the Central Excise Act, as made applicable to Service Tax under Section 83 of the Finance Act, 1994.

under my hand and seal of
fice, today the 17th Jan, 2013

(U.A.GUPTE)
SENIOR INTELLIGENCE OFFICER,
DGCEI, ZONAL UNIT, MUMBAI

GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, CENTRAL BOARD OF EXCISE AND CUSTOMS,
DIRECTORATE GENERAL OF CENTRAL EXCISE INTELLIGENCE,
MUMBAI ZONAL UNIT, III FLOOR, NTC HOUSE, 15, N. M. ROAD,
BALLARD ESTATE, MUMBAI-400 001.

'el: 022-22642820 Fax : 022-22663013

. No. DGCEI/ MZU/ I&IS'D'/12(4)06/2013 /1566 Date : 19.02.2013

'o
Shri Kotawar (Partner)
M/s L.V. Construction,
C/o Venkatesh Distributors,
Sheela Complex, Wadi, Nagpur,
ax no. 07104-224024

Gentlemen,

Sub: Service Tax enquiry –Reg.

***

This office has initiated enquiry against various Service Tax assessees and an even no. letter dt. 17.01.2013 has already been sent to you at G-7, Premium Plaza Commercial Complex, Mata Mandir Road, Khare Town, Nagpur, which was returned back by the postal department with a remark as 'undelivered- addressee left'. Now, as per telephonic conversation with you the letter is again being sent to your new address.

It is requested that the following information/documents may please be sent to this office within 7 days from the date of receipt of this letter.

i) Copy of balance sheets and 3CD statements for the financial years 2008-09 to 2011-12.
ii) One copy of Agreement/ Work order of each of the contractor involving contract value more than 50 Lakhs.
iii) Details of payments received from each of the contractor mentioned above.
iv) Copy of ST-3 returns filed with Service Tax department, if any.

The above information is called for under Section 14 of the Central Excise Act, 1944, as made applicable to Service Tax under Section 83 of the Finance Act, 1994.

Given under my hand and seal of the office, today the 19 Feb. 2013

(U.A.GUPTE)
SENIOR INTELLIGENCE OFFICER,
DGCEI, ZONAL UNIT, MUMBAI

It can be seen that same inquiry was made from various assesses of roving nature. The Board circular No. 170/5/2013-ST dated 8/8/2013 and No. 174/9/2013-ST dated 25/11/2013 clarified the same issue as under :

S No.	*Issues*	*Clarification*
1	*Whether the communications, wherein department has*	*Attention is invited to clarification issued at S. No. 4 of the circular No. 169/4/2013-ST, dated 13.5.2013, as regards the scope of section 106 (2) (a) of the*

	sought information of roving nature from potential taxpayer regarding their business activities without seeking any documents from such person or calling for his presence, while quoting the authority of section 14 of the Central Excise Act, 1944, would attract the provision of section 106 (2) (a)?	*Finance Act, 2013, wherein it has been clarified that the provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidence are requisitioned by the authorized officer from the declarant under the authority of a statutory provision.* *A communication of the nature as mentioned in the previous column would not attract the provision of section 106 (2)(a) even though the authority of section 14 of the Central Excise Act may have been quoted therein.*

The Board circular No. 174/9/2013-ST dated 25/11/2013

3	*Whether benefit of VCES would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department in the inquiries of roving nature, while quoting authority of section 14 of the Central Excise Act in a routine manner.*	*The designated authority/ Commissioner concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are attracted in such cases.*

From the above clarification, it is clear that if the information is sought of roving nature even though communication regarding seeking information quoted Section 14 which shall not attract provisions of Section 106(2)(a). The cases of the appellants are squarely covered under the above clarification. It is settle position by the Hon'ble Courts in the various judgment with Board Circular binding on the departmental officers.

(i) Ranadey Micronutrients Vs. Collector[1996(87) ELT 19(S.C.)]

(ii) Commissioner of C. Ex. Bhavnagar Vs. Ultratech Cement Pvt. Ltd[2014(302) ELT 334(Guj)]

(iii) Union of India Vs. Arviva Industries Ltd. [2007(209) ELT 5(S.C.)]

In view of the above judgments, The Ld. Adjudicating authority should have accepted the declaration filed by the appellants. As regard the judgments of Sadguru Construction Co & 1(supra) relied upon by the Revenue, on going through the said judgment I find that in the said judgment issue before the Hon'ble High Court is correct declaration of tax dues whereas in the present case, the issue is different and therefore the judgments is not applicable in the fact of the present case. In view of the above discussion, I am of the considered view that in light of Board instruction, inquiry initiated by the DGCEI in form of letter dated 19/2/2013 cannot be considered as the inquiry prescribed under Section 106(2)(a) of Finance Act, 2013. Therefore the impugned orders rejecting the declaration of the appellant are not sustainable. The impugned orders are set aside and appeals are allowed."

In the facts of the present case also the information sought is of roving nature for the reason that the similar information was asked from more than one assessee and the same is not specific in relation to any particular assessee. Therefore the facts of the present case is identical facts of the above decision. Considering both the aspect that first there is no service of any inquiry letter to the appellants, secondly the information sought for by the department is of roving nature, the VCES declaration filed by the appellant is acceptable and the impugned order is correct and legal. As per our discussion made hereinabove, we set aside the impugned order and allow the appeals.

(Pronounced in court on 17/05/2018)

(C.J.Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.