CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

DIVISION BENCH – COURT NO. 1

Service Tax APPEAL No.30216 of 2016

(Arising out of **Orders-in-Appeal** Nos. HYD-SVTAX-000-APP-0159-15-16-ST, HYD-SVTAX-000-APP-0160-15-16-ST, HYD-SVTAX-000-APP-0161-15-16-ST, HYD-SVTAX-000-APP-0162-15-16-ST, HYD-SVTAX-000-APP-0163-15-16-ST, HYD-SVTAX-000-APP-0164-15-16-ST dated 30.11.2015 passed by Commissioner (Appeals-ST), Hyderabad)

Commissioner of Central Tax .. **APPELLANT**
Secunderabad GST
Secunderabad Commissionerate,
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

VERSUS

Sri Ram V Tolani, .. **RESPONDENT**
No. 72/4, East Marredpally,
SECUNDERABAD – 500 026.
Telangana

WITH

Service Tax APPEAL No.30217 of 2016

(Arising out of **Orders-in-Appeal** Nos. HYD-SVTAX-000-APP-0159-15-16-ST, HYD-SVTAX-000-APP-0160-15-16-ST, HYD-SVTAX-000-APP-0161-15-16-ST, HYD-SVTAX-000-APP-0162-15-16-ST, HYD-SVTAX-000-APP-0163-15-16-ST, HYD-SVTAX-000-APP-0164-15-16-ST dated 30.11.2015 passed by Commissioner (Appeals-ST), Hyderabad)

Commissioner of Central Tax .. **APPELLANT**
Secunderabad GST
Secunderabad Commissionerate,
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

VERSUS

Smt. Shanti S.Tolani, .. **RESPONDENT**
No. 303/304, Venkatadri Apartments,
East Marredpally,
SECUNDERABAD – 500 026.
Telangana

WITH

Service Tax APPEAL No.30218 of 2016