CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20568 of 2014

(Arising out of Order-in-Appeal No. MLR-EXCUS-000-DIVV-APP-HAB-062-13-14 dated 25.11.2013 passed by the Commissioner of Central Excise (Appeals), Mysore.)

M/s. K2 Builders & Realtors
Metalaco Plaza,
Falnir, Kankanady,
Mangalore – 575 002. **.........Appellant(s)**

VERSUS

Commissioner of Central Excise and Service Tax,
V Floor, Punja Building Annex,
Lalbagh, Mangalore – 575 003. **.........Respondent(s)**

APPEARANCE:

Mr. B. Venugopal, Advocate for the Appellant
Mr. Vikalp Jain, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR P.A. AUGUSTIAN, MEMBER (JUDICIAL) HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20990 /2026

Date of Hearing: 30.06.2026
Date of Decision: 30.06.2026

PER: P.A. AUGUSTIAN

The issue involved in the present appeal is regarding penalty imposed by Adjudication Authority for the delay in payment of service tax on 'renting of immovable property'. Alleging short payment of service tax, show-cause notice was issued on 09.01.2012 for the period from April 2010 to March 2011 and adjudicating authority as per the Order-in-Original dated 09.04.2013 confirmed the demand with interest and appropriated the amount paid by the appellant.

Penalties also imposed under various provisions of Finance Act 1994. Aggrieved by the said order, an appeal was filed before learned Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 25.11.2013 rejected the appeal. Aggrieved by the said order, present appeal is filed.

2. When the appeal came up for hearing, learned counsel for the appellant submits that Section 65(105)(zzzz) of the Finance Act, 1994 came into effect from 01.06.2007 to levy Service tax on 'renting of immovable property for use in the course or furtherance of business or commerce'. This levy was disputed from the very beginning and was challenged before the Hon'ble High Court of Delhi in various Writ Petitions. The Hon'ble Delhi High Court while disposing the Writ Petitions, held that *'renting property per se does not amount to service as no value addition is involved and no Service tax is payable on the activity of renting'* [**Home Solutions Retail India Ltd. Vs. Union of India**- **2009 (237) ELT 209 (Del)]**. In view of this decision, no Service tax was collected by the Appellant during the material period. The Revenue challenged the said judgment before the Hon'ble Supreme Court. In the meantime, as per Finance Act 2010, Section 65(105)(zzzz) was amended retrospectively w.e.f. June 1, 2007, to explicitly include "any other service in relation to such renting". Later to that the Hon'ble Supreme Court overruled the Delhi High Court decision **[2011 (24) S.T.R. 129 (Del.)]** by affirming that renting commercial property inherently involves value addition and also upheld the retrospective amendment as a legitimate exercise by Parliament to cure a judicial lacuna. Learned Counsel submits that during the relevant period Appellant has not collected Service tax. In the Finance Act, 2012, sub-section (2) to Section 80 was inserted w.e.f. 28.05.2012, which is a time-bound amnesty-type provision covering only "renting of immovable property" service under section 65(105)(zzzz), which reads as follows: *"(2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in*

sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President". Learned Counsel further submits that while inserting the retrospective amendment to Section 65(105)(zzzz) of the Finance Act, 1994 by Finance Act, 2010 on 01.04.2010, the Government safe guarded the interest of tax payers for any act or omission with regard to offence under the Finance Act, 1994 in the Explanation appended thereto, which is reproduced below:

> *"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".*

3. Learned Counsel further submits that the entire demand of Service tax payable in the present case pertains to period 2010-11, i.e., before 06.03.2012, date stipulated in Section 80(2) of the Act. Further, the entire Service tax payable with interest thereon has been remitted vide Challan dated 28.11.2012, which is the last date of six months from the date of Finance Bill, 2012 received assent from the President. Thus the First Appellate Authority should have extended the benefit of the legislative mandate under section 80(2) instead of proceeding with imposing penalties under Section 76 and 78 of the Finance Act, 1994. Thus, the penalties upheld by the impugned order are liable to be set aside.

4. Learned Authorized Representative (AR) for the Revenue reiterated the findings of the impugned order.

5. Heard both sides and perused the records.

6. We find that as per the amended provision, the appellant had paid service tax as applicable with interest before the due date and considering the amendment, impugned order confirming the

appropriation of the demand with interest is upheld. However, the penalties imposed by the adjudicating authority are set aside.

7. Accordingly, impugned order is modified accordingly and appeal is partially allowed.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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