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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CENTRAL EXCISE APPEAL NO.7 OF 2018

SADGURU ELECTRICALS

Through its Prop. Shri. Mali
Parmeshwar Rajendra
At Plot No.26/1973,
Vidyavihar colony,
Solapur bypass Road,
Osmanabad 413 501.

..APPELLANT

VERSUS

The Commissioner
Customs, Central Excise and
Service Tax
(Now the Commissioner of CGST
and Central Excise,
Commissionerate Aurangabad.)
CGST Commissionerate Office
Town Centre, N-5, Cidco,
Aurangabad 431001 (M.S.)

..RESPONDENT

Mr Alok Sharma, Advocate h/f Mr R.S. Indani,
Advocate for appellant;
Mr D.S. Ladda, Advocate for respondent sole.

**CORAM : PRASANNA B. VARALE &
S. M. GAVHANE, JJ.**

DATE : 12th JULY, 2018

ORAL ORDER :

Heard Mr. Alok Sharma, learned Counsel

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appearing for the appellant and Mr. Ladda, learned Counsel for the respondent sole.

2. There is no dispute on the facts that the appellant subjected himself to a scheme known as 'Voluntary Compliance Encouragement Scheme'. (for short, 'VCES'). Certain rules are also framed and they are known as 'Service Tax Voluntary Compliance Encouragement Rules, 2013'. The appellant runs enterprise namely Sadguru Electricals and is engaged in providing taxable services having service tax registration No. AQLPM7161RSD001. The appellant received a notice and thereby certain amount was directed to be paid by the appellant as against unpaid taxes. It may not be necessary for us to go into other details.

3. The appellant submitted his reply to the show cause notice but finding no favour with the reply, the adjudicating authority confirmed the demand and ordered recovery of tax amount along with under Section 73 of the Finance Act, 1994, in

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addition penalty was imposed.

4. Being aggrieved, the appeal was preferred before the appellate tribunal by the appellant on 23rd January, 2016. The appellate tribunal initially issued notice and then on 22nd September, 2017 passed order. Same is impugned in the present appeal.

5. Mr. Sharma, learned Counsel appearing for the appellant invited our attention to the order and submitted that though firstly reference is made to the absence of the appellant, the tribunal subsequently by observing that VCES being a self contained code under Finance Act, 2013 without any appeal provision in the scheme dismissed the appeal holding that the appeal is not maintainable. He then submits that dismissal of appeal on the ground of no provision in the scheme is unsustainable. He further submits that basic Act itself provides remedy of appeal and merely because such appeal remedy is not a part of same scheme, the appeal

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ought not to have dismissed by the tribunal on the ground that there is no provision in the scheme of appeal.

6. Mr. Sharma, learned Counsel appearing for the appellant by placing heavy reliance on the judgment of Madras High Court in the matter of **Narasimha Mills Pvt. Ltd. vs. Commissioner of C. Ex.(Appeals), Coimbatore**, reported in **2015(39) S.T.R. 795 (Mad.)** submitted that the very issue fall for consideration before the Madras High Court and the Madras High Court, by specific observation, dismissed the appeal on the ground that there is no remedy of appeal in the scheme would be giving unfettered power to the authority and same is not acceptable.

7. Mr. Sharma, learned Counsel appearing for the appellant invited our attention to the judgment of Punjab & Haryana High Court in the matter of **Barnala Builders & Property Consultants vs Dy. C.C.E. & S.T. Dera Bassi**, reported in **2014(35)**

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S.T.R. 65 (P & H) and submitted that similar view which is taken by the Madras High Court in **Narasimha Mills Pvt. Ltd** (supra) is taken by Punjab and Haryana High Court in **Barnala Builders & Property Consultants** (supra).

8. Though Mr. Ladda, learned Counsel appearing for the respondent opposes the appeal, considering the facts of the present matter and considering the judgments relied on by Mr. Sharma, learned Counsel appearing for the appellant, we are of the view that there is no reason to adopt a different approach and view than the approach and view adopted by Madras High Court as well as Punjab & Haryana High Court.

9. It would be useful to refer observations of Madras High Court on the issue in paragraph Nos. 18 and 19, which read thus :

“18. Further, it is relevant to note that the Service Tax Voluntary Compliance Encouragement Scheme, 2013 has been

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introduced by the Central Government, in exercise of the powers conferred by sub-sections (1) and (2) of Section 114 of the Finance Act, 2013 (17 of 2013) with effect from 13-5-2013 by Notification 10/2013 and hence, it is not a self-contained code, but is to be construed as a part and parcel of the Chapter V of the Act, 1994 in view of the contents of Section 105 of the Finance Act, 2013. Therefore, when the said scheme itself is construed as part and parcel to the Finance Act, all other provisions of the Act except to the extent specifically excluded would automatically apply to proceedings under the scheme and consequently, I am of the view that the order, dated 15-11-2013 passed by the Assistant Commissioner of Central Excise, the second respondent herein is appealable under Section 85 of the Act, 1994."

"19. The remedy of appeal is a creation of a statute. In fact, making a provision of appeal is the statute is to give a hope of success to the aggrieved party who has been affected by the adverse order of the decision maker, who, while passing such order, might have misapplied the law, came to an incorrect factual finding, acted in

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excess of his jurisdiction, abused his powers, was biased, considered evidence which he should not have considered, or failed to consider evidence that he should have considered. To err is human and hence it cannot be expected that all the decision makers would be perfect in their approach in arriving at just conclusions. If any statute or scheme does not make the appeal provision, it would be nothing to mean that the order passed by the authority has become final and conclusive for all the purposes and thereby, giving uncontrolled and unquestionable powers to the said authority by virtue of which, he becomes as monopoly over the statute and will certainly act in an arrogant manner. In this case, the second respondent is the original authority, whose decision regarding the eligibility of the assessee under the scheme is final even if the said decision may perverse since no appeal provision has been made. Therefore, the entire scheme has virtually been vested exclusively within his control and the party who seeks the benefit under the scheme has to wait for grant of mercy by the authority."

(emphasis supplied)

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10. In view of above referred facts, the appeal is allowed. The impugned order dated 22nd September, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal is quashed and set aside. The CESTAT to hear the appeal afresh and pass appropriate orders on merit of the appeal No. ST/86698/16-Mum, as expeditiously as possible.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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