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

Appeal No. ST/229/2009
[Arising out of Order-in-Appeal No.95/2008 (M-ST) dt. 29.12.2008 passed by the Commissioner of Central Excise (Appeals), Chennai]

Invensys India Pvt. Ltd. — Appellant

Versus

Commissioner of Service Tax,
Chennai — Respondent

Appearance:

Shri T.R. Ramesh, Advocate
For the Appellant

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

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing / decision : 05.09.2017

FINAL ORDER No. 41968/2017

Per B. Ravichandran

The appellant is aggrieved by the order dt.29.12.2008 of Commissioner (Appeals), Chennai.

2. The appellants were engaged in the manufacture of automation products and were also rendering taxable services under the category of "Consulting Engineer Service" and "Commissioning and Installation Service." The dispute in the present appeal relates to the period 09.07.2004 to 09.09.2004 involving tax liability of the appellant under the category of 'Maintenance or Repair Service' in respect of

Customs, Excise & Service Tax Appellate Tribunal maintenance of software for the clients. The lower authorities confirmed service tax liability of Rs.4,84,568/- along with penalties under Section 76, 77 & 78 of the Finance Act, 1994.

3. Ld. counsel appearing for the appellants, contesting the findings of the lower authorities, submitted that prior to the introduction of *Explanation* under the tax entry under Section 65 (64) of Finance Act, 1994 on 1.5.2006 no tax liability will arise for such services for the appellant. He relies on the decision of the Hon'ble Madras High Court in *Kasturi & Sons Ltd. Vs UOI and Others* - 2011-TIOL-240-HC-MAD-ST.

4. The Ld. A.R reiterated the findings of the lower authorities.

5. After hearing both sides and on perusal of appeal records, we note that the dispute in the present case is resolved by the decision of the Hon'ble Madras High Court in the case of *Kasturi & Sons* (supra) which has been followed by this Tribunal in *Financial Software Systems Pvt. Ltd. Vs CST Chennai – 2014 (33) STR 393 (Tri.-Chennai).* Accordingly, following the ratio of these decisions, we find that the impugned order is not sustainable. Accordingly, the same is set aside. Appeal is allowed with consequential relief, if any, as per law.

(dictated and pronounced in court)

6.9.17.

(B. Ravichandran)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

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