

# Bimal Jain

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Dear Professional Colleague,

**Service Tax paid after March 1, 2013 but before enactment of VCES on May 10, 2013 – Should be considered as paid under VCES**

We are sharing with you an important judgment of the Hon'ble Gujarat High Court in the case of **Sadguru Construction Co. Vs. Union of India [2014-TIOL-630-HC-AHM-ST]** on the following issue:

**Issue:**

**Whether the amount paid after March 1, 2013 but before enactment of VCES on May 10, 2013 can be excluded from declaration filed under the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (“VCES” or “the Scheme”)?**

**Facts & Background:**

Sadguru Construction Co. (“**the Petitioners**”) is a partnership firm engaged in the business of construction. On March 8, 2013, the preventive officers of the Service Tax Department conducted inquiry at the premises of the Petitioners regarding the Petitioners' unpaid service tax dues. The Petitioners deposited Rs. 35.51 lakhs with the Department between March 9, 2013 and April 15, 2013. On July 14, 2013 the Petitioners deposited further amount with the Department such that total deposit with the Department became Rs. 47.79 lakhs.

Thereafter, the Petitioners declared tax dues of Rs. 43.61 lakhs on August 24, 2013 (revised to Rs. 45.76 lakhs on December 30, 2013) under VCES. The Petitioners included Rs. 35.51 lakhs paid to the Department between March 9, 2013 and April 15, 2013 in the declaration filed under VCES.

The Department contended that the amount which was deposited before enactment of the Scheme i.e. before May 10, 2013 cannot be included in the declaration under VCES.

The Designated Authority vide its Impugned Order dated December 31, 2012 acknowledged the declaration of the Petitioners only to the extent of tax dues of Rs.10,24,656/- i.e. amount deposited by the petitioners after enactment of the Scheme. The Impugned Order was issued on the basis of clarification contained in the Circular 170/5/2013-ST dated August 8, 2013 (“**the Circular**”) which provides that amount paid by applicant from March 1, 2013 till the date of enactment of the Scheme i.e. May 10, 2013 will not be covered under VCES.

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Hence, the Petitioners filed a writ petition before the Hon'ble Gujarat High Court.

## Held:

The Hon'ble Gujarat High Court held that if the contention of the Department is accepted that any tax dues which is deposited before May 10, 2013 cannot form part of the tax dues under the Scheme, then, it will mutilate the definition of term 'tax dues' contained in Section 105(1)(e) of the Finance Act, 2013. Further, the argument of the Department cannot be accepted on the basis of the clarifications contained in the Circular as it cannot override the statutory provisions contained in the Scheme.

Furthermore, the Hon'ble High Court held that if the intention of the legislature was to exclude any service tax deposited before framing of the Scheme, the same could have been provided in the Statute. However, the legislature only excluded the declaration of such taxes which were already paid by March 1, 2013. Accordingly, the Hon'ble High Court observed that two conditions were essential for a valid declaration i.e.

- i. The proceedings for declaration or recovery of the tax dues should not be pending on March 1, 2013; and
- ii. The taxes should not have been deposited before March 1, 2013.

Since, the Petitioners fulfilled both the conditions, the declaration filed by the Petitioners was valid and the Hon'ble Gujarat High Court quashed the order of the Designated Authority.

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards

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