IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: ST/41469/2013

(Arising out of Order-in-Appeal No. 66/2013 dated 22.03.2013 passed by The Commissioner of Customs & Central Excise (Appeals), Salem)

M/s. The Leigh Bazaar Merchant's Association Ltd. : Appellant

Vs.

Commissioner of Central Excise, Salem : Respondent

Appearance:-

Ms. Krithika Jaganathan, Advocate
for the Appellant

Shri. L. Nandakumar, 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:**31.07.2018**

Final Order No. 42167 / 2018

Per Bench,

Brief facts are that the appellants were renting out immovable properties such as commercial complexes, shops, etc., to private parties and were not discharging the service tax under the category "Renting of Immovable Property". Show Cause Notice was issued demanding the service tax along with interest and for imposing penalties. After due process of law, the adjudicating authority confirmed the demand of Rs. 9,81,218/- along with interest and imposed penalties under Section 77 and 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) upheld the same. Hence, the appellants are now before the Tribunal.

2.1 On behalf of the appellant, the Ld. Counsel Ms. Krithika Jaganathan submitted that the appellant is a voluntary service organization incorporated as a guarantee company under the Indian Companies Act, 1913. The land and building constructed therein are let out to members of the association who, in turn, facilitate agriculturists of Salem to market their products. In addition to letting out space to members, they also let out space to non-members, namely Canara Bank, Post Office, BSNL, Petroleum Bunk, etc.

2.2 Further, rent was also received in respect of vacant land let out to persons. The demand of Rs. 9,81,218/- has been confirmed for the period 01.06.2007 to 31.03.2011.

2.3 She argued that the appellant having the status of an association formed for the purpose of facilitating merchants to store and trade food grains, are renting out the space to its own members. Due to the principle of mutuality of interest, the demand of service tax cannot sustain. The issue is settled in the case of a club/association and its members as rendered by the High Court in the case of ***Saturday Club Ltd. 2005 (180) E.L.T. 437 (Cal.), Ranchi Club Ltd. Vs. Chief Commissioner of C. Ex & S.T., Ranchi Zone - 2012 (26) S.T.R. 401 (Jharkhand)*** as well as ***Sports Club of Gujarat Ltd. Vs. Union of India - 2013 (31) S.T.R. 645 (Guj.)*** That this Tribunal in ***Cosmopolitan Club & Ors. Vs. C.C.E. & S.T., Chennai vide Final Order No. 40366-40385/2018 dt. 06.02.2018*** has followed the above judgments and held that no service tax liability is attracted on the amounts collected by the clubs from its members.

2.4 With regard to the amounts collected as rent from non-members, she submitted that the said taxable value would fall within the threshold limit of 10 lakhs as provided under Notification No. 08/2008 dt. 01.03.2008. It is pointed out by her that though this plea was put forward before the Commissioner (Appeals) and also discussed in page 4 of the impugned order, the same was not considered by the Commissioner (Appeals). She, therefore, prayed to set aside the demand.

3. The Ld. AR Shri. L. Nandakumar supported the findings in the impugned order.

4. Heard both sides.

5.1 The foremost contention put forward by the Ld. Counsel for appellant is that the appellant is an association incorporated for the purpose of facilitating merchants who are its members. That a part of the premises have been let out to its members and the rent collected from the members would not attract the levy of service tax, due to the principle of mutuality of interest. We agree with this submission as this issue has been settled in the case of *Ranchi Club Ltd. (supra), Saturday Club Ltd. (supra)* and other decisions relied by the Ld. Counsel for appellant.

5.2 It is her case that if the said demand raised in respect of rent collected from members is excluded, the amounts collected from non-members and the amount collected from vacant land would fall below the threshold limit as provided in Notification No. 08/2008 dt. 01.03.2008. The Notification No. 06/2005-ST dt. 01.03.2005 was amended by Notification 08/2008 by increasing the threshold limit from Rs. 8 lakhs to Rs. 10 lakhs in any financial year. The Commissioner (Appeals) has considered this issue in page 4 of the impugned order. It is seen that for the period 2007-08, when the threshold limit was 8 lakhs, the rent received from non-members is only Rs. 3,36,180/-. Similarly, for the period from 2008-09 to 2010-11, the rent collected from non-members is less than Rs. 5 lakhs. It is very much clear that the amounts collected from non-members would fall below the threshold limit and the demand of service tax on this ground cannot sustain.

5.3 From the above discussions, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside.

6. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order was pronounced in open Court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Sdd