CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61644 of 2018

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-1482-18 dated 24.07.2018 passed by the Commissioner, CGST Audit Commissionerate, Ludhiana]

Sh Prith Pal Singh Sidhu And Others ......**Appellant**
H.No. 1108, Sector 36-C,
Chandigarh

VERSUS

Commissioner of CE & ST, Ludhiana ......**Respondent**
Central Excise House, F Block, Rishi Nagar,
Ludhiana, Punjab

APPEARANCE:

Present for the Appellant: Mr. Abhinav Kansal, Advocate

Present for the Respondent: Mr. Amandeep Kumar, Authorised Representative

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 60208 /2020

DATE OF HEARING: 24.01.2020
DATE OF DECISION: 24.01.2020

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein demand has been confirmed by clubbing the rent receipt by the appellant under the category of renting of immovable property service.

2. The facts of the case are that the appellant is having 1/3 share of the immovable property along with his wife and the H.U.F. of the

appellant himself having 1/3 share each. All these three have jointly let out their property to Punjab Warehousing and received the rent in their account separately and paying income tax separately and Form 16 were also received separately for the income tax department.

3. The Revenue is of the view that as all these three are common and the same family members and let out their property jointly under a common agreement, therefore, the rent received by all of them are to be clubbed and to be taxed accordingly. Therefore, the show cause notice was issued to the appellant by denying the benefit of exemption Notification No.06/2005-ST dated 01.03.2005 and Notification No.33/12 dated 20.06.2012 and to demand service tax from the appellant under the category of renting of immovable property service. The matter was adjudicated. The demand of service was dropped by the adjudicating authority. But in appeal, the Ld. Commissioner (Appeal) hold that as property has been let out by a common agreement, therefore, the rent received by all the three parties to be clubbed with the appellant. Accordingly, they are liable to pay service tax. If the rent received by all the three parties are clubbed, the same exceeds the prescribed under Notification No.06/2005-ST dated 01.03.2005 and Notification No.33/12 dated 20.06.2012 and the appellant is liable to pay service tax. Against the said order, the appellant is before us.

4. Heard the parties and perused the record.

5. On perusal of the record, we find that the appellant is co-owners with his wife and his H.U.F. (the same has been mentioned in

the Revenue's record itself) and in the agreement also it has been shown separately that three parties have entered with an agreement with the tenant to take the property on rent. It is also a fact on record that the rent has been paid separately to all these three and income tax returns have been filed by these three showing rental income separately. In these circumstances, relying on the decision of this Tribunal in the cases of ***Anil Saini Vs. C.C.E. Chandigarh -I*** reported in ***2017 (51) STR 38 (Tri. Chan.)*** and ***C.C.E & S.T Ludhiana Vs. Sunil Kumar & Co-owners and others*** vide ***Final Order No.62811-62818/2019 dated 04.09.2018*** we hold that the rent received by the appellant cannot be clubbed with the rent received by the co-owners of the property. Therefore, we do not find any merit in impugned order. The same is set aside.

6. In result, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Kailash