

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

Appeal No.ST/41721/2014

[Arising out of Order-in-Appeal No.100/2014 dt. 22.04.2014 passed by
Commissioner of Central Excise (Appeals), Salem]

Sakthi Sugars Limited

Appellant

Versus

Commissioner of Central Excise, Salem

Respondent

Appearance :

Ms. Cynduja Crishnan, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 16.10.2018

FINAL ORDER No. 42653 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the case are that appellants had entered into an agreement with M/s.Tamil Nadu Newsprint and Papers Ltd. (TNPL) for renting of land for which TNPL was required to pay a sum of Rs.1200/- per month per acre. A show cause notice dt. 25.03.2013 was issued to the appellants, inter alia proposing demand of service tax liability of Rs.1,18,656/- with interest and also imposition of

penalty under various provisions of law. It appeared to the department that appellants had not discharged tax liability in respect of the aforesaid renting of immovable property made by them. In reply to the SCN and also during personal hearing, the appellants inter alia, contended that the area occupied by TNPL is only 9 acres and not 40 acres hence as per agreement the monthly rent works out to Rs.10,800/- per month, hence the total service tax liable to be paid by them during the period of dispute is an amount of Rs.26,706/- and not Rs.1,18,656/- as proposed in the SCN. However, the original authority confirmed the demand of Rs.1,18,656/- as proposed in the notice and also appropriated an amount of Rs.26,706/- already paid by them with interest. Penalty was also proposed under Section 77 & 78 of the Act. In appeal, vide impugned order dt.22.04.2014, the lower appellate authority inter alia observed that appellants had not furnished any documentary evidence specifically mentioning the areas of 9 acres. Hence the order of the original authority was upheld and the appeal rejected, hence appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Counsel Ms. Cynduja Crishnan submits the following :

i) The area occupied by TNPL is only 9 acres. Hence, as per the agreement, the monthly rent for the 9 acres of land i.e. 9 acre x Rs.1200 and not as 40 acre x Rs.1200 as alleged in the notice. Thus, the rent works to Rs.2,37,600/- for the period April 2011 to January 2013 at Rs.1200/- per acre as provided in the agreement works and not Rs.10,56,000/- as alleged in the notice. In view of the same, the total service tax liable to be paid by notice during the period of dispute is an amount of Rs.26,706/- (Service Tax : Rs.25,920/-, Education Cess: Rs.524/-

and SHE Cess: Rs.262/-) and not Rs.1,18,656/- as proposed in the subject notice. Further due to some unforeseen circumstances and the reason that they have not received any rent from TNPL.

ii) Ld. Advocate produced letters of Sakthi Sugars Ltd. dt. 06.02.2001 and of TNPL dt. 10.02.2001 referring to the agreement dt. 04.02.2001 between the two parties and confirmed that area of only 9 acres as demarcated in the premises of appellants have been occupied by TNPL.

iii) Ld. Advocate draws our attention to a subsequent proceedings on the same issue wherein the Commissioner (Appeals) vide a latter order dt. 28.03.2016 has accepted the contention of appellant that only 9 acres of land have been leased out and that service tax liability on the same has been discharged and on which grounds, the appeal has been allowed vide Order No.32/2016 dt. 28.03.2016.

3. On the other hand, Ld. A.R Shri A. Cletus supports the impugned order. He refers to para 2.2 of the SCN to submit that the agreement entered into by appellant in question was for renting of 40 acres of land. He further submits that although Commissioner (Appeals) in the subsequent order dt. 28.03.2016 relied upon by appellants accepted their plea, the department may not have filed appeal against the said order as the amount involved is only Rs.64,368/-.

4. Heard both sides and have gone through the facts. We find that appellant has been contending right from the reply to the SCN that the agreement in question is only for renting of 9 acres of land as per their letter dt. 06.02.2001 addressed to TNPL and also have submitted TNPL's confirmatory letter dt. 10.02.2001. In our view, sufficient proof has been submitted by the appellants in

support of their contention. These aspects have also been taken into account in the proceedings for the subsequent period on the same issue wherein the Commissioner (appeals) has found merit in the appellant's plea and has decided in their favour. In the circumstances, we hold that appellants have only rented out 9 acres of land to TNPL and that service tax liability for the impugned period has already been discharged by them. The impugned order to the contrary cannot then sustain and will have to be set aside, which we hereby do. Appeal is allowed with consequential relief, if any, as per law.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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