CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.40526 of 2016

(Arising out of Order-in-Appeal No.36/2015 (STA-II) dated 30.11.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai)

M/s. BPL Telecom Pvt. Ltd., **.... Appellant**
No.14, Sadasivam Street,
Gopalapuram, Chennai-600 086.

VERSUS

Commissioner of GST & Central Excise ... Respondent
Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar. Chennai-600 040.

APPEARANCE :

Ms. Rini Anna Kurian, Advocate for the Appellant
Ms. Rajni Menon, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40712/2026

DATE OF HEARING : 19.03.2026
DATE OF DECISION :10.06.2026

Per: Shri Ajayan T.V.

BPL Telecom, the appellant herein, has assailed the Order-in -Appeal number 36/2015 (STA-II) dated 30.11.2015, whereby the Appellate Authority has upheld the Order No.31/2014 (VCES) dated 29.03.2014 of the Designated Authority (VCES).

2. The relevant facts are that the appellant is a manufacturer of telephones and PABX having service tax Registration No.AAACB9460AST007. The appellant, vide letter dated 05.7.2013, filed declaration in form VCES-1 under Service Tax voluntary compliance encouragement scheme 2013, (VCES), declaring tax dues of Rs.20,53,344/- for the period from December 2010 to December 2012. On preliminary verification, the Department noticed that an investigation was started by the Assistant Commissioner, Service Tax division during February 2013 and the appellant unit was visited by the officers of the Service Tax II Division on 05.02.2013 in connection with recovery of service tax amount defaulted and was pending as on 01.03.2013. Hence, furnishing the details of correspondence with the appellant, the Designated Authority, issued a Show Cause Notice No.003/2013[VCES] dated 03.10.2013, proposing the rejection of the VCES declaration filed by the appellant, in terms of second proviso to Section 106 (1) of VCES, 2013 and Section 106 (2) (a) of VCES, 2013, on the allegation that Show Cause notice no.19/2010 dated 15.01.2010 has been issued on the same issue, viz, non-payment of service tax covering the earlier period from April 2004 to February 2009 and Order-in-Original No.4/2011 dated 23.02.2011 has been passed confirming the Service Tax demanded on the same issue and also that an inquiry/investigation initiated against the appellant (declarant) is pending as on 01.03.2013. Pursuant to a reply filed by the declarant dated 03.12.2013, the Adjudicating Authority vide the Order No. 31 / 2014 [VCES] dated 29.03.2014, rejected the VCES declaration filed by the Appellant in terms of second proviso to Section 106 (1) and Section 106 (2) of the Finance Act 2013. Aggrieved, the Appellant had preferred an appeal before the Commission of Service Tax (Appeals-II), who has however, vide the impugned order. rejected the appeal. Hence this appeal.

3. Ms. Rini Anna Kurian, Ld. Advocate, appearing on behalf of the Appellant, argued that Section 106(1) deals with notice or order of determination under Section 72 or Section 73 or Section 73 A, being issued before first day of March 2013. No such notice or order has been issued in the case of the Appellant. Further, neither the show cause notice nor the order of the Lower Authorities state that any such notice under the aforementioned sections have been issued, hence Section 106 (1) is not applicable in the case of the Appellant.

4. The Ld. Counsel further argued that the scope of the term " inquiry or investigation" in Section 106 (2) (a) of the Act is qualified in the three sub-clauses there under, namely, search of premises under Section 82 of the Finance Act, 1994, issuance of summons under Section 14 of the Central Excise Act, 1944, as made applicable under Section 83 of the Finance Act and requiring production of accounts, documents or other evidence. It is contended that neither the show cause notice nor the orders make out a case that there has been any search under Section 82 or that any summons under Section 14 of the Central Excise Act, 1944 has been issued. The only reason stated by the Appellate Authority is non-compliance of Section 106 (2) (a) (iii) of the Finance Act. However, as can be seen from the paragraph 2.2 of the SCN, it is admitted that copies of balance sheet/trial balance/details of services provided, received, and service tax paid for the period from 2008-09 to 2012-13 were sought by the department only vide letter dated 04.06.2013. This would show that the conditions of Section 106 (2) (a) (iii) are not satisfied as the letter seeking the documents were issued after first day of March, 2013. The Ld. Counsel further submits that without prejudice to the above contentions, the Show Cause Notice itself is not maintainable for having been issued beyond the prescribed time limit of 30 days. The

