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

ST/42473 to 42475/2016-SM

[Arising out of Order-in-Appeal No.508/2016 (STA-I), dated 24.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

M/s. MANGAL TIRTH ESTATE LTD. APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI-I RESPONDENT

Appearance:

For the Appellant None

For the Respondent Shri R. Subramaniyan, AC (AR)

CORAM:

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

Date of hearing **01-08-2017**
Date of Pronouncement 10/8/17

FINAL ORDER NO.A. 41614 – 41616/2017

Per Archana Wadhwa:

Service tax stands confirmed against the appellant along with imposition of penalties in terms of section 76 of the Finance Act, 1994 under the category of Renting of Immovable Property.

2. The service tax is not under dispute, the appellant's prayer is that inasmuch as, they were not collecting service tax from their

Customs, Excise & Service Tax Appellate Tribunal tenants, the entire consideration should be treated as cum-duty price and the benefit of cum-duty can be extended to them. The lower authority have held against the assessee on the ground that the tax amount has not be retained by the appellant in their P&L account and as such it cannot be said that the same is not recoverable from the client.

3. Appellants have also challenged imposition of penalty on the ground that the litigation was going on in respect of the taxability of renting of immovable category.

5. After hearing both sides, I find that admissible tax has not been collected by the appellant from their tenants and if the same has not been retained of in the P&L account, the benefit of the same has to be extended to the assessee in terms of the law declared by various courts. Reference can be made to Hon'ble Supreme Court decision of *Maruti Suzuki Ltd.*

As such, I agree with the appellants subject to their writing of tax amount from their P&L account. Accordingly, the matter is remanded to the lower authorities for re-quantification of the demand by extending cum-duty benefit.

6. As regards penalty, I fully agree with the appellant that the issue was subject-matter of litigation before various courts. Reference can be made to Delhi High Court decision———in the case of reported as *2010-TIOL-341-HC-Del-ST*. The appellants have also contended that after issue of the stay order, they have approached the Hon'ble Madras High Court, who passed the stay order against the notice. In such a scenario, imposition of any penalty on the appellant is not justified. Accordingly, the same is set aside.

Customs Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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Appeal is allowed in the above terms.

(Pronounced in open court on 10/8/17)

10/8/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
10-08-2017

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

Customs, Excise & Service Tax Appellate Tribunal