CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No. 56047 of 2014

[Arising out of Order-in-Appeal Nos.BPL-EXCUS-000-APP-122-123-124-125-14-15 dated 01.09.2014 passed by the Commissioner (Appeals), Customs, Central and Service Tax, Bhopal]

M/s. Kaling Oberai **Appellant**
169, Krishna Nagar,
Satna-485 001(M.P.)

VERSUS

Commissioner of Customs, Central Excise and Service Tax, **Respondent**
Bhagya Bhawan, 178 Zone-II, M.P. Nagar,
Bhopal.

With

ST/56048/2014, ST/56054/2014 ST/56055/2014

APPEARANCE:

Ms. Nikita Jaju, Advocate for the appellant.
Shri Manoj Kumar, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NOs.58570-58573/2024

DATE OF HEARING:03.09.2024
DATE OF DECISION: 11.09.2024

BINU TAMTA:

1. Separate appeals have been filed by Shri Kaling Oberai, Smt. Neena Oberai, Shri Kuldeepak Oberai and Smt. Mala Oberai against the common order dated 01.09.2014 passed in

Order-in Appeal Nos.BPL-EXCUS-000-APP-122-123-124-125-14-15 confirming that separate exemption to each co-owner is not available and were, therefore, liable to pay service tax. Since all the appeals arise out of the common order and the issue involved is also common, all the appeals are being taken up together.

2. Facts of the case are that all the appellants being the joint owners of the immovable property are engaged in renting of commercial building situated at Krishna Nagar, Satna, which is rented out to LIC of India Divisional Office, LIC of India, CAB Branch, Krishna Nagar, Satna, and commercial shops. On being observed that the activity undertaken by the appellant falls in the category of "Renting of Immovable Property Service", which is taxable with effect from 01.06.2007 under Section 65(105)(zzzz) of the Finance Act, 1994 and hence they were called upon to furnish the details of the rental income, which was submitted as under:-

	2007-08	2008-09	2099-10	2010-11	2011-12(Up to 09/11)
Smt.Mala Oberai	745250	801992	750150	738096	738096
Smt. Neena Oberai	745250	801992	750150	738096	738096
Total in Rs.	**1490500**	**1603985**	**1500318**	**1476192**	**1476192**
Shri Kalinga Oberai	5801556	566734	561288	584373	692760
Shri Kuldeepak Oberai	577473	566743	561288	584373	692760

Total in Rs.	**1157628**	**1133477**	**1122576**	**1168746**	**1385520**

3. As amount of rent jointly received by the appellants exceeded the exemption limit as provided under the Notification No.6/2005-ST dated 01.03.3005, show cause notice was issued to the appellants for the period 2007-08 to 2011-12 (upto September, 2011). On adjudication, the service tax liability amounting to Rs.6,61,896/- was confirmed jointly on the appellants along with interest and penalties under Section 76, Section 77 and Section 78 of the Act. Challenge to the said order before the Commissioner (Appeals) resulted in the impugned order against which the present appeals have been preferred.

4. Heard Ms. Nikita Jaju, learned counsel for the appellants and Shri Manoj Kumar, learned Authorised Representative for the respondent.

5. The basic issue involved in the present appeal is whether the threshold exemption under Notification No.6/2005–ST dated 01.03.2005 as amended from time to time is available separately to each joint owner of the immovable property or has to be considered as single joint unit to determine the tax liability as an aggregate of the value of the service provided.

