CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 613 of 2012

(Arising out of Order-in-Appeal No. 09/2012 dated 04.01.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

Devon Plantations and Industries Limited
Bappunji, Nuggi, Koppa Taluk,
Chikmangalur – 577 126.

Appellant(s)

VERSUS

The Commissioner of Central Excise
Vinaya Marga, Siddharthanagar,
Mysore – 570 011.

Respondent(s)

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APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21687 - 21688 /2025

DATE OF HEARING: 03.06.2025
DATE OF DECISION: 28.10.2025

PER: R. BHAGYA DEVI

These appeals are filed by the appellant M/s. Devon Plantations and Industries Ltd. against Order-in-Appeal No.09/2012 dated 04.01.2012 passed by the Commissioner (Appeals), Mangalore.

2. Briefly the facts are that the appellant was engaged in renting of commercial property during the period from June 2007 to December 2010 and had failed to discharge service tax on the rental income received by them. The Commissioner (Appeals) in the impugned order confirmed the demand against the appellant on the ground that the definition of taxable service under Section 65(105)(zzzz) was retrospectively amended and relied upon the Board Circular DOF No.334/1/2010-TRU dated 26.02.2010 to confirm the demand along with interest and penalty. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel submitted that the entire amount of tax of Rs.2,97,539/- was deposited. It is submitted that the Hon'ble High Court of Delhi in the case of **Home Solution Retail India vs. Union of India: 2009 (14) S.T.R. 433 (Del.)** dated 18-4-2009 had held that renting of immovable property in itself was not a taxable service which led to the

retrospective amendment in 2010. It is also stated that SLP (Civil) petitions have been filed against the above order and hence, the matter has not attained finality. Since, the entire issue is interpretational one, the show-cause notice was issued only after the retrospective amendment and the entire demand is barred by limitation. Hence, the impugned order along with the penalty cannot be sustained. Relied on the following decisions:

- **Star India Pvt. Ltd. Vs. CCE, Goa: 2006 (1) STR 73 (S.C.)**
- **Morarji Goculdas B&W Co. Ltd. Vs. Union of India: 1996 (83) ELT 259 (S.C.)**
- **Precot Mills Ltd. UOI: 2011 (24) STR 283 (Ker.)**
- **Davangere Cotton Mills Ltd. Vs. CBEC :1991 (55) ELT 295 (Kar.)**
- **JK Spinning and Weaving Mills Ltd. and another Vs. UOI and others: 1987 (32) ELT 234 (S.C.)**

4. The learned Authorised Representative (AR) on behalf of the Revenue submitted that the appellant is liable to pay service tax w.e.f. 01.06.2007 and the validity of the retrospective amendment has been upheld by the Hon'ble High Court of Punjab and Haryana in the case of **Shubh Timb Steels Ltd. Vs. Union of India: 2010 (20) S.T.R. 737 (P & H)** and hence, the impugned order needs to be sustained.

5. Heard both sides. The appellant is liable to pay service tax is not in dispute in view of the fact that the definition of taxable service under Section 65(105)(zzzz) was amended retrospectively. It is also on record that the Hon'ble High Court of Punjab and Haryana in the case of **Shubh Timb Steels Ltd.** (supra) upheld the retrospective amendment. The only dispute is whether the Revenue was right in invoking suppression against the appellant and was justified in imposing penalty. We find that the show-cause notices dated 27.12.2010 and 17.03.2011 was

issued to demand service tax on the rental income for the period from June 2007 to December 2009 and January 2010 to December 2010 only after issuance of the retrospective amendment inserted by the Finance Act, 2010 dated 01.04.2010, which is reproduced below:

THE FINANCE ACT, 2010
[Act No. 14 of 2010]

[8th May, 2010]

An Act to give effect to the financial proposals of the Central Government for the financial year 2010-2011.

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

77. Validation of action taken under sub-clause (zzzz) of clause (105) of Section 65. — Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, 1994 (32 of 1994), at any time during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in sub-clause (zzzz) of clause (105) of section 65, by sub-item (i) of item (h) of sub-clause (6) of clause (A) of section 76 of the Finance Act, 2010 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) any action taken or anything done or omitted to be taken or done in relation to the levy and collection of service tax during the said period on the taxable service of renting of immovable property, shall be deemed to be and deemed always to have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the levy and collection of such service tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;

(c) recovery shall be made of all such amounts of service tax, interest or penalty or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

Explanation. — For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.

6. The Commissioner (A) has relied on para (c) to demand service tax interest and penalty; while, the appellant relies on the *Explanation* to submit that no act or omission shall be punishable as an offence in view of the retrospective amendment, hence, any demand has to be for the normal period and therefore, the demand beyond the normal period along with interest and penalty cannot be sustained. The Supreme Court in the case of **Star India Pvt. Ltd.** (supra) has observed that:

"**7.** In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. There were clearly

> judgments, decrees or orders of courts and Tribunals or other authorities, which required to be neutralised by the Validation Clause. We can only assume that the judgments, decree or orders etc. had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the Validation Section which says that no act or acts on the part of any person shall be punishable as an offence which would have been so punishable if the Section had not come into force."

7. Similarly, the Hon'ble High Court of Karnataka in the case of **Davangere Cotton Mills Ltd. vs. UOI** (supra) is in line with the ratio laid down by the Supreme Court in the case of **J.K. Spinning and Weaving Mills Ltd.** (supra) wherein it was observed that the Department should have issued show-cause notice within the normal period in view of the retrospective amendments. The Supreme Court in the case of **J.K. Spinning and Weaving Mills Ltd.** (supra) clearly observed that:

> **"29.** It is not disputed that the Legislature is competent to make laws both prospectively and retrospectively. But, as pointed out by this Court in *Jawaharmal* v*. State of Rajasthan and Others, (*1966) 1 S.C.R. 890, the cases may conceivably occur where the court may have to consider the question as to whether excessive retrospective operation prescribed by a taxing statute amounts to the contravention of the citizens' fundamental rights; and in dealing with such a question the court may have to take into account all the relevant and surrounding facts and circumstances in relation to the taxation. Again in *Rai Ramkrishna and Others* v*. State of Bihar, (*1964) 1 S.C.R. 897 this Court has pointed out that if the retrospective feature of a law is arbitrary and burdensome, the statute will not be sustained and the reasonableness of each retrospective statute will depend on the circumstances of each case; and the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test.

30. The apprehension of the appellants is that the amendments to Rules 9 and 49 having been made retrospective from the date the Rules were framed, that is, from February 28, 1944, the appellants and others similarly situated may be called upon to pay enormous amounts of duty in respect of intermediate goods which have come into existence and again consumed in the integrated process of manufacture of another commodity. There can be no doubt that if one has to pay duty with retrospective effect from 1944, it would really cause great hardship but, in our opinion, in view of Section 11A of the Act, there is no cause for such apprehension. Section 11A(1) of the Act provides as follows :-

> "Section 11A. - (1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
>
> Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mistatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", the words "five years" were substituted.
>
> Explanation. - Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be."

8. In view of the above decisions, we are inclined to agree with the appellant that the demand cannot be sustained beyond the normal period and therefore, the penalties are also set aside. Appeals are partially allowed.

(Order pronounced in Open Court on 28.10.2025.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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