

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 593 OF 2017

1. M/s. Transmedia Software Ltd. } a company registered under the } Companies Act, 1956 having its } registered office at Rupayatan } building, S. V. Road, Vile Parle } (West), Mumbai 400 056 } } 2. Jasmin B. Shah } having his office at Rupayatan } Building, S. V. Road, Vile Parle } (West), Mumbai 400056 } } 3. Vishal A. Shah } having his office at Rupayatan } building, S. V. Road, Vile Parle } (West), Mumbai 400 056 } } versus 1. The Union of India } through the Secretary, Ministry } of Finance, New Delhi } } 2. The Commissioner of Service } Tax - VI, 1st floor, Mahavir Jain } Vidyalaya, C. D. Burfiwala Marg } (Juhu Lane), Andheri (W), } Mumbai } } 3. Asstt. Commissioner, Service } Tax-VI, Mumbai Designated } Authority (VCES Cell), Service } Tax - VI, Mumbai, Office of the } Commissioner of Service Tax-VI, } Mumbai }	}	Petitioners
	}	Respondents

Mr. M. M. Vashi-Senior Advocate with
Mr. Sean Wassoodew and Mr. Rupesh
Mandhare for the petitioners.

Mr. M. Dwivedi for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.**

DATED :- MARCH 12, 2018

ORAL JUDGMENT:- (Per S. C. Dharmadhikari, J.)

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.
2. The petitioners in this petition under Article 226 of the Constitution of India seek a writ of certiorari or any other writ, order or direction calling for the papers and proceedings relating to the impugned communication dated 29th December, 2016.
3. It is prayed that after scrutinising this communication for its legality and validity, this court should proceed to quash and set aside the same.
4. Before proceeding further, we would be justified in reproducing the contents of the impugned communication, copy of which is at Exhibit 'G' at pages 69 and 70 of the paper book. The same reads as under:-

**“OFFICE OF THE COMMISSIONER:
SERVICE TAX-VI:MUMBAI 1ST FLOOR:
MAHAVIR JAIN VIDYALAYA: C. D. BURFIWALA MARG
(JUHU LANE): ANDHERI (W): MUMBAI-400 058
Email - st6vcescell@gmail.com Tel. No. 26210377**

SPEED POST

F. No. VCES/Transmedia/79(415)ST-II/2013/2356
Mumbai, the 29th Dec. 2016

To,
M/s. Transmedia Software Ltd.,
5, 1st Floor, Rupayatan, Irla,
Vile Parle (W), Mumbai-400 056

Gentlemen,

Sub: Non-Eligibility of declaration filed under Voluntary Compliance Encouragement Scheme, 2013.

Kindly refer to your VCES-1 declaration application no. 79 dated 07.08.2013 for Rs.4828491/- which was further revised to Rs.5651696/- dt. 03.09.2013, under the Voluntary Compliance Encouragement Scheme, 2013.

2. On verification of the aforesaid VCES-1 declaration, it is observed that the declarant has paid Rs.2900000/- by 31.12.2013 under various challans and the remaining balance amount i.e. Rs.2751696/- along with interest of Rs.265169/- was also paid under various challans which are as follows:

Challan No.	Amount	Date
0023	153833/-	27.12.2014
00241	917648/-	27.12.2014
00245	655030/-	27.12.2014
01470	552500/-	02.01.2015
01500	737854/-	02.01.2015

From the above table it is observed that the last two payments were made post December 2014. In other words, the declarant has not made the mandatory balance payment of Rs.2751696/- alongwith interest before 31.12.2014 as is required under the Proviso 4 of Section 107 of Finance Act 2013.

3. As per proviso 4 of Section 107 of Finance Act 2013 under Procedure for making declaration and payment of tax dues states that tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014: Provided that where the declarant fails to pay said

tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014, if the declarant fails to pay as required above, he would not be eligible to avail of the benefit of the scheme.

