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

ST/360/2009

(Arising out of Order-in-Appeal No.52/2009 dated 25.3.2009 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Cresent Residency — Appellant

Vs.

Commissioner of Central Excise, Trichy — Respondent

Appearance

Ms. Minchu Mariam Punnose, 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: **28.08.2017**

Final Order No. 41908/2017

Per Bench

The appeal is against the demand of service tax in respect of construction of residential complex service. At the time of hearing, ld. Counsel Ms. Minchu Mariam Punnose appearing on behalf of the appellant submitted that the period involved is prior to 1.6.2007 and the issue whether the said services are liable to service tax has been decided by the

Customs, Excise & Service Tax Appellate Tribunal

Hon'ble Supreme Court in the case of Commissioner of Central Excise, Kerala Vs. Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC). She, however, fairly conceded that in the present case, the appellant has challenged only the penalties imposed. Heard the ld. AR Shri R. Subramaniyam.

2. After considering the submissions made by both sides as well as perusal of records, it is seen that the appellant has challenged only the penalty imposed by the original authority by filing appeal before Commissioner (Appeals). The Commissioner (Appeals) upheld the penalties imposed under sections 76, 77 and 78 of the Finance Act. Being aggrieved the appellants have filed the present appeal. Since the levy of service tax on impugned services prior to 1.6.2007 is not sustainable and the appellant contesting only the penalties imposed, we order that the impugned order upholding the penalties imposed under sections 76, 77 and 78 of the Finance Act are set aside. The appeal is allowed in the above terms without disturbing the rest of the demand.

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

Sulekha Beevi

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

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI