CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 52412 of 2015

[Arising out of Order-in-Appeal No.CHD-CEX-001-COM-23-2015 dated 20.03.2015 passed by the Commissioner (Appeals), Central Excise, Chandigarh]

M/s Chander Sharma Ashok Sharma and Associates **......Appellant**
C/o Chander Prakash Sharma, Visakha Enclave,
CU-31, Pitampura, New Delhi-110034

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh-I **......Respondent**
Central Revenue Building, Plot No.19, Sector-17C,
Chandigarh-160017

APPEARANCE:

Shri Sudeep Singh Bhangoo, Advocate for the Appellant

Shri S.K. Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61465/2025

DATE OF HEARING: 29.09.2025
DATE OF DECISION: 07.10.2025

P. ANJANI KUMAR:

Shri Chander Prakash Sharma, Shri Ashok Kumar Sharma, Smt. Neelam Sharma and Smt. Sashi Kant Sharma w/o Shri Ashok Kumar Sharma entered into tripartite agreement with State Bank of India and M/s Luminous Group and obtained a loan for construction of premises, which were later leased out to M/s Electrix Motors Ltd. to M/s N' Cubate Logistics Warehousing Pvt. Ltd., M/s Luminous Tele Infra, M/s Luminous Power Technologies and M/s Luminous Water Technologies; the appellants claimed that the properties are registered in the respective names of the above four persons. Revenue entertained an opinion that these four persons entered into an "Association of Persons" and are liable to pay service tax on the rental income received, by them, from M/s Electrix Motors Ltd. to M/s N' Cubate Logistics Warehousing Pvt. Ltd. for the premises at Mubarikpur and from M/s Luminous Tele Infra, M/s Luminous Power Technologies and M/s Luminous Water Technologies. A show cause notice dated 17.10.2013 was issued demanding service tax of Rs.71,08,612/-, for the period April 2008 to March 2013, while proposing to appropriate service tax of Rs.48,26,507/- deposited by the individual co-owners. Learned Commissioner of Central Excise & Service Tax, Chandigarh vide Order dated 24.03.2015 confirmed the demand of Rs.67,55,018/- along with interest under Section 78 and equal penalty under Section 77 of the Finance Act. Hence, this appeal.

2. Shri Sudeep Singh Bhangoo, learned Counsel for the appellants submits that the entire proceedings are on the basis of a mis-construed statement of Shri Chander Sharma on 20.09.2011, who stated that he along with others floated a firm by the name of M/s Chander Sharma Ashok Sharma & Associates; the individuals had a tripartite agreement with State Bank of India and Luminous Group for availment of loan only. He submits that all the properties

are co-owned by the individual owners in their individual capacities and have accordingly received the rent for their share of property separately; the co-owners obtained registrations individually and started paying tax, on their share of the rent received, from October 2011.

3. He further submits that Hon'ble High Court of Delhi in the case of Home Solutions Retails (India) Ltd. – 2009 (250) ELT 209 (Del.) held that provisions of Section 65 (105) (zzzz) do not entail that the renting of immovable property would itself constitute a taxable service; though the provisions of Section 65 (105) (zzzz) were amended by Section 76 of the Finance Act, 2010 retrospectively, Hon'ble Kerala High Court in the case of Kuthuparamba Municipality – 2013 (30) STR 237 (Ker.) held that service tax cannot be recovered for the period 01.01.2011. He submits that learned Commissioner did not appreciate that the property is not by the AOP; no evidence has been brought to show the existence of the AOP; Luminous Power Technologies Pvt. Ltd. and Lectrix Motors Pvt. Ltd., vide Letters dated 06.09.2013 and 03.05.2012, addressed to Superintendent (Preventive) Central Excise, Chandigarh, informed that rental amount had been paid to the concerned persons and not to the AOP.

4. Learned Counsel further submits that Section 26 of the Income Tax Act clearly provides that where the property consists of building (s) is owned by two or more persons and their shares are definite and ascertainable, such persons shall not be assessed as "Association of Persons" but share of each person be included in his

or her total income; therefore, AOP cannot be taxed; the concept of AOP has not been made applicable to Section 65 (105) (zzzz); its only made applicable to the definition of “Business Entity” given in Section 65 (19B). He relies on the following cases:

- Commissioner of Central Excise Vs. Deoram Vishrambhai Patel-2015(40) STR 1146 (Tri);
- Anil Saini Vs. Commissioner of C. Ex., Chandigarh-1-2017(51)STR 38(Tri)
- KM Building Tenant's Association Vs. Kuthuparmba Municipality-2013(30)STR 237 (Ker)
- Jindal Vegetable products Ltd. Vs. Commissioner of C. Ex.-2013(31) STR 367(Tri.Del).

5. Learned Counsel would further submit that the demand prior to 01.10.2011 is time barred and the issue was being agitated and reached a definitive conclusion after the decision of the Hon’ble Delhi High Court in Home Solutions Retail (India) Ltd. (supra) and the decision of the Hon’ble Kerala High Court in the case of K.M. Building Tenant’s Association (supra); therefore, extended period cannot be invoked as held in J K Spinning and Weaving Mills Ltd. – 1987 (32) ELT 234 (SC) and Jindal Vegetable Products (supra). He submits that for the same reason, benefit of Section 80 should also be given.

6. Learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

7. Heard both sides and perused the record of the case. We find that the rent is being received by the individual co-owners separately. The premises rented out is not registered in the name of the alleged AOP; Revenue has not brought any evidence to indicate even the existence of the AOP. The only reliance placed by the Revenue appears to be the statement of Shri Chander Sharma, which only goes to prove that the individuals came together and approached the bank for a loan. It is not coming forth if the said AOP has been registered. The individual co-owners obtained central excise registration and started paying service tax from October 2011 whereas the show cause notice was issued on 17.10.2013. Under the circumstances, it is not understood as to how Revenue attempted to tax the AOP. Interestingly, it appears that the adjudicating authority or the Revenue were not clear in their approach. On the one hand, they seek to recover service tax from a non-existent AOP and other hand, seek to appropriate the service tax paid by the individual owners. We find that no case has been made by the Department to demand service tax from the alleged AOP. We find that co-ordinate Bench of this Tribunal in Mumbai held in the case of Deoram Vishrambhai Patel (supra), which was followed by this Bench in the case of Anil Saini (supra) held that:

> **6.** We have considered the submissions made by both sides and perused the records. The issue that needs to be decided in this case is whether the respondent and his brothers are to be treated as association of persons or other vise and service tax liability on it arises, should be confined without the benefit of the Notification No. 6/2005-S.T.

7. It is undisputed that the property which has been rented out by the respondent and his brothers is jointly owned property; Service Tax liability arises on such renting of property.

8. On deeper perusal of impugned order, we find that the first appellate authority has considered all the angles in the dispute and came to the correct conclusion. The findings of first appellate authority is as under.

> "6.2 On mere reading of the Order-in-Original, it is evident that the adjudicating officer has considered above named four persons as one person for determining tax liability and imposition of penalties without telling any legal basis for doing so. The appellants have contested the Order in Original mainly on the grounds that rented property belongs to four separate persons (all brothers) but the service tax has been demanded wrongly by the department from the appellants by clubbing the rent received by all the co-owners and, therefore, the demand off tax is not maintainable on this ground alone. In support they have produced a City Survey Extract as evidence regarding ownership of the rented property which shows that the said property was purchased in 2003 and is owned jointly by all the four co-owners. Further, the lease agreements with M/s. Max New York Life Insurance Co. Ltd., Oriental Bank of Commerce, Axis Bank, Kotak Mahindra Bank and HDFC Standard Life Insurance Ltd. are also entered into by the appellants in their individual capacity, as per SCN also, all four co-owners have obtained separate Registration Certificate on 10-4-2012 and all the four co-owners individually paid their Service tax liability along with interest on 14-2-2012. Thus, the ownership of the Property and providing of taxable renting of immovable Property by the four appellants in this case is in their individual capacity and, therefore, their tax liability should have been determined by considering their individual rental receipts and not collective one. From the various lease agreements made with above mentioned Commercial firms, it cannot be disputed that monthly rent was paid by the above named concerns to each appellant after deducting tax at their end.

6.3 From the show cause notice dated 19-10-2012, it is evident that the appellants had received rent as detailed below :-

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But as the rent was distributed equally among each of the appellant, it is evident that each of them received an amount lesser than Rs. 8 lakhs and 10 lakhs in the years 2007-08 and 2008-09 respectively which is below the exemption limit of eight lakhs and ten lakhs during the relevant period. The appellants were, therefore, not liable to pay service tax on the amounts received by them during these two years by virtue of Notification No. 6/2005-S.T., dated 1-3-2005. The appellant's case is also supported by the Tribunal's decision in the case of *Dinesh K. Patwa* v. *CST, Ahmedabed* which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-22, the receipt off rent by each appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax along with interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional tax liability has been worked out for the said period in OIO.

6.4 Since the appellants were individually liable to pay service tax and eligible for the exemption under general exemption Notification 6/2005-S.T., dated 1-3-2005 during the period 2007-08 and 2008-09, no service tax was payable during the said period. Hence, the question of penalty under Section 76 for the said period does not arise. For the subsequent period i.e. 2009-10 & 2010-11, the appellants have already accepted their tax liability and paid Service tax along with interest on 14-2-2012. The said payment of service tax is certainly a delayed payment, but was made by the appellants on their own when they realized that their taxable value for renting of property had exceeded the exemption limit of Rs. 10 lakhs. The adjudicating authority has claimed in his order that the appellants paid service tax only after Department started investigation, but it is not supported by any evidence or the facts on record. The SCN or the OIO do not talk of any audit objection or Preventive action or any Inspection etc. on the basis of which not payment of service tax by the

> appellants was pointed out. Instead in the SCN, one statement of Shri Chandulal Vishrambhai Patel is only referred to which was recorded on 22-2-2012 which is 8 days after the appellants had paid service tax along with interest on their own. Thus, the claim of the appellant that they had paid service tax for the years 2009-10 and 2010-11 on their own initiative and there was no suppression of facts etc. on their part with any intention to evade service tax cannot be denied. Considering all these facts, I agree with the appellant's contention that this case was squarely covered under sub-section (3) of Section 73 which provided not to issue any notice under sub-section (1) of Section 73 if the service tax not levied or paid was paid along with interest by the person concerned before service of notice on him and informed the Central Excise Officer of such payment in writing. Further in Explanation 2 of the said sub section it is also clearly provided that no penalty under any of the provisions of the Act or the Rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon. Hence, in fact no SCN was required to be issued in this case for recovery of service tax and imposition of penalty and even when it has been issued, no penalty under Section 76 or 78 is imposable in this case for the period 2009-10 and 2010-11."

9. It can be seen from the above reproduced findings of the first appellate authority, the conclusion arrived at is very correct, as co-owners of the property cannot be considered as liable for a Service Tax jointly or severally as Revenue has took identify the service provider and the service recipient for imposing service tax liability, which in this case, we find our individual. The conclusion arrived at by the first appellate authority is correct and he has confirmed the demand raised on the respondents by extending the benefit of Notification No. 6/2005-S.T. We do not find any reason to interfere in such a detailed order.

8. In view of the above, the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on 07/10/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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