CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70880 of 2016

(Arising out of Order-in-Original No.ALD/EXCUS/000/(ST-155/2014) 27 of 2016 dated 23/05/2016 passed by Commissioner, Central Excise & Service Tax, Allahabad)

M/s N S Construction Company **.....Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Allahabad
.....Respondent

38, M.G., Marg, Civil Lines,
Allahabad-211001, U.P.

APPEARANCE:

Shri A.P. Mathur, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71410 / 2019

DATE OF HEARING : 20 June, 2019
DATE OF PRONOUNCEMENT : 26 July, 2019

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri A.P. Mathur learned advocate on behalf of the appellant and Shri Sandeep Kumar Singh learned Deputy Commissioner appearing on behalf of the Revenue, we note that appellant had filed VCES declaration on 30 December, 2013 declaring therein tax dues of Rs.68,828/- including a calculation sheet wherein it was declared that for the month of

November, 2012 taxable value was Rs.9,27,400/- and for the month of December 2012 taxable value was Rs.13,00,048/-. It was further declared that on the said taxable value of Rs.22,27,448/- total tax liability was Rs.2,75,312.57 and out of the same 75% was paid to the tune of Rs.2,06,484/- by service receiver M/s SNC Power Corporation (P) Ltd. and rest 25% Rs.68,828/- was declared as tax dues by the appellant. The appellant were issued with a show cause notice dated 26 December, 2014 invoking Section 111 of Finance Act, 2013 and making an allegation that appellant had made substantially false declaration of tax dues of Rs.68,828/- whereas the tax liability on appellant was Rs.12,34,193/- and therefore demanded Service Tax of Rs.11,65,365/-. It was stated that since the time limit for issuance of demand-cum-show cause notice would lapse, therefore, Revenue contacted Income Tax Officers, Mirzapur and sought for information from income tax return and Form 26AS for the Financial Year 2010-11, 2011-12, 2012-13 & 2013-14. On the basis of information in said Form 26AS for the above stated period from 2010-11 to December 2012, the receipt reflected in Form 26AS were taken as the consideration received for providing services. Above stated tax dues of Rs.12 lakhs were arrived at and allegation of substantially false declaration were made in the said show cause notice. On adjudication the demand was confirmed and penalties were imposed. Aggrieved by the said order, appellant is before this Tribunal.

2. After hearing both the sides and on perusal of record, we note that Section 111 of Finance Act, 2013 empowered raising of demand if declaration filed under VCES was established to be substantially false. The declaration was for

the months of November 2012 and December 2012 whereas the said declaration was held to be substantially false on the basis of service tax due calculated on the basis of information in Form 26AS for the period from 01 April, 2010 to 31 December, 2012. Since the comparison of tax dues declared for a larger period of tax dues was made said comparison is insufficient to hold the declaration to be substantially false. If the declaration was for two months, the tax dues should have been examined for same period to establish whether the declaration was substantially false. Further, there is no examination of the activities for which appellant had received payments as reflected in Form 26AS. We note that unless it is established that the entire payments received as reflected in Form 26AS were on account of services provided and such services did not have any provisions for abatement nor there were any exemption then only such payments received are required to be considered as consideration for computation of Service Tax. Since such exercise was not undertaken the demand raised is presumptive. We, therefore, set aside the impugned order and allow the appeal.

(Order Pronounced in the open Court on 26 July, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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