

M/S Utkal Builders Limited Vs Commissioner Of Central Excise, Customs & Service Tax, Bhubaneswar I

Court: Customs, Excise And Service Tax Appellate, Kolkata

Date of Decision: Sept. 27, 2023

Acts Referred: Finance Act, 2010 " Section 11A(1), 65(105)(zzzz), 73(1), 77, 78

Hon'ble Judges: Ashok Jindal, Member (J); K.Anpazhakan, Member (T)

Bench: Division Bench

Advocate: Shovit Betal, S.Mukhopadhyay

Final Decision: Allowed

Judgement

Ashok Jindal, Member (J)

1. By way of impugned order, the demand of service tax has been confirmed against the appellant for the period from 01.06.2007 to 31.03.2010 under

the category of "renting of immovable property" service.

2. The facts of the case are that the appellant is rented out their premises to M/s Pantaloons Retails (India) Limited. The levy of service tax came into

knowledge initially from 01.06.2007. The said levy of service tax were challenged by the various tenants before the Hon'ble Delhi High Court in

the case of Home Solution Retail Vs. Union of India reported in 2009 (237) ELT 209 (Del.), wherein the Hon'ble High Court held that the levy of

service tax is ultra vires. Thereafter, vide Section 77 of the Finance Act, 2010, it was made taxable retrospectively w.e.f. 01.06.2007.

2.1 In these set of facts, a show-cause notice dated 10.10.2011 was issued to the appellant by invoking extended period of limitation.

2.2 The matter was adjudicated. The demand of service tax was confirmed along with interest and the penalty was also imposed.

2.3 Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that it is an admitted fact that the period involved from 01.06.2007 to 31.03.2010 and the show-cause

notice has been issued by invoking extended period of limitation on 10.10.2011. The said show-cause notice is barred by limitation as the levy of

service tax on renting immovable property came into effect by way of amendment in the Finance Act, 2010 retrospectively w.e.f. 1. 06.2007. In that

circumstances, the extended period of limitation is not invocable. To support, he relied on the decision of this Tribunal in the case of Jindal Vegetable

Products Limited Vs. Commissioner of Central Excise, Meerut II reported in 2013 (31) STR 367 (Tri.-Del.). He, therefore, prayed that the impugned

order is to be set aside.

4. On the other hand, the Id.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the facts are not in dispute that the appellant is providing renting immovable property service w.e.f. 01.06.2007 and at that time, the

wires of levy of service tax was challenged before the Hon'ble Delhi High Court and it was held that the levy of service tax under renting of

immovable property is ultra vires. Thereafter, by way of Section 77 of the Finance Act, 2010, the amendment was brought in and the levy of service

tax became on renting of immovable property and came retrospectively w.e.f. 01.06.2007.

7. In that circumstances, the show-cause notice issued to the appellant by invoking extended period limitation is not sustainable as held by this Tribunal

in the case of Jindal Vegetable Products Limited (supra), wherein this Tribunal has observed as under :

“6. There is no dispute that the activity of the appellant was renting of immovable property. Though service in relation to renting of immovable

property had been brought within the service tax net w.e.f. 1-6-2007 by introducing Section 65(105)(zzzz), the validity of this levy had been

challenged before the Hon'ble Delhi High Court and Hon'ble Delhi High Court vide judgment dated 18th April, 2009 in the case of Home

Solution Retail India (supra) held that mere renting of immovable property by itself cannot be regarded as service and would not attract service tax. It

is only by retrospective amendment introduced w.e.f. 1-6-2007 by Finance Act, 2010, that the renting of immovable property by itself became a

taxable service neutralising the judgment of judgment of Hon'ble Delhi High Court. In the circumstances of the case, I am of the view that the

appellant cannot be accused of suppressing the relevant information from the department as during the period of dispute there was doubt about the

levy of service on the renting of immovable property till the dispute was put to an end by retrospective amendment made by Finance Act, 2010.

Hon'ble Apex Court in the case of Continental Foundation Jt. Venture reported in 2007 (216) E.L.T. 177 (S.C.), has held that when during the

period of dispute there was doubt about interpretation of some provisions of law on account of conflicting judgments, which were later on resolved by

a Larger Bench, the extended period under proviso to Section 11A(1) cannot be invoked. I am of the view that the ratio of this judgment of Apex

Court is squarely applicable in this case and in this case the longer limitation period under proviso to Section 73(1) would not be applicable and for the

same reason, the penalty under Section 78 of the Finance Act, 1994 also would not be attracted, as the elements required for invoking longer limitation

period under proviso to Section 73(1) are the same as those required for imposing penalty under Section 78 of the Finance Act, 1994. Thus, the entire

service tax demand is time barred. The impugned order is, therefore, not sustainable. The same is set aside. The appeal is allowed.Ã¢â€

8. In view of this, we hold that the show-cause notice issued to the appellant is barred by limitation as the same has been issued by extended period of

limitation. Therefore, no demand is sustainable against the appellant. Accordingly, the impugned order is set aside and the appeal is allowed with

consequential relief, if any.