(2024) 02 CESTAT CK 0026

Customs, Excise And Service Tax Appellate, Ahmedabad

Case No: Service Tax Appeal No. 11550 Of 2016

Mahalaxmi Enterprise		APPELLANT
	Vs	
Commissioner Of Central Excise, Customs (Adjudication)-Gandhinagar		RESPONDENT

Date of Decision: Feb. 15, 2024

Hon'ble Judges: Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench: Division Bench

Advocate: Jigar Shah, Amber Kumrawat, Tara Prakash

Final Decision: Allowed

Judgement

Ramesh Nair, Member (J)

1. The issue involved in the present case are as under:-

A. Whether the Appellant (Partnership Firm) is liable to discharge service tax under the category of “renting of immovable property service” in respect of property jointly owned by parents of the Appellant Firm?

B. Whether the benefit of SSI Exemption under notification No. 06/225-ST dated 01.03.2005 can be denied to the co-owners of jointly owned property on the ground that aggregate value of service (rent arising from the said property is beyond threshold limit, regardless of the fact that rent received by each of the co-owners’ was much lower than the threshold limit?

1. M/s Mahalaxmi Enterprise (hereinafter referred to as "the Appellant") is a Partnership Firm consisting of six Partners and is engaged in leasing out of immovable property i.e. cinema theatre.

2. All the Partners of the Appellant Firm jointly owned a property situated at Palanpur and have appropriated shares in the same. The aforesaid property is built up into a theatre known as 'Movie World' for exhibiting cinema.

3. For the purpose of renting out 'Movie World', the Appellant had entered into a Conducting Agreement on 25.03.2008 and a revised agreement on 30.11.2009 with M/s. Reliance Media Works Limited (hereinafter referred to as "RM" for the sake of brevity).

4. Because the Partners/ co-owners intended to earn monthly/quarterly income individually, the rent from the aforesaid property was received by all of them independently in their names and the same was credited to their individual Accounts.

5. Against the said consideration RM would also deduct TDS on year to year basis and issue TDS Certificates to co-owners to ensure that the actual rent amount gets credited to the Accounts of the co-owners.

6. On the rent received by the co-owners, no Service Tax was paid by them because the rent amount received by them in individual capacity was less than Rs. 10 Lacs which made them entitled to the benefit of the basic threshold exemption in terms of Notification No. 06/2005- ST dated 01.03.2005.

1.1 The case of the department is that all the persons who received the rent though individually but being partners of partnership firm that is appellant the appellant is liable to pay the Service Tax.

2. Shri Jigar Shah, Learned Counsel appearing on behalf of the appellant submits that the department had erroneously issued the show cause notice to the appellant that is Partnership firm because rent amount was actually received by the partners of the co-owners individually and independently and not the appellant which is a partnership firm. He submitted that the show cause notice was issued on the basis that the agreement for this was entered in between the appellant and RM and not separately with each co-owner. It is his submission that agreement was entered into by the appellant merely because RM did not agree to enter into separate individual agreements with each co-owner. Hence an agreement was entered into by RM with appellant when the appellant was acting merely in the capacity of an agent for the co-owners.

2.1 He submits that every individual has received the rent in their account and separate TDS was deducted by RM from the amount payable to the individual. It is his submission that since every individual have received the amount, it is the individual who are liable to pay the Service Tax in the eyes of the law however since their rent receipt for each year is Rs. 10,00,000/-, which is below the threshold limit of exemption under notification No. 6/2005/ST no tax liability exist against individual.

2.2 He also submits that since the issue involves interpretation of law relates to levy of Service Tax and involvement of notification no mala fide can be attributed to the appellant accordingly the demand is hit by limitation for the extended period. He placed reliance on the following judgments:

• Shri Akash Devendrakumar Sharma & Others v. CCE & ST. Ahmedabad 2023 (4) TMI 262-CESTAT AHMEDABAD

• CCE v. Deoram Vishrambhai Patel 2015 (40) STR 1146 (T)

• Sanjay Kanaiyalal Motwani & Ors. v. CST- Service Tax- Ahmedabad 2017 (10) TMI 807-CESTAT AHMEDABAD

• Neenaben R. Doshi v. CST & St, Ahmedabad 2019 (5) TMI 1485- CESTAT AHMEDABAD

• Sarojben Kushalben v. CST 2017 (4) GSTL 159 (Tri.- Ahm.)