4. In view of the above it is hereby informed that your aforesaid declaration is not eligible for benefit of the VCES-2013 scheme. You are therefore requested to deposit full pending tax dues, if not paid, alongwith applicable interest right from the day the tax was due immediately, failing which, necessary action under Section 110 of The Finance Act, 2013 will be initiated for recovery of Government dues under section 87.

5. Further necessary action will be initiated by the department in due course.

Yours faithfully,

Designated Authority (VCES Cell)
Service Tax-VI, Mumbai”

5. It is common ground that the petitioners before us are firstly a company registered under the Indian Companies Act, 1956 and secondly, the Managing Director of the first petitioner company. The third petitioner is a Director of the said company. The respondents before us are the Union of India and the authorities under the Finance Act, 1994. They are also in-charge of implementing what is styled as Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereinafter referred to as “the STVCE Scheme).

6. It is stated by the petitioners that they are carrying on business, inter alia, of event management services, broadcasting services, copyright services and business ancillary services. Each of these services were brought within the purview of the Finance Act, 2007 and liable to payment of service tax.

7. It is claimed that the petitioner company, through oversight, did not pay the service tax from October, 2007 to December, 2012. The petitioners came across this STVCE Scheme. It is claimed that it is in the nature of an amnesty scheme for encouraging voluntary payment of service tax. Taking advantage of this scheme, the petitioners applied for the benefit in terms thereof. It is their claim that in pursuance of this scheme, they made an application on 7th August, 2013. This application was revised and the demand was stipulated at Rs.56,51,696/-. In the meanwhile, the petitioners were visited with recovery proceeding and by coercive means, in the form of freezing of their bank account with ICICI Bank. That compelled them to approach this court in its writ jurisdiction by filing a writ petition being Writ Petition 2261 of 2013. On that writ petition, an order was passed by this court directing the respondents to consider the petitioners' application under the above scheme. That application was initially rejected on the ground that it was filed belatedly, particularly after initiation of the recovery

proceedings. The petitioners represented on 10th September, 2013 by pointing out that they had been throughout seeking benefit of the scheme and had made an application. Therefore, their application cannot be rejected on such ground. After considering the petitioners' reply, the respondents came to the conclusion on 27th December, 2013 that the scheme was applicable and the petitioners could have taken the benefits thereof. The Assistant Commissioner of Service Tax made that order by firstly holding that the provisions of the scheme dated 13th May, 2013 specifies the period for which this application can be made. The cut off date for making that application was 1st March, 2013. The Anti Evasion Team had visited the premises of the petitioner on 14th March, 2013 and sought records. They also recorded statement of the Managing Director. The petitioners filed an application initially on 7th August, 2013 and thereafter revised it on 3rd September, 2013. The Assistant Commissioner came to the conclusion that the individual inquiry and investigation in the petitioners' case was initiated on 14th March, 2013. There was no inquiry, investigation or audit pending in respect of the petitioners as on 1st March, 2013. It is in these circumstances that the application was held to be maintainable and not barred by section 106(1) and (2) of the Finance Act, 1994. That is how the application was accepted.

8. With this, the petitioners were then expected to make the payments. Admittedly, the petitioners made the payment in the following manner:-

"Challan No.	Amount	Date
00176	800000	27.08.2013
01027	500000	30.12.2013
01063	600000	30.12.2013
00751	500000	31.12.2013
00774	500000	31.12.2013
00233	153833	27.12.2014
00241	917648	27.12.2014
00245	655030	27.12.2014
01470	552500	02.01.2015
01500	737854	02.01.2015"

9. The petitioners state that the delay in the last two payments aggregating to Rs.12,90,354/- was due to some miscalculation and clerical mistake so also miscommunication between the Chartered Accountant and the petitioners. That was noticed on 1st January, 2015. After noticing that, the petitioners immediately made payment of the balance tax amount voluntarily. That was made within two days from the alleged due date, namely, 31st December, 2014. The payment made on 2nd January, 2015 has been accepted.

10. It is in these circumstances that the petitioners would submit that the impugned communication threatening to recover the moneys by coercive means is unsustainable. They pointed out immediately, upon receipt of this communication, that the

aforesaid events led to the delay. That is, therefore, deemed to have been condoned and/or in any event capable of being condoned. On these pleadings the writ petition was filed.

