

[Service Tax: Roving enquiry not a Bar to VCES: CESTAT](#)

IN their VCES-1 declarations the appellant has verified and signed the declaration that "No inquiry, investigation or audit is pending against the declarant as on the 1st day of March 2013 as envisaged in sub-section (2) of section 106 of the Act".

The department issued SCN proposing rejection of declaration(s) under provisions of Section 111 of Finance Act, 2013 on the ground that inquiry was initiated against the appellant by DGCEI and the documents were sought for by the DGCEI vide letter dated 17/1/2013 and 19/2/2013 and, therefore, as on 1/3/2013 the inquiry was pending.

The designated authority upheld the allegations & rejected the VCES-1 application.

Before the CESTAT, the appellant submitted that the DGCEI letter dated 17/1/2013 was not received by them and was returned as undelivered. However, subsequent letter dated 19/2/2013 was received wherein it was mentioned that the information is called for under Section 14 of the CEA, 1944. It is, therefore, submitted that the inquiry initiated by the DGCEI is of roving nature as general inquiry was made from various other assesseees also *and, therefore, the application cannot be rejected by citing the exclusion category as provided under Section 106(2) of FA, 2013*. Reliance is placed on the Board Circular No. 170/5/2013-ST dated 8/8/2013 wherein it is clarified that communication for seeking information of roving nature, even though the communication has quoted authority of Section 14, would not attract the provisions of Section 106(2)(a). It is also emphasized that the instructions contained in the Circular is binding on the Adjudicating authority.

The following clarification given in the Board Circulars No. [170/5/2013-ST](#) dated 8/8/2013 and No. [174/9/2013-ST](#) dated 25/11/2013 was also extracted by the Bench:

S No.	Issues	Clarification
1	Whether the communications, wherein department has sought information of roving nature from potential taxpayer regarding their business activities without seeking any documents from such person or calling for his presence, while quoting the authority of section 14 of the Central Excise Act, 1944, would attract the provision of section 106 (2) (a)?	Attention is invited to clarification issued at S. No. 4 of the circular No. 169/4/2013-ST , dated 13.5.2013, as regards the scope of section 106 (2) (a) of the Finance Act, 2013, wherein it has been clarified that the provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidence are requisitioned by the authorized officer from the declarant under the authority of a statutory provision. A communication of the nature as mentioned in the previous column would not attract the provision of section 106 (2)(a) even though the authority of section 14 of the Central Excise Act may have been quoted therein.
3	Whether benefit of VCES would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department in the inquiries of roving nature, while quoting authority of section 14 of the Central Excise Act in a routine manner.	The designated authority/ Commissioner concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are attracted in such cases.

The AR reiterated the findings of the designated authority and also cited the *decision in Sadguru Construction Co - [2014-TIOL-630-HC-AHM-ST](#)* in support.

The Bench reproduced the DGCEI letters dated 17/1/2013 and 19/2/2013 issued to the appellant & carrying the subject line "Service Tax Enquiry - reg" and asking for some information and documents related to their taxable activity and observed *that* same inquiry was made from various assessee of roving nature.

It was, thereafter, observed:

"From the above clarification, it is clear that if the information is sought of roving nature even though communication regarding seeking information quoted Section 14 which shall not attract provisions of Section 106(2)(a). The cases of the appellants are squarely covered under the above clarification."

Observing that it is a settled position that Board Circulars are binding on the departmental officers as held by the apex court in the case of *Ranadey Micronutrients* - [2002-TIOL-184-SC-CX](#) & *Arviva Industries Ltd.* - [2007-TIOL-12-SC-CX](#), the Bench concluded that the adjudicating authority should have accepted the VCES-1 declaration(s) filed by the appellant.

The case law cited by the AR was distinguished and held to be inapplicable to the present case.

In fine, it was held that the inquiry initiated by the DGCEI in form of letter dated 19/2/2013 could not be considered as an "inquiry" prescribed under Section 106(2) (a) of Finance Act, 2013.

The impugned orders rejecting the VCES-1 declaration(s) of the appellant were set aside as not sustainable and the appeals were allowed.