CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No: 87770 of 2017

[Arising out of Order-in-Appeal No: PK/27/MC/2017 dated 31st July 2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

Raj Infrastructure … ***Appellant***
2nd Floor, Kamal City, SB Marg, Lower Parel,
Mumbai – 400 013

versus

Commissioner of GST – Mumbai Central ***…Respondent***
4th Floor, Central Excise Building, Churchgate
Mumbai – 400 020

APPEARANCE:

Shri Darshan Ranawat, Chartered Accountant for the appellant

Shri VR Reddy, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/88474 / 2018

DATE OF HEARING: 17/04/2018
DATE OF DECISION: 17/04/2018

PER: C J MATHEW

Appeal lies against order-in-appeal no. PK/27/MC/2017 dated 31st July 2017 of Commissioner of CGST & Central Excise (Appeals-

II), Mumbai which has upheld the order of the original authority rejecting the declaration made under the Voluntary Compliance Encouragement Scheme 2013. The dispute pertains to declaration of tax dues of ₹ 6,82,375/- in application dated 18th December 2013; the application was rejected on the ground that, as on the date of declaration for the period from October 2007 to December 2012, in relation to ‘construction of residential complex’ proceedings had been initiated on 1st March 2013 against them.

2. After hearing the Learned Chartered Accountant for the appellant and Learned Authorised Representative, it would appear that the conditions enumerated in section 106 of Finance Act, 2013 prescribe that the appellant should not have been subject to investigation or served with a notice as on 31st March 2013. It is seen that circular no. 170/5/2013-ST dated 8th August 2013 clarified that there was no bar on filing of declaration by an assessee against whom an inquiry, investigation or audit has been initiated after 1st March 2013. Learned Chartered Accountant also place reliance on the decision of the Tribunal in *Siddhi Vinayaka Enterprises Pvt Ltd v. Commissioner of Service Tax, Raipur [2016 (43) STR 474 (Tri.-Del.)]* and *VS Enterprises v. Commissioner Central Excise & Customs, Nagpur [2017 (52) SR 151 (Tri.Mumbai)]*.

3. It is seen from the records that the show cause notice was

issued only on the 18th of August 2015 and that notice proposing rejection should have been issued within 30 days of the filing of the declaration. As the competent authority itself had not complied with the conditions prescribed in the scheme, the rejection of the declaration made is erroneous.

4. Accordingly, the impugned order is set aside and the appeal allowed.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

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