11. After a copy of this writ petition was served on the respondents, a reply affidavit has been filed by the second respondent. The above factual statements have not been denied, but what has been emphasised in this affidavit in para 7 reads as under:-

“7. I say that, from the above table it was observed that the last two payments were made post December, 2014. In other words, the declarant had not made the mandatory balance payment of Rs.27,51,696/- along with interest before 31.12.2014 as is required under the Proviso 4 of Section 107 of Finance Act 2013. As per proviso 4 of Section 107 of Finance Act 2013 under procedure for making declaration and payment of tax dues states that tax dues or part thereof remaining to be paid after the payment made under sub-section (3), shall be paid by the declarant on or before the 30th Day of June, 2014: Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014, if the declarant fails to pay as required above, he would not be eligible to avail the benefit of the scheme.”

12. It is, therefore, claimed in this affidavit that the petitioners cannot insist on the delay being condoned, because the scheme is not open ended. The cases relied upon by the petitioners are distinguishable on facts.

13. It is on the above material that we have heard Mr. Vashi learned senior counsel appearing for the petitioners and Mr. Dwivedi appearing for the respondents. With their able assistance, we have perused the writ petition and the annexures thereto so also the relevant provisions of law. Mr. Vashi has invited our attention to the provisions contained in the Finance Act and particularly Chapter VI of the Finance Act, 2013. Mr. Vashi would submit that section 104 of the Act sets out the title of the scheme. Service Tax Voluntary Encouragement Scheme, 2013, according to Mr. Vashi is designed to enable any person to declare its tax dues in respect of which, no notice or declaration or order under section 72 or section 73 or 73A of the Chapter has been issued or made before the 1st day of March, 2013. Mr. Vashi would invite our attention to sub-section (1) of section 106 to submit that once the application was made and initially rejected, but later on accepted by a specific order of the Assistant Commissioner of Service Tax, then, the procedure for making declaration and payment of tax due, as set out in section 107 has to be complied with. In the instant case, the petitioners could have availed of the benefit of the proviso to sub-section (4) of section 107. Mr. Vashi would submit that there is nothing in this section nor the further provisions and particularly section 110 which would enable us to hold that a power to condone the delay

is not available. In other words, there are no negative prescriptions or provisions, according to Mr. Vashi, which would dis-entitle the petitioners to a discretionary relief. Thus, the authorities administering and managing the scheme had a discretion to condone the delay, particularly when the same is bonafide. If the delay has occurred only because of miscommunication as between the petitioners and their Chartered Accountant, then, they would be entitled to seek this relief. In support of his submissions, Mr. Vashi has heavily relied upon a Division Bench judgment of this court rendered by the Nagpur Bench in the case of *Vijay Omprakash Bansal vs. Commissioner of Income-Tax*¹.

14. Mr. Vashi would submit that there are two decisions rendered by the Punjab and Haryana High Court and the High Court of Madras. In each of these decisions, the said High Courts have taken a view that there is power to condone the delay. Once, there is above power even in respect of such voluntary scheme, then, we must not hesitate to allow the petition.

15. On the other hand, Mr. Dwivedi appearing for the respondents would submit that the decisions of this court in the above matter as also that of the other High Courts are

¹ (2002) 257 ITR 649

inapplicable. In the present case, the scheme itself is clear. The scheme itself provided for relaxation. That relaxation was granted as is evident by sub-section (4) of section 107. By proviso to that sub-section, the outer limit was specified. Once that was specified and that too in a voluntary scheme, then, there is no scope for extending the time. That would be doing violence to the plain language of the scheme and the statute. This court cannot in its discretionary and equitable jurisdiction rewrite the scheme or make any further provisions conferring a discretionary power in the authorities. Once such is the prescription, then, the writ petition is entirely misconceived as there is no error of law warranting interference in writ jurisdiction.

16. In support of his submissions, Mr. Dwivedi has heavily relied upon a Division Bench judgment of the High Court of Jharkhand at Ranchi in the case of *Manpreet Engineering and Construction Co. vs. Union of India*². Mr. Dwivedi would submit that the Division Bench judgment correctly summarises the principles in relation to the instant scheme. Further, the petitioner, who was aggrieved by the rejection of his writ petition by the High Court of Jharkhand, preferred a Special Leave

² 2016(44) STR 384

Petition before the Hon'ble Supreme Court, which was also dismissed. All the more, therefore, this petition deserves to be dismissed according to Mr. Dwivedi.

17. Mr. Vashi, in rejoinder, would submit that the High Court of Jharkhand has failed to notice section 110 of the Finance Act, 1994 and once the said provision enables recovery, then, that would reflect the ambit and scope of the discretionary power conferred in the authorities. Hence, we should not follow that line of reasoning is the submission of Mr. Vashi and grant relief to the petitioners.

18. Section 104 onwards of Chapter VI of the Finance Act, 2013 sets out the scheme. Section 105 contains definitions. The definition of the term "tax dues" is found in section 105(e) to mean the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013. Then, the section itself clarifies that the words and expressions used in this Chapter and not defined but defined in the Chapter or the rules made thereunder shall have the meaning respectively assigned to them in the Chapter or the rules made thereunder.

19. Section 106 enables a person to declare his tax in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013. There are two provisos, which enable a person to make this declaration. By sub-section (2), the consequences of making a declaration are set out. The designated authority, by an order and for the reasons to be recorded in writing, reject the declaration in the event that is contravening sub-section (2) of section 106. Then comes section 107, which reads as under:-

“107. Procedure for making declaration and payment of tax dues. - (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgment issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgment of discharge of such dues to the declarant in such form and in such manner as may be prescribed.”

20. A perusal of this provision would denote that subject to the provisions of the scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed. The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed. On or before the 31st day of December, 2013, the declarant shall pay not less than fifty per cent of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority. Pertinently, it is not the argument that this period can be extended or the delay in making the application can be condoned. That has to be adhered to strictly. The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of

June, 2014. Thus, by sub-section (3), 50% of the tax dues declared by the declarant have to be paid on or before 31st December, 2013 and the remaining part have to be paid by 30th June, 2014. The legislature, therefore, was of the view that a further relaxation would achieve the object and purpose of the scheme. Therefore, a proviso was provided to sub-section (4) of section 107 and which enables the person, who fails to pay said tax dues or part thereof on or before the said date, namely, 30th June, 2014, to pay the same on or before 31st day of December, 2014 along with interest thereon at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014. Thus, this was a concession or relaxation given, but not without condition. There was a condition, namely, to pay interest and within the outer time limit.

21. Sub-section (5) of section 107 would say that notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter. The discharge of

the dues is to be obtained in terms of sub-section (7) of section 107 after furnishing of details of full payment of declared tax dues. It is then, by section 108, immunity from penalty, interest and other proceedings is granted. If, therefore, the payment is made in accordance with the scheme, then, the benefits would follow.

22. We are unable to agree with Mr. Vashi that section 110 having not been noticed in the judgment of the High Court of Jharkhand, it does not have any persuasive value. Even if we peruse section 110, it sets out the consequences of failing to pay the tax dues. Therefore, a declaration by the declarant indicating the tax dues oblige him to clear the same and as declared by him. If he fails to pay tax dues either in full or part, such dues, along with interest, shall be recovered under the provisions of section 87 of the Chapter. The failure to make true declaration invites the consequences under section 111. By section 112, it is clarified that nothing contained in this scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108. The power to remove difficulties conferred in the Central Government can be exercised by making an order not inconsistent with the provisions of the scheme. Proviso to section

113 says that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this scheme come into force. Further, by sub-section (2) of section 113, every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament. Finally, there is a power to make rules.

