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

| S.No. | Appeal No. | Appellant | Respondent |
|---|---|---|---|
| 1. | ST/40225/2015 | T. Parivallal | CCE & ST Tiruchirappalli |
| Arising out of Order-in-Appeal No.162/2014-TRY (ST) dt. 14.10.2014 passed by Commissioner of Customs & Central Excise (Appeals-2) Trichy | | | |
| 2. | ST/40226/2015 | T. Karunanidhi | CCE & ST Tiruchirappalli |
| Arising out of Order-in-Appeal No.163/2014-TRY (ST) dt. 14.10.2014 passed by Commissioner of Customs & Central Excise (Appeals-2) Trichy | | | |
| 3. | ST/40227/2015 | T. Chinnaraja | CCE & ST Tiruchirappalli |
| Arising out of Order-in-Appeal No.164/2014-TRY (ST) dt. 14.10.2014 passed by Commissioner of Customs & Central Excise (Appeals-2) Trichy | | | |

Appearance :

Shri V. Alagappan, Consultant
For the Appellant

Shri B. Balamurugan, 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 : 01.10.2018

**FINAL ORDER No. 42535-42537 / 2018**

**Per Bench**

After hearing both sides, we find that the dispute relates to demand of service tax on the total rents received by four joint owners of commercial complex located at Trichy, which is rented to various persons. In adjudication proceedings by order dt. 17.03.2014 a service tax amount of Rs.10,43,156/- was demanded jointly from all the joint owners under the category of renting of immovable property for the period 1.6.2007 to 31.03.2012 with interest thereon. Penalties were also imposed on the four joint owners under Section 77 & 78 of the Finance Act,1994. In appeal, the Commissioner (Appeals) vide impugned order dt. 14.10.2014 upheld the order of original authority. Out of the four joint owners, appeals have been filed by three of the joint owners as under :

| Appellant | Appeal No. |
|---|---|
| T. Parivallal | ST/40225/2015 |
| T. Karunanidhi | ST/40226/2015 |
| T. Chinnaraja | ST/40227/2015 |

2. Ld. Consultant Shri V. Alagappan appearing on behalf of the appellants submits that the matter is no longer *res integra* and has been decided by a number of Tribunal decisions. He relies upon the following case laws :

1) G.Soundarapandian and G.Kanagavel Vs CCE (ST) Madurai
   2015 (10 TMI 644 – CESTAT Chennai

2) 2018 (6) TMI 810- CESTAT New Delhi
   Anita Singh & Others Vs CGST, CC & CE, Dehradun

3) 2017 (10) TMI 1190 – CESTAT Ahmedabad
   CST Ahmedabad Vs Khushiram M Ratanchandani & Others

4) 2017 (8) TMI 109 – CSTAT Chandigarh
   Simrandeep Kaur and Others Vs CCE Chandigarh

3. On the other hand, Ld. A.R Shri B. Balamurugan supports the impugned order.

4. Heard both sides and have gone through the facts. We find that the Ld. Advocate is correct in her assertion that the matter is already settled by a plethora of decisions of the Tribunal. In the case of *Sarojben Khusalchand Vs CST Ahmedabad* (supra) relied upon by Ld. Advocate, the Tribunal has observed as under :

> **"7.**The basis of allegation by against the Appellants rests on the premise that even though the the Revenue immovable property is jointly owned by several persons, since the property itself is indivisible, and each person cannot separately render the service without involvement of other co-owners, hence the total rent received as a whole, be considered for the purpose of computing aggregate value of taxable services in extending the

Notification No. 6/2005-S.T., dated 1-3-2005, as amended. In other words, the Service Tax is assessed on the total amount of rent, without extending the benefit of exemption Notification No. 6/2005-S.T. on the rent received by each co-owner in proportion to his share in the immovable property rented/leased. The reasoning of the lower authorities in denying the benefit to each co-owner is that the meaning of "person" defined under Section 3(42) of General Clauses Act, includes any company or body of individual whether incorporated or not should be pressed into service to levy Service Tax on the total rent received by all co-owners considering them as body of individual or association of persons in computing the gross taxable value under the exemption Notification No. 6/2005-S.T. The appellants on the other hand, vehemently argued that the definition of 'person' provided under the General Clauses Act, is not relevant and inapplicable to the facts and circumstances of the present case, inasmuch as merely because several persons own the immovable property jointly, they cannot be treated as body of individuals or association of persons, when each co-owner receive the rent proportionate to their share in the immovable property, having separate PAN No. and subjected to TDS and income tax assessment separately. In support of their argument on the scope and meaning of association of persons they have referred to the judgment of Hon'ble Supreme Court in the case of *CIT* v. *Indira Balkrishna* (supra) followed in *Deghamwala Estates* (supra) case where under similar circumstances, the co-owners who received the rent income proportionate to their share had been assessed to income tax separately, but not as an association of persons.

**… … …**

**… … ….**

**9.** We find force in the ld. Advocates representing the respective appellants contention of the inasmuch as 'association of persons' has been considered as a separate legal entity under the Income-tax Act for assessment and provided separate PAN number different from the PAN number possessed by individual co-owners; who joined together to form an 'association of persons'. In the present case, the show cause notices were issued in many cases to one person among the Joint owners and in other cases to all the persons who had jointly owned the immovable property provided on rent. Needless to mention, the Service Tax Registration of individual assessees for collection of Service Tax is PAN based, hence, collection of Service Tax from one of the co-owners, against his individual Registration for the total rent received by all co-owners separately, is neither supported by law nor by laid down procedure. Thus, it is difficult to accept the proposition advanced by the Revenue that all the co-owners providing the service of renting of immovable property be considered as an association of persons and the Service Tax on the total rent be collected from one of the co-owners. Another argument of the Revenue is that since the property is indivisible and not earmarked against each of the co-owners, hence the Service Tax is leviable on the total rent

> received against the said property without apportioning against each of the co-owners in proportion to their share. We find fallacy in the said argument of the Revenue. Conceptually Service Tax is levied on the service provided, which is an intangible thing and hence it is not necessary to be identified with physical demarcation of the immovable property given on rent against individual co-owners. Once the value of service provided by a service provider is ascertainable Service Tax is accordingly charged. This Tribunal in similar facts and circumstances in the cases of *Deoram Vishrambhai Patel*, *Anil Saini & Others* and *Luxmi Chaurasia* (supra) after considering the issues raised, rejected the contention of the Revenue and allowed the benefit of exemption Notification No. 6/2005-S.T., dt.1-3-2005 as amended to individual co-owners who jointly owned the property and provided the service of renting of immovable property, and received the rent in proportion to the shares in the immovable property.
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> **10.** In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law."

The above ratio has been reiterated by the Tribunal in *Anil Saini Vs CCE Chandigarh* - 2017 (51) STR 38 (Tri.-Chan.). This very Bench in the case of *Shri S.V. Janardhanam Vs. Commissioner of GST & Central Excise, Salem* vide Final Order No.42474/2018 dt. 25.09.2018 and in the case of Shri Syed Ahamed & Others Vs CGST & CE, Trichy vide Final Order No.42477/2018 dt. 25.09.2018 has taken an identical stand. Following the same ratio, we hold in favour of the appellant. The impugned order cannot then be sustained and is required to be set aside, which we hereby do. Appeal is allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

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| **(Madhu Mohan Damodhar)** | **(Sulekha Beevi, C.S)** |
| **Member (Technical)** | **Member (Judicial)** |

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