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

ST/COD/41118/2016 in ST/42438/2016
ST/COD/41120/2016 in ST/42441/2016
ST/COD/41119/2016 in ST/42440/2016

(Arising out of Order-in-Appeal No. 33,34,35/2016 dated 28.03.2016 passed by the Commissioner of Central Excise and Service Tax (Appeals), Salem,

1 & 2 Punjai Puliampatti Municipality — Appellants

3. The Commissioner, Sathyamangalam Municipality

Vs.

CCE & ST, Salem — Respondent

Appearance

Shri M. N. Bharathi, Advocate
for the appellant

Shri R. Subramaniyam, AC (AR)
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing/Decision: **03.08.2017**

FINAL ORDER No. 41394 - 41396 **/2017**

After rejecting the request for adjournment, I proceed to decide the condonation of delay application in all the three matters. The delay in filing the appeals to the extent of 160 days which stand attributed to the fact that during the period in question, there were State elections and the officers were busy with the same. It is further submitted that being a State Corporation, they had to seek permission from the higher authorities which took sometime to get sanction and thus resulting in delay.

2.1 Appreciating the facts that the appellants were State Corporate and there is a complex procedure to file an appeal as also the fact that the officers were busy with the State elections and in the interest of justice I condone the delay in filing the present appeals. All the three COD applications are allowed.

2.2 I also note that the issue involved is not a complex issue and stands decided by the precedent decisions of the Triubnal. Vide the impugned orders, the lower authorities have confirmed demand of service tax against the assessees, along with confirmation of interest in respect of services provided by them falling under the category of "renting of immovable property service". In addition, penalties stand imposed upon them and they are contesting the penalties only imposed under the Finance Act, 1994.

2.3 I find that the Tribunal vide its Final Order Nos. 40385 to 40387/2016, dated 01.03.2016 had observed that-

> "the penalty imposed in adjudication was waived by learned Commissioner (Appeals) on the ground that he did not find any mala-fide of the respective respondents and CBE & C guidelines do not intend to penalize public authorities. He also noted that no Government body would be making any fraud or collusion to

Customs, Excise & Service Tax Appellate Tribunal defraud Revenue. When such recorded finding is apparent from record, in absence of any evidence to controvert the same, no interference to the order of Commissioner (Appeals) is called for. Accordingly all the three appeals of Revenue are dismissed."

2.4 Apart from the above, I also note that the issue of leviability of service tax on renting of immovable properties was the subject matter of litigation before various High Courts. A reference can be made to the judgment of the Hon'ble Delhi High Court in the case of *Home Solution Retail India Ltd. Vs. UOI* – 2009 (237) ELT 209 (Del.).

3 In such a scenario, there can be a bonafide belief on the part of the assessee as regards non-payment of service tax. Accordingly, I hold that no penalties are required to be imposed upon them and the same are accordingly set aside, while confiming the service tax along with interest.

4. All the three CODs and appeals are allowed in above terms.

(Order dictated and pronounced in the open Court)

4/8/17
(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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