23. The STVCE Scheme, 2013 together with the forms has been perused by us. We are of the firm view that this is not an open ended scheme. The benefits thereunder cannot be derived de hors the scheme or after its life or duration has come to an end. The relaxation or concession, which can be granted in terms of the scheme have been outlined in the scheme itself and particularly by sub-section (4) of section 107. It is not the intent that the tax dues for the period 1st October, 2007 and ending on 31st December, 2012 and the liability in that behalf can be discharged in the manner chosen by the assessee or as per his whims and fancies. Equally, the Revenue and its department cannot, by its whims and fancies, allow any defaulter to pay the taxes after the due date is over long time back. The plain duty of the departmental officials is to assess the tax payable and within the period prescribed by the statute. Any such scheme would not enable the authorities to extend the period of compliance

stipulated by law and defer the tax liability indefinitely. It is not expected of them to show undue favour de hors the statute. We are of the firm opinion that the judgments of this court as also the other High Courts relied upon by Mr. Vashi are distinguishable on facts.

24. In the case before this court in the case of *Vijay Omprakash Bansal* (supra), the petitioner Vijay Bansal was assessed to income-tax for a number of years and he wanted to avail of the benefit under the *Kar Vivad Samadhan Scheme, 1998*. Under that scheme, the assessee is required to make payment of the required amount stated to be around 30% of the full assessment within a period of thirty days after the required amount is communicated to the assessee. In the event the amount is so paid, it is accepted as a one time full settlement. The petitioner was communicated that under the said scheme, his liability will be Rs.2,18,451/-. The intimation was given to him on 10th December, 1998. The last date for making payment was 9th January, 1999. On 9th January, 1999, the petitioner went to the Income Tax Department to deposit the amount only to learn that the payment is to be made in a Nationalised bank. 9th January, 1999 was Saturday and therefore, he made payment on 11th January, 1999 by a challan in a Nationalised bank. The

department, however, rejected the claim for one time settlement on the ground that the payment was not made within time. However, before rejecting the claim, a notice was issued on 3rd November, 1999 and a rejection order was passed on 28th January, 2000. That is how a writ petition was filed and the argument was that the department has power to condone this delay, whereas the department urged that the scheme requires the payment to be made within 30 days and there is no provision for condonation of delay. Pertinently, the Division Bench of this court relied upon the judgment of Punjab and Haryana High Court in the case of *Smt. Laxmi Mittal vs. Commissioner of Income-Tax*³. Before the Punjab and Haryana High Court, the facts were peculiar. A lady Smt. Laxmi Mittal availed of a similar scheme under the Income Tax Act and she made a declaration of income by 31st December, 1997. Under section 67 of the scheme, the tax and interest etc., if any, had to be paid within three months. The declaration was made on 27th December, 1997 and an amount was paid on that date. The remaining amount was to be paid on or before 27th March, 1998. The lady went to make that deposit and on the way, she met with an accident. Along with her husband, she was admitted in a nursing home. Both of them remained in nursing home and therefore, could not make the

3 (1999) 238 ITR 97

payment. The amount was actually deposited on 30th March, 1998. There was a delay of three days. That delay was not being condoned though bonafide and honesty of the lady was not questioned. Pertinently, there was a circular dated 3rd September, 1998, whereunder, the authority, namely, the Commissioner of Income Tax had the discretion to extend the period. He did not extend the period and therefore, this action was termed as arbitrary. It is in these circumstances that the Division Bench took a view that it took in paras 7 and 8 of the judgment of the Punjab and Haryana High Court. The relevant paragraphs read as under:-

“7. Mr. Sawhney submits that section 67 lays down as inflexible rule and according to this provision the deposit has to be made within a period of three months from the date of declaration. Any failure renders the declaration and the deposit non-est. This contention cannot be accepted. The Government of India has itself issued a circular dated September 3, 1998. By this circular it has been, *inter alia*, provided by the Board that the period for calculating interest will be 90 days from the date of declaration. If the 90th day happens to be a bank holiday, payment on the 91st day being the next working day would be valid. Thus, it is clear that section 67 does not embody a totally inflexible rule. When things are beyond the control of the citizen, certain moving space is normally allowed. This is precisely what the petitioner is wanting in the present case.

