IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI

COURT HALL No.III

SERVICE TAX APPEAL No.42332 OF 2018

(Arising out of Order-in-Appeal No.230/2018 dt. 08.08.2018 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore, Circuit Office, Madurai, No.4, Lal Bahadur Shastri Marg, C.R. Buildings, Madurai-2)

Mr.M. Somu **.... Appellant**
No.10, Deputy Collector Colony,
K.K. Nagar,
Madurai 625 020.

Versus

The Commissioner of GST & Central Excise, **...Respondent**
Madurai Commissionerate,
Central Revenue Building,
No.4, Lal Bhadur Sastri Road, Bibiikulam
Madurai 625 002.

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Ms. S. Kala **.... Appellant**
No.10, Deputy Collector Colony,
K.K. Nagar,
Madurai 625 020.

Versus

The Commissioner of GST & Central Excise, **...Respondent**
Madurai Commissionerate,
Central Revenue Building,
No.4, Lal Bhadur Sastri Road, Bibiikulam
Madurai 625 002.

APPEARANCE :

Mr. M. Karthikeyan, Advocate
For the Appellant

Mr. N. Sathyanarayanan, Assistant Commissioner (A.R)
For the Respondent

CORAM :

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

Date of Hearing : 12.10.2023
Date of Decision : 12.10.2023

FINAL ORDER No.40935-40936/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

Brief facts are that the appellants were holding joint property and received rent separately on the leased out premises. The department was of the view that as they are providing Renting of Immovable Property Service they are liable to pay service tax when the amount collected as rent by both the appellants are clubbed together. The appellants also received advance amounts and it appeared to the department that the appellants have to discharge service tax on the rental advance amount received by them. Show cause notice was issued for the period 1.4.2010 to 31.3.2014 proposing to demand the service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. Aggrieved by such order, the appellants are now before the Tribunal.

2. On behalf of the appellant, Ld. counsel Sri M. Karthikeyan appeared and argued the matter. It is submitted that Sri M. Somu and his wife Ms.Kala jointly own the commercial properties in Madurai and have equal shares in the said properties. They rented out the property and received rent separately in their accounts. The appellants are filing Income Tax Returns declaring the monthly income received by them individually. When the department pointed out that they would fall outside the threshold limit and they are liable to pay service tax by clubbing the rental amounts received by both of them, the appellants paid up the amount after taking service tax registration separately. However, Show Cause Notice No.30/2015-ST dt. 14.10.2015 was issued alleging that the rental income of both the appellants have to be clubbed and therefore are outside the threshold limit of SSI exemption. The SCN thus proposed to demand Rs.17,80,432/- from both the appellants together. The show cause notice also proposed to demand the interest and imposition of penalties.

3. Ld. counsel submitted that the appellant had paid up service tax over and above the amount actually payable by them separately. They have not been given the cum-tax benefit also. Though the property is jointly owned by them, as the rentals are received separately, the amount received cannot be clubbed together so as to demand service tax as alleged in the SCN. In case, the rentals received by them are taken separately for each appellant, they may fall within the threshold limit and the

appellants would not be liable to pay service tax. This aspect has to be clarified.

3. It is argued that service tax liability has to be quantified individually from each co-owner and this issue stands settled by various decisions as under :

1. Sarojben Khusalchand & Others Vs CST Ahmedabad - 2017 (5) TMI 240 -CESTAT Ahmedabad
2. Parivallal and others Vs CCE & ST Tiruchirappalli – 2018 (10) TMI 560 -CESTAT CHENNAI
3. Srimathy Complex Vs CCE & ST Tiruchirapalli - 2018 (11) TMI 1155 – CESTAT CHENNAI
4. Smt. Uma Sanjay & Ors Vs CCE & ST - 2020 (3) TMI 748 – CESTAT CHENNAI
5. Vijayabhrathi Vs CGST & CE Tiruchirapali 2023 (6) TMI 846 – CESTAT CHENNAI

