IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 25146 of 2015

Date of Decision: 2.12.2015

M/S Barnala Builders & Property Consultants, Zirakpur

....Petitioner.

Versus

Deputy Commissioner of Central Excise & Service Tax, Dera Bassi and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. R. Santhanam, Advocate,
Mr. Ajay Jain, Advocate and
Mr. Sachin Gupta, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.1 to issue discharge certificate to it qua the declaration under Voluntary Compliance Encouragement Scheme (VCES) filed and service tax paid for the period from 1.7.2010 to 31.12.2012. Further, a writ of prohibition has been sought restraining respondent No.2 from issuing summons and proceeding to claim to make any investigation against the petitioner in respect of the records, documents, details, accounts etc. already filed in

support of the declaration under the VCES and thereafter on earlier occasions and only after verification thereof the declaration was accepted and service tax paid and, therefore, the question of reopening the assessment for the period from 1.7.2010 to 31.12.2012 for service tax of the assessee do not arise. Also a prayer for issuance of a writ of certiorari has been made for quashing the summons dated 31.7.2015 (Annexure P-23), dated 10.8.2015 (Annexure P-24), dated 12.10.2015 (Annexure P-25) and show cause notice dated 21.10.2015 (Annexure P-26) issued by respondent No.3.

2. In the year 2013, VCES (Annexure P-1) was introduced as a part of the Finance Act, 2013 (in short "the Act"). The Central Government issued a notification dated 13.5.2013 (Annexure P-2) to frame rules and to give effect to the VCES. The Central Board of Excise and Customs (CBEC) issued a circular dated 13.5.2013 (Annexure P-3) containing certain questions and answers by way of clarification of doubts with regard to issues arising for implementation of VCES. A further circular dated 8.8.2013 (Annexure P-4) was issued by the CBEC to give further clarifications to ensure that mere calling for information of a roving nature would not attract Section 106(2)(a) of the Act even though the authority of Section 14 of the Excise Act, 1944 have been quoted therein. Thereafter, respondent No.3 issued a further circular dated 25.11.2013 (Annexure P-5) providing further clarifications on issues and doubts raised and the designated authority as well as the Commissioners have been directed to ensure the time limit of 30 days was followed scrupulously without any deviation in every case. The petitioner filed declaration dated 17.7.2013 (Annexure P-6) along with

all the computation of service tax liability under Section 107 of the Finance Act before respondent No.1. According to the petitioner, the figure of service tax payable amounting to ₹ 11,31,37,122/- needs to be corrected to be ₹ 10,39,10,420/- as service tax rate during the financial year 2011-12 was 10% instead of 12% at which the tax was worked out in the declaration. Respondent No.1 duly acknowledged the declaration filed and gave Form VCES-2 on 30.6.2013 (Annexure P-7) accepting the declaration and authorizing the petitioner to pay the amount in two equal installments of 50% each, first on or before 31.12.2013 and the next on or before 30.6.2014. Before issuing the above acceptance in Form VCES-2, respondent No.1 also called for report from the jurisdictional Superintendent and Range Officer who confirmed that no inquiry/ proceedings are pending against the petitioner. Earlier, the petitioner was issued a letter dated 12.2.2013 (Annexure P-8) by the Range Superintending for filing all pending returns for service tax and the information regarding details of amount booked towards construction linked payments from 1.7.2010 onwards. The said letter was not received by the petitioner but the same was enclosed with the letter dated 27.2.2013 issued by respondent No.1 when it sought the relied documents. The Range Superintendent also issued a letter dated 27.2.2013 (Annexure P-9), to the petitioner for details of booking amount charged/construction linked payment from buyers w.e.f. 1.7.2010. The Superintendent issued a letter dated 5.9.2013 to respondent No.1 to the effect that the petitioner was duly registered for service tax but has not filed returns and paid service tax. The said letter was received along with the letter dated 8.10.2013 issued by respondent No.1. The copies of letters dated 8.10.2013 and 5.9.2013 are appended as Annexure P-10 (Colly.) with the petition. Thereafter, respondent No.1 issued a show cause notice dated 18.9.2013 (Annexure P-11) proposing to reject the declaration of the petitioner filed on 17.7.2013. However, vide order dated 27.11.2013 (Annexure P-12), respondent No.1 rejected the declaration of the petitioner. Feeling aggrieved, the petitioner filed CWP No. 26929 of 2013 and this Court vide order dated 9.12.2013 (Annexure P-13) dismissed the writ petition as withdrawn with liberty to the petitioner to file an appeal. This Court directed the Commissioner (Appeals) to decide the appeal within a fortnight. Accordingly, the petitioner filed an appeal before the Commissioner (Appeals) who vide order dated 23.12.2013 (Annexure P-14) allowed the appeal and ordered for acceptance of the declaration of the petitioner. The revenue challenged the said order, Annexure P-14, before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi. In pursuance thereto, the petitioner paid the service tax and sought certificate of discharge from respondent No.1 vide letter dated 26.12.2014 (Annexure P-15) and also attached copies of the challans for payment of service tax aggregating to ₹ 10,39,10,421/-. Respondent No.1 after verifying the same found that a further sum of ₹ 26,000/- was to be paid by the petitioner which he did vide letter dated 29.12.2014 (Annexure P-16). However, discharge certificate has not been issued by respondent No.1. Earlier respondent No.2 had issued letters dated 22.7.2013, 3.10.2013 and 15.10.2013 (Annexures P-17 to P-19, respectively) and took the statement of partner of the petitioner dated 7.6.2013 (Annexure P-20) wherein it was specifically stated that all the required records and documents for the financial years 2010-11 and 2011-12 have already been filed before the respondents. The central excise and service tax audit of the petitioner was carried out by the audit officers as is evident from the letter dated 14.6.2013 (Annexure P-21). The records and documents of the petitioner relating to service tax had been called for and after verifying the same, the audit was completed and a certificate dated 26.3.2014 (Annexure P-22) for completion of audit was issued. Thereafter, respondent No.2 issued summons dated 31.7.2015, 10.8.2015 and 12.10.2015 (Annexures P-23 to P-25, respectively) asking the petitioner to furnish all the records and documents which had already been furnished. Respondent No.3 issued a show cause notice dated 21.10.2015 (Annexure P-26) for recovery of service tax amounting to ₹ 16,53,38,730/- (₹ 16,05,23,039/- as service tax + ₹ 32,10,461/- as Education Cess + ₹ 16,05,230/- as S.H. Education Cess) and a sum of ₹ 10,39,10,421/- already deposited by them against their liability be not appropriated along with interest. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a letter dated 26.12.2014 (Annexure P-15) to respondent No.1, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, the present writ petition is disposed of by directing respondent No.1 to take a decision on the letter dated 26.12.2014 (Annexure P-15), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of a certified copy of this order. As regards, challenge to the show

cause notice, the petitioner shall file a detailed and comprehensive representation. In case any such representation is filed by the petitioner, the same shall be decided by the competent authority expeditiously in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner.

(AJAY KUMAR MITTAL)
JUDGE

December 2, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**