IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12065 OF 2017

Bhushan Bal Kulkarni … Petitioner

V/s.

Assistant Commissioner,
Service Tax Division-I and ors. … Respondents

Mr.Nitin Deshpande for the Petitioner.
Mr.Sham Walve i/by Mr. Nikhil Wadikar for the Respondents.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.

DATE : NOVEMBER 22, 2018.

P.C.:-

1. With the consent of learned Advocates for the parties, Petition is taken upon for final disposal.

2. Petitioner has challenged the order dated 23rd January, 2015 as at annexure (I) to the Petition. By such order, the Petitioner's application for being granted the benefit of Voluntary Compliance Encouragement Scheme (the Scheme for short) came to be rejected by the Assistant Commissioner of service tax.

3. Brief facts are as under:-

Petitioner is a proprietary concern and was granted service tax registration, as provider of various services. The Government of India formed a scheme for settling service tax disputes. The scheme envisages making declaration by the interested dealer. Subject to fulfillment of conditions of the scheme, penalties and interest waiver would be granted.

4. The Petitioner, desirous of availing the benefit of the scheme made a declaration in proper format on 23rd March 2013. The declaration covered the period between April, 2010 to December, 2012. For such period, the Petitioner made a declaration of unpaid tax of Rs.4,73,527/-.

5. Sometime thereafter, however, the Petitioner realized that such declaration of Rs.4,73,527/- of unpaid tax included a sum of Rs.1,32,842/- which the Petitioner had already paid in the past. According to the Petitioner, therefore, his net tax dues were of Rs.3,40,686/-. On the basis of such reduced tax liability, the

Petitioner also deposited with the Government-Revenue the installments as per the terms of the scheme of settlement. On 27th December, 2013, Petitioner addressed a letter to the department stating that he has already paid the tax dues of Rs.3,02,841/-, which is an excess of the first installment which the Petitioner had to deposit as per the scheme.

6. The Assistant Commissioner heard the Petitioner on the question of grant of benefits of the scheme. During such hearing also the Petitioner urged that the original declaration of tax dues of Rs.4,73,527/- was inclusive of an amount of Rs.1,32,841/- already paid by the Petitioner and that the Petitioner's net tax liability was only Rs.3,40,686/-. He further pointed out that according to such liability the petitioner had already deposited the installments which would satisfy the requirements of the scheme. The Assistant Commissioner, however, did not accept this plea of the Petitioner. He was of the opinion that Petitioner himself had made a declaration of Rs.4,73,527/-. The Petitioner could have but had not asked for the amendment of the declaration. In absence of any such amendment

the Petitioner had to pay the installments as per the declared tax dues of Rs.4,73,527/-. The Assistant Commissioner, however, did not dispute the Petitioner's stand that the declared sum of Rs. 4,73,527/- included sum of Rs.1,32,841/- already paid by Petitioner only on the ground that the declaration was not amended, he rejected the Petitioner's application under the scheme by passing the following order:-

> "I. The VCES application No.P33H702 filed on 23/12/2013 is rejected under the provisions of Section 107(3) of the Finance Act, 2013 and the amount of Rs.4,73,527/- i.e. the declaration made against SI No.6 of the Form VCES-1 of the declarant is made ineligible for benefits under Section 108 of the Finance Act, 2013; and
> II. I order that the amount so declared under VCES shall be recoverable alongwith interest and penalty at appropriate rate under Section 87 of the Act, as per Section 110 of the Act."

7. Having heard learned counsel for the parties and having perused the documents on record, we cannot uphold the order of the Assistant Commissioner. Facts as noted are not seriously in dispute. The Assistant Commissioner does not dispute the Petitioner's assertions that not the tax of Rs.4,73,527/-, but sum

of Rs.3,40,686/- was outstanding. The declaration included a payment of Rs.1,32,841/- previously made. If that was the case, the Assistant Commissioner ought to have considered the correct figure of tax dues. He could not have enforced the Petitioner's declaration which was factually erroneous. Even if the declaration required an amendment, the Petitioner had under his letter dated 27th December, 2013 brought the correct facts to the notice of the Departmental Authorities. Such letter could have been treated as a request for amending the declaration. Nothing is brought to our notice to suggest that such amendment application had to be filed in a particular format. Even if so, the same would be a purely procedural aspect.

8. If we allow, the order of the Assistant Commissioner to stand, it will result into gross injustice. In sub-paragraph (II) of the operative portion of the order the Assistant Commissioner has ordered recovery of the declared sum with interest and penalty. This would mean the entire amount of Rs.4,73,527/- would become recoverable with penalty and interest though undisputed by the department, out of the said sum, Rs.1,32,841/- has

already been paid over by the Petitioner earlier. The Government-Revenue cannot recover any tax without authority of law.

9. For all such reasons, impugned order dated 23rd January, 2015 is set aside. No other defect is pointed out in the Petitioner's application. The authority shall therefore grant the benefit of the Voluntary Compliance Encouragement Scheme to the Petitioner. Petition disposed of.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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