

(2014) 03 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) 2028 of 2014 and CM Application 4234 of 2014

Frankfinn Aviation Services Pvt. LTD.

APPELLANT

Vs

Assistant Commissioner, Designated Authority, Vces, Service
Tax

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 14
Finance Act, 2013 — Section 106 106(1) 106(1) 107 108

Citation : (2014) 34 STR 165 : (2014) 70 VST 446

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : N. Venkataraman, Mr. K.G. Rajeshwari and Mr. R. Satish Kumar, for the Appellant; Satish Kumar, Senior Standing Counsel, for the Respondent

Judgement

S. Ravindra Bhat, J.—Issue notice. Mr. Satish Kumar, learned counsel for the Revenue accepts notice. With consent, the matter was heard finally. The petitioner carries out vocational training for Air Hostesses/Stewards and in the hospitality and management sector. It states that the courses are designed in a manner that the students after completion of their training can also start their own enterprises in the field. It is contended that the petitioner took advantage of an exemption notification dated 10.09.2004 which exempted vocational training institutes imparting vocational education and training from the payment of service tax. The petitioner relies upon subsequent notification issued in that regard and submits that the exemption could be availed of by the institutions which were not affiliated to any statutory or regulatory body and that the kind of training imparted was not confined to what are traditionally known as vocational training. It is stated that subsequently on 27.02.2010 with the bringing into force of Notification No. 3/2010, the situation changed and that vocational training institutes which are not affiliated to National Council for Vocational Training are now covered by the provisions of the Finance Act and, therefore, liable to pay service tax. The petitioner apparently was paying service tax for the period till

31.03.2012; however, it contends that due to some unavoidable reasons for the period thereafter, i.e., from 1.4.2012 to 31.12.2012 it did not deposit the service tax. In these circumstances with the coming into force of the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereafter referred to as "the Scheme") which was brought into force, w.e.f. 10.05.2013 it sought to avail the benefit of one time declaration and immunity from prosecution and penalty extendable by virtue of Section 108 of the Finance Act in respect of declaration. The petitioner relies upon Section 106 and 107 of the Scheme and submits that it furnished the requisite declaration so as to enable the authorities to accept it and grant the benefit. It is also contended that the petitioner deposited 50% of the amount due before the time stipulated, i.e., 31.12.2013. The petitioner is aggrieved by the order of the Assistant Commissioner/designated authority VCES dated 5.3.2013 whereby its declaration or application seeking onetime benefit was rejected. The order is premised upon the existence of the dispute concerning the previous period between 10.09.2004 - 27.02.2010 before the CESTAT.

2. Learned senior counsel submits that the dispute pending before the Tribunal could not have been a valid basis for rejection by the respondents who have sought recourse to the second proviso to Section 106. It was submitted that that proviso has limited application. In that, the subject matter of the controversy called "the issue" should be identical to the matter which is sought to be subject matter of declaration either in respect of the period or of the service itself. It is contended that the subject matter of the controversy pending before the Tribunal was entirely different, i.e., pertaining to the exigibility of the petitioner to taxation given the provisions of the previous notification which existed up to 27.02.2010 and, therefore, the respondents could not have rejected the declaration. It is submitted that even the later period up to 31.03.2012 is not the subject matter of any controversy or proceeding and the petitioner had already deposited the service tax dues. In these circumstances, since the liability after that date, i.e., from 1.4.2012 to 31.12.2012 was in issue, it could legitimately seek recourse to the Scheme.

3. Counsel for the respondents submitted that the impugned order should not be interfered with. He highlighted the wide applicability of the second proviso of Section 106 especially the term "any issue" and submitted that the pendency of any case or cause before any of the service tax authority including the Tribunal precludes assessee from seeking to avail the benefits of the Scheme. It was submitted that the Tribunal was seized of the petitioner's liability for the six year period which in fact does not differ from the character of the liability which the petitioner now admits for the period in dispute i.e. from 01.04.2012 to 31.12.2012.

4. Before discussing the merits of the case, it would be relevant to extract the relevant provisions of the Scheme which are as follows:-

106. (1) Any person may declare his tax dues in respect of which no notice or an order of determination u/s 72 or section 73 or section 73A of the Chapter has

been issued or made before the 1st day of March, 2013:

Provided that any person who has furnished return u/s 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return.

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom,-

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of-

(i) search of premises u/s 82 of the Chapter; or

(ii) issuance of summons u/s 14 of the Central Excise Act, 1944, as made applicable to the Chapter u/s 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

(b) an audit has been initiated, and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Procedure for making declaration and payment of tax dues.

107. (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 u/s 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 acknowledgement 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 acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

Immunity from penalty, interest and other proceeding.

108. (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority/or court relating to the period covered by such declaration.

5. It is evident that the Scheme was introduced to give benefit of one time amnesty or relief to service tax defaulters or those who had not paid their dues fully. In its terms, the assessment as to the liability has to be made and if the declaration or application is found to be in order and compliant with the provisions, the authority would accept the application and grant immunity from prosecution and also exempt interest and penalty liability. Keeping in mind the spirit of the Scheme, certain safeguards and conditions have been indicated. The first and perhaps foremost one is that the applicant should deposit 50% of the admitted liability with the declaration itself on or before 31.12.2013 and the balance should be paid latest by 31.12.2014. The second is in respect of the subject matter that there should be no issue pending or determined before any of the tax authorities or Tribunals for adjudication. The object of this is to avoid multiplicity and reopening of settled matters. If one keeps this objective in mind, the second proviso is to be construed strictly. The main provision, i.e., Section 106 enables the filing of the declaration subject to the pre-condition of a pre-deposit. It is settled law that a proviso merely carves out an exception from the operation of the main provision. The second proviso of Section 106 (1) is no exception to that rule. This proviso when it alludes to "any issue" must, therefore, mean that the issue as to service tax liability or quantum of liability itself for a particular period must be pending before the Tribunal or some of the

tax authorities or should have been determined. As long as in respect of the particular distinct period, the subject matter of declaration or application is not pending or determined, the main part of Section 106(1) would prevail. In the present case, there is no dispute that the subject matter of the declaration or liability is for the period of 1.4.2012 to 31.12.2012. The order in question also does not show any different facts. Therefore, the view of the designated authority that the pendency of the issue or question of the petitioner's liability for a past period when it sought to avail the advantage of the exemption notification bars the remedy u/s 106 is clearly in error.

6. For the above reasons, the impugned order is hereby set aside. The respondents are directed to proceed further and process the petitioner's application in accordance with law.

W.P.(C) 2028/2014 is allowed in the above terms.

Order dasti.