

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

Regional Bench – Court No. III

**Service Tax Appeal No. 42698 of 2014**

(Arising out of Order-in-Appeal No. 114/2014 dated 11.09.2014 passed by the Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

**Smt. P. Dhanalakshmi,**  
No. 15, Second Cross Street,  
5<sup>th</sup> Main Road, Srinivasa Nagar,  
Tiruchirappalli – 620 017

**: Appellant**

**VERSUS**

**The Commissioner of G.S.T. & Central Excise,**  
Tiruchirappalli Commissionerate,  
No.1, Williams Road, Cantonment,  
Tiruchirappalli – 620 001

**: Respondent**

**APPEARANCE:**

Ms. K. Nancy, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**  
**HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 40649 / 2019**

DATE OF HEARING: 22.03.2019

DATE OF DECISION: 22.03.2019

**PER BENCH :**

Brief facts are that the appellant is providing taxable services under the category of 'Renting of Immovable Property Services'. A Show Cause Notice was issued proposing to demand the short paid service tax along with interest and also for imposing penalties. After due process of law, the Original Authority vide Order-in-Original dated 14.03.2014 confirmed the demand of Rs. 24,23,798/- along with interest and also imposed penalties. In appeal, the Commissioner (Appeals) vide impugned order dated 11.09.2014 upheld the same. Hence, this appeal.

2.1 On behalf of the appellant, Ld. Advocate Ms. K. Nancy appeared and argued the matter. She submitted that the appellant is the co-owner of the complex called "Lakkshmi Arcade" along with her husband Shri. M.S. Paramasivam. The property is situated in Survey Nos. T.S. No.65, bearing postal address of Plot No. A/10, Door No. 18, 11<sup>th</sup> Cross Main Door, Thillai Nagar, Tiruchirappalli – 620 018. The property was purchased by her along with her husband Shri. M.S. Paramasivam vide sale deed No. 609/1992 dated 29.01.1992. From the date of the above purchase, the appellant and her husband have been in absolute possession and enjoyment of the schedule property as joint owners. She along with her husband constructed the commercial complex which is now known as "Lakkshmi Arcade". Even now, the said complex is in the name of both Smt. P. Dhanalakshmi (the appellant herein) and her husband Shri. M.S. Paramasivam.

2.2 She along with her husband entered into lease agreements with various tenants for renting the said premises and they have collected rental charges equally. In all the agreements, the terms of payment of rent are equal between the appellant and her husband Shri. M.S. Paramasivam. For the sake of convenience, her husband executed a Power-of-Attorney in her favour for execution of the lease deed. Based on such Power-of-Attorney, the appellant has entered into agreements with some of the tenants in her individual name, instead of jointly with herself and her husband. However, in all these cases, the rent is shared equally by both of them, which is evident from the lease agreements as well as the computation of income shown in their income tax returns. She therefore submitted that the demand of service tax by the Department alleging that the property is owned solely by the appellant alone is incorrect and illegal.

2.3 If the rental income is shared between the appellant and her husband, the amount would be much below the threshold limit and the appellant would not be liable to pay service tax. It is argued by her that it is the settled position of law that the rent received by each co-owner has to be considered separately for the purpose of quantification of service tax.

3. Ld. AR Shri. B. Balamurugan appeared and argued the matter on behalf of the Department. He submitted that as per the land revenue records, the property is in the absolute ownership of the appellant only. Further, several lease agreements have been entered into with the tenants by the appellant only. In view of the above, it is very much clear that the liability to pay service tax on the rental income received from "Lakkshmi Arcade" vests with the appellant alone. Therefore, the demand of service

tax on the appellant, who is the legal owner of the property, is correct and proper.

4. Heard both sides.

5. The appellant has argued that she is a joint owner/co-owner of the property namely "Lakkshmi Arcade" along with her husband Shri. M.S. Paramasivam. Ld. Counsel for the appellant has produced the English translation of the sale deed dated 29.01.1992. On perusal of the same, it is seen that the property has been purchased jointly by the appellant and her husband Shri. M.S. Paramasivam. Several lease agreements have also been produced before us. Some of the lease agreements are entered into by both the appellant and her husband. It is very much brought out by the documents that the appellant is not the absolute owner of the property "Lakkshmi Arcade". The sale deed as well as the related documents shows that the property is owned jointly by the appellant and her husband.

6. The contention of the Department that in the land revenue records the name of the appellant alone is shown cannot be made the basis for confirmation of the demand, especially when there is no proof that the village records have been updated. It is not disputed that the income by way of rent is received by them separately and reflected in their income tax returns separately. This being the case, the mere reliance on the land revenue records is not correct. When the property is owned jointly by the appellant and her husband, the demand of service tax raised on the appellant alone, therefore, cannot be sustained.

7. The Tribunal in the case of ***M/s. Sambhaji Pandurang Hulawale Vs. Commissioner of C.Ex., Pune-I reported in 2017 (6) G.S.T.L. 209 (Tri. – Mum.)*** has held that the rent received by the co-owners cannot be clubbed together for raising the demand of service tax.

8. Ld. Advocate for the appellant also contends that if the rent is shared between the appellant and her husband, they would come under the threshold limit. This aspect, however, requires verification. If the rent received by the appellant separately is below the threshold limit during the disputed period, then the appellant would not be liable to pay service tax.

9. From the above discussions, we hold that the demand as such cannot sustain and requires to be set aside, which we hereby do. However, the fact as to whether the demand made against the appellant is well within the threshold limit during the disputed period requires verification. For this

limited purpose, the matter is remanded to the adjudicating authority. The impugned order is set aside.

10. The appeal is allowed with consequential reliefs, if any, as per law with the limited direction to verify whether the rent received by the appellant would fall within the threshold limit during the disputed period. If beyond the threshold limit, the appellant would be liable to pay the requantified amount of service tax.

(Operative part of the order pronounced in open court)

**(SULEKHA BEEVI C.S.)**  
MEMBER (JUDICIAL)

**(MADHU MOHAN DAMODHAR)**  
MEMBER (TECHNICAL)

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