CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Appeal No.	Appellant	Respondent
1.	ST/87/2010	R. Nagendra Rao	CCE & ST Salem
Arising out of Order-in-Appeal No.169/2009-ST (SLM) dt. 17.11.2009 passed by the Commissioner of Central Excise (Appeals), Salem			
2.	ST/114/2012	R. Nagendra Rao	CCE & ST Salem
Arising out of Order-in-Appeal No.52/2011-S.Tax (SLM) dt. 24.11.2001 passed by the Commissioner of Central Excise (Appeals), Salem			

Appearance :

Shri Ramachandra Rao, Consultant
For the Appellant

Shri B.Balamurugan, AC (AR)
Shri R.Subramaniyan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 26.07.2018

FINAL ORDER No. 42138-42139 / 2018

Per Bench

Both these appeals since involving the same dispute, they are taken up together for common disposal.

2. The facts of the case are that the appellants were registered with the department under 'Interior Decorator' services. On perusal of ST-3 returns, it appeared to the department that appellant instead of paying service tax @ 12% on the value of taxable service, they had discharged service tax @ 2% after treating their service as 'works contract service' and availing concessional rate of 2% under Rule 3 (1) of Works Contract (Compensation Scheme for Payment of Service Tax) Rules, 2007 (hereinafter referred to as Compensation Scheme). Accordingly, show cause notice dt. 09.09.2008 was issued for the period April

207 to March 2008, alleging total service tax liability of Rs.84,565/- and after taking into account the amount of Rs.14,013/- already paid by the appellants, proposed a demand of Rs.70,552/- with interest and imposition of penalty under Section 76 of the Finance Act,1994. Similarly, another show cause notice dt. 08.10.2009 was issued for the period April 2008 to March 2009 alleging total service tax liability of 63,767/- and after taking into account amount of Rs.20,919/- already paid by appellants proposed a demand of Rs.42,848/- with interest and imposition of penalty under Section 76 ibid. In adjudication, the original authorities confirmed these proposals and also imposed penalties under Section 76 ibid. In appeal, the Commissioner (Appeals) vide impugned orders dt.17.11.2009 and 24.11.2001 upheld the orders of the original authority and rejected their appeals. Hence appellants are before this forum in these two appeals.

3. Today when the matter came up for hearing, on behalf of the appellants, Ld. Consultant Shri Ramachandra Rao submits that they had wrongly registered under Interior Decorator Service; that they were not only providing materials like Gypsum boards etc. but also were also taking up the work of making false ceiling with these items. Hence the services performed by them are very much in the nature of works contract and not as ‘interior decorator’. For these reasons, they are eligible for benefit of Compensation Scheme. Ld. consultant also submits that they have already discharged tax liability under works contract taking the benefit of Compensation Scheme. He also submits that appellants in respect of the periods covered in both the appeals were very much in the threshold limit of service tax exemption of Rs.8 lakhs during the impugned periods. Hence there

would not be any tax liability on them under any service tax category. However, the for the amounts of Rs.14,013/- and Rs.20,919/- already collected by them and paid to the department, they are not contesting the same.

4. On the other hand, Ld. A.R supports the impugned orders. He submits that the work performed by them was related to planning, design and beautification of space and hence it squarely falls within the scope of "Interior Decorator Service". He also submits that even if the activity has to be considered as 'works contract', the procedural requirement for claiming Compensation Scheme was not followed by the appellants.

5. Heard both sides and have gone through the facts.

6. From the definition of "Interior Decorator" as reproduced and discussed in the orders of lower authorities, it becomes evident that the said services concerned involve advice, consultancy, technical assistance related to planning design and beautification of space etc. This being so, any work involving beautification of space cannot by itself be brought within the fold of 'interior decorator'. This very Bench in the decision of *Master Piece Vs CCE & ST Coimbatore* [2018] 93 taxmann.com 425 (Chennai) has observed as under :

> "5. From the above definitions, it becomes clear that Interior Decorator Service involves provision of advice, consulting technical assistance or services provided by way of intelligence or skill. There is no supply of material envisaged in the provision of services under Interior Decorator Service. On the other hand, from the sample copies of invoices submitted along with the appeal from page 50 onwards, we find that the activities involving making mirror panelling, false ceiling, lunch room tables, sofa, chairs, laminated panelling etc. with the materials to be supplied by the appellants themselves. It is also interesting to note that in all these invoices, the work has to be completed as per "design and drawing and specifications as provided by M/s.Gypsum India Ltd." Discernably, the appellants are then no where involved even in the design and drawing of

the work that has been entrusted to them. The appellants cannot then be slotted into the category of Interior Decorator Service. We also find that the case laws relied upon by the Ld. Advocate (supra) also support their contention. The relevant portion of the Tribunal's decision in the case of *Divekar Associates Vs CCE Pune-III* (supra) are re-produced below :

"6. Undisputedly the facts are that the appellants are engaged in the business of manufacturing furniture as per the design, drawing and specification provided by the client. They also undertook the work of modular partition and the activities were executed under the supervision through sub-contractor, manufacture all types of furniture at site out of their own raw material as per the requirement and design provided by their client on contract basis. These facts are recorded by the first appellate authority in para 8 of the impugned order.

6.1 On this factual matrix we have to consider whether these activities under dispute would fall under the category of "interior decorator" or otherwise. We need to go through the definition as amended, in Section 65(59) of Finance Act, 1994 : -

"Clause (59) of Section 65 of the Finance Act, 1994 defines 'interior decorators' as -

" 'interior decorators' means any person engaged whether directly or indirectly in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of space whether man-made or otherwise and includes a landscape designer".

6.2 It can be seen from the above reproduced definition, the activities which are undertaken by the appellant are not falling under the category of "interior decorator services". We find strong force in the submissions made by the learned advocate that the issue is finally settled by the decision of this Tribunal in the case of *Spandrel* (supra) (in which one of us was a Member). We reproduce the relevant paragraphs : -

"7. The term 'Commissioning or Installation' has been defined under Section 65(39a) of the Act, as : -

(i) Erection, commissioning or installation of Plant (Machinery Equipment or Structures whether fabricated or otherwise); or

(ii) Installation of -

(a) electrical and electronic devices including wiring or fitting therefor; or

(b) plumbing, drain laying or other installations for transport of fluids; or

(c)heating, ventilation or air-conditioning including related pipe, work, duct work and sheet metal work; or

(d) thermal insulation, sound insulation, fire proofing or water proofing; or

(e) lift and escalator, fire escape staircases or travelators; or

(f) such other similar services;

8. The appellants are engaged in the business of manufacturing furniture as per the design, drawing and specification provided by their client. They also undertook the work of modular partition and the activities were executed under their supervision through a sub-contractor. They also manufacture all types of furniture at site out of their own raw material and under their supervision as per the requirement and design provided by their client on contract basis. The various kinds of work include carpentry work involving execution of different types of *furniture, modular partitions fixation of* false ceiling *painting of walls* and *ceiling and all these activities are carried* out under the control and supervision of the appellant as per the agreement/contracts entered into. These facts have been admitted by Shri Divekar i.e. the appellant in his statement recorded under Section 14 of the Central Excise Act, 1944. The service provided by the appellant is related to planning, designing and beautification of space."

6.3 In view of the foregoing and the facts and circumstances of this case as also the judicial pronouncement, we hold the impugned order is unsustainable and liable to be set aside and we do so."

7. In the event, we are of the considered opinion that the appellant cannot then be brought within the fold of Interior Decorator Service. Show cause notices have also proposed demand of differential tax on the ground that provisions of Section 66 and 68 of the Finance Act, 1994 and Rule 3 of the Compensation Scheme have been contravened by not exercising the option as required under the Compensation Scheme etc. Be that as it may, one of the major arguments made by the Ld. consultant is that appellants in the impugned periods covered by the appeals would have fallen within the threshold limits and there would have been no tax liability under any service tax category. We find from para-5 of SCN dt. 0.09.2008 that the total taxable value for the impugned period is only Rs.6,84,179/- . So also in respect of another SCN dt. 08.10.2009 we find that the total taxable value is only Rs.5,15,920/-. We then find that the assertion of Ld.

consultant on this score is correct. This being so, while not disturbing the amount of Rs.14,013/- and Rs.20,919/- collected by the appellants and already paid to the Central Government, we set aside the differential tax liabilitiess of Rs.70,552/- and Rs.42,848/- demanded and confirmed in these cases respectively along with interest and penalties imposed thereon.

Appeals are allowed on above terms.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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