Board, |Circular No.174/9/2013-ST dated 25.11.2013, while issuing instructions for implementation of the VCES scheme, 2013 directed that Show Cause Notice proposing intention to reject the declaration should be issued by the designated authority within 30 days of date of filing of the declaration. It was argued that the appellant had submitted the declaration on 08.07.2013 and the 30 days' time limit contemplated for issuance of notice proposing intention to reject the declaration should have been issued on or before 07.08.2013, admittedly the Show Cause Notice is dated 03.10.2013. Therefore, since the Show Cause Notice itself was barred by limitation, the consequent rejection of the declaration filed by the appellant pursuant to such notice is illegal. It is therefore submitted that appellant's appeal may be allowed.

5. Ms. Rajini Menon, Ld. Authorised Representative, appearing for the Respondent, reiterated the findings of the Appellate Authority in the impugned order.

6. Heard both sides and perused the material available on record.

7. The sole issue that arises for our consideration is whether the impugned order upholding the rejection of the VCES application filed by the appellant, is tenable.

8. It is a settled position in law that the SCN is the foundation on which the department has to build up its case. Thus, the tenability of any demand hinges on an SCN that is valid on the date of issue. It is equally well settled that the Department cannot argue against its own Circulars. The decision in ***Union of India v. Arviva Industries (I) Ltd, 2008 (10) STR 534 (SC)*** refers. Therefore, when the appellant raises a contention that the SCN has not been

issued within the time frame specified as per the Circulars issued by the Department, we deem it appropriate to deal with the said contention at the outset.

9. In this regard the appellant has relied upon a decision of the coordinate bench in the case of ***JMD Ltd v CCE, New Delhi, (2024) 14 Centax 138 (Tri-Del)***, wherein on the aspect of the SCN being barred by time, the Tribunal after noticing the Department Circular No. 170/5/2013-ST dated 8-8-2013 as well as the Circular No. 174/9/2013-ST dated 25-11-2013, has gone on to hold as under:

> **"**10. In order to ascertain whether the enquiry/investigation on the basis of which the declaration of the appellant has been rejected was of roving nature, we need to peruse the letter dated 18-2-2013, which has been relied upon by the Revenue. The said letter reads as:-
> "Subject: Service Tax Enquiry - submission of data/documents-reg.
> It is to inform you that an enquiry has been initiated against you by this office regarding proper payment of service tax.
> In this regard, you are requested to supply the following data/documents/information (self attested) to this office 1-3-2013 on 1130 hrs:-
>
> 1. Copy of Service Tax Registration Certificate (ST-2);
> 2. Copies of Service Tax Returns (ST-3) for the period April, 2011 to June, 2012;
> 3. Copy of Annual Reports alongwith Profit & Loss Accounts, all schedules and Notes to Accounts for FY 2011-12;
> 4. List of ongoing projects as on 1-7-2010;
> 5. Month-wise and project-wise details of demand raised/advances received from prospective buyers

of property for the period 1-4-2010 to 31-12-2012 and service tax paid through cash and/or CENVAT thereon, if any;

Note: This letter may be treated as issued under section 14 of the Central Excise Act, 1944 within the meaning of Section 193 and Section 228 of the Indian Penal Code as made applicable to like matters in Service Tax, in terms of Section 83 of the Finance Act, 1994 as amended."

