IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CENTRAL EXCISE APPEAL NO.4/2017
(The Commissioner of Customs, Central Excise, Wardha vs. M/s City Land Associates Amravati.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

Mr.S.N.Bhattad, Advocate for the appellant
Mr.Anand Parchure, Advocate for respondent

CORAM : **SMT. VASANTI A. NAIK & MRS.SWAPNA JOSHI, JJ.**
DATED : **2nd May, 2017.**

Heard.

By this Central Excise Appeal, the appellant-Department challenges the order of the Customs, Excise and Service Tax Appellate Tribunal, dated 17.06.2013, dismissing the Appeal of the Department and upholding the decision to accept the application of the respondent-assessee under the Voluntary Compliance Encouragement Scheme.

The respondent is a service-tax payee and admittedly, some service tax dues were payable by the respondent when the Voluntary Compliance Encouragement Scheme (VCES) was floated by the Government. As per the said Scheme, the last date of applying under the scheme was 31.12.2013 and it was necessary for a service-tax payee to deposit/pay 50% of the service tax dues on or before 31.12.2013. It is not in dispute that the respondent tendered the application for availing the benefit under the VCES on 31.12.2013 and at 11.30 am -12.00 noon, it tried to deposit 50% of the service tax dues online through the official website. However, due to the system failure, the amount could not be deposited on 31.12.2013 and the same was actually deposited on 01.01.2014. The respondent immediately sent two e-mails to the Department that due to system failure, despite its efforts the amount could not be credited to the account of the Department. The application of the respondent was however, not accepted on the ground that there was a delay in filing the application and depositing 50% of the dues. The respondent filed the First Appeal before the Commissioner (Appeals) and the Appeal filed by the respondent was allowed. It was held that this was not a case where the respondent had delayed in making payment of 50% dues and it was a case of system failure as a result of which the respondent was not able to credit the amount to the Department, despite its efforts to do so, on 31.12.2013. The Department challenged the judgment of the Commissioner (Appeals) before the Central Customs, Excise and Service Tax Appellate Tribunal. The Tribunal dismissed the Appeal filed by the Department.

On hearing the learned counsel for the parties, we find that there is no scope for interference with the orders passed by the Tribunal and the Commissioner (Appeals). This is not a case where there was a delay on the part of the respondent-assessee in paying 50% of the service tax dues. The application was made by the respondent on 31.12.2013 under the VCES and after 11.00 am, the respondent conveyed to the Department vide two emails that though the amount is sought to be deposited with the Department, the same cannot be deposited due to the technical glitch. Both the authorities have rightly held that it cannot be said in the circumstances of the case that there was any delay on the part of the respondent in depositing 50% of the service tax dues with the Department under the VCES. It was held that the deposit of the amount on 01.01.2014 in the circumstances of the case, cannot be said to be a delayed payment. The authorities, therefore, rightly held that the decisions on which the learned counsel for the Department had relied on, were not applicable to the case in hand. In our view, the Commissioner (Appeals) and the Tribunal have taken a just decision in the matter and the authorities would have failed in their duty in appropriately deciding the Appeals, had they taken a decision in favour of the Department. The judgment reported in ***(2003)9 SCC Page 510***: (Hemalatha Gargya vs.Commissioner of Income tax A.P. and another) and relied on by the learned counsel for the Department cannot be made applicable to the facts of this case. It was held in the said judgment by the Hon'ble Supreme Court that in view of the clear provisions of the Income tax Act pertaining to the Voluntary Disclosure Scheme, the time limit could not be extended on equitable consideration. Such is not the case. The present case is distinguishable on facts as, in this case, the respondent tried its level best to make the deposit of the dues with the Department on 31.12.2013 but the the same could not be made only because of the technical glitch and this fact is immediately brought to the notice of the Department on the same day by the respondent vide emails that are received by the Department.

Since no question of law arises in this Appeal, the Appeal is dismissed, with no order as to costs.

JUDGE **JUDGE**

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