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

ST/582 & 583/2009

(Arising out of Order-in-Appeal No.133 & 134/2009 (SLM) (ST) dated 28.8.2009 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Sharada Terry Products Ltd. Appellant

Vs.

Commissioner of Central Excise, Salem Respondent

Appearance

Ms. D. Naveena, 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 Nos. 41557-41558/2017

Per Bench

The common issue involved in the above appeals is whether the appellant will fall under clause (i) or clause (ii) of the exemption Notification No. 34/2004-ST dated 3.12.2004. In other words, whether the goods transported by the GTA, exclusively for the appellant, would fall within the meaning of "individual consignment" or "consignments". The said

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Notification provides exemption of service tax for transportation of goods by road on the basis of consignment, charges and the consignee. The contention of the assessee is that they fall under clause (i) since the GTA had exclusively transported for them and clause (ii) is applicable in cases where GTA undertakes transportation of multiple consignments in a single goods carriage and a consignee has more than one consignment in the said goods carriage. The Revenue's stand is that the assessee is eligible for exemption up to only Rs.750/- since the GTA had exclusively transported for the assessee and therefore the transaction will fall within the meaning of 'individual consignment' mention in clause (ii). The adjudicating authority had confirmed the demand of Rs.61,989/- and imposed penalty under section 78 for the period January 2005 to February 2006 and Rs.16,911/- and imposed penalty under section 76 for the period March 2006 to January 2007. The appeals filed by the appellants were dismissed by Commissioner (Appeals). Hence the appellants have filed these appeals before the Tribunal.

2. At the time of hearing, the learned counsel Ms.D.Naveena appearing for appellant was fair enough to concede that the Hon'ble Madras High Court has held in favour of the Revenue in the case of Commissioner of Central Excise, Salem Vs. Subramania Siva Co-op Sugar Mills Ltd. – 2014 (35) STR 500

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(Mad) wherein it was held that where the transportation is for a single consignee, the transaction will fall under the second clause. The learned counsel has also argued to set aside the penalty. She submits that they were under the bonafide belief that the said services are not liable to tax as per the exemption Notification. That being an interpretational issue, the appellants may be given the benefit of waiving the penalties. That further appellant had declared the entire transaction in their returns. Apart from vague allegation, there is no evidence brought out to prove that the appellant has suppressed or wilfully mis-stated any facts.

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

4. Heard both sides.

5. As already discussed above, the issue stands settled in favour of the Revenue by the judgment reported in the case of Subramania Siva Cooperative Sugar Mills Ltd. (supra). Following the same, we hold that the demand is sustainable. However, the issue being interpretational one and having travelled upto the Hon'ble High Court, we find that the appellant has put forward reasonable cause for non-payment of service tax. Thus, invoking section 80 of the Finance Act, 1994, we are of the view that the penalties imposed under sections 76 and 78 are unwarranted.

6. In the result, the impugned order in the above appeals are modified to the extent of setting aside the penalties imposed under sections 76 and 78 of the Finance Act, 1994 without disturbing the confirmation of demand of service tax or the interest thereof.

(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

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