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Date: 24/10/2025

Tiruppattur Municipality Vs Commissioner of Service Tax

Civil Miscellaneous Appeal No. 3155 of 2014 and M.P. No. 1 of 2014

Court: Madras High Court

Date of Decision: Dec. 4, 2014

Acts Referred:
Finance Act, 1994 â€" Section 65, 65(105)(zzzz), 73, 75, 76

Hon'ble Judges: R. Sudhakar, J; R. Karuppiah, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

R. Sudhakar, J.

1. This Civil Miscellaneous Appeal is filed as against the order dated 25.08.2014 passed by the Customs, Excise and Service Tax Appellate

Tribunal, Chennai.

2. The appellant/assessee is in charge of the Municipal Administration and Water Distribution for the areas falling under the territorial jurisdiction of

the said municipality. The case of the Department is that renting of immovable property was brought under service tax net with effect from

01.06.2007 under Clause (90a) of Section 65 of the Finance Act, 1994. Finance Act, 2010 has amended the definition of taxable service given in

Section 65(105)(zzzz) of the Act to provide explicitly that the activity of ""renting"" itself is a taxable service. The amendment has been given

retrospective effect from 01.06.2007 itself, i.e., the date from which the service tax was levied for the first time on this activity. Hence a show

cause notice dated 22.10.2012 was issued to the appellant proposing to demand service tax with interest and penalty. The appellant submitted its

reply dated 30.12.2012 contending that the lease were entered into long before the introduction of the said provision and therefore, the demand is

not maintainable. After taking into consideration the reply submitted by the assessee, the Adjudicating Authority passed the following order:

16. I hold that the services rendered by M/s.Tiruppatur Municipality during the period from 2007-2008 to 2011-2012 is classifiable under the

category of ""Renting of Immovable Property Service,"" in terms of Clause (90a) of Section 65 of the Finance Act, 1994 read with Section 65 of the

Finance Act, 1994.

17. I hereby confirm the demand of Rs. 1,00,66,725/- (Rupees one crore sixty six thousand seven hundred and twenty five only) under Section 73

of the Finance Act, 1994:

18. I hereby confirm the demand of interest on the service tax adjudged above from the date on which the tax had become due till the actual date

of payment under Section 75 of the Finance Act 1994;

19. I hereby impose a penalty of Rs. 1,00,66,725/- (Rupees one crore sixty six thousand seven hundred and twenty five only) on M/s.Tiruppatur

Municipality, under Section 78 of the Finance Act, 1994. However, I hereby allow the option of payment of 25% of the penalty subject to the

condition that the entire service tax due, interest and the reduced penalty is paid within 30 days of receipt of this order. I refrain from imposing any

penalty under Section 76 of the Finance Act, 1994, as I have imposed penalty under Section 78 ibid, as held by the courts and appellate tribunals.

20. I further impose a penalty of Rs. 5000/- on M/s.Tiruppatur Municipality, under Section 77 of the Finance Act, 1994.

3. Aggrieved by the order of the Adjudicating Authority, the appellant preferred an appeal before the Tribunal along with an application for waiver

of pre-deposit. The Tribunal, by order dated 25.8.2014 in Miscellaneous Order No. 41386 of 2014, after hearing both sides, passed the

following order:

2. After considering the submissions of both sides and on perusal of the statement placed by the learned counsel, we find that the demand of tax

of Rs. 14,89,730/- under Daily Market and Rs. 56,67,524/- under Shop Rent are, prima facie, sustainable. Accordingly, we direct the applicant

to predeposit Rs. 72,00,000/- (Rupees seventy two lakhs only) within a period of eight weeks and report compliance on 5.11.2014. Upon such

deposit, predeposit of balance dues stands waived and recovery thereof stayed during the pendency of the appeal.

4. As against this order of the Tribunal, the assessee is before this Court raising the following substantial questions of law:

A. Is not the Tribunal wrong in imposing the condition of deposit of even the disputed levy of tax, particularly when the Act does not contemplate

the deposit of entire tax for any particular item?

B. Is not the Tribunal wrong in imposing the condition unmindful of the fact that the challenge is on the levy of the Service Tax retrospectively from

2007, when the levy has been enforced only from 2010 that too after a pronouncement of a Court in a totally different case?

C. Whether the imposition of the condition to pay nearly 75% of the demanded tax justified when the appellant is a statutory body having perpetual

succession and statutory existence?

D. Has not the Tribunal below failed to appreciate the merits of the Appellants case that challenged the levy of tax on the point of lack of

jurisdiction, and thereby the imposition on the condition is an onerous one and illegal?

5. Learned counsel appearing for the appellant submits that since the lease has been entered into long before the introduction of provision, the

appellant is not liable to pay service tax prior to 2010. He further submits that if the order of the Tribunal is not set aside great prejudice would be

caused to the appellant and the entire work of the Municipality will come to a standstill.

6. Per contra, learned standing counsel appearing for the Revenue submits that the appellant itself had admitted before the Adjudicating Authority

by letter dated 10.6.2013 that they would collect service tax from the users from 2007-08 and would remit the same in due course. In this

connection, he relied upon the decision of the Supreme Court in the case of P.K.Hospitality Services Ltd. V. UOI reported in 2012 (26) STR

J142 (SC), wherein the Supreme Court directed the assessee to pay the amount demanded in instalments. Hence, the Adjudicating Authority is

correct in demanding the service tax.

7. Heard learned counsel appearing for the appellant and the learned standing counsel appearing for the Revenue and perused the materials placed

before this Court.

8. As rightly pointed out by the learned standing counsel appearing for the Revenue, the appellant himself has admitted before the Adjudicating

Authority that they would collect service tax from its users and remit the same. Hence, the appellant should not now raise a question that the lease

was entered into long before the introduction of Section 65 of the Finance Act, 1994 and hence not liable to pay service tax. The appellant has not

produced any material showing that they are suffering from financial hardship.

9. In the case of P.K.Hospitality Services Ltd. V. UOI reported in 2012 (26) STR J142 (SC), the Supreme Court while dealing with the demand

of service tax directed the appellant therein to pay the arrears in equated monthly instalments. The relevant portion of the order reads as follows:

Having heard learned counsel for the appellants on the question of stay with regard to the arrears of service tax due as on 30th September, 2011,

we direct that on each of the appellant''s clearing all the arrears as on the said date in three equated instalments, on or before 1st March, 2012; 1st

May 2012 and 1st July 2012, no coercive steps shall be taken against the appellants for the recovery of the said arrears. However, in the event of

default on the part of the appellants in deposit of any one of the instalments by the due date, it will be open to the respondents to recover the entire

amount in arrears forthwith.

10. In the light of the above, we are not inclined to set aside the order of the Tribunal. However, following the above-said decision of the Supreme

Court, we are inclined to modify the order of the Tribunal. Accordingly, we pass the following order:

(i) the order of the Tribunal is modified to the effect that the appellant is directed to deposit the amount as ordered by the Tribunal in six equal

monthly instalments on or before 1st of every month. The first instalment shall commence from January, 2015.

(ii) If there is any failure to deposit any one of the instalments by the due date, it will be open to the Tribunal to proceed in accordance with law.

(iii) On the deposit of 1st instalment within the stipulated time, the Tribunal is at liberty to take up the appeal and proceed further in accordance

with law.

In the result, this Civil Miscellaneous Appeal stands disposed of. No costs. Consequently, M.P.No. 1 of 2014 is closed.