8. Taking the totality of circumstances into consideration it appears that the petitioner was unable to make the deposit on account of reasons beyond her control. The Revenue has suffered no loss as the interest for three months, viz., Rs.33,000, has been deposited by the petitioner. Still further, it is also clear that a declaration under the scheme could be made on or before december 31, 1997. The tax along with interest could

have been deposited on or before March 31, 1998. Any deposit before that should not be considered as being beyond the scheme. In any event, the interest having been paid, the Revenue has suffered no loss.”

25. It is this view, which has been followed in the case of *E. Prahalatha Babu vs. The Commissioner of Income Tax Tamil Nadu*⁴. There, the facts were very peculiar, though the scheme was under the Finance Act, 1997. There, the petitioner filed a declaration before the due date. He did not pay any tax along with the returns. The tax ought to have been paid on or before 28th March, 1998 before the expiry of three months' period in accordance with section 67(1) of the Finance Act, 1997. The amount was paid on 31st March, 1998. There was a delay of three days in paying the tax and that is how the declaration was rejected. The argument before the High Court of Madras was that for making payment in terms of declaration, the petitioner approached a bank for sanction of loan to pay the tax in accordance with the scheme. The petitioner applied for loan of Rs.9.75 lakhs. The loan was sanctioned only on 31st March, 1998 and he immediately paid the tax. He, therefore, argued that the benefit cannot be refused on technical ground especially when the tax paid is not refundable and also when the declaration made by the petitioner can be used against him for reopening of the income-tax returns submitted by him for the previous assessment

4 1999(III) CTC 369

years. It is in these circumstances that the relevant provisions were perused by the learned Single Judge and relying on the view taken by the Punjab and Haryana High Court, the writ petition was allowed. The view taken in the Judgment of the Madhya Pradesh High Court in the case of *Sardar Machh Singh vs. Commissioner of Income-Tax and Anr.*⁵ is once again in peculiar circumstances. The petitioner could have deposited the amount on 25th March, 1999 (due date), but that was a bank holiday and the amount was deposited on 27th March, 1999. One day's delay was, therefore, condoned relying upon once again the judgment in of *Laxmi Mittal* (supra).

26. Before us, we do not think that the situation is identical. The petitioners knew their tax liability in advance. They knew that there was already relaxation/extension granted.. Those who have not cleared the tax liability by the end of June, 2014 got one more opportunity and they had to make the payment on or before 31st December, 2014. The petitioners were desirous of obtaining benefit and concession under the STVCE Scheme. They were bound by the stipulations thereof. They knew the liability had to be cleared by 31st December, 2014. They made some payment after availing of the relaxation and by further relaxation, which

⁵ (2000) 245 ITR 58

was available till 31st December, 2014, they definitely could have made the deposit. How there could be a miscommunication is, therefore, not clear at all. The reason now assigned and in the memo of the petition is clearly an afterthought. We are in respectful agreement with the High Court of Jharkhand that when this is the nature of the stipulations in the scheme, any view taken contrary to the same would be rewriting the scheme itself or prescribing conditions which are not specifically imposed. The argument canvassed before the High Court was identical. It was rejected with the following reasoning:-

“ We are not accepting this argument mainly for the following reasons:

a) The VCES, 2013 is already a liberal scheme floated for those declarants, who have committed breach of the taxing statute, especially in payment of Service Tax. Thus, the scheme itself is a liberal approach of the Union of India to encourage voluntary declaration.

b) Looking to the clauses of the VCES, 2013, especially, 107 thereof, the payment of the service tax liability is divided into two instalments. First instalment is of minimum 50% to be paid on or before 31st December, 2013, whereas the remaining amount of the service tax liability is to be discharged by the assessee-declarant on or before 30th June, 2014. This is the second liberal approach in the scheme floated by the Union of India.

c) In the second instalment also, which was to be paid on or before 30th June, 2014, if any declarant has got any difficulty he can make the payment on or before 31st December, 2014 but, in this eventuality the payment shall be made with interest. This is the another liberal approach of the Union of India as provided under the VCES, 2013.

d) The scheme is nothing but a policy decision of Union of India and this court will be extremely slow and

careful in making further liberal interpretation of the VCES, 2013 because this court is not sitting in appeal against the said scheme nor this court can replace an existing scheme with a better one. The clauses of VCES, 2013 cannot be changed by this court. If Section 107(3) directs the declarant to make the payment of at least 50% of the service tax so declared under sub-section (1) of Section 107, to be paid on or before December, 2013, court cannot give further instalment in the first instalment to the effect that part of the payment can be made on or before 31st December, 2013 and the remaining amount can be paid later on. This is not permissible while exercising powers under Article 226 of the Constitution of India.

