CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing: 03.07.2017

Appeal No. ST/50472/2016-ST[SM]

[Arising out of the Order-in-Appeal No. UDZ/WXCUS/000/Com/0053/15-16 dated 12.01.2016, passed by the Commissioner of Central Excise, Udaipur]

M/s. Mohit Agency … Appellant

Vs.

CCE & ST Udaipur ... Respondent

Appearance:

Present Shri Vijayan Khangal, CS for the appellant
Present Shri Kumar Vikram, DR for the respondent

Coram: Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 54542/2017

Per V. Padmanabhan:

The appeal is against order in original no. 53/15-16 dated 12.01.2016.

2. The appellant filed the declaration under the Voluntary Compliance Encouragement Scheme (VCES), and declared unpaid service tax amounting to Rs.6,47,370/- for the period 2008-09 and 2011-12. On scrutiny of the declaration and consideration of the profit and loss account filed with the Income Tax Returns, the Department was of the view that the

declaration filed under VCES was partially false. The show cause notice dated 19.12.2014 was issued to the appellant proposing to reject the VCES declaration and to demand service tax amounting to Rs.22,28,626/-. On conclusion of the adjudicating proceedings the impugned order was passed in which the adjudicating authority held that the declaration filed under VCES is not required to be rejected, since it does not fall under the category of substantially false. However, the demand of Rs.1,06,030/- was confirmed along with penalty of an equal amount. Aggrieved by the same the present appeal has been filed.

3. With the above background, we have heard Shri Vijayan Khangal, CS for the appellant and Shri Kumar Vikram, DR for the respondent.

4. The Ld. Counsel submits that the appellant is not pressing the service tax demand amounting to Rs. 1,06,030/-. Further, he submitted that the penalty imposed under various sections of Finance Act may be set aside.

5. The Ld. DR supported the impugned order.

6. The adjudicating proceedings have culminated with the observations of the adjudicating authority when the declaration filed under VCES does not fall under the category of substantially false. However, the Commissioner has confirmed the service tax demand amounting to Rs.1,06,030/- in the impugned order. Since the same is not pressed it is upheld. However, I find that

there is no justification for imposition of penalty on the appellant, in view of the fact that he has come forward and declared unpaid tax under the VCES scheme.

7. Accordingly, the appeal is partially allowed and impugned order is modified to the extent above.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

Bhanu