

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40824 of 2021

(Arising out of Order-in-Appeal Nos. 72 to 76 / 2021 (CTA-II) dated 29.06.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

S. Thiagarajan : **Appellant**
No. 1, Rutland Gate, 2nd Street,
Thousand Lights, Chennai – 600 006

VERSUS

Commissioner of G.S.T. and Central Excise : **Respondent**
Chennai South Commissionerate
692, M.H.U. Complex, Nandanam, Chennai – 600 035

WITH

Service Tax Appeal No. 40048 of 2022

(Arising out of Order-in-Appeal Nos. 72 to 76 / 2021 (CTA-II) dated 29.06.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Prashanthi Entertainers (P) Limited : **Appellant**
No. 39, North Usman Road,
T. Nagar, Chennai – 600 017

VERSUS

Commissioner of G.S.T. and Central Excise : **Respondent**
Chennai South Commissionerate
692, M.H.U. Complex, Nandanam, Chennai – 600 035

WITH

Service Tax Appeal No. 40049 of 2022

(Arising out of Order-in-Appeal Nos. 72 to 76 / 2021 (CTA-II) dated 29.06.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

Preethi Thiagarajan : **Appellant**
No. 1, Rutland Gate, 2nd Street,
Thousand Lights, Chennai – 600 006

VERSUS

Commissioner of G.S.T. and Central Excise : **Respondent**
Chennai South Commissionerate
692, M.H.U. Complex, Nandanam, Chennai – 600 035

Appeal No(s): ST/40824/2021-DB
& ST/40048-40051/2022-DB

WITH

Service Tax Appeal No. 40050 of 2022

(Arising out of Order-in-Appeal Nos. 72 to 76 / 2021 (CTA-II) dated 29.06.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

Shanthi Thiagarajan

: Appellant

No. 1, Rutland Gate, 2nd Street,
Thousand Lights, Chennai – 600 006

VERSUS

Commissioner of G.S.T. and Central Excise

: Respondent

Chennai South Commissionerate
692, M.H.U. Complex, Nandanam, Chennai – 600 035

AND

Service Tax Appeal No. 40051 of 2022

(Arising out of Order-in-Appeal Nos. 72 to 76 / 2021 (CTA-II) dated 29.06.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

T.L. Prashanth

: Appellant

No. 1, Rutland Gate, 2nd Street,
Thousand Lights, Chennai – 600 006

VERSUS

Commissioner of G.S.T. and Central Excise

: Respondent

Chennai South Commissionerate
692, M.H.U. Complex, Nandanam, Chennai – 600 035

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOS. 40817-40821 / 2023

DATE OF HEARING: 02.08.2023

DATE OF DECISION: 15.09.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts leading to the present dispute emanate from the fact that the appellants apparently had not paid Service Tax in respect the premises rented out to M/s. Joy Alukkas Traders (India) Pvt. Ltd. A common Show Cause Notice dated 15.10.2013 was issued alleging, *inter alia*, on the ground that M/s. Joy Alukkas was paying rent to Mrs. Shanthi Thiagarajan, Ms. Preethi Thiagarajan, M/s. Real Value Promoters (P) Ltd. and fifteen other co-owners and that a portion of the property was rented out to M/s. Bank of India, but however, Service Tax relating to this rental was partially remitted only on 23.01.2012 and hence, the appellants had contravened Sections 68, 69 and 70 of the Finance Act, 1994 read with Rules 4, 6 and 7 of the Service Tax Rules, consequent to which it was proposed to recover Service Tax along with Education Cess and Higher Education Cess, apart from interest under Section 75 and penalty under Sections 76, 77 and 78 of the Finance Act, 1994. The said Show Cause Notice also proposed to appropriate a sum of Rs.51,60,954/- which was already paid, towards the proposed demands.

