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

ST/~~547~~ 574/2009

(Arising out of Order-in-Appeal No.11/2009 dated 18.8.2009 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Sheladia Associates Limited — Appellant

Vs.

Commissioner of Central Excise, Trichy — Respondent

Appearance

Ms. S. Sridevi, Advocate for the Appellant
Shri R. Subramaniyam, 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: **09.08.2017**

Final Order No. 41556/2017

Per Bench

The issue involved in the above case is on the demand of service tax on TDS portion of the amount received as well as on the reimbursement expenses. At the time of hearing, the learned counsel Ms. Sridevi submitted that the appellant is not contesting the liability to pay service tax and is confining her argument only in respect of the penalties imposed. She submits that the appellant did not discharge service tax on the

Customs, Excise & Service Tax Appellate Tribunal bonafide belief that service tax is payable only on the net amount received. Further, that the withholding tax (TDS) is on the amount paid to the appellant in foreign exchange and the appellant was of the view that they are not liable to pay service tax on such reimbursement as well as withholding tax thereon. She relied upon the decision in the case of Margarpatta Township Dev. & Construction Co. Ltd. Vs. Commissioner of Central Excise, Pune– 2016 (43) STR 132 and contended that the penalties may be waived. In regard to service tax demand on reimbursements, she relied upon the judgment in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. Union of India – 2013 (29) ELT 9 (Del.).

2. The learned AR Shri R. Subramaniyam reiterated the findings in the impugned order.

3. Heard both sides.

4. The learned counsel has submitted that the appellant is not contesting the demand of service tax or the interest thereon. She has confined her arguments on the penalties imposed. In the case of Margarpatta Township Dev. & Construction Co. Ltd. (supra), in similar circumstances, the Tribunal has set aside the penalties imposed. We find that the penalties imposed are unjustified. It is also to be noted that the authorities below have imposed equal penalty under section 77 which is beyond the provisions of law. Therefore,

Customs, Excise & Service Tax Appellate Tribunal the penalties imposed under sections 76 and 77 are set aside in toto.

5. In the result, the appeals are party allowed in the above terms.

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

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

Sulekha Beevi

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

Rex

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

प्रमाणित प्रति / Certified True Copy
31/8
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai