

VCES Woes – II

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Question : We are a service provider. We have not paid service tax during the period 2008-09 to 2011-12 on the service charges collected by us. Further, we also used to collect reimbursement of various expenses incurred by us while providing the service. We understand that there is no need to pay service tax on reimbursement of expenses, as the Hon'ble Delhi High Court has struck down Rule 5 of the Service Tax (Determination of Value) Rules, 2006. We intend to declare our service tax liability on the service charges alone under VCES and pay the same. But, we are not sure whether the decision of the Delhi High Court has been accepted by the Government or they have filed any appeal. We do not know whether our non payment of service tax on reimbursement of expenses would be accepted by the department or disputed. We are not sure whether our declaration under VCES would be accepted or rejected. Please guide us.

The above situation is not at all covered either under the provisos under section 106 (1) or under the situations contemplated under Section 106 (2) of the Finance Act, 2013. The said section is reproduced below.

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.

Further, reference is also invited to section 111 of the Act, which is reproduced below.

111. Failure to make true declaration. — (1) *Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.*

(2) *No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.*

(3) *The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.*

Once you inform the department while filing the declaration, about the collection of reimbursement of expenses from your customers and non payment of service tax on such reimbursement of expenses, the vice of the above section also would not be attracted.

Hence, your declaration is not at all liable to returned / rejected and is bound to be accepted. If at all the department intend to demand service tax on reimbursement of expenses also, the right course for them would be to issue a fresh show cause notice in this regard and not rejecting the declaration filed by you, admitting your liability to service tax on service charges.

What follows from the above is, wherever the service tax liability declared under VCES is capable of being disputed by the department, either with reference to value, or with reference to rate of tax applicable, entitlement for abatement, etc. once the declaration passes the tests under sections 106 (satisfying all conditions thereunder) and 111 (the declaration is not substantially false) *ibid*, the same cannot at all be rejected and immunity from interest and penalty shall be granted for such declared liability. If the department intend to raise any additional demand, they can issue show cause notice for such additional demand.