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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 926/2015 & CM 1621/2015**

DISHA SECURITIES AND MANPOWER PRIVATE LIMITED ..... Petitioner
Through: Mr V.V. Gautam and Ms Mehak Tanwar, Advocates.

versus

ASSISTANT COMMISSIONER OF SERVICE TAX ..... Respondent
Through: Mr Satish Kumar, Senior Standing Counsel Service Tax with Mr Resmitha R. Chandran, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **05.04.2016**

1. The short question that arises in the present Petition is whether the date on which the Petitioner made the payment of 50% of the service tax due for the purposes of availing of the Voluntary Compliance Encouragement Scheme, 2013 ('VCES Scheme 2013') should be taken to be the date on which the Petitioner deposited the cheque for the requisite amount in the bank designated for that purposes or on the date on which the cheque was in fact encashed in the account of the Government of India?

2. The Petitioner is engaged in providing manpower services and has a service tax registration dated 15th March 2010 under the jurisdiction of the Service Tax Commissionerate, Delhi. According to the Petitioner, since

obtaining the registration, it has been regularly paying service tax to the Service Tax Department through physical challans and has been filing periodical service tax returns. It is stated that due to financial difficulties the Petitioner was unable to pay service tax during the period between April and December, 2012. It also could not file its service tax returns during that period.

3. The Government of India introduced the Service Tax Voluntary Compliance Encouragement Scheme (VCES Scheme) to give an opportunity to the persons who were in default of service tax dues between 1st October, 2007 to 31st December 2012, to avail of immunity from penalty, interest and other proceedings if they filed a declaration under Section 106 of Finance Act, 2013 and paid 50% of the service tax dues by 31st December, 2013 and the balance 50% on or before 30th June, 2014.

4. Rule (1) of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 reads as under:

> **6. Payment of tax dues.—**
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> (1) The tax dues payable under the Scheme along with interest, if any, under the Scheme along with interest, in any, under section 107 of the Act shall be paid to the credit of the Central Government in the manner prescribed for the payment of service tax under the Service Tax Rules, 1994.
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> (2) The CENVAT credit shall not be utilised for payment of tax dues under the Scheme.

5. Rule 6 of the Service Tax Rules 1994 (ST Rules), which is

relevant for the purposes of the present case reads as under:

"6. Payment of service tax. —

(1) The service tax shall be paid to the credit of the Central Government,-

(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii) by the 5th day of the month, in any other case,

Immediately following the calendar month in which the [service is deemed to be provided as per the rules framed in this regard]:

Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the [service is deemed to be provided as per the rules framed in this regard]:

[**Provided** also that the service tax on the service deemed to be provided in the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.]

[Provided also that in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services [provided or agreed to be provided] by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub- rule with respect to the month or quarter, as the case may be, in which payment is received.]

[(1A) Without prejudice to the provisions contained in sub-rule (1), every person liable to pay service tax, may, on his own volition, pay an amount as service tax in advance, to the credit of the Central Government and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period:

Provided that the assessee shall,-

(i) intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and

(ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act.

[(2) Every assessee shall electronically pay the service tax payable by him, through internet banking:
Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction, may for reasons to be recorded in writing, allow the assessee to deposit the service tax by any mode other than internet banking.]

(2A) For the purpose this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.

6. It requires to be noted at the outset that Rule 6 (2) of the ST Rules requiring payment through electronic banking was introduced only with effect from 1st October, 2014 by Notification No. 9/2014-Service Tax dated 11th July, 2014. Therefore, at the time when the Petitioner made the

payment of 50% of the service tax due by cheque, i.e., on 31st December, 2013, the system of payment through a physical challan was in vogue.

7. The Petitioner opted to avail of the VCES, Scheme 2013 and filed an application dated 30th December 2013 wherein it declared the service tax dues in the sum of Rs.2,93,41,336/- for the period between April, 2012 to December, 2012. The Petitioner deposited Rs.1,46,70,668/- being 50% of the aforementioned declared tax dues by way of a cheque drawn on Axis Bank Ltd. Udyog Vihar, Gurgaon, Haryana Branch bearing the stamp of Axis Bank of 31st December, 2013. Axis Bank was a designated bank for the purposes of payment of service tax.

8. The balance 50% was deposited by the Petitioner by three challans dated 17th May, 2014, 19th June, 2014 and 21st June, 2014 and copies of these challans along with their covering letters were furnished to the Service Tax Department.

9. It appears that a show cause notice dated 30th January 2014 was issued to the Petitioner by the Department since according to the Department the service tax purportedly paid by the Petitioner had not been received by 31st December, 2013. It is stated by the Department that the cheque deposited on 31st December 2013 was realized only on 8th January, 2014. According to the Department, Axis Bank informed that the cheque could not be processed immediately upon being deposited for want of funds in the Petitioner's account. It is, therefore, stated that the Petitioner's plea for a declaration under the VCES Scheme was rejected under Section 107 (3) of the Finance

Act, 2013 as the Petitioner had failed to deposit the first instalment of 50% of the declared amount of service tax on or before 31st December, 2013. An order to this effect was passed on 15th August, 2014 and this order has been challenged in the present writ petition by the Petitioner.

10. The impugned order dated 15th August 2014 which is a short one, inter alia, states that since the Petitioner failed to pay 50% of the declared tax dues under the Scheme by 31st December, 2013. Therefore, in terms of sub section (3) of Section 107 of the Finance Act, 2013 the VCES declaration was rejected.

11. The Court has heard the learned counsel for the parties.

12. An explanation is offered by the Petitioner in the rejoinder that the Axis Bank initially proceeded on the mistaken belief that the payment of service tax had to be made online. However, it was later realised that online payment became mandatory only with effect from 1st October 2014. Thereafter, the Bank processed the payment made by cheque by the Petitioner the physical challan. This led to the cheque being realised only on 8th January 2014.

13. Be that as it may, as the Court views it, Rule 6 (2A) of the ST Rules provides a complete answer in favour of the Petitioner. It makes it clear that where an assessee deposits the service tax by cheque then the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on

which service tax has been paid subject to realization of that cheque. It is not in dispute that the Petitioner deposited the cheque constituting 50% of the service tax dues in terms of the VCES Scheme 2013 on 31st December 2013 and it was realised on 8th January, 2014. With the cheque having been realized, the date on which the service tax should be taken to have been paid, is deemed to be the date of presentation of the said cheque in terms of Rule 6 (2A) of the ST Rules.

14. The impugned order dated 15th August 2014 makes no reference to Rule 6 (2A) of the ST Rules. On this ground itself, the impugned order cannot be sustained in law. The rejection of the Petitioner's plea for a declaration under the VCES Scheme 2013 is, therefore, bad in law. The impugned order dated 15th August 2014 is hereby set aside. The Respondents shall within two weeks pass the necessary orders issuing a declaration in favour of the Petitioner under the VCES 2013.

15. The writ petition is disposed of in the above terms. *Dasti* to the parties.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 05, 2016
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