CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 3486 of 2012

(Arising out of Order-in-Appeal No. IND/CEX/000/APP/197/12 dated 26.07.2012 passed by the Commissioner of Central Excise, Indore)

DATE OF HEARING : 29.01.2018
DATE OF DECISION : 29.01.2018

M/s Shiv Sai Caterer & Supplier ….. **Appellants**
(Rep. by Ms. Surbhi Sinha, Adv.)

VERSUS

CCE, Indore .…. **Respondent**
(Rep by Sh. P. Juneja, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50527/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. IND/CEX/000/APP/197/12 dated 26.07.2012 passed by the Commissioner of Central Excise, Indore. The period in dispute is April 2009 to March 2011.

2. The brief facts of the case are that, the assessee-Appellants are providing outdoor catering services and availing benefit of exemption under Notification No. 21/2004-ST dated 10.09.2004, which was subsequently withdrawn vide Notification No. 02/2006-ST dated

01.03.2006. Therefore, for the period under consideration, the lower authorities has demanded the Service Tax and imposed penalties. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Ms. Surbhi Sinha, learned counsel for the assessee-Appellants and Shri P. Juneja, learned DR for the Department.

4. After hearing both sides and on perusal of the material available on record, it appears that the matter has come up before the Tribunal in the assessee-Appellants' own case and the Tribunal vide Final Order No. 50194-50195/2018 dated 16.01.2018 has observed that :

> **"4. After hearing both sides and on perusal of the material available on record, it appears that the matter has come up before the Tribunal in the assessee-Appellants' own case and the Tribunal vide Final Order No. 52467-52468/2016 dated 14.07.2016 and Final Order No. 54054-540552017 dated 13.06.2017 confirmed the demand of Service Tax, but by taking a lenient view dropped the penalties."**

5. By following our earlier orders (supra), we confirm the demand of Service Tax and drop the penalties by invoking the provisions of Section 80 of the Finance Act, 1994.

6. In the result, the appeal filed by the assessee-Appellants is partly allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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