• CST-ST- Ahmedabad v. Khushiram M Ratanchandani & Ors. 2017 (10) TMI 1190-CESTAT AHMEDABAD

• Anil Saini v. CCE, Chandigarh 2017 (51) STR 38 (T)

• CCE, Nasik v. Deoram Vishrambhai Patel 2015 (40) STR 1146 (T) Two Departments of the Government of India cannot treat same transaction, differently.

• Green Palace v. Deputy Commissioner of Central Excise, Trichy 2018 (1) TMI 760 M/s. Rentworks India

• M/s. Rentworks India Pvt. Ltd. v. CCE, Mumbai-V 2016 (43) STR 634 (T)

• Commissioner of Central Excise, Coimbatore v. Jawahar Mills Ltd. 2001 (132) ELT 0003 (SC)

• Shabina Abraham v. Collector of Central Excise and Customs 2015 (322) ELT 372 (SC) Demand of Service Tax to the extent confirmed in respect of charges payable for usage of plant and machinery, furniture and other assets I unsustainable.

• CST v. UFO Moviez India Ltd. 2022-VIL-7-SC-ST

• Quippo Energy Pvt. Ltd. v. CST – ST – Ahmedabad 2022 (12) TMI 1440-CESTAT AHMEDABAD The present case involves question of interpretation of law; therefore, extended period of limitation not invokable.

• M/s. Utkal Builders Ltd. v. Commissioner of Central Excise, Customs & Service Tax 2023 (9) TMI 1285 – CESTAT Kolkata

• M/s. Venus Laminations Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Daman 2018 (3) TMI 1002

• Maa Communication Ltd. v. Principal Commissioner of Service Tax, Bangalore 2018 (2) TMI 327 – CESTAT BANGALORE

• M/s. Spencer International Hotels Ltd. v. CGST & CE, Chennai 2023 (6) TMI 99-CESTAT CHENNAI In view of revenue sharing agreement existing between the parties to agreement, the element of consideration i.e. the quid pro quo for services, is absent in the present case.

• Inox Leisure Ltd. v. CST, Hyderabad 2021 (10) TMI 893-CESTAT HYDERABAD

• CST v. Inox Leisure Ltd. 2022 (3) TMI 1206-SC ORDER

• M/s. Moti Talkies v. CST, Delhi-I 2020 (6) TMI 87- CESTAT NEW DELHI

• Shri Vinay Kumar, Proprietor of M/s Regal Theatre v. Principal CST, Delhi-I 2020 (11) TMI 436-CESTAT NEW DELHI

• Satyam Cineplexes Ltd. v. Principal CST, Delhi-I 2021 (8) TMI 1222-CESTAT NEW DELHI

• M/s. Golcha Properties Pvt. Ltd. v. Principal CST, Delhi-I 2020 (11) TMI 137-CESTAT NEW DELHI

• M/s. Asian Art Printers (Shela Theatre) v. Principal CST, Delhi-I 2020 (20) TMI 1012-CESTAT NEW DELHI

• M/s. PVS Multiplex India Pvt. Ltd. v. CCE, Meeru-I 2017 (11) TMI 156-CESTAT ALLAHABAD

3. On the other hand, Shri Tara Prakash Learned Deputy Commissioner AR appearing on behalf of the revenue reiterates the finding of the impugned order. He also placed reliance on the decision of Tribunal in the case of Gtail Corporation Vs. Commissioner (Appeals), Cus. and CGST Allahabad.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that there is no dispute that irrespective of any agreement of RM with the present appellant the rent was paid by RM individually to the co-owners and TDS from the amount payable was deducted by RM. No amount was received by the appellant being a partnership. In this case the person who received the amount of rent directly from RM shall be treated a person liable to pay Service Tax. However, since the total receipt of rent by individual is less than the threshold limit as provided under

exemption notification No. 6/2005/ST dated 01.03.2005 co- owners are not liable to pay Service Tax. This issue has been considered time and again in various judgments some of the judgments are referredbelow.