2. It appears that the appellants filed detailed reply, primarily contending that the lessee M/s. Joy Alukkas had filed a Writ Petition before the Hon'ble High Court of Kerala and as an interim measure, the Hon'ble High Court had directed to keep the amount equivalent to the Service Tax in a separate bank account in Fixed Deposit with a lien in favour of Commissioner of Central Excise, Ernakulam till the disposal of the said Writ Petition, consequent to which M/s. Joy Alukkas had remitted a sum of Rs.71,26,717/- as tax in the form of a Fixed Deposit with a lien in favour of Commissioner of Service Tax, Ernakulam. The same was duly indicated by the counsel for M/s. Joy Alukkas vide letter dated 15.03.2013 to the Superintendent of Service Tax, SIR, Group-V, Chennai. It was also stated that substantial amount had already been remitted towards the proposed demand in the Show Cause Notice. They had also

pleaded that during the relevant period, under the category of 'Rental of Immovable Property', Service tax was to be paid on the taxable value which is determined after deducting the property tax paid for the period in question, which was in terms of Notification No. 24/2007-ST dated 22.05.2007. Accordingly, the tenant i.e., M/s. Joy Alukkas, had remitted a sum of Rs.2,70,896/- for the period from October 2011 to March 2012 and a further sum of Rs.2,70,896/- for the period from October 2012 to March 2013 as Service Tax which aspect was required to be considered while re-quantifying the demand.

3. The adjudicating authority having considered the explanation of the appellants, however, vide common Order-in-Original No. 41/2020-ADC dated 27.11.2020, proceeded to confirm the demands as proposed in the Show Cause Notice. In the said order, the adjudicating authority has ordered appropriation of Rs.1,22,39,617/- as against the proposed demand of Rs.1,23,70,879/- towards Service Tax. He also ordered appropriation of Rs.10,61,843/- that had accrued by way of interest on the Fixed Deposits kept in terms of the directions of the Hon'ble High Court, towards the interest payable in respect of the Service Tax demand.

4. Aggrieved by the above demand, it appears that the appellants filed appeals before the Commissioner (Appeals), but however, even the first appellate authority having dismissed their appeals vide impugned Order-in-Appeal Nos. 72 to 76 / 2021 (CTA-II) dated 29.06.2021, the present appeals been filed before this forum.

5. Heard Shri M.N. Bharathi, Ld. Advocate for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Superintendent for the respondent.

6. Ld. Advocate would submit at the outset that since the Service Tax demand has been completely met by the appellants, even though Service Tax on renting of

immovable property has been litigated before the Hon'ble Supreme Court. The Ld. Advocate has also filed a letter to that effect, the relevant portion of which is reproduced for the sake of convenience: -

"We hereby undertake that we / our client shall not claim refund of the above mentioned amount at any point in time and shall confine our arguments to the following points only.

a) Non-invocation of extended period

b) Non-imposition of penalty

c) Non-levy of interest"

7. With regard to the levy of interest, we note that the same is mandatory in nature, but however, the same has not been quantified by the adjudicating authority. In view of the facts and circumstances of the case, we hold that any interest liability payable for the normal period alone could be demanded / adjusted.

8.1 The proposal in the Show Cause Notice, at paragraph 19, reads as under: -

"19. Therefore, it appears that the noticees are liable to pay Service Tax of an amount of Rs.1,23,70,879/- (Rupees One Crore twenty three lakhs seventy thousand, eight hundred and seventy nine only) including Education Cess and Higher Education Cess for the period from April 2008 to December 2011 on the taxable value of Rs.11,38,20,631/- as detailed in the 'ANNEXURE-I, IA, IB & IC' enclosed to this show cause notice."

8.2 Annexure-1 to the Show Cause Notice is reproduced below for the sake of convenience: -

ANNEXURE -1					
Total Service Tax payable by Shri. S. Thiagrajan and 4 others under 'Renting of Immovable Property'					
Sl.No.	TOTAL RENT (Rs.)	SERVICE TAX (in.Rs.)	EDU. CESS (in.Rs.)	H.EDU.CESS (in.Rs.)	TOTAL SERVICE TAX (in.Rs.)
1	63417163	6723583	134472	67236	6925291
2	45543468	4777219	95544	47772	4920535
3	4860000	509760	10195	5098	525053
Total	113820631	12010562	240211	120106	12370879

9. We find from the Order-in-Original that the adjudicating authority has appropriated an amount of Rs.1,22,39,617/- against the Service Tax demand of Rs.1,23,70,879/- and an amount of Rs.10,61,843/- against unquantified interest on the Fixed Deposits kept with the bank with a lien in favour of the Commissioner of Service Tax, Ernakulam and this itself covers the entire demand of Service Tax as proposed in the Show Cause Notice.

