

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

S.No.	Appeal No.	Appellant	Respondent
1.	ST/15/2012	T.P. Dhamodharan	CCE & ST Salem
<b>Arising out of Order in Appeal No.44/2011 dt. 11.10.2011 passed by Commissioner of Customs &amp; Central Excise (Appeals) Salem</b>			
2.	ST/16/2012	T.P. Dhamodharan	CCE & ST Salem
<b>Arising out of Order in Appeal No.45/2011 dt. 11.10.2011 passed by Commissioner of Customs &amp; Central Excise (Appeals) Salem</b>			
3.	ST/17/2012	T.P. Dhamodharan	CCE & ST Salem
<b>Arising out of Order in Appeal No.51/2011-STX dt.14.11.2011 passed by Commissioner of Central Excise (Appeals) Salem</b>			
4.	ST/41088/2013	T.P. Dhamodharan	CCE & ST Salem
<b>Arising out of Order in Appeal No.21/2013-ST (SLM) dt.31.1.2013 passed by Commissioner of Central Excise (Appeals) Salem</b>			

Appearance :

Shri J.Shankar Raman, Advocate  
For the Appellant

Ms. T. Usha Devi, DC (AR)  
For the Respondent

**CORAM :**

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

Date of hearing / decision : 05.12.2018

**FINAL ORDER No. 43012-43015 / 2018**

**Per Shri Madhu Mohan Damodhar**

The facts of the case are that proceedings were initiated against the appellant on the allegation that he, as Managing Director of M/s.Srivasa Cements (P) Ltd. had entered into a lease agreement for leasing out of the cement grinding unit of M/s.Srivasa Cements (P) Ltd. to M/s.Vijay Cements for a fixed monthly lease rent. Four show cause notices have been issued to the appellant for

different periods proposing demand of service under Renting of Immovable Property Service. In adjudication, demands raised in the SCNs were confirmed by the original authority and penalties were also imposed under various provisions of law. In appeal, Commissioner (Appeals) vide impugned order No.44/2011 dt.11.10.2011, 45/2011 dt. 11.10.2011 & 51/2011 dt. 14.11.2011 confirmed the orders of original authority, however set aside penalties. In Impugned Order No.21/2013 dt. 31.3.2011, the lower appellate authority upheld the order of original authority including the penalties imposed.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld.Advocate Shri J. Shankarraman made the following submissions :

- i) The appellant was only the Managing Director of Srivasa Cements (P) Ltd. and that he had only signed the lease agreement on behalf of the said company.
- ii) The entire payment was received by the company only and not by the appellant. Further the building and land belong to the company and not to the appellant.
- iii) The similar issue considered by the Tribunal in the case of *Bhavana Jayantibhai Desai Vs CCE & ST Rajiot - 2015 (37) STR 412* (Tri.-Ahmd.) wherein the Tribunal held that no demand can be confirmed against the appellant therein who was the Director of the company signing the contract.

3. On the other hand, Ld.A.R Ms.T. Usha Devi supports the impugned order.

4. Heard both sides and have gone through the facts. In the first place, from the facts on record itself, it is observed that while demands have been made against the appellant Shri T.P. Damodharan, the show cause notice itself mentions that the cement grinding unit leased out belonged to M/s.Srivasa

Cements (P) Ltd. It is not the allegation that such unit was owned or belonged to the appellant. Perusal of the lease agreement found in page 73 of appeal ST/41088/2013 clearly indicates that the agreement was signed by the appellant “representing Srivasa Cements (P) Ltd.” who is referred to as the LESSOR. In page 2 of the agreement it is indicated that the cement grinding unit along with land is seized and possessed with title by LESSOR themselves. Finally, in page 12 of the agreement it is indicated that appellant is signing the documents Pursuant to a Board Resolution of Srivasa Cements (P) Ltd. In the light of these facts, we find that the proceedings initiated against the appellant is unjustified in law. At the most, the demand could have been raised or initiated against the LESSOR namely Srivasa Cements Ltd. and not their Managing Director. This conclusion finds resonance in the decision of the Tribunal in the case of *Bhavana Jayantibhai Desai* (supra) relied upon by the Ld.Advocate. In view thereof, we find in favour of the appellant. In consequence, the impugned orders cannot be sustained and require to be set aside, which we hereby do. Appeals are allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

**(P. Dinesha)**  
**Member (Judicial)**

**(Madhu Mohan Damodhar)**  
**Member (Technical)**

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