IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/274/2011

(Arising out of Order-in-Appeal No.2/2011 (MST) dated 19.1.2011 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Choudary Technical Ship Services Pvt. Ltd. — Appellant

Vs.

Commissioner of Service Tax, Chennai — Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri R. Subramanian, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **12.04.2018**

Final Order No. **41103 / 2018**

Per Bench

The appellants were issued show cause notice dated 9.9.2008 alleging non-inclusion of income received from handling charges in their value of taxable services for discharging service tax liability. The appellant contested the show cause notice contending that these amounts received by them are nothing but reimbursable expenses and is not to be included in the total taxable value. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence the appellant has filed this appeal.

2. On behalf of the appellant, ld. counsel Shri M. Kannan submitted that the issue whether reimbursable expenses is includible in the total taxable is settled by the decision of the Apex Court in the case of Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. – 2018 (3) TMI 357. However, the ld. counsel fairly conceded that the authorities below have rejected the plea of the appellant for the reason that the appellant has not established by evidence that these income are reimbursable expenses. He requested that the appellant may be given a further chance to establish the same.

3. The ld. AR Shri R. Subramanian reiterated the findings in the impugned order.

4. Heard both sides.

5. The main contention put forward by the appellant is that the amount alleged to be received by the appellant as handling charges in the show cause notice is nothing but reimbursable expenses. On perusal of records, we find that the appellant has not adduced sufficient evidence to establish this plea. The ld. counsel has pleaded a further chance to establish the same. Taking note of the request made by the appellant, we are of

the considered opinion that a further chance can be granted to the appellant to establish his case. The matter is therefore remanded to the adjudicating authority for fresh consideration of the issue. The adjudicating authority shall grant an opportunity of hearing to the appellant and also consider the evidence produced by the appellant, if any. The impugned order is set aside keeping all the issues open. The appeal is allowed by way of remand.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex