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

CENTRAL EXCISE APPEAL 32 NO. 2019

The Commissioner of Central Tax
Pune I Commissionerate .. Appellant
v/s.
Marvel Landmarks Pvt. Ltd. .. Respondent

WITH
CENTRAL EXCISE APPEAL 33 NO. 2019

The Commissioner of Central Tax
Pune I Commissionerate .. Appellant
v/s.
M/s. Marvel Sigma Homes Pvt. Ltd. .. Respondent

Mr. Vijay Kantharia a/w Mr. J.B. Mishra for the appellant
None for the respondent

CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.

DATED : 25th APRIL, 2019

P.C.

1. These two appeals have been filed under Section 83 of the Finance act, 1994 (Finance Act, 1994) read with Section 35G of the Central Excise Act, 1944 (the Act). Both the appeals challenge a common order dated 17th May, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). The Tribunal by the common impugned order dated 17th May, 2018 *inter alia* allowed the appeals of the respondents holding that the appellants are entitled to

the benefit of VCES scheme under the Finance Act, 2013.

2. The Revenue has urged the following re-framed questions of law for our consideration :-

> *(i) Whether in the facts and circumstances of the case and in law, the Tribunal was justified in holding that provisions of Section 106(2A) of the Finance Act, 2013 are not attracted as no inquiry had been initiated against the respondents herein to warrant rejection of the declaration made under the VCES scheme ?*
>
> *(ii) Whether in the facts and circumstances of the case and in law, was the Tribunal justified in holding that the information sought from M/s. Marvel Realtors was an inquiry of roving nature and, therefore, the declaration ought to have been accepted?*

3. Regarding question (i) :-

(a) The respondents had independently filed applications making a declaration under the VCES scheme in terms of the Finance Act, 2013. The original adjudicating Authority accepted the VCES declaration under the Finance Act, 2013 filed by the respondents.

(b) However, being aggrieved with declaration being accepted, the Revenue filed appeals before the Commissioner (Appeals) who by order dated 30th June, 2016 allowed amongst other, both the appeals of the

Revenue in respect of these respondents.

(c) Being aggrieved in further appeal by the respondents, the Tribunal found the letter / Notice dated 20th August, 2012 issued to one M/s. Marvel Realators being relied upon by the Revenue to reject the declaration under the VCES scheme, cannot be accepted. This for the reason that neither of the respondents before it are called M/s. Marvel Realtors. Thus, a notice issued to a non-existing person cannot be considered to be commencement of any inquiry or an investigation in respect of the respondents as the letter / Notice dated 20th August, 2012 was not issued to the respondents. Thus, concluding that the inquiry contemplated under Section 106(2) of the Finance Act, 2013 cannot be said to have been initiated so as to deprive the respondents of the benefit of VCES declaration filed under the Finance Act, 2013.

(d) Mr. Kantharia, learned Counsel appearing for the appellant Revenue submits that both the respondents belong to Marvel group and even though there was no entity in the name of Marvel Realtors, the letter addressed to M/s. Marvel Realtors shall be deemed to be an inquiry being made in respect of the entire Marvel group. Therefore, the declarations filed under the VCES scheme can not be accepted as they are hit by Section 106(2) of the Finance Act, 2013.

(e) We find that before Section 106(2) of the Finance Act, 2013 can be invoked so as to reject the application under the VCES scheme, it is necessary that the declaration is made by a person against whom an inquiry / investigation for service tax not paid / short paid has been initiated. In this case, admittedly no inquiry / investigation has been initiated against the respondents but a Notice has been issued to M/s. Marvel Realtors, which admittedly is a non-existing entity. Therefore, no proceedings have been initiated against the two respondents herein who had filed declaration under the VCES scheme so as to be hit by Section 106(2) of the Finance Act, 2013. Thus, the impugned order of the Tribunal allowing the appeal of the respondents before it, cannot be found fault with as the Authorities had no jurisdiction to reject the declaration filed under the VCES scheme by the two respondents. This is particularly so as no inquiry / investigation had been initiated in respect of them.

(f) In the above view, this question as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. Regarding question (ii) :-

(a) In view of the fact that the appeal is liable to be dismissed for the reason given while dealing with question (i) above, this issue became academic. In any view, the Tribunal found that the enquiry being made in respect of the respondents were in nature of roving enquiry, not hit by Section 106(2) of the Finance Act, 2013. This was by following the decision of its co-ordinate bench in the care of ***L.V. Constructions & Co. Vs. Commissioner of Sales Tax, 2016 TIOL 159 (Mum)***.

(b) The appeal of the Revenue in case of L.V. Construction (supra) had been dismissed by this Court reported as ***Commissioner of Central Excise Vs. L.V. Construction & Company 351 ELT 94***.

(c) This finding of the Tribunal is one of facts and nothing has been shown to us to indicate that the same is perverse.

(d) Therefore, this question as proposed also does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly the appeals are dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(A. S. OKA, J.)**