IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/50370/2014-[DB]
[Arising out of Order-In-Appeal No. 217/ST/DLH/2013 dated 26.09.2013 passed by Commissioner (Appeals) Delhi-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Jumera Promotors and Developers Pvt. Ltd. ...Appellant

Vs.

C.C.E. Delhi …Respondent

Appearance:
Mr. A.K. Batra appeared for the Appellant
Ms. Neha Garg (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.05.06.2017

Final Order No. 53733 /2017

Per: B. Ravichandran:

The appeal is against order dated 26.09.2013 of Commissioner (Appeals) Delhi-I. The dispute involved in the present appeal is relating to liability of the appellant to pay service tax on a consideration received for letting out a building to M/s Plasser (India) Pvt. Ltd. for use of Sh. Thomas Hentze for residence and personal office. The Revenue entertained a view that since the term 'personal office' is mentioned in the lease agreement, the consideration shall be liable to be taxed under the category of 'renting of immovable property service' in furtherance of business or commerce. The appellants contested the claim and stated that the building has been used only for residence of Shri Thomas Hentze. The lease agreement itself will make it clear that letting out will be only for residential purpose and the said premises shall not be used for other than residential purpose. The proceedings initiated against the appellant resulted in the original order dated 09.11.2012 wherein the demand of service tax of Rs. 8,09,271/- was dropped by the original authority. On appeal by Revenue, the Commissioner (Appeals) vide the impugned order reversed the decision and held that the appellants are liable to service tax. He also imposed penalty under section 78 & 77 of the Finance Act, 1984.

2. The Ld. Consultant for the appellant submitted that the lease agreement clearly brings out the purpose of letting out the property. There is a clear bar in using this property for other than residential purposes. The fact that the occupant of building is employee of LESSEE company by itself cannot make the premises as other than residential premises. He further submitted documents to the affect that all the utility services like electricity, water supply etc. were all in terms of usage of the building for residential purpose only. In fact though the term 'personal office' was used in the lease, the employee did not use for any office work etc. Affidavit to this effect has also been filed. It is further contended that for the year 2011-2012 they have never received any rental income, as there was no lease agreement. As such, the demand for such period is not tenable. The demand was also contested on the ground of limitation. Renting of immovable property has been a subject matter of litigation in various judicial forums. In fact, renting per se was held to be not taxable by the Hon'ble Delhi High Court in Home Solutions Retail (I) Ltd. 2011 (24) S.T.R. 129 (Del.) resulting in amendment, including retrospective amendment in the statutory provisions for the said tax entry. As such, the demand cannot invoke extended period as the issue was not free from doubt. In the present case, the whole demand is for extended period only.

3. Ld. AR reiterated the findings of the Commissioner (Appeals).

4. We have heard both the sides and perused the appeal records.

5. The whole demand against appellant arose because of the word 'personal office' used in the lease agreement. However, when read together the said clause – (c) will make it clear that the purpose of letting will be residential only and the lessee shall be responsible if the premises is used for other than residence. All the consequences including extra levy shall be the liability on the lessee. We note that the terms of lease make it clear that the building was let out to the appellant for residential use by one of its employees. Even if we consider that the said employee did attend to some personal office work from the said premises, the same will not make it use of premises other than the residence.

6. We also note that the appellant do have a strong case on limitation. Admittedly the tax liability on his particular tax entry has been a subject matter of substantial litigation. As observed above, Hon'ble Delhi High Court even held that renting per se is not liable to service tax and it is only services in relation to renting that are liable to service tax. This resulted in statutory amendments, including retrospective amendments, with reference to this tax liability. In fact special provision for waiver of penalties under section 80(2) of the Act was also made.

6. Considering the above position, we find that the present demand against the appellant is not tenable both on merit as well as on time bar.

7. The appeal is accordingly allowed.

(Dictated and pronounced in the open court)

(**B. Ravichandran**) Member(Technical)	(**S. K. Mohanty**) Member (Judicial)

Neha