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Cce, Salem Vs. M/S. Devi Constructions

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Mar-16-2010

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President

Appeal No. : Appeal No. ST/99 of 2009

Appellant : Cce, Salem

Respondent : M/S. Devi Constructions

Advocate for Pet/Ap. : Shri C. Rangaraju, SDR for the Appellant. Shri M.N. Bharathi, Advocate for the Respondents.

Judgement :

The Revenue is aggrieved by the setting aside of penalties imposed on the assessees herein under the provisions of Sections 76 and 78 of the Finance Act, 1994, on the ground that the assessees had established reasonable cause for failure to pay the service tax leviable within time, and extended the protection under Section 80.

2. I have heard both sides. Section 80 of the Finance Act provides that notwithstanding anything contained in the provisions of Sections 76, 77 and 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure. The Commissioner (Appeals) has noted that the assessees had obtained registration certificate well before the issue of levy of tax arose and that there was

a confusion in the mind of the assessee since Southern Region Petroleum Corporation Contractors Welfare Association was taking steps to move the High Court regarding levy of service tax. I am also informed that the Hon ble Madras High Court has granted interim stay against the levy of service tax, as prayed for by the association in its petition before the High Court. In these circumstances it cannot be held that the assessees were guilty of suppression with intention to evade payment of tax so as to make them liable to penalty under Sections 76 and 78 of the Finance Act, 1944. The Commissioner (Appeals) has therefore rightly extended the protection under Section 80 of the Finance Act. I, therefore, uphold the impugned order and reject the appeal.

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