IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/70033/2016-CU[DB]

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-014-15-16 dated 29/10/2015 passed by Commissioner of Central Excise, Kanpur)

Shri Ashok Kumar Kesharwani, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Kanpur **Respondent**

Appearance:

Request for Adjournment/written submission, for Appellant
Shri Gyandendra Kr. Tripati, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Decision : 29/01/2019

FINAL ORDER NO-**70205 / 2019**

Per: Anil G. Shakkarwar

The appellant has submitted a written submission and through a communication dated 28.01.2019 prayed for decision on the basis of written submission. Accordingly, we have heard the learned A.R. for revenue and have perused the written submission and records of the case. On perusal of record of the case, we note that appellant was providing 'Renting of Immovable Property Service' and through the impugned order service tax demand of Rs.8,864/- was confirmed against the appellant for the period from 01.04.2011 to 31.12.2012. Further, equal penalty was imposed on the appellant. We also note that the Original Authority has held that appellant had filed substantially false declaration under VCES. On perusal of

Order-in-Original, we note that appellant had filed declaration under VCE Scheme on 07.10.2013 in form VCES-1 declaring tax dues of Rs.1,19,643/- for the period from April, 2011 to December, 2012. An acknowledgment in the form VCES-2 was issued to appellant on 10.10.2013. Subsequently discharge certificate in the form VCES-3 was issued on 30.10.2013. On 01.10.2014 show cause notice was issued making allegations that declaration under VCE Scheme filed on 07.10.2013 was substantially false. We note that discharge certificate in the form VCES-3 was issued in terms of Sub-section (7) of Section 107 of the Finance Act, 2013. We further note that it is provided through Section 108 of Finance Act, 2013 that once a discharge certificate under Sub-section (7) of Section 107 is issued then revenue does not have authority to reopen any proceedings in respect of declaration made. We note that the impugned show cause notice and impugned proceedings are bad in law in view of the provisions of Section 108 of Finance Act, 2013.

2. We, therefore, set aside the impugned order and allow the appeal.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

akp