IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH,
COURT NO. IV

Service Tax Appeal No. 52288 of 2016

[Arising out of the Order-in-Original No. 33/PC/STs/BPL-ST/2016 dated 31/03/2016 passed by The Commissioner of Customs & Central Excise, Bhopal.]

M/s C. Net Infotech Pvt. Ltd. **Appellant**
W-5/5, II Floor, Opp. Habibganj
Police Station,
Bhopal – 462 016 (M.P.).

VERSUS

The Principal Commissioner **Respondent**
Customs & Central Excise,
48, Administrative Area,
Arera Hill, Hoshangabad Road,
Bhopal – 462 011 (M.P.).

<u>Appearance</u>

Shri Z.U. Alvi, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51150/2019

DATE OF HEARING : 24/04/2019.
DATE OF DECISION: 23/08/2019.

<u>C.L. MAHAR :-</u>

The brief facts of the matter are that the appellant are engaged in providing the taxable service under the category of business auxiliary service and for which they are duly registered with the Department. The appellant have opted for Voluntary Compliance Encouragement Scheme (VCES) for the period 2008 to 2011 wherein they have voluntarily declared service tax liability of Rs. 13,03,526/- for the financial year 2009-2010 and 2010-2011. The declared short payment of the service tax was duly deposited by the appellant in the two installments within the given time period as provided under Voluntary Compliance Encouragement Scheme. The audit of the appellant was undertaken between 28 April 2014 to 29 April 2014 by the Department and it was pointed out by the audit on the basis of the scrutiny of the financial records that the appellant have grossly mis-declared the service tax liability for the financial year 2009-2010 and 2010-2011 and therefore the declaration made by the appellant was substantially false and therefore the same need to be rejected. As a corollary impugned show cause notice was issued for recovery of short payment of service tax for financial year 2009-2010 and 2010-2011. It has been alleged by the Department that the taxable value of Rs. 1,12,28,363/- was less declared by the appellant for financial year 2010-2011 and taxable value of Rs. 69,77,932/- was also mis-declared for the financial year 2010-2011 and thereby the appellant have a short paid on service tax amounting to Rs. 18,75,248/- for financial years 2009-2010 and 2010-2011.

2. It was further noticed that while comparing the gross amount shown in the ST-3 returns for the financial year 2011-2012 with the total gross revenue shown by the appellant in their financial records like balance sheet and profit and loss accounts, it was noticed that the taxable value declared under ST-3 returns was substantially less than what was declared in the financial records and thereby an amount of Rs. 26,12,534/- of the service tax was found recoverable under Section 73 (1) of the Finance Act, 1994. The audit party of the Department has also observed that for the financial year 2013-2014 the admitted service tax payable was to the tune of Rs. 2,27,01,377/-, however, the appellant have deposited only an amount of Rs. 1,48,10,031/- and thereby short paid an amount of Rs. 78,91,345/-.

3. On the basis of the above findings of the audit party, the Department had issued a show cause notice dated 18/09/2014 demanding a service tax of Rs. 1,23,79,127/- under Section 73 (1) of the Finance Act, 1994 alongwith the interest under Section 75 of the Finance Act, 1994. The matter has been adjudicated vide order-in-original No. 33/PC/STs/BPL-ST/2016 dated 31 March 2016 whereunder the learned Adjudicating Authority has confirmed the charges as levelled in the show cause notice and has held as follows :-

> "1. The demand of service tax amounting to Rs. 1,23,79,127/- issued under show cause notice No. 75/COMMR/ST/ADJ/BPL-I/2014 dated 18/09/2014 for the period from April 2009 to March 2014 is confirmed and is ordered to be recovered forthwith in terms of proviso to Section 73 (1) of the Act.
>
> 2. Interest at the appropriate rate is ordered to be charged and recovered in terms of Section 75 of the Act on the amount confirmed at (1) above.
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> 3. A penalty of Rs. 10,000/- is imposed under Section 77 of the Act for contravention of provisions of Section 69 and 70 of the Act.
>
> 4. A penalty of Rs. 1,23,79,127/- is imposed upon the Noticee in terms of Section 78 of the Act. The penalty shall be reduced to twenty five percent of the service tax so determined, provided the service tax and interest is paid within a period of thirty days of the receipt of this order, provided also that the benefit of reduced penalty shall be available only if the amount of such reduced penalty is also paid within such period".

4. The learned Advocate appearing on behalf of the appellant have contended that it is wrong on the part of the Department to allege that the declaration made by the appellant under the VCES is substantially false since the appellant is involved both in the development of the software and sale of the software and therefore the receipt in the balance sheet constitute the Revenue generated from both the element of sales and from the element of the service. It has further been argued by the learned Advocate that the Department has not been able to establish that VCES declaration made by the appellant was substantially false and failed to prove that appellant have made a substantially false declaration under the VCES. It was further been added that the

Department has not adduced any concrete evidence to establish their case. Regarding the short payment of service tax for the financial year 2013-2014 of Rs. 78,91,345/- it has been claimed that the entire amount had been paid by them vide various challans before January 2016 i.e. prior to issue of the order-in-original. With regard to short payment of the service tax for financial year 2011-2012 the appellants have submitted that the Department has taken the total value of sales and service component while calculating the service tax and since the appellant is also engaged in sale of the software and therefore the revenue generated from the sales should have been reduced from the gross receipt shown in the balance sheet while calculating the short payment of the service tax.

5. After hearing the rival submissions as well as on perusal of the record of the appeal, we find that the Department has written to the appellant vide three letters bearing No. RST/BPL-I/GR.B/AN-C-Net-63/14 dated 23 June 2014, 9 July, 2014 and 17 July 2014, however, as per Department, the assessee did not respond to the letters of the Department. It was only after sometime that the appellant have replied vide their letter dated 5 August 2014 that due to heavy rains their financial books have got destroyed and some of the receipt shown in the balance sheet for the financial year 2009-2010 and 2010-2011 also includes certain receipts on account of software product sale by them and same has also been claimed for financial year 2011-2012 and 2012-2013. However, we find that the claim made by the appellant that part of the receipt for the financial year involving 2009-2010, 2010-2011, 2011-2012 and 2012-2013 also involved sales receipts on account of sale of software product, however, it is a matter of record that no details in the form of any invoice or sales tax/VAT/assessment return has been submitted by the appellant to substantiate their claim. It is also a matter of record that so far as the short payment of service tax for the financial year 2013-2014 is concerned, the appellant have

admitted their liability and the short payment of the service tax has been deposited by them after issue of the show cause notice.

6. We find that the Department have enough evidence to prove that the VCES declaration made by the appellant for financial year 2009-2010, 2010-2011 has been substantially false as the appellant have not come clean in making a declaration before the Department about their actual service tax liability and therefore we feel that VCES declaration made by the appellant have correctly been rejected. We also feel that the claims made by the appellant that part of receipts pertains to sale of software product has also not been substantiated by the appellant by adducing the requisite evidences in the forms of invoices or VAT/sales tax returns etc. and therefore we feel that the findings given in impugned order-in-original are legally sustainable.

7. In view of above, we find no infirmity in the impugned order-in-original and therefore we uphold the same. Accordingly, the appeal is dismissed.

(Order pronounced in open court on 23/08/2019.)

(Ashok Jindal)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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