IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87608/2018

[Arising out of Order-in-Appeal No: SM/CGST & CX/Bhiwandi/APP-136/17-18 dated 15.03.2018 passed by the Commissioner (Appeals) CGST & Central Excise, Bhiwandi]

Aayurmed Biotech Pvt. Ltd. ***Appellant***

versus

Commissioner of C.G.S.T.
Mumbai West ***Respondent***

Appearance:

Shri S.S. Gupta, C.A. for appellant

Shri O.M. Shivdikar, Assistant Commissioner (AR) for respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)

Date of hearing: 10/10/2018
Date of decision: 10/10/2018

ORDER NO: A/88332/2018

Per: S.K. Mohanty

The appellant has filed this appeal against the impugned order dated 15.03.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Bhiwandi.

2. The facts of the case, in brief are that the appellant is engaged in providing the taxable services under the category of consultancy service, plantation service, works contract service etc., and for that purpose, was registered with the service tax authorities. It had filed a declaration dated 31.12.2013 of tax dues of Rs.1,63,147/- for the period July'2017 to December'2012, under the Voluntary Compliance Encouragement Scheme, 2013 (VCES). The said declaration was rejected vide letter dated 05.12.2014 on the ground that the appellant had adjusted its balance of liability against Cenvat Credit and the appellant had not calculated its liability properly. The appellant filed the appeal before the Commissioner (Appeals) against the rejection of declaration under VCES. By the impugned order, the appeal filed by the appellant was rejected.

3. Heard both sides and perused the records.

4. The Commissioner (Appeals) has observed that the VCES has no provisions of appeal against the rejection of declaration. It is noted that the Hon'ble Punjab & Haryana High Court in the case of Barnala Builders & Property Consultants vs. Dy. C.C.E. & S.T., Dera Bassi, 2014 (35) S.T.R. 65 (P&H) has dismissed the writ petition as withdrawn, with liberty to file an appeal. Further, the Tribunal in the case of C.C.E. & S.T., Jaipur vs Vision Freight Solutions India Ltd., 2018 (4) TMI 1467-CESTAT has held that as per VCES, there is no

bar for utilization of credit up to 31.12.2012. However, the above decisions were not examined by the authorities below for ascertaining the facts as to whether the issues are identical or not.

5. Therefore, in my considered view, the matter should be examined in the light of the above decision. Accordingly, after setting aside the impugned order, the matter is remanded to the adjudicating authority for a decision on merits, in accordance with law.

(Operative part pronounced in Court)

(S.K.Mohanty)
Member (Judicial)

HK