CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 56065 of 2014 [DB]

[Arising out of Order-in-Appeal No. 95/ST/DLH/2014 dated 18.08.2014 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

Commissioner of Service Tax, Delhi-I **...Appellant**
Room No.134, Central Revenue Building,
I.P. Estate, New Delhi-110108.

Vs.

M/s. Negolice India Ltd. **...Respondent**
E-34, Second Floor, Middle Circle,
Connaught Circle,
NewDelhi-110001.

<u>APPEARANCE:</u>

Shri R.K. Maji, Authorised Representative for the Revenue
Shri Varun Gaba, Advocate for the Assessee

Coram: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR.BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. <u>50485/2019</u>

DATE OF HEARING : 29 March, 2019
DATE OF DECISION: 29 March, 2019

<u>ARCHANA WADHWA:</u>

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing Shri R.K. Maji, ld. D.R. for Revenue and Shri Varun Gaba ld. Counsel for assessee, we find that the issue in the present appeal relates to filing of declaration under the Voluntary Compliance Encouragement Scheme (VCES) floated w.e.f. 10.05.2013. The assessee filed the declaration under the said Scheme, disclosing tax liability to the extent of Rs.93,71,419/-. It

was rejected by original adjudicating authority. In terms of the said Scheme, 50% of the disclosed income is required to be deposited at the time of filing of declaration. While calculating the said 50% of the demand, the assessee took into consideration the deposits made by them prior to 10.05.2013 i.e. prior to the floating of the Scheme itself.

3. The said declaration was rejected by the lower authorities and on appeal, Commissioner (Appeals), while relying upon the Hon'ble Gujarat High Court decision in the case of **Satguru Construction Co. vs. Union of India - 2014 - TIOL - 630 – SC –Ahmd.-ST**, held that the amount deposited prior to 10.05.2013 are to be taken into consideration for the purposes of adjudging the assessees liability of deposit of 50% of the disclosed income. He accordingly, allowed the assessees appeal, which stands impugned by the Revenue.

4. Ld. AR appearing for the Revenue has submitted that two issues are involved in the present appeal. First issue relates to the assessees right of filing an appeal against the order of the designated authority in respect of an order passed by him under the VCES Scheme. Elaborating on his argument, he submits that the decision of the Hon'ble Punjab & Haryana High Court in the case of **Barnala Builders & Properties Consultants vs. CCE & ST reported in 2014 (35) STR 65,** which has held that the orders passed by the Designated Authority in respect of the declarations made under Voluntary Compliance Encouragement Scheme are appealable. However, he submits that the said decision has not been accepted by the Revenue and an SLP was filed there against before the Hon'ble Supreme Court. The said SLP was initially disposed of by the Hon'ble Supreme Court vide their order dated 24.03.2015 by keeping the issue of law open, reported as **Dy. Commissioner of Central Excise and Service Tax vs. M/s. Barnala Builders & Property Consultants in Civil Appeal No.3135 of 2015.**

5. He further clarifies that inasmuch as said disposal by the Hon'ble Supreme Court was based upon incorrect statements made by the parties, a review petition was filed before the Hon'ble Supreme Court and the earlier order of Hon'ble Supreme Court stands recalled, reported **in 2016-TIOL-88-SC-ST** and the matter is still pending before the Hon'ble Supreme Court. However, he fairly agrees that there is no stay of operation of the Hon'ble Punjab & Haryana's decision in the case of **Barnala Builders**.

5.1. As regards the second issue, ld. A.R., though agrees that the decision of the Hon'ble Gujarat High Court in the case of **Satguru Construction Co**. is applicable to the facts of the case, but submits that the same is distinguishable on facts. While drawing our attention to the said decision, he submits that the assessee in that case had deposited the dues prior to 10.05.2013, under duress, whereas the deposit in the present case is voluntary. He submits that the fact of deposit of dues prior to 10.05.2013 under duress was the reason Hon'ble Gujarat High Court to hold that the said deposits would be countable towards 50% of the deposit. As such, he submits that the said decision, which stands followed by the Commissioner (Appeals), is distinguishable on facts.

6. Ld. Advocate appearing for the respondent supports the impugned order and submits that the law having been declared by Punjab & Haryana High Court, is holding the field in the absence of any stay of the same by the Hon'ble Supreme Court. As regards merits of the case, he submits that though the legal issue stands decided in their favour by the Hon'ble Gujarat High Court and the distinction made by the ld. A.R. is not proper, inasmuch as, the legal issue is very clear, but submits that there are other decisions of other High Courts on the said issue. Reliance is placed upon in the case of Premier Associates v. Asstt. Commissioner of Service Tax reported in 2018 (2) TMI 408 –Karnataka High Court and Dr. Yeshwant Dhume vs. Asstt. Commissioner, Service Tax, Designated

Authority VCES Cell rported in 2018 (12) TMI 1042 – Bombay High Court.

7. As such, he submitted that the issue stands decided in favour of the assessee.

8. After carefully considering the submissions made by both the sides, we find that admittedly on the first issue of the assessees right to challenge the order of Designated Authority, there is Punjab & Haryana High Court decision laying down the the said order are appealable. In the absence of any other decision to the contrary and there being no stay of the said decision of the Hon'ble High court, we are unable to find favour with the Revenue's contention.

9. As regards the second issue, we find that the same is covered by above referred decision of not only Hon'ble Gujarat High Court but also by the Hon'ble Karnataka High Court and Hon'ble Bombay High Court laying down that the deposits made before 10.05.2013 are required to be taken into consideration. As such, we find no infirmity in the impugned order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected. Cross objection also stands disposed of.

[Dictated and pronounced in the open Court]

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Anita