IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]

Appeal No.: ST/40761/2014

[Arising out of Orders-in-Appeal No. 60 & 61/2014 dated 12.02.2014 passed by the Commissioner of Central Excise (Appeals), Salem]

M/s. The Leigh Bazaar Merchants' Association Ltd., **: Appellant**
Leigh Bazaar, Salem – 636 009

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Salem Commissionerate

Appearance:-
Ms. Krithika Jaganathan, Advocate
for the Appellant

Ms. T. Usha Devi, DC (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: **24.01.2019**

Final Order No. 40187 / 2019

Per Bench :

Brief facts are that the appellants received rent amount collected from renting Commercial Complexes, Shops, etc. The Department was of the view that they are liable to pay service tax under the category of "Renting of Immovable Property".

2. A Show Cause Notice was issued proposing to demand service tax for the period from 01.04.2011 to 31.03.2012 along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the demand along with interest and imposed penalties. In appeal, the Commissioner (Appeals) upheld the same. Hence, this appeal.

3.1 On behalf of the appellant, Ld. Advocate Ms. Krithika Jaganathan submitted that the appellant is an association formed for the purpose of facilitating merchants to store and trade food grains from the demarcated premises. They received certain amounts from its members, who are merchants, for utilizing the land owned by the appellant. The services rendered by allowing the members to use the premises would not fall under "Renting of Immovable Property Service" due to the principle of mutuality of interest.

3.2 She submitted that the members are able to take lease of the lands only because they are members of the association. It is settled law that in case of a Club/Association and its members, the provider of services and the consumer is one single entity and resultantly, the activities provided by a Club/Association to its members do not come within the fold of 'service'. She placed reliance on the following cases :

- *Saturday Club Ltd. Vs. Asst. Commr., Service Tax Cell, Calcutta - 2005 (180) E.L.T. 437 (Cal.);*
- *Ranchi Club Ltd. Vs. Chief Commr. of C.Ex. & S.T., Ranchi Zone – 2012 (26) S.T.R. 401 (Jharkhand).*

3.3 It is also argued by her that in cases where the appellant has leased the property to private parties, who are not members of the association, the total taxable value would be within the threshold limit and therefore, the demand cannot sustain. She adverted to the ***Final Order No. 42167/2018 dated 31.07.2018*** in the appellant's own case and submitted that the Tribunal in the said case had analysed that the rent received from members is not subject to levy of service tax due to the principle of mutuality of interest. So also the benefit of threshold limit was extended for the rent collected from non-members and the demand on such rent from non-members was set aside. She prayed for a similar ruling.

4. Ld. AR Ms. T. Usha Devi appearing on behalf of the respondent supported the findings in the impugned Order.

5. Heard both sides.

6. On a perusal of paragraph 14.01 of the Order-in-Original, it is seen that the appellant has received rent from members as well as non-members such as Petrol Bunk, BSNL, Bank, etc. The Tribunal in the appellant's own case in the above stated Final Order has decided that the rent collected from members cannot be subject to levy of service tax due to the principle of mutuality as laid down in the case of *Saturday Club Ltd. (supra)* and *Ranchi Club Ltd. (supra)*. Following the same, we are of the view that the demand of service tax on the rent received from members cannot sustain and requires to be set aside, which we hereby do.

7.1 With respect to the rent received from non-members, the appellant has put forward the contention that it would be within the threshold limit. The details of rent collected covered by the Show Cause Notice for the year 2011-12 is as under :

Year	**Rent on vacant lands (in Rs.)**	**Rent from Petrol Bunk, BSNL and Bank (in Rs.)**	**Rent from members (in Rs.)**	**Total (in Rs.)**
2011-12	5,04,515/-	4,59,932/-	14,96,480/-	24,60,927/-

7.2 It would go to show that the amount of rent collected from non-members is within the threshold limit of exemption of service tax. Therefore, following the decision in the appellant's own case, as observed in the Final Order stated above, we are of the view that the demand of service tax on the rent collected from non-members also cannot sustain and requires to be set aside, which we hereby do. The impugned Order is therefore set aside.

8. The appeal is allowed with consequential reliefs, if any, as per law.

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

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

Sdd