11. The contents of the above letter are of very general nature whereby documents have been asked for without any specific details, which in other words would mean that the enquiry which appears to have been contemplated in terms of the said letter was merely of 'roving nature' and would therefore not call for rejection on that ground under section 106(2) of the Act. In arriving at such a conclusion, we are supported by the decision of the Bombay High Court in *Commissioner of Central Excise, Commissionerate Nagpur-II Nagpur* v. *L. V. Construction & Company, Nagpur* 2017 (351) E.L.T. 94 (Bom.) whereby the learned Division Bench relying on the circular examined the communication sent by the DGCEI asking for the copies of the balance sheets, agreement, work order, details of payments received and copy of ST-3 returns and held the enquiry to be of a 'roving nature' as there were no specific details for which the enquiry was sought. The relevant para of the judgement is quoted below:-

"On hearing the learned Counsel for the appellant and on a perusal of the orders of the Commissioner and the Tribunal as also the relevant Circulars and the communication of the DGCEI dated 19-2-2013, it appears that there is no scope for interference with the order of the Tribunal in this appeal. *The Board Circular, dated 25-11-2013 clarifies that in cases where the documents like the balance-sheets, profit and loss account etc., are called for, by the Department in the enquiries of roving nature, while quoting the authority of Section 14 of the Central Excise Act in a routine manner, the Commissioner concerned would be entitled to take a view on merit, taking*

into account the facts and circumstances of each case, as to whether the enquiry is of roving nature or whether the provisions of Section 106(2) of the Act are attracted to such cases. It appears on a reading of the communication served by the DGCEI on the respondent - assessee, dated 19-2-2013, by making a reference to Section 14 of the Central Excise Act that the respondent -assessee was asked to send to the office of the DGCEI the copies of the balance-sheets for the financial years 2008-09 to 2011-12, a copy of the agreement/work order of each of the contractors involving contract value of more than Rs. 50,00,000/-, details of payments received from each of the contractors involving the contract value of more than Rs. 50,00,000/- and a copy of ST-3 Returns filed with the Service Tax Department for those years. On a reading of the communication, dated 19-2-2013, served by the DGCEI on the respondent -assessee, *the Tribunal rightly held that by the said communication, the assessee was called by the DGCEI to produce the documents like the balance-sheets, profit and loss account and all the other documents that are mentioned in the said communication, in the enquiry of roving nature without giving any details of any particular transaction or particular matter with regard to which the enquiry was sought to be made. Only by quoting the provisions of Section 14 of the Central Excise Act in the communication dated 19-2-2013, the DGCEI asked the petitioner to produce almost all the documents pertaining to the financial years 2008-09 to 2011-12 without mentioning any reasons for seeking the said documents or without seeking any particular documents pertaining to any particular query.* By relying on the Board Circular, dated 25-11-2013 that is clarificatory in nature, the Tribunal rightly held that the adjudicating authority - Revenue should have accepted the declaration filed by the respondent - assessee. While holding so, the Tribunal relied on the two judgements of the Hon'ble Supreme Court that the Board Circulars are binding on the departmental officers and as per the Board Circular, dated 15-11-2013, the declaration made by the respondent -assessee was liable to be accepted. We do

not find any illegality in the order of the Tribunal so as to admit the appeal."

The aforesaid decision squarely applies to the facts of the present case and needless to mention the principle that the Circular is binding on the revenue. The Circular dated 25-11-2013 while referring to the conditions as enumerated in Section 106(2), specifically provides that these conditions may be construed strictly and narrowly.

12. We have no hesitation in accepting the plea taken by the learned Counsel for the appellant that the show cause notice is barred by time. In the present case, the appellant had filed the declaration for VCES on 27-12-2013 and though the notice is shown to have been issued on 24-1-2014, however, as per the postal receipt annexed by the appellant, the said notice was received by him on 3-2-2014, which is beyond the period of thirty days. **The circular dated 8-8-2013 in the clarification stated that the designated authority shall give a notice of intention to reject the declaration within thirty days of the date of filing of the declaration. The giving of notice does not mean mere issuance of the notice and therefore the date of issue of the show cause notice would not be relevant for computing the period of thirty days. The very term 'give' implies in simple terms to allow someone to have or to provide someone something so unless and until the person to whom it has been issued receive the notice the service of notice shall not be complete,** the observation of the Apex Court in *MCD* v. *Dharma Properties (P.) Ltd.*, (2018) 11 SCC 230, resolve the controversy in following terms:-