“4. We have carefully considered the submissions made by both sides and perused the record. We find that clubbing the property as co-owned by the persons, five appellants own equal share. All the appellants entered into lease agreement with Reliance Industries Limited and for this, each appellant became an independent service provider in respect of renting of immovable property. As per facts, there is no legal entity such as Association of Persons of Body Corporate, each person owns the property. As per lease agreement, every individual is independent owner of his share. The rent is also paid by the service recipient to each individual. In such case, every individual become a separate service provider hence, if at all service tax arises, it needs to be assessed in respect of every individual. Further, the rent received by the individual is well within the threshold limit provided for exemption under Notification No. 6/2005-ST dated 01.05.2005. Therefore, there is no service tax liability on any of the appellant. Identical issue has been considered by this Tribunal in the case of Neenaben R Doshi & others in Appeal No. ST/10248/2013-DB and passed the following order:-

4. Heard both the sides and perused the records. We find that though in respect of one property, there are joint owners owner is independent in respect of ownership of respective shares, therefore, whatsoever consideration received by an individual, it is the subject matter of taxation in respect of that individual person either as per income tax or as per service tax. Rental income of other co-joint owner cannot be considered.

Therefore, in our considered view receipt of rental income by every individual is only subject to liability of service tax. If the value is below thresh-hold exemption limit in case of any individual, the same will not be taxable being exempted under Notification No. 06/05-ST dated 01.03.2005. At the same time in case of any individual person if the thresh-hold limit exceed in financial year, the same will be liable for service tax. This issue has been considered by this Tribunal in the case of Sarojben Khushalchand (Supra) wherein the Tribunal dealing with the absolute identical issue passed the following order :-

9. We find force in the contention of the Id. Advocates representing the respective appellants inasmuch as association of persons" has been considered as a separate legal entity under the Income-tax Act for assessment and provided separate PAN number different from the PAN number possessed by individual co-owners; who joined together to form an association of persons. In the present case, the show cause notices were issued in many cases to one person among the Joint owners and in other cases to all the persons who had jointly owned the immovable property provided on rent. Needless to mention, the Service Tax Registration of individual assessees for collection of Service Tax is PAN based, hence, collection of Service Tax from one of the co-owners, against his individual Registration for the total rent received by all co-owners separately, is neither supported by law nor by laid down procedure. Thus, it is difficult to accept the proposition advanced by the Revenue that all the co-owners providing the service of renting of immovable property be considered as an association of persons and the Service Tax on the total rent be collected from one of the co-owners. Another argument of the Revenue is that since the property is indivisible and not earmarked against each of the co- owners, hence the Service Tax is leviable on the total rent received against the said property without apportioning against each of the co-owners in proportion to their share. We find fallacy in the said argument of the Revenue. Conceptually Service Tax is levied on the service provided, which is an intangible thing and hence it is not necessary to be identified with physical demarcation of the

immovable property given on rent against individual co-owners. Once the value of service provided by a service provider is ascertainable Service Tax is accordingly charged. This Tribunal in similar facts and circumstances in the cases of Deoram Vishrambhai Patel, Anil Saini & Others and Luxmi Chaurasia (supra) after considering the issues raised, rejected the contention of the Revenue and allowed the benefit of exemption Notification No. 6/2005-S.T., dt. 1-3-2005 as amended to individual co-owners who jointly owned the property and provided the service of renting of immovable property, and received the rent in proportion to the shares in the immovable property.

10. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law."

From the above judgment wherein various other judgments were relied upon, it is settled that even though for one single property if the co-owners are receiving the rent individually in their account the total rent cannot be considered as one for levy or Service Tax. Every individual who receive the rent as co-owners he should be treated as individual Assessee and if the total receipt does crosses threshold limit of exemption they are liable to pay Service Tax otherwise not. As regard the judgment relied upon by the revenue in the case of Gtail Corporation, on going through the same we find that in that case the fact are totally different in as much as the rent was first received by the partnership firm and subsequently the partnership firm has distributed amount of rent to individual partners. Accordingly, it is a firm who is the recipient of the rent and thereafter individual share has been distributed. Whereas, in the present case it is not the appellant (partnership firm) received the rent but the rent was directly received by individual in their account. Therefore, the ratio of the judgment in the case of Gtail Corporation is not applicable being its fact is totally different. As per our above decision and finding the demand against the appellant who is not the recipient of the rent cannot be sustained.

5. Hence, the impugned order is set aside. The appeal is allowed.