4. It is pointed out by the learned counsel that apart from the rental amounts received by them, the demand has been raised on the interest free deposit (advance) paid by the lessee. The said amount is refundable to the lessee and cannot form part of the rent. The appellant is not liable to pay service tax on such advance received by them which is ultimately to be returned to the lessee. Ld. Counsel submitted that there was no intention to evade payment of service tax and the non-payment of tax was because they were not aware that they are liable to pay service tax under the Renting of Immovable Property Services. On being pointed out by the department, they have paid the service tax as calculated by them even much before issuance of the show cause notice. Sub-section (3) of Section 73 of Finance Act, 1994 was referred to by

the learned counsel to argue that when the service tax has been paid up by the assessee on being pointed out by the officers, the department ought not to have issued show cause notice and the adjudicating authority should not have confirmed the penalties. Ld. Counsel prayed for favourable orders.

5. Ld. A.R Sri N. Sathyanarayanan supported the findings in the impugned order. It is asserted by the Ld. A.R that even if co-owner has received the amount for the joint property, the amount received by them as rent has to be clubbed together for calculating the tax liability. The demand raised is therefore legal and proper.

6. Heard both sides.

7. From the facts narrated above, we find that both the appellants in these appeals are co-owners of the joint property and are receiving rent separately. They are also showing income received as rent in their IT returns filed by them. In such circumstances, the rent received by each appellant individually has to be taken separately to calculate whether each appellant falls beyond the threshold limit for payment of service tax. In the present case, the department has clubbed the rent amount received by both the appellants together to demand the service tax amount which, in our view, is erroneous. In the case of *Vijayabharathi* (supra) the Tribunal held as under :

> "5. On going through the records of the case, we find that in the case of the co-owner Smt. Akila, the Tribunal has set aside the demand observing that income received as rent separately by each co-owner is much below the threshold limit to subject to levy of service tax. Thus, the income falls within the threshold limit for payment of service tax. Vide Final Order No.42538 dated 01.10.2018 the Tribunal has relied

> upon the decision of *Anil Saini Vs CCE Chandigarh* 2017 (51) STR (Tri.-Chan.). and also the case of *S.V. Janardhanam Vs CGST & CE Salem* - Final Order No.42474/2018 dated 25.09.2018. Following the decision in the case of the co-owner as well as other decisions, we hold that demand cannot sustain. Impugned order is set aside. Appeal is allowed with consequential relief, if any.

8. After appreciating the facts and evidence, and following the decisions cited supra, we are of the opinion that the matter requires to be remanded to the adjudicating authority who is directed to verify and quantify the demand separately for each appellant. Needless to say, that in such quantification, if the amount of rent received by each appellant falls below the threshold limit, the appellant would not be liable to pay service tax. The advance received by them as deposit which is to be returned to the lessee cannot be included in the taxable value. The demand in this regard on advance is set aside. The appellant has also prayed for cum tax benefit in quantification of the demand, which we hold to be tenable and acceptable. The matter thus requires to be remanded for verification as to whether each appellant would fall beyond the threshold limit separately and also for quantitation, if any, after extending cum tax benefit. We hold that the appellant is eligible for the cum-tax benefit.

9. The Ld. Counsel has argued to set aside the penalties imposed. From the facts of the case, it is seen that the appellant has already discharged service tax as calculated by them much before issuance of the show cause notice in September 2015. Therefore, the penalties imposed are not justified. Sub-section (3) of Section 73 of the Finance Act, 1994 states that no show cause

notice has to be issued when the assessee pays the service tax along with interest. This provision is made to avoid unnecessary litigations when an assessee comes forward to pay the tax. For this reason, we find that the penalties imposed require to be set aside which we hereby do.

10. From the foregoing, we hold that the impugned order is modified to the extent of setting aside the demand, interest and remanding the same to the adjudicating authority to verify and quantify the liability of service tax separately on the rent received by each appellant. The appellant shall be given benefit of cum tax value also. The penalties imposed are entirely set aside.

11. The appeal is partly allowed and partly remanded to the adjudicating authority in the above terms.

(dictated and pronounced in court)

sd/- sd/-

(VASA SESHAGIRI RAO) **(SULEKHA BEEVI C.S.)**
Member (Technical) Member (Judicial)

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