10.1 With regard to the invocation of the extended period of limitation, we find that the matter involved legal interpretation, which was litigated and even the tenant of the appellants had challenged the same before the Hon'ble Kerala High Court. It is a matter of record that the said litigation is pending even as on date before the Hon'ble Constitutional Bench of the Hon'ble Apex Court in the case of *Mineral Area Development Authority v. Steel Authority of India [(2011) 4 SCC 450]*.

10.2 The adjudicating authority, however, has *inter alia* observed that "*the jurisdiction of the assessee is in Chennai. The writ was filed in Ernakulam. It cannot be assumed that such a writ was in the knowledge of the Service Tax Commissionerate in Chennai Thus the department had no knowledge about the tax deposit.*"

10.3 We do not accept the above finding primarily for the reason that at Annexure-2 of the Show Cause Notice, which is the list of documents relied upon in this case, the Commissioner has listed out all the orders of the Hon'ble

High Court of Kerala and hence, to say at a later stage that the Department had no knowledge, is a farce.

11. The fact however remains that the entire demand stood paid along with interest much before issuance of the Show Cause Notice, which are clearly reflected at paragraphs 10(b), (d) and (e) of the Show Cause Notice. Moreover, the tax in this case apparently having been demanded giving retrospective effect to the amendment, we are of the view that no suppression or fraud could be alleged to invoke the extended period of limitation.

12. For the very same reasons, we are also of the view that suppression or fraud within the meaning of Section 78 cannot be attributed to the appellants for levying penalty under Section 78. Therefore, the penalty under Section 78 cannot sustain and to this extent, the impugned order stands set aside. Moreover, we also agree with the plea that the demand that survives, as proposed in the Show Cause Notice, was only the penalty since the entire tax demand stood appropriated in the Order-in-Original. We find that the decision of the Hon'ble Karnataka High Court in the case of *Commissioner of Central Excise and Service Tax, LTU, Bangalore v. M/s. Adecco Flexione Workforce Solutions Ltd. [2012 (26) S.T.R. 3 (Kar.)]* supports the above view, wherein it was held as under: -

"3. Unfortunately the assessing authority as well as the appellate authority seem to think. If an assessee does not pay the tax within the stipulated time and regularly pays tax after the due date with interest. It is something which is not pardonable in law. Though the law does not say so, authorities working under the law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest in spite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with interest for delayed payment. It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this

enactment is passed and also keep in mind the express provision as contained in sub-sec. (3) of Sec. 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served. If notices are issued contrary to the said Section, the person to be punished is the person who has issued notice and not the person to whom it is issued. We take that, in ignorance of law, the authorities are indulging in the extravaganza and wasting their precious time and also the time of the Tribunal and this Court. It is high time that the authorities shall issue appropriate directions to see that such tax payers are not harassed. If such instances are noticed by this Court hereafter, certainly it will be a case for taking proper action against those law breakers.

4. In that view of the matter, we do not see any merit in these appeals. The appeals are dismissed."

13. The Ld. Advocate has categorically admitted that they are not questioning the merit or otherwise of the liability insofar as renting of immovable property is concerned and hence, we do not propose to answer their contention insofar as the merit is concerned.

14. In the result: -

- (i) The demand of interest under Section 75 of the Finance Act, 1994 is concerned, is held to be payable for the normal period alone.
- (ii) The imposition of penalty under Section 78 *ibid.* stands set aside and the appeals to this extent are allowed.
- (iii) The invocation of extended period of limitation is not in order.

15. The appeals stand disposed of on the above terms.

(Order pronounced in the open court on **15.09.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)