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

Appeal No.ST/84/2008

[Arising out of Order-in-Original No.09/2008 dated 11.01.2008 passed by the Commissioner of Service Tax, Chennai]

True Value Homes (India) Pvt. Ltd. — Appellant

Versus

Commissioner of Service Tax, Chennai — Respondent

Appearance:

Shri J. Shankarraman, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision : 03.03.2017

FINAL ORDER No. 40417/2017

Per D.N. Panda

Ld. counsel says that there are two demands in this case. The first demand relates to nature of the activity carried out which squarely fall under the "Works Contract Service" although that was named by the department as "Industrial Commercial Construction". The second demand relates to "Maintenance and Repair Service".

2. Assessee does not dispute the demand on "Repair and Maintenance Service" since liability on that count is discharged by them.

3. Ld. counsel says that there was a construction of civil structures ~~on~~ as the Park Villa and that was made before 1.6.2007. Hon'ble Supreme Court in the case of *CCE & CC Vs Larsen and Toubro Ltd.* – 2015 (39) STR 913 (SC) has held that any works contract carried out before 1.6.2007 does not result in taxable service as there is no such taxing entry in the statute book. Therefore the allegation of taxability of the works contract does not sustain.

4. Revenue, on the other hand, says that appellant itself has paid the tax and adjudication is done properly.

5. Heard both sides and perused the record.

6. The law declared by Apex court is the law binding on the authorities and the nature of the activities carried out by appellant was civil construction. As work contract was not liable to tax prior to 1.6.2007, there shall not be taxability on this aspect of the adjudication. Further, once there is no liability on works contract, therefore there shall be no penalty.

7. In so far as Repair and Maintenance activity is concerned, for no agitation against that by appellant, there shall be demand of service tax on that count.

8. So far as penalty on the Maintenance and Repair service is concerned, there is contract between the appellant and the residents that soon after residents association is formed, the deposits shall be transferred to the association. Ld.adjudicating authority is required to examine the records and evidence of the appellant in this regard.

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If realization of above has gone to the association, appellant shall not be liable to penalty. Otherwise, appropriate order on penalty shall be passed. On the aforesaid limited issue, appeal is remanded to the Adjudicating Authority. Consequential relief, if any, shall flow in accordance with law upon adjudication of the penalty issue.

9. We make it clear that if the authority chooses to impose penalty, there shall be penalty under section 78 of the Finance Act but not under section 76. As huge money has been deposited with the department, to ensure that public confidence is not shaken, the authority shall complete the proceeding by 30.6.2017 and order refund, if any, that may accrue to the appellant. That shall also be paid forthwith in accordance with law.

(Dictated and pronounced in open court)

08.03.2016

(Madhu Mohan Damodhar)
Technical Member

7/3/2017

(D.N. Panda)
Judicial Member

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