(2014) 08 UK CK 0019

In the Uttarakhand High Court

Case No : Special Appeal Nos. 274 to 277 and 325 to 339 of 2014

Uttarakhand Van Vikas Nigam APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 14 — Finance Act, 1994 - Section 65(105)(zzp), 70, 72, 73, 73A

Citation : (2015) 81 VST 106

Hon'ble Judges : K.M. Joseph, C.J.;V.K. Bist, J.

Bench : Division Bench

Advocate : Pulak Raj Mullick, for the Appellant; Shobhit Saharia, for the Respondent

Judgement

K.M. Joseph, C.J.

1. These appeals are filed against a common judgment passed by the learned single judge, by which the writ petitions filed by the appellant came to be dismissed. The appellant is the Uttarakhand Forest Development Corporation, a public sector unit. The Divisions of the Corporation, 19 in number, are the appellants before us.

2. Section 65(105)(zzp) was introduced in the year 2007 and it provides for service tax liability in respect of "goods transport agency service". By Notification No. 42/97-ST dated November 5, 1997 , the liability concerning the said taxable service in relation to goods transport agency for transportation of goods by road in a goods carriage was shifted to the service recipients. The appellant received certain communications from the Director General of Central Excise Intelligence, Kanpur. The first notice was issued on July 26, 2011. That is not before us. The next communication is dated September 7, 2011. It reads as follows :

"F. No. DGCEI/KRU/17/09/Part/839/08/9/II

Dated : 07.09.2011

To, The Managing Director, Uttaranchal Forest Development Corporation, Aranya Vikas Bhawan, 73, Nehru Road, Dehradun, Uttarakhand 248 001. Sir,

Subject : Enquiry regarding payment of service tax under the head ''transport of goods by road service''-Reg.

Kindly refer to this office letter of even C. No. dated July 26, 2011 on the above subject.

In this regard, the desired information is still awaited from you, which is causing delay in completion of investigation. It is reiterated that it is gathered that your organization is incurring significant amount under the head freight/transportation charges for transportation of wood, minerals, etc. In view of the statutory provisions of ''goods transport agency'' (copy enclosed), it appears that service tax is leviable on freight charges paid by your organization.

In order to further enquire into the matter, it is requested that the following information may be provided to this office at the earliest-

1. The amount of freight/transportation charges incurred by your organization during 2006-07 to 2010-11;

2. Balance sheets (with all schedules and annexure) for the years 2006-07 to 2010-11;

3. Whether your organization is registered with Service Tax and Central Excise Department or not. If yes, details of service tax paid under the category ''transport of goods by road service''.

Kindly note that the above information is being sought under the provisions of section 14 of the Central Excise Act, 1944 as made applicable to service tax matter by virtue of section 83 of the Finance Act, 1994.

An early reply is highly solicited. End. As above.

Yours faithfully, (Sanjay Lawania) Deputy Director"

3. The said communication was issued to the Managing Director and there is no dispute that it relates to all the Divisions. Thereafter, a third notice dated May 22, 2012 was also issued. The same reads as follows :

"F. No. DGCEI/KRU/17/09/Pt. 438

Dated : 22.05.2012

To, The Managing Director, Uttaranchal Forest Development Corporation, Aranya Vikas Bhawan, 73, Nehru Road, Dehradun, Uttarakhand 248001 Sir,

Subject : Enquiry regarding payment of service tax under the head ''transport of goods by road service''-Reg.

This office is conducting an enquiry regarding payment of service tax under the head transport of goods by road services.

In this regard, it is requested that the copies of balance sheets (with all schedules and annexure) for the years 2007-08 to 2011-12, may be provided to this office. If the balance sheet for 2011-12 has not been audited, the unaudited copy of balance sheet may be provided. These documents/information may be supplied within seven days of receipt of this letter.

Kindly note that the above information is being sought under the provisions of section 14 of the Central Excise Act, 1944 as made applicable to service tax matter by virtue of section 83 of the Finance Act, 1994.

An early reply is highly solicited.

Yours faithfully, (Madhukar Anand) Sr. Intelligence Officer"

4. It appears that the Government, with an intent to entice persons into paying the service tax due, brought out a Scheme called the Service Tax Voluntary Compliance Encouragement Scheme, 2013. The scheme as such came into force on May 10, 2013. According to the appellant, the draft was out before that. Apparently, in anticipation of the same, the appellant addressed a communication (annexure No. 4 to the writ petition) dated March 20, 2013, which reads as follows :

"Dated : 20/03/2013

To, The Senior Intelligence Officer, Directorate General of Central Excise Intelligence Kanpur Regional Unit 117/42 Sarvodaya Nagar, Kanpur Subject : Furnishing of Information Dear Sir,

This has reference to your letter F. No. DGCEI/KRU/17/09/Pt. dated January 30, 2013 regarding enquiry into payment of service tax under ''transport of goods by road service''.

In this regards we wish to inform you that Uttarakhand Van Vikas Nigam, a statutory Corporation, initially formed under the Uttar Pradesh Van Nigam Act, 1974 and subsequently transferred to the State of Uttarakhand by Uttar Pradesh Van Nigam (Uttaranchal Amendment) Order, 2011 and latter name was changed to Uttarakhand Van Vikas Nigam by Uttarakhand Van Vikas Nigam (Amendment) Act, 2011 is a unit of the Uttarakhand Government.

The activities assigned to Corporation are mainly scientific extraction and sale of forest produce and other natural resources within the State of Uttarakhand as per the directions of the Government of Uttarakhand.

In the course of performance of its activities the units of the Corporation situated at various locations avail of services of various transporters for transporting forest produce and other natural resources from its units to its depots.

We, therefore, now wish to deposit service tax under the Service Tax Voluntary Encouragement Scheme, 2013 with respect to transport facilities availed of by individual units since 1st day of October, 2007 till December, 2012.

Service tax dues of the respective units have been attached to this application.

Copies of service tax registration certificates of the respective units are duly attached for your kind perusal.

Thanking you

(........Chandola) Managing Director"

5. The appellant proceeded to deposit a sum of Rs. 1,45,45,813 as service tax under the scheme and wrote a letter dated April 4, 2013, which reads as follows :

"April 4, 2013

To, The Senior Intelligence Officer, Directorate General of Central Excise Intelligence Kanpur Regional Unit 117/42 Sarvodaya Nagar Kanpur Dear Sir,

Subject : Uttarakhand Van Vikas Nigam, Dehradun Furnishing of Information

Please refer our earlier letter dated March 20, 2013, in the continuation of the same we are intimating about the tax deposited by the assessee. The assessee has deposited Rs. 1,45,45,813 as service tax in advance under Central Government Scheme ''SERVICE TAX VOLUNTARY ENCOURGEMENT SCHEME, 2013''. The assessee also intimated with your goodself about the intention of the assessee and wants to avail of the benefit of the "scheme".

Therefore it is requested that, the assessee voluntary deposited the service tax, the assessee should not be penalized in any manner for taking early action suo motu.

The copy of detail of service, service tax thereon and copy of challans are enclosed for your reference.

Thanking you Faithfully (Anand Singh Rawat) Authorized Representative Encl : Copy of challan"

6. Thereafter, it seems that the Additional Director General of Central Excise Intelligence wrote the following letter dated May 17, 2013 :

"F No. DZU/INV/ST/KRU/B/62/2013/1932

dated 17.05.2013

To, The Chief Commissioner, Central Excise, Meerut Zone Opposite CCS University, Mangal Pandey Nagar, Meerut 250 005 Sir,

Sub : Non-payment of service tax under the taxable service category of ''transport of goods by road service'' by Uttarakhand Van Vikas Nigam, Dehradun-Reg

This Directorate had initiated an enquiry into non-payment of service tax by the

Uttarakhand Van Vikas Nigam (UWN), Dehradun under the taxable service of ''transport of goods by road services''.

UVVN vide their letter dated March 20, 2013 (copy enclosed) informed that they wish to deposit service tax under the ''Service Tax Voluntary Compliance Encouragement Scheme, 2013'' and enclosed 19 service tax registration certificates issued to their various divisions. Subsequently, vide letter dated April 4, 2013 (copy enclosed), they informed that they have deposited Rs. 1,45,45,813 as advance service tax under the said Service Tax Voluntary Encouragement Scheme, 2013.

As the said 19 service producers fall within your jurisdiction (either Meerut I or Meerut II Commissionerate), further investigation/action in the matter may please be conducted/taken by the concerned Commissionerate. After completion of the proceedings, the outcome may please be intimated to this Directorate.

End-as above

Yours faithfully, (Samanjasa Das) Additional Director General"

7. In the meantime, the scheme came into force. The scheme is a statutory scheme. The scheme, which is brought under Chapter VI of the Finance Act, 2013, is captioned as Service Tax Voluntary Compliance Encouragement Scheme, 2013. Under section 105, "declarant" is defined as a person, who makes a declaration under sub-section (1) of section 107. "Designated Authority" is defined to mean an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of the scheme. "Tax dues" is defined 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 October, 2007 and ending on the 31st 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.

8. Sections 106 and 107 read as follows :

"106. Person who may make declaration of tax dues.-(1) Any person may declare his tax dues 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:

Provided that any person who has furnished return under section 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 under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944 (1 of 1944), as made applicable to the Chapter under section 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.

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 acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed."

9. On the basis of the scheme, the appellant got itself registered on March 6, 2013 and, thereafter, the amount was deposited, as already noticed, on March 31, 2013. Thereafter, it made the declaration in November, 2013. It was issued with a show cause, however, wherein it was proposed to reject the declaration. The appellant filed its reply and there was a writ petition also filed. During the pendency of the writ petition, however, the impugned order came to be passed rejecting the declaration. It is feeling aggrieved by the same that the earlier writ petition came to be withdrawn with liberty to challenge the impugned order and, finally, the present writ petitions came to be filed, which have been rejected by the learned single judge and, hence, these appeals.

10. We have heard Mr. Pulak Raj Mullick, learned counsel for the appellant and Mr. Shobhit Saharia, learned counsel for the respondents.

11. The learned counsel for the appellant would submit that no notice was issued under sections 72, 73 and 73A, read with rule 5A of the Service Tax Rules. He would submit that, unless proceedings are initiated under sections 72, 73 and 73A, mere commencement of proceedings under section 14 of the Central Excise Act would not suffice to take the appellant out of the purview of the scheme or deny the benefit of the scheme. The appellant has a case that the show-cause notice did not relate to the pending investigation and it only relates to the effect of the amount being deposited on March 31, 2013. He would further take us through the circulars to which we shall presently advert to and contends that the officer has not, before passing the impugned order, borne in mind the purport of the circulars and this has resulted in grave injustice. He reminds the court that the appellant is a public sector unit. It has deposited a huge amount of money and the amount could not be realized from the transporters. It is further submitted that the appellant was enticed into depositing the amount. It is a Scheme, which is an encouraging scheme and the appellant has paid the money honestly and, hence, a liberal approach is called for. It is further the argument of the learned counsel for the appellant that the appellant must be treated at par with other honest taxpayers. He points out that, under the Scheme, a person needs to only deposit 50 per cent immediately and he gets time till June 30, 2014 to pay the balance amount and, still further, if the balance 50 per cent is not paid by June 30, 2014, he can pay the balance amount with interest till December 31, 2014 instead. It is submitted that the court may note the conduct of the appellant in depositing the amount even prior to the Scheme being formulated as such, i.e., on March 31, 2013. He would further submit that the mere fact that he has deposited the amount on March 31, 2013 could not be sufficient to deprive him of the benefit of the scheme. In this regard, he drew our attention to the definition of the word "dues". According to him, it would clearly

show that, insofar as the amount was not paid as on March 1, 2013 and it is admittedly paid only thereafter, i.e., on March 31, 2013; appellant cannot be deprived of the benefit of the scheme. In this regard, he drew our attention to the Bench decision of the Gujarat High Court in the case of Sadguru Construction Co. v. Union of India reported in [2015] 81 VST 95 (Guj); 2014-TIOL-630-HC-AHM-ST.

12. Now, we shall pass on to the consideration of the circulars, which the learned counsel for the appellant has adverted to in the writ petition. They are as follows :

"Circular No. 169/4/2013-S.T., dated May 13, 2013 .

" Circular No. 170/5/2013-S.T., dated August 8, 2013 .

"Circular No. 174/9/2013-S.T., dated November 25, 2013.

13. The learned counsel for the appellant would submit with reference to the first circular, which he referred to, that he has already taken the registration. Then, in regard to the column No. 4, he would submit that, since there is no notice issued or proceedings taken under sections 72, 73 and 73A, it cannot take him out of the purview of the Scheme. Next, he would contend with reference to circular dated August 8, 2013 that it would not be sufficient as is clear from the clarification issued that there is a notice issued under section 14 of the Central Excise Act. Lastly, there is reference also to circular dated November 25, 2013, which, in a sense, is to the effect that, even if notice is captioned under section 14 of the Central Excise Act, if the Department is conducting inquiries of roving nature, the matter has to be decided on merits taking into account the facts and circumstances of each case as to whether, the inquiry is of a roving nature or whether the provisions of section 106(2) are attracted in such cases. He would submit that he was not given full opportunity as the writ petition was pending and the order came to be passed.

14. Per contra, the learned counsel for the respondents would submit that the learned single judge has rightly declined to interfere with the impugned orders. The appellant is running a number of services. Notices were issued citing section 14 of the Central Excise Act and it was with reference to the particular service, which is taxable under the Finance Act, that the documents were called for. It is not a roving inquiry and all the other ingredients of section 106(2)(ii) stood satisfied. He would, in fact, submit that, if notices or orders had been issued under sections 72, 73 and 73A of the Finance Act, 1994, then such a person would be ineligible even to apply for the Scheme; whereas, a person, to whom, for instance, a notice has been issued under section 14 of the Central Excise Act, may still file a declaration. The matter has to be considered on merits. It may happen that the so-called investigation inquiry under section 14 of the Central Excise Act may be of a roving nature. Then, as clarified in the circular dated November 25, 2013, the case must be decided on the merits and it has to be decided whether it is of a roving nature. In this case, he would point out that, in

the nature of the notices, which we have already referred to, it cannot be considered as an inquiry of a roving nature. The matter was in focus, namely, the transport services availed of by the appellant for which it made payments and for which, though it is a recipient of the service, in view of the amendment in 1997, it became liable and it is with reference to the same that the documents were requisitioned and summons were issued under section 14 of the Central Excise Act and, therefore, the matter is not of a roving nature.

15. We have already considered the correspondence between the parties. The first contention, which we will have to deal with, is, whether the learned counsel for the appellant is justified in contending that, since the proceedings were not taken under sections 72, 73 and 73A of the Finance Act, 1994, the mere issuance of proceedings under section 14 of the Central Excise Act, that too by the Deputy Director of Central Excise Intelligence, would be sufficient to take the case of the appellant outside the scope of the scheme ? We are of the view that there is merit in the contention of the learned counsel for the respondents that the scheme expressly bars or rather renders ineligible persons against whom notices have been issued or orders have been passed under sections 72, 73 and 73A of the Finance Act, 1994. This is a matter, which is beyond doubt. In respect of sections 72, 73 and 73A, be it a notice or a case where a decision is taken thereunder, that will suffice to debar the person from invoking the benefit of the Scheme. It is, after providing for such a contingency, that the Legislature has further provided that, when there is an inquiry or investigation which is pending and which, for the purpose of our case, is based on summons issued under section 14 of the Central Excise Act; the competent authority, as defined, is to look into the matter and it shall reject such a declaration for reasons to be recorded. Therefore, even though a declaration is made by a person, if any inquiry or investigation in respect of service tax not levied or not paid or short-levied or short-paid has been initiated by way of search of premises under section 82 of the Chapter or by issuance of summons under section 14 of the Central Excise Act or requiring production of accounts, documents or other evidence under the Chapter or the Rules made thereunder or an audit has been initiated and such inquiry, investigation or audit is pending as on the 1st day of March, 2013; then the contingency of the designated authority passing an order, for reasons to be recorded, rejecting the declaration is unavoidable.

16. It is submitted by the learned counsel for the appellant that, since there is reference to the words "in respect of service tax not levied or not paid or short-levied or short-paid" and these words are to be found in section 73, unless there is a proceeding initiated under section 73, by mere issuance of summons under section 14 of the Central Excise Act, the appellant cannot be deprived of the benefit of the scheme. We are of the clear view that there is no merit in this argument. We have already taken note of the provisions of section 106(1), which separately and initially, itself, declares that a person against whom there is a notice or order of determination under section 72 or section 73 or section 73A is issued will be ineligible. It is after providing for the said contingency that a

separate limit is culled-out and the grounds of disentitlement additionally provided in section 106(2)(a). We see no scope at all for importing a condition for the applicability of section 106(2) that there must be separate proceedings under sections 72 or 73 or 73A, as we would think that this is not the intention of the Legislature. Quite clearly, the intention of the Legislature appears to have been, undoubtedly, to entice large number of persons into paying the service tax dues with the assurance that, if the terms of the Scheme are complied with, they will not have to pay penalty and interest. This is, undoubtedly, for alluring such persons so that there is an increase in the revenue of the Government. But, at the same time, the Legislature was conscious of the criticism that could be levelled against such a Scheme being in the nature of promotion of dishonesty. It, therefore, felt that the scheme should be limited to those cases, where there were no proceedings at all pending and where the concerned assessee may have, out of ignorance which is partly contributed to by the revenue in not taking any sort of action against them, not made payments, which they were otherwise liable to pay. This interpretation of ours appears to be inevitable on the clear language of section 106 read as a whole and in part.

17. Now, we will pass on to the consideration of the case of the appellant based on the circulars. Undoubtedly, as far as the first circular is concerned, at column No. 1, which we have extracted above, the appellant has taken out the registration. The declarant may get the benefit of immunity for not having taken registration earlier or not filed the return or for delay in filing the return. But, this is applicable provided the other disqualification present in section 106(2), which is relevant for our purpose, is not applicable. As far as column No. 3 is concerned, we do not think that anything turns on the same as far as facts of these cases are concerned. Coming to column No. 4, namely, the query appears to have been whether a communication from the Department seeking general information from the declarant would lead to the invoking of section 106(2)(a)(iii). The clarification, which is given, appears to be that there are relevant provisions, which have been made applicable by virtue of section 83 of the Finance Act, 1994, under which accounts, documents or other evidences can be requisitioned. The clarification, then, proceeds to say that, besides section 14 of the Central Excise Act, section 72 and rule 5A of the Service Tax Rules provide for these conditions and, therefore, it proceeds to say that the provision of section 106(2)(a)(iii) relating to calling for accounts would appear to be satisfied if the proceedings are taken under the said provisions. This view of ours is re-enforced with reference to the ultimate portion of the clarification, which says that no other communication from the Department would attract the provisions of section 106(2)(a)(iii) and would not lead to the rejection of the declaration. The position in this case is that summons were issued under section 14 of the Central Excise Act, which is a statutory provision and which is made applicable by virtue of section 83 of the Finance Act, 1994.

18. Coming next to circular dated August 8, 2013, the query is, when a communication is issued quoting the authority of section 14 of the Central Excise

Act, it would suffice to attract section 106(2)(a) when the department does not seek any document from the person or call for his presence. The clarification is that it would not attract the provisions of section 106(2)(a) even though the authority under section 14 of the Central Excise Act is quoted. But, we have already noticed the nature of the communication issued under section 14 of the Central Excise Act. Therein, specifically, documents are requisitioned. Therefore, there is no scope for the appellant drawing support from this clarification. We need not be detained by column No. 13, which only provides that the Scheme does not provide for an appeal.

19. Lastly, there is clarification dated November 25, 2013. We have already extracted the same. In a sense, it provides for a situation, where, though section 14 of the Central Excise Act is quoted in a routine manner and documents are also called for, if the inquiry is of a roving nature, what is the approach to be made. The clarification reads that the authority may take the view on merit taking into account the facts and circumstances of each case, as to whether the inquiry is of a roving nature or whether the provisions of section 106(2) are attracted. The argument of the learned counsel for the appellant in regard to this clarification appears, at the first blush, to have some merit. But the stand of the respondents is that, having regard to the nature of the correspondence under section 14 of the Central Excise Act, which we have already extracted, it cannot be considered to be of a roving nature. He would submit that the notice under section 14 of the Central Excise Act was specifically directed to transport service. In other words, the authorities had zeroed in on the specific service rendered for which the appellant became liable as a recipient. It is with reference to the same that the documents were also called for. We notice that, in the show-cause notice issued, it is stated that, though the amount was deposited on March 31, 2013, it was when the investigation was pending. A reply was given by the assessee. The reply as such is not before us, but the learned counsel for the appellant would submit that the reply has been faithfully reproduced in the impugned orders. In the impugned orders, there is no reference to the circular as such. In other words, there is no case set up by the assessee before the authority that the notices issued under section 14 of the Central Excise Act were of a roving nature. Besides that, as we have already noticed, the notices do specifically refer to the transport service from out of the many services, which the appellant do perform, and the documents are sought with reference to the same. Having regard to the same, we would think that it would be a futile attempt to again remit the matter back to the authority for a de novo consideration.

20. The learned counsel for the appellant, no doubt, has a case that he was not given a full hearing. But, as noticed by the competent body, there was no interdiction by this court against the authority considering the matter. In the circumstances of this case, therefore, noticing that the matter would be a futile exercise, we would decline to undertake the exercise of remitting the matter back.

21. In regard to the payment effected being prior to the scheme, we would think that, insofar as the payment was effected not as on March 1, 2013, but thereafter, namely, on March 31, 2013; though the express words of section 107 appear to contemplate payments being made after the Scheme, but, insofar as requirement is that 50 per cent is to be paid prior to December 31, 2013 and the payment effected in this case being of the full amount prior to December 31, 2013, we would think that the appellant''s case cannot be thrown out on that ground.

22. The learned counsel for the appellant would, then, contend that the court may consider the fact that the appellant had paid the entire amount on March 31, 2013 and he apprehends the levy of full penalty and interest. To this, the learned counsel for the respondents would draw our attention to column No. 5 of the clarification dated November 25, 2013. It reads as follows :

The learned counsel for the respondents would, therefore, submit that certainly the authorities will look into the matter and consider the issue of penalty and interest in terms of the said clarification. We record such submission and, subject to the same, the appeals will stand dismissed. There will be no order as to costs.