6. We find, that the issue is no longer *res-integra* and has been decided earlier in various decisions of the Tribunal, taking consistent view that clubbing of rental amounts received by each co-owner as per their share in jointly owned rented property is not permissible and no service tax is leviable, if such co-owners enter into rent agreement in their individual capacity and each of them receives an amount lesser than the threshold limit prescribed under the notification. Without multiplying, too many decisions, we would like to refer to the decision of the Mumbai Bench in **Commissioner of Central Excise, Nasik Vs. Deoram Vishrambhai Patel**[1]**,** where the issue considered was whether the respondent and his brothers are to be treated as association of persons or otherwise and service tax liability on it arises, should be confined without the benefit of the notification no. 6/2005–ST. The Tribunal affirmed the following findings of the Appellate Authority as under:-

> "**6.2** On mere reading of the Order-in-Original, it is evident that the adjudicating officer has considered above named four persons as one person for determining tax liability and imposition of penalties without telling any legal basis for doing so. The appellants have contested the Order in Original mainly on the grounds that rented property belongs to four separate persons (all brothers) but the service tax has been demanded wrongly by the department from the appellants by clubbing the rent received by all the co-owners and, therefore, the demand off tax is not maintainable on this ground alone. In support they have produced a City Survey Extract as evidence regarding ownership of the rented property which shows that the said property was purchased in 2003 and is owned jointly by all the four co-owners. Further, the lease agreements with M/s. Max New York Life Insurance Co. Ltd., Oriental Bank of Commerce, Axis Bank, Kotak Mahindra Bank and HDFC Standard Life Insurance Ltd. are also entered into by the appellants in their individual capacity, as per SCN also, all four co-owners have obtained separate

[1] 2015 (40) STR 1146 (T-Mumbai)

Registration Certificate on 10-4-2012 and all the four co-owners individually paid their Service tax liability along with interest on 14-2-2012. Thus, the ownership of the Property and providing of taxable renting of immovable Property by the four appellants in this case is in their individual capacity and, therefore, their tax liability should have been determined by considering their individual rental receipts and not collective one. From the various lease agreements made with above mentioned Commercial firms, it cannot be disputed that monthly rent was paid by the above named concerns to each appellant after deducting tax at their end.

6.3 From the show cause notice dated 19-10-2012, it is evident that the appellants had received rent as detailed below :-

	S.No.	Period	Amount (Rs.)	
		2007-08 (1-6-2007 to 31-3-2008)	Rs. 29,21,048/-	
		2008-09	Rs. 36,27,024/-	
		2009-10	Rs. 46,72,744/-	
		2010-11	Rs. 52,63,304/-	
		2011-12	Rs. 44,28,360/-	

But as the rent was distributed equally among each of the appellant, it is evident that each of them received an amount lesser than Rs. 8 lakhs and 10 lakhs in the years 2007-08 and 2008-09 respectively which is below the exemption limit of eight lakhs and ten lakhs during the relevant period. The appellants were, therefore, not liable to pay service tax on the amounts received by them during these two years by virtue of Notification No. 6/2005-S.T., dated 1-3-2005. The appellant's case is also supported by the Tribunal's decision in the case of *Dinesh K. Patwa* v. *CST*, *Ahmedabed* which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-22, the receipt off rent by each appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax along with interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional tax liability has been worked out for the said period in OIO.

6.4 Since the appellants were individually liable to pay service tax and eligible for the exemption under general exemption Notification 6/2005-S.T., dated 1-3-2005 during the period 2007-08 and 2008-09, no service tax was payable during the said period. Hence, the question of penalty under Section 76 for the said period does not arise. For the subsequent period i.e. 2009-10 & 2010-11, the appellants have already accepted their tax liability and paid Service tax along with interest on 14-2-2012. The said payment of service tax is certainly a delayed payment, but was made by the appellants on their own when they realized that their taxable value for renting of property had exceeded the exemption limit of Rs. 10 lakhs. The adjudicating authority has claimed in his order that the appellants paid service tax only after Department started investigation, but it is not supported by any evidence or the facts on record. The SCN or the OIO do not talk of any audit objection or Preventive action or any Inspection etc. on the basis of which not payment of service tax by the appellants was pointed out. Instead in the SCN, one statement of Shri Chandulal Vishrambhai Patel is only referred to which was recorded on 22-2-2012 which is 8 days after the appellants had paid service tax along with interest on their own. Thus, the claim of the appellant that they had paid service tax for the years 2009-10 and 2010-11 on their own initiative and there was no suppression of facts etc. on their part with any intention to evade service tax cannot be denied. Considering all these facts, I agree with the appellant's contention that this case was squarely covered under sub-section (3) of Section 73 which provided not to issue any notice under sub-section (1) of Section 73 if the service tax not levied or paid was paid along with interest by the person concerned before service of notice on him and informed the Central Excise Officer of such payment in writing. Further in Explanation 2 of the said sub section it is also clearly provided that no penalty under any of the provisions of the Act or the Rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon. Hence, in fact no SCN was required to be issued in this case for recovery of service tax and imposition of penalty and even when it has been issued, no penalty under Section 76 or 78 is imposable in this case for the period 2009-10 and 2010-11."

7. In line with the above decision, the learned counsel for the appellant has also relied on the subsequent decisions:-

A. **Anil Saini Vs. Commissioner of Central Excise,Chandigarh.[2]**
B. **Commissiner of Customs,C.Ex. & S.T., Allahabad Vs. Luxmu Chaurasia[3]**
C. **Sarojben Khusalchand Vs. Commissioner of Service Tax, Ahmedabad [4]**

8. Learned counsel for the appellant has also referred to the decision of this Tribunal in **Ruchi Infrastructure Ltd.[5]** where the appellant had entered into a Joint Venture Agreement for providing warehouses and the income generated from the customers were shared in the ratio of 35% to MPWLC and 65% to the appellant. The Tribunal noting that it was a Joint Venture within an income sharing arrangement, where there is neither a service provider nor a service recipient but only partners in the business and hence, no service tax could be levied on "renting of immovable property". Similar view was then taken by the Principal Bench in **Haldiram Marketing Pvt. Ltd.[6],** where the appellant was selling his own goods at the premises taken on lease as well as the goods of the Associated Enterprises were sold from the same premises, for which they received certain portion

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[2] 2017 (51) STR 38 (Tri.-Chan.)
[3] 2017(49) STR 541 (Tri.-All.)
[4] 2017(4)GSTL 159 (Tri.-Ahmd.)
[5] 2020(37)GSTL 236 (Tri.-Del.)
[6] 2023(71)GSTL 414 (Tri.-Del.)

of the rent from the Associated Enterprises and the Tribunal observed that the amount paid by the Associated Enterprises to the appellant is not for any service but for cost sharing between the two and that this arrangement falls under the category of "sharing of expenses" and relied on the decision of the Supreme Court in **Gujarat State Fertilizers and Chemicals Ltd. Vs. Commissioner of Central Excise**[7] and also on the later decision of the Tribunal, where it was held that sharing of the expenditure cannot be treated as service rendered by one to another.

9. We fully agree with the submissions made by the learned Counsel for the appellant, which are duly supported by the earlier decisions of the Tribunal. The crux of the submissions of the learned Counsel for the appellant is that the parties have received the rent directly from the tenants drawn in their own name separately and as a result have never exceeded the threshold limit of SSI exemption as per the notification. Resultantly, the appellants are not liable to pay service tax and, therefore, have never charged any service tax on the amount of rent received by them. The learned Counsel submitted that each appellant is a separate owner of the property to the extent of their share in the

[7] 2016(45)STR 489(SC)

property and the respective Government Authorities are accepting separate property tax deposited by individual applicants. Even the Income Tax Authority is accepting separate income receipts by each applicants from the activity of renting. Hence, it is wrong to conclude that ownership in the building and the total value of service provided is to be taken together to determine the service tax liability.

10. There is no reason to differ from the view taken by the Coordinate Benches. Accordingly, the impugned orders are not sustainable and are hereby set aside.

11. Thus all the above appeals stands allowed.

[Order pronounced on 11th September, 2024]

(Binu Tamta)
Member (Judicial)

(Hemambika R.Priya)
Member (Technical)

Ckp.