(III) It appears on perusal of VCES, 2013 that the clauses of the Scheme are drafted very clearly and they are bereft of any ambiguity. What is to be paid that has already been mentioned in Section 107. We cannot replace all these sections. In a taxing statute interpretation ought to be made strictly. Court can neither replace all these clauses of VCES, 2013 nor further instalments can be given by the court in exercise of powers under Article 226 of the Constitution of the India. The so called theory argued by the counsel for the petitioner, viz, 'substantial compliance' has no place in a taxing statute, otherwise every declarant or assessee will partly comply with a scheme or provision of the taxing statute and will say that there is substantial compliance, which will lead to nothing but chaos and court cannot be a party to this.

(IV) Likewise, 'No prejudice' theory in the payment of taxes cannot be advanced by the erring assessee or erring declarant. There is no question of any prejudice caused to the Union of India and once the clauses of the VCES, 2013 is violated, the declarant is not entitled to get benefit of the said scheme.

(V) Counsel for the petitioner has also submitted that never any objection was raised by the respondent while receiving the post-dated cheque. This cheque was given on 31st December, 2013 and the date of the cheque was 31st January, 2014.

(VI) These aspects of the matter have been properly appreciated by the Assistant Commissioner Central Excise and Service Tax, Division-IV, Jamshedpur while passing the order dated 7th April, 2014. It ought to be kept in mind that whenever such voluntary disclosure Scheme is floated,

further lenience should not be given by the court to the declarant apart from what has been provided under the scheme, otherwise, there will be no end of liberal approach. Moreover, payment of tax has a direct nexus with the budget of the country. There are fixed dates for payment of taxes. Realisation of taxes after due date is a matter of policy decision of the Union of India. Hence, this court will not extend the period for the payment of tax dues unless the scheme in question gives that liberty to the declarant.

As stated hereinabove, in the facts of the present case, so far as the payment of first instalment is concerned, which was minimum 50% of the tax dues so declared was to be paid on or before 31st December, 2013 and there is no provision under the VCES, 2013 for relaxation in the payment of first instalment. So far as second second instalment is concerned, it was to be paid on or before 30th June, 2014. However, there is slight leniency in the payment of second instalment, viz, if the second instalment is not paid before 30th June, 2014, the declarant can make the payment on or before 31st December, 2014, but, with interest. Thus, this petitioner-declarant has committed a breach of Section 107(3) of the VCES, 2013 in making the payment of first instalment and hence, he is not entitled to get the benefits provided under this scheme.

(VII) As submitted by the counsel for the petitioner, some errors might have been committed by the department in case of one or two declarant, but no benefit of those errors can be extended to the present petitioner because there is no equality in illegality committed by this respondent.

4. As a cumulative effect of the aforesaid facts and reasons, there is no substance in this writ petition as no error has been committed by the Assistant Commissioner, Central Excise and Service Tax, Division-IV, Jamshedpur, while passing the order dated 7th April, 2014, hence, this writ petition is hereby dismissed.”

27. Once we are in agreement with the above reasoning and which has also been not interfered with after rejection of the Special Leave Petition against this judgment of the Division Bench, then, all the more we are disinclined to grant any relief.

We are of the view that the petitioners have to blame themselves and they cannot take advantage of their own wrong and force the respondents to accept the further sums in full and final settlement contrary to the stipulations and provisions in the scheme.

28. As a result of the above discussion, Rule is discharged. The writ petition is dismissed. However, there would be no order as to costs.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)