**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**

**APPEAL NO: ST/86978/2014**

[Arising out of Order-in-Appeal No: NSK-EXCUS-000-APP-357-13-14 dated 13/03/2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.]

Anisha Deepak Tank … ***Appellant***

*versus*

Commissioner of Central Excise
Nashik ***…Respondent***

*Appearance:*

Shri Anshul Jain, Advocate for appellant

Shri V R Reddy, Assistant Commissioner (AR) for respondent

**CORAM**

**Hon'ble Shri M V Ravindran, Member (Judicial)**
**Hon'ble Shri C J Mathew, Member (Technical)**

**Date of hearing: 29/12/2017**
**Date of decision: 29/12/2017**

**ORDER NO: A/92292 / 2017**

*Per: M V Ravindran:*

TheThis appeal is filed against Order-in-Appeal No: NSK-EXCUS-000-APP-357-13-14 dated 13/03/2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.

2. Heard both the sides and perused the records.

3. The issue that falls for consideration in this appeal is whether appellant's declaration under Voluntary Compliance Encouragement Scheme (VCES) needs to be rejected or otherwise.

4. The relevant facts that arise for consideration are, appellant herein filed VCES declaration which was sought to be filed by the appellant for the demands which have been raised against them; in the declaration appellant had indicated that they have paid the dues, on 02/05/2013 before the VCES scheme came into effect from 10th May 2013. Both the lower authorities have held that since the dues were clearly paid prior to operationalization of the VCES 2013, the VCES declaration was rejected relying upon the Board's clarification No. 174/9/2013-ST dated 25/11/2013.

5. We find that issue nor more *res integra.* Identical issue came up for consideration before the Hon'ble High Court of Gujarat in the case *of Sadguru Construction Company v. Union of India* 2014-TIOL-630-HC-AHM-ST. In the said case their Lordships have recorded the facts which are that amounts due from the petitioner therein were paid after 01/03/2013 much before enactment of VCES 2013 on 10/05/2013 and the VCES declaration was filed with the authorities which was rejected. After considering the entire scheme as promulgated by Finance Act, 2013, their Lordships has held as under:

*"15. From the provisions contained in the Scheme of 2013, it can be seen that in terms of sub-section (1) of Section 106 any person can make declaration of his tax dues in respect of which no notice or an order of determination under Section 72 or 73 or 73A of the Finance Act, 1994 has been issued before 1-3-2013. Sub-section (2) of Section 106 essentially provides that in cases where any inquiry or investigation against declarant is initiated for non-payment or short-payment of service tax dues which is pending on 1-3-2013, the designated authority would reject the declaration of such a person. In turn, the term "tax dues" defined under Section 105(1)(e) means service tax or tax payable for the period between 1-10-2007 to 31-12-2012 but not paid as on 1-3-2013.*

*16. Combined reading of Section 106 with Section 105(1)(e) would make it clear that the position of a declarant vis-a-vis his service tax dues would have to be ascertained as on 1-3-2013. If any proceedings for determination of the tax dues of a person have been initiated before 1-3-2013, declaration of such a person would not be accepted. Likewise, arrear of tax which could be declared in such declaration would be the service tax due or payable for the period between 1-10-2007 to 31-12-2012 and which sum is not paid before 1-3-2013. In plain terms, therefore, if any service tax is due and payable by a person for the aforesaid period, the same would be included in the definition of the expression "tax dues" if the same has not been paid as on 1-3-2013.*

*17. In the present case, admittedly the disputed amount of taxes were deposited by the petitioners with the department after 1-3-2013. However, the same having been deposited before 10-5-2013 that is the date on which the scheme was framed, the department contends that such amount cannot* *form part of the declaration under the Scheme. In our opinion, the contention ignores the statutory provisions contained in the Scheme of 2013. As we have noticed, the declaration can be made in terms of Section 106 of tax dues. The term "tax dues" is defined in Section 105(1)(e). If we accept the stand of the department that any tax which is deposited before 10-5-2013 cannot form part of a declaration, the same would substantially mutilate the definition of term "tax dues" contained in Section 105(1)(e). If the intention of the Legislature was to exclude any tax deposited before the framing of the scheme, the same could have been provided in plain language. On the contrary, the Legislature excluded from the purview of declaration only those taxes which were already paid by 1-3-2013. The period between 1-3-2013 and 10-5-2013 would, by necessary application of the provision of the scheme, be covered for declaration under the Scheme itself. In our understanding, for a valid declaration two of the essential conditions were that the proceedings for either declaration or recovery of the tax dues should not be pending on 1-3-2013 and secondly that the tax should not have been deposited before the said date. In the present case, both the conditions were fulfilled."*

6. It can be seen that even the CBEC clarification dated 08/08/2013 on the issue was also considered by the Hon'ble High Court and in paragraph 31 quashed and set aside the communication which rejected the VCES declaration.

7. Respectfully following the *ratio* of the said judgment of the High Court we hold that the impugned orders are unsustainable and liable to be set aside and we do so.

8. The impugned orders are set aside and the appeals are allowed..

*(Pronounced in Court)*

**(C J Mathew)** **(M V Ravindran)**
***Member (Technical)*** ***Member (Judicial)***
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