

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

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41233 of 2013

(Arising out of Order-in Appeal CMB-CEX-000-APP No.097/2013 dated 19.03.2013 passed by Commissioner of Customs Central Excise & Service Tax (Appeals) 6/7 A.T.D. Street, Race Course Road, Coimbatore-641018.)

M/s. Sree Annapoorna Gowrishankar Estates : Appellant
And Constructions Private Limited.,
75 East Arokiasamy Road
Rs Puram, Coimbatore
Tamil Nadu-641002

VERSUS

The Commissioner of Central Excise and : Respondent
Service Tax,
6/7 A.T.D. Street,
Race Course,
Coimbatore- 641018

APPEARANCE:

Shri M. N. Bharathi, Advocate for the Appellant

Shri M. Ambe, DC (AR) for the Respondent
Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40626/ 2023

DATE OF HEARING: 26.07.2023

DATE OF DECISION: 02.08.2023

Order : [Per Hon'ble Mrs. Sulekha Beevi C.S.]

Brief facts are that the appellant who is engaged in rendering services under the category of 'Renting of Immovable Property Services' has obtained registration for such services. During scrutiny of the account for the

year 2006-07 and 2007-08 it was found that appellant had received Rs.92,56,460/- and Rs.18,01,000/- during 2006-07 and 2007-08 respectively for providing 'Real Estate Services'. The appellant had not registered for the said service and did not discharge the service tax liability. Show Cause Notice dated 19.09.2011 was issued proposing to demand the service tax along with interest and for imposing penalty. After due process of law the original authority confirmed the demand along with interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2.1 The Learned Counsel Shri M. N. Bharathi appeared and argued for the appellant. It is submitted that the appellant has neither rendered any Real Estate Agent Service nor received any consideration for such services. The appellant purchased and sold such land and the amount received is the profit from such sale of immovable property. The land was acquired from several land owners through a registered General Power of Attorney. Besides executing the General Power of Attorney in favour of appellant the land owners had also executed a declaration in stamp paper stating that they are giving up their entire rights in the property to the appellant. The appellant had paid the land value to the land owners. The land so acquired by appellant was made as a single parcel and sold to the Associate Companies of K. G. Group. This sale is done by way of outright sale and the transaction is nothing but buying and selling of land. The amount received is the profit arising out of such immovable property sale. The land being taken possession of by appellant by General Power of Attorney accompanied by declaration given by land owners, the amount received cannot be construed as consideration received for Real Estate Agent Service.

3. Further, the appellant had properly accounted the income received in the profit and loss account for relevant year. It is explained that as the asset was acquired and sold within the same financial year, as stock in trade, the same was not reflected in the fixed assets schedule. The amount is actually profit from purchase and sale of immovable property and not service charges for Real Estate Agent services though the appellant had indicated the amount as service charges in their accounts.

4. The Learned Counsel argued on the ground of limitation also. It is submitted that the entire transaction was reflected in the Books of account and Balance sheet. The department has not put forward any evidence to establish that there is wilful suppression of facts with intent to evade payment of tax. The appellant was under bonafide belief that being purchase and sale of immovable property there is no taxable event in the transaction. The appellant is registered under 'Renting of immovable property and is filing returns and discharging appropriate tax. Moreover, the word 'wilful' suppression has not been alleged in the Show Cause Notice for invoking the extended period. In the Show Cause Notice it is merely stated that appellant suppressed facts with intent to evade payment of duty. The decision in the case of *Cosmic Dye Chemical vs. Collector of CE Bombay reported in 1995(75) E.L.T. 721 (S.C)* was relied to argue that unless there is 'wilful' suppression of facts, the extended period cannot be invoked. As an alternate plea, the Learned Counsel prayed that the penalty may be set aside under Section-80 of the Finance Act, 1994.

5. The Learned Authorized Representative Shri Harendra Singh Pal appeared and argued for the department. It is submitted that the appellant has not made purchase and sale of immovable property but has functioned as an intermediary ie; as Real estate agent in the purchase and sale of land. The land was never registered in the name of the appellant. For this reason

itself, the appellant cannot contend that it is the profit received from purchase and sale of land in the same financial year. The General Power of Attorney or the declaration signed by the land owners are not legal documents transferring right over the property to the appellant. The General Power of Attorney allows the appellant to find purchasers for the land of the land owners. Thus the amount received is nothing but commission as a Real Estate Agent. The demand confirmed is legal and proper. Further that the evasion of tax would not have come to light but for the scrutiny by the audit party. The appellant is therefore guilty of wilful suppression of facts and the demand raised invoking extended period is legal and proper.

6. Heard both sides.

7. The issue to be decided is (i) whether the appellant is liable to pay service tax under 'Real Estate Agent Service' (ii) whether the extended period is invocable (iii) whether the appellant has put forward reasonable cause for non-imposition of penalties under Section 80 of the Finance Act 1994.

8. The Learned Counsel for appellant has strenuously argued that the appellant had not rendered any service as 'Real Estate Agent' and that the amount received is profit from purchase and sale of immovable property. The documents relied to support this argument are the General Power of Attorney and declaration executed by the land owners to the appellant. On bare perusal, it can be seen that these documents do not confer any legal title or possession over the property to the appellant. These documents only facilitate the appellant to find a buyer for the land without the involvement of the land owners. The documents are executed for a trust and assurance that the land owners will not sell their land to any other buyer. The appellant contends that the land owners were paid the entire consideration of the property

at the time of executing General Power of Attorney and that possession was handed over to the appellant. The General Power of Attorney is only an authorisation to sell and to find a buyer. This facilitates the appellant for finding a buyer for the land and also avoid the need of each land owner to come to the Register Office. It saves stamp duty also. The sale deed has been ultimately executed by the land owners and not by the appellant. From the facts it is clear that the appellant has acted as a middleman/ agent in the purchase and sale of immovable property and the amount received is consideration for such services. We are in full agreement with the findings of the adjudicating as well as the Commissioner (Appeals) on the merits of the case. The issue on merits is found against the appellant and in favour of the Revenue.

9. The Learned Counsel has argued on the ground of limitation also. It is submitted by the appellant that they have disclosed the amount received in these accounts and therefore cannot be held guilty of wilful suppression of facts with an intent to evade payment of duty. It has to be seen that the appellant did not obtain registration under the 'Real Estate Agent Service' and did not pay the service tax. The same would have gone unnoticed, but for the scrutiny by the audit party. Therefore we do not find any grounds to set aside the demand on the ground of limitation. However, the appellant has put forward explanation that they were under bonafide belief that the transaction is purchase and sale of immovable property and that it did not fall under 'Real Estate Agent Service.' For this reason we are of the considered opinion that in terms of Section 80 of finance Act, 1944 the penalties imposed under Section 77& 78 alone, 1994 require to be set aside which we hereby do.

10. In the result, the impugned order is modified to the extent of setting aside the penalties imposed under Section 77 and 78 of the Finance Act, 1994 without disturbing the demand of service tax or the interest

thereon. The appeal is partly allowed in above terms, with consequential relief, if any.

(Order pronounced in the open court on 02.08.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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

RKP