"14. Section 444 prescribes the manner in which notices, etc. are required to be served or issued. The High Court has rightly pointed out that four eventualities are contemplated in Section 444(1). However, the expression "give" does not find mention in any of those eventualities. Mandate of Section 126 is "giving of a notice". *Therefore, the question is as to whether*

at what stage, it would be treated that notice as stipulated in Section 126 has been given. In K. Narasimhiah [K. Narasimhiah v. H.C. Singri Gowda, (1964) 7 SCR 618 : AIR 1966 SC 330] , this Court has held that mere dispatch of notice would not amount to "giving" of notice. "Giving" would be complete only when it has been offered to the person/addressee concerned, even when it is not accepted by him on tendering. Likewise, in Banarsi Debi case [Banarsi Debi v. ITO, (1964) 7 SCR 539 : AIR 1964 SC 1742] , referring to Section 27 of the General Clauses Act, 1897 which deals with the expressions "serve" or "give" or "sent", this Court held that all these expressions, namely, "serve", "give" and "sent" are interchangeable terms and, therefore, notice would be treated to have been issued only when the entire process of sending the notice i.e. from dispatch till the service thereof, is complete."

13. In view of the above principle laid-down by the Apex Court, we are of the considered view that the show cause notice in the present case is time barred and cannot be acted upon. **Further, the Circular dated 25-11-2013 in unequivocal words has stated that, Commissioner should ensure that the said time limit of giving the notice within 30 days has to be followed scrupulously**.

14. We would like to add that the very nomenclature of the scheme is to promote voluntary encouragement by the assessee to make the declaration of the tax dues. Since the very purpose of introducing the scheme is to motivate the registered assessee who had stopped filing the returns to file returns and pay the taxes. The underlying object is to reduce unnecessary litigation, which is evident from the clarifications made in the Circulars. The VCES Scheme as further clarified in the Circulars needs to be implemented so as to give full play which would not only benefit the assessee but also the revenue. Moreover, we are of the view that the guiding factor to determine whether the enquiry is of roving nature or not so as to call for rejection of the declaration is the clarification

provided in the Circular dated 25-11-2013 while referring to the conditions prescribed in Section 106(2) of the Finance Act- *"These conditions may be construed strictly and narrowly.* The concerned Commissioner may ensure that no declaration is rejected on frivolous grounds or by taking a wider interpretation of the conditions enumerated in section 106(2)."

15. <u>The impugned order is *set aside* and the appeal stands allowed. Accordingly, the revenue should accept the declaration filed by the appellant. The appeal is allowed with no order as to cost</u>."**<u>(emphasis supplied)</u>**

The decision in ***Raj Infrastructure v Commissioner of GST, Mumbai Central, 2020 (34) GSTL 223 (Tri-Mumbai***), relied upon by the appellant is also in similar vein in so far as the SCN being barred by time is concerned.

10. In the instant case, admittedly the appellant has filed the declaration on 05.07.2013 and the SCN has been issued only on 03.10.2013. It is seen that the Department's Circular No. 170/5/2013-S.T., dated 8-8-2013, at Sl.No.12, categorically clarifies that for declarations already filed, the said period of 30 days would apply from the date of this circular. Therefore, even if we were to take the date of issuance of the Circular, the fact remains that the SCN is issued beyond the prescribed time limit specified therein. Moreover, the details of the correspondence indicated in the SCN also reveal that they are very general in nature. We are therefore of the considered view that the decision in ***JMD Ltd v CCE, New Delhi, (2024) 14 Centax 138 (Tri-Del)***, as noticed above, would squarely apply in the appellant's favour.

11. In light of our aforesaid discussion and decisions of the Tribunal noticed above, we are of the considered view that the impugned order is liable to be set aside. Ordered accordingly.

The Appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in the open court on 10.06.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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