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

ST/40760/2017 - SM

[Arising out of Order-in-Appeal No.10/2017, dated 15.02.2017 passed by the Commissioner of Customs & Central Excise (Appeals-2), Tiruchirapalli]

PON DEVARAJAN APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, TIRUCHIRAPALLI RESPONDENT

Appearance:

For the Appellant Ms. Vishnu Priya, Adv.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **25-07-2017**

FINAL ORDER NO. 41411/2017

Per Archana Wadhwa:

After hearing both sides, I find that the dispute relates to payment of service tax on Renting of Immovable Property, which is not being disputed by the appellant.

2. It is seen that before Commissioner (Appeals), the appellant contested on the point of valuation of such services by submitting the property tax paid by them is required to be taken out of the value of the service as also the entire consideration is to be treated as cum-duty tax. Commissioner (Appeals) agreed to the first proposition and held that in favour of the assessee. However, as regards, the cum-tax benefit, he observed that the issue stand decided by Tribunal's decision in the case of *Shakti Motors Vs Commissioner of Service Tax,*

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

Ahmedabad reported as *2008 (12) S.T.R.710 (Tri.-Ahmd.)* that if the invoices raised against the appellant do not show the tax amount separately, the benefit cannot be extended to them.

2.1 The appellant's contention is that the said explanation of Rule 67(2) was introduced after 2006, whereas, the period involved in their case is prior to 2006. The learned advocate has also argued that though the issue of imposition of penalties were raised before Commissioner (Appeals), he has not given any finding on the same and has simplicitor remanded the matter for deciding the same afresh in the light of the observations made by him.

3. Inasmuch as, the matter stands remanded to the original adjudicating authority, I make the remand, as open remand with directions to the original adjudicating authority to decide the issues on cum-tax benefit as also on penalties, without adverting the observations made by Commissioner (Appeals). The appellant would be at liberty to contest all the issues before original adjudicating authority in de novo proceeding for which purpose, they would be given an opportunity.

Appeal is disposed of in the above terms.

(Dictated and pronounced in open court)

26/7/17.

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
26-07-2017

प्रमाणित प्रति/Certified True Copy
2/8
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते