

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Service Tax Appeal No. 41417/2015**

(Arising out of Order in Original No. 01/2015 (ST – Commr.) dated 25.2.2015 passed by the Commissioner of Central Excise, Salem)

**M/s. ARS Transport**

Proprietor R. Selvam  
New No. 3/754, Old No 3/304  
Pillaiyar Nagar, Bye Pass Main Road  
Salem – 636 010.

**Appellant**

Vs.

**Commissioner of GST & Central Excise**

No. 1, Foulks Compound  
Anai Medu, Salem – 636 001.

**Respondent**

**APPEARANCE:**

Shri S. Venkatachalam, Advocate for the Appellant  
Shri N. Satyanarayanan, Authorised Representative for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

**Hon'ble Shri Ajayan T.V., Member (Judicial)**

**FINAL ORDER NO. 40347/2026**

Date of Hearing: 06.11.2025

Date of Decision: 12.03.2026

**Per M. Ajit Kumar,**

This appeal is filed by the appellant against Order in Original No. 01/2015 (ST – Commr.) dated 25.2.2015 passed by the Commissioner of Central Excise, Salem (impugned order).

2. The appellant rendered site formation, clearance, excavation, and earth-moving services to M/s. Madras Cements Ltd. during 2008–09 to 2012–13. Based on information from IAD, Trichy Commissionerate, it was alleged by the department that the appellant collected service tax but failed to remit it and did not file Service Tax

returns for the period June 2008 to March 2013. Accordingly, a Show Cause Notice was issued proposing a demand of ₹88,71,927/- with interest and penalties. The Commissioner of Central Excise, Salem confirmed a demand of ₹18,39,185/- with interest, after adjusting ₹68,92,188/- paid under the VCES, 2013, and imposed penalties under Sections 78 and 77 of the Finance Act, 1994. Hence, the present appeal.

3. The learned Advocate Shri S. Venkatachalam appeared for the appellant and Ld. Authorized Representative Shri N. Satyanarayanan appeared for the respondent.

3.1 Shri S. Venkatachalam the Ld. Counsel for the appellant submitted that:

A. The Appellant is registered under Site Formation and Clearance, Excavation and Earthmoving and Demolition Services.

B. Pursuant to audit, a Show Cause Notice dated 22.10.2013 was issued.

C. Prior to adjudication, the Appellant filed a declaration under the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (**VCES**) on 12.12.2013, which was acknowledged on 16.12.2013. The Appellant paid the entire declared tax dues for 'site formation' service, including the balance amount with interest, within the prescribed time. A discharge certificate was issued on 29.01.2015.

D. Under VCES, once a discharge certificate is issued, no demand can be raised for the period covered by the declaration, i.e., June 2008 to December 2012. No notice alleging the declaration to be substantially false was ever issued under Section 108 of the Finance

Act, 2013. Hence, the subsequent confirmation of demand is without authority of law.

E. Without prejudice, the demand is also unsustainable on merits. The Appellant entered into a contract dated 09.01.2008 with M/s Madras Cements Ltd. for transportation of limestone. Such activity squarely falls under Goods Transport Agency (**GTA**) Service and not under Site Formation Service.

F In terms of Rule 2(1)(d)(v) of the Service Tax Rules, 1994, the liability to pay service tax on GTA services rests on the consignor/consignee paying the freight. In the present case, M/s Madras Cements Ltd., being the service recipient, discharged the service tax liability.

G Transportation of limestone is a post-mining activity and cannot be classified as Site Formation Service. Applying Section 65A of the Finance Act, 1994, the specific entry of GTA must prevail.

I Since the demand itself is unsustainable in law and on merits, the levy of interest and imposition of penalties are also liable to be set aside.

3.2 Shri N. Satyanarayanan, Ld. Authorized Representative reiterated the findings in the impugned order.

4. We have heard the parties and perused the appeals. The Service Tax Voluntary Compliance Encouragement Scheme, 2013 (**VCES**), formed a part of Chapter VI of the Finance Act, 2013 (**Act**) and was a beneficial legislation that offered a one-time amnesty for service tax defaulters by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, to the declarant who had not disclosed

true liability in the returns filed during the period from 01.10. 2007 to 31.12. 2012 and who makes a truthful declaration of all his pending "tax dues" during the said period and pays the same in the manner prescribed.

5. Before discussing the merits of the case, it would be relevant to extract the relevant sections of the Act governing the Scheme which are as follows:-

**"105.** (1) In this Scheme, unless the context otherwise requires,—

. . .

(e) "**tax dues**" means 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

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**106.** (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. . .

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"Procedure for making declaration and payment of tax dues.

**107.** (1) . . . . .

. . . . .

(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."

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"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."

6. The issue under dispute is whether the appellant have disclosed his tax dues under the VCES scheme and the designated authority having acknowledged the discharge of such dues under the scheme, can issue a notice for tax dues during the same period.

7. We note that under the second proviso to Section 106(1), a VCES declaration is barred if a notice or order has been issued for any period on the **same issue**. Hence the converse would also apply as per the immunity granted under the scheme, a demand would be barred where a tax demand is raised after a VCES declaration has been accepted on the same issue. The key question then is whether the subsequent notice relates to the same issue already settled under the Scheme.

8. Revenue contends that the demand can be bifurcated into two parts: service tax on site formation services for 2008–09 to 2012–13, which was declared and discharged under VCES, 2013; and service tax

on transportation of limestone for the same period, which is disputed. According to the Order-in-Original, the transportation activity formed an integral part of site formation services and was not a standalone service. Payment was based on weighed quantity and no consignment note was issued; hence, M/s ARS Transports could not be treated as a Goods Transport Agency, and the activity did not qualify as GTA service. Accordingly, the Adjudicating Authority classified all services under 'Site Formation and Clearance, Excavation and Earth-Moving and Demolition Services' under Section 65(105)(zzza) of the Finance Act, 1994 up to 30.06.2012, and under Section 65B(44) thereafter. He rejected the appellant's contention that tax liability stood discharged by the service recipient under Rule 2(d)(v) of the Service Tax Rules, 1994 and that in any case they are entitled to immunity from further proceedings as they have settled their outstanding dues under the VCES.

8. After examining the legal issue, we find merit in the averment of the appellant that under VCES, once a discharge certificate is issued, no demand can be raised for the period covered by the declaration for the same issue.

9. We find that the Hon'ble Supreme Court in the case of **M/S ARMOUR SECURITY (INDIA) LTD. Vs COMMISSIONER, CGST, DELHI** [2025 INSC 982 /SPECIAL LEAVE PETITION (C) No. 6092 of 2025, Dated: 14.08.2025], examined as to what constitutes the "same subject matter" in the context of parallel enquiries being made by State and Central GST authorities. The expression "same subject matter" as discussed in the judgment, finds resonance with the term "same issue"

and would be helpful in resolving the dispute before us. The Hon'ble Court held:

“86. The expression “subject matter” contemplates proceedings directed towards determining the taxpayer’s liability or contravention, encompassing the alleged offence or non-compliance together with the relief or demand sought by the Revenue, as articulated in the show cause notice through its charges, grounds, and quantification of demand. Accordingly, the bar on the “**same subject matter**” is attracted only **where both proceedings seek to assess or recover an identical liability, or even where there is the slightest overlap in the tax liability or obligation.**”

10. The Ld. Adjudicating Authority, in the OIO, concluded that the transportation activity undertaken by the appellant was an integral part of site formation services and not a standalone service, and was therefore correctly classifiable under “Site Formation and Clearance, Excavation and Earth Moving and Demolition Services.” Without examining the merits of this classification, we note that the Authority sought to assess and recover tax on an overlapping liability, a portion of which had already been verified and settled under the VCES. Such a demand is barred under section 108 and cannot be sustained.

11. We find that section 108(1) of the Act grants complete immunity from penalty, interest, and further proceedings once the declared tax dues and applicable interest under Section 107 are paid. In the present case, the appellant’s VCES declaration was accepted without dispute, and it was not alleged to be substantially false. Consequently, in the light of the immunity gained no further demand on the same issue can be sustained. The impugned demand is liable to be set aside on this ground alone, rendering it unnecessary for us to examine the

appellant's alternative plea that M/s Madras Cements Ltd., as service recipient, had already discharged the service tax on transportation charges under Rule 2(d)(v) of the Service Tax Rules, 1994.

11. In furtherance of the discussions above, we set aside the impugned order. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 12.03.2026)

Sd/-  
**(AJAYAN T.V.)**  
Member (Judicial)

Sd/-  
**(M. AJIT KUMAR)**  
Member (Technical)

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