Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10450 of 2013 - DB

(Arising out of OIO-03/STC/DEMAND/COMMR-I/2012 dated 10/12/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

Monalidevelopers Gokul Bunglow ....**Appellant**
Near Inox Cinema,
Race Course,
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.- Vadodara-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:
Shri M G Yagnik, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10706 /2024

DATE OF HEARING: 22.11.2023
DATE OF DECISION: 28.03.2024

RAMESH NAIR

The Appellants M/s. Monali Developers are a partnership constituted within the meaning of the Indian Partnership Act, 1932. The Appellant are engaged in the provision of taxable service namely Renting of Immovable Property Service, classifiable under Section 65(105)(zzzz) of the Finance Act, 1994. The Department vide Order–in–Original No. 03/STC/DEMAND/COMMR –I/ 2012 dated 10.12.2012 confirmed demand amounting to Rs. 87,67,603/- along with interest and penalty on the Appellant.

Hence the present appeal.

2. Shri M.G. Yagnik Learned Counsel appearing on behalf of the Appellant submits that the entire commercial world was under confusion as regards payment on service tax on rent paid to the owners of Commercial Immovable Property. He further submits that out of a substantial portion of Service Tax, only an amount to the tune of Rs. 4,94,693/- remains payable

by Aditya Birla Retail Ltd. which has not been paid by them on account of the Order of the Hon'ble Supreme Court. He further submits that the demand of Service Tax as raised in the Show cause notice and as confirmed vide impugned order in original is Rs. 87,67,603/- whereas it correctly works out to Rs. 77,17,165/- the said calculations having been based out on correct amounts of rent rather than the inflated rates relied on by the Department. He further submits that under the directions issued by the Central Government vide Section 143 (L) of the Finance Act, 2012 if Service Tax is paid along with interest , in respect of Renting of Immovable Property, within six months of date of enactment of Finance Bill, 2012 no penalty cannot be imposed upon the owner of Immovable Commercial Property therefore the Appellant having paid off the entire amount of Service Tax and interest thereon should be covered within the discretionary ambit where upon still an amount to the tune of Rs. 4,94,693/- was only remaining on account of Aditya Birla Retail Ltd.

3. Shri. Rajesh R. Kurup, Learned Superintendent AR appearing on behalf of the Department reiterates findings of the impugned order.

4. Heard submissions made by both sides and perused the records. We find that in the present case the Department has alleged that the Appellant is liable to pay Service Tax amounting to Rs. 87,67,603/- whereas it is the claim of the Appellant that their liability amounts to Rs. 77,17,165/- only which has been paid by them along with interest and an amount to the tune of Rs. 4,94,693/- on account of Aditya Birla Retail Ltd. stands remaining due to the Interim order of the Hon'ble Supreme Court. We observe that it is the claim of the Appellant that the Department has relied on inflated figures of rent to ascertain the service tax liability. In light of the given facts and circumstances of the present case we are of the considered view that the submissions made by the Appellant need to be considered as regards discrepancy in the amount of Service Tax. Basically, the issue needs to be verified from the factual matrix first so as to ascertain the correct amount of service tax liability. Hence, in view of the foregoing discussion and finding, we remand the matter back to the adjudicating authority to reconsider the amount of service tax and address the

discrepancy taking into account the claims by the appellant as regards payment made and rent received.

5. Appeal is allowed by way of remand. We make it clear that no findings have been recorded on the merits of the case and are leaving the issue open.

(Pronounced in the open court on 28.03.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha