IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70905/2018-CU[DB]

(Arising out of Order-in-Appeal No. 145-146/ST/APPL/KNP/ADG-NACIN/2017-18 dated 12/04/2018 passed by National Academy of Customs, Indirect Taxes & Narcotics (ZTI) Kanpur)

M/s Rakesh Jaidka **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Vaibhav Dixit, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 06/03/2019

FINAL ORDER NO. **70723/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Vaibhav Dixit, Advocate appearing on behalf of the appellant & Shri Sandeep Kumar Singh, Deputy Commissioner (AR) appearing on behalf of the Revenue, we note that the appellant had provided Renting of immovable property service. There were three joint owners of the property and total consideration jointly received by all the three. There was common Rent agreement between the owners of the property and the lessee and rent agreement mentioned how much proportion of rent will be paid to individual owner. It appeared to Revenue that the said consideration received by the appellant and consideration received by Smt. Reema Jaidka, who was wife of the present appellant was required to be clubbed together. Therefore, proceedings were initiated against them which culminated into filing of the present appeal by clubbing the consideration received by the said two co-owners of property. It was held that the appellant had crossed the exemption limit of Small Scale and therefore for the period from October, 2012 to March, 2014 Service Tax demand of Rs.2,46,780/- was confirmed against the appellant and equal amount of penalty was imposed. The ld. Counsel has submitted that the said two co-owners are independent persons and they are filing their Income Tax Returns independently and there is no justifiable legal reason to club the consideration received by them. He has further relied on the Final Order of this Tribunal bearing No. A/71214-71221/2016 dated 23/12/2016 through which it was held that in a jointly owned property each individual's share is independent of each other and cannot be clubbed together for deciding admissibility for Small Scale Exemption. He has also relied on other decisions of this Tribunal in the case of Sambhaji Pandurang Hulawale *Versus* Commissioner of Central Excise, Pune-I reported at 2017 (6) GSTL 209 (Tri. – Mumbai). He further submitted that for earlier period and for subsequent period to the present appeal, the appeals were filed with other appellate authorities who had accepted the contention of appellant that clubbing of consideration received by two co-owners cannot be upheld. After hearing both the sides and on perusal of the facts on records particularly the other Orders-in-Appeal and all earlier orders placed by the appellant before us, we hold that in case of co-owners the individual owners are having a right of independent consideration of rent. We, therefore, do not find the impugned order to be sustainable. The same is set aside and the appeal is allowed.

(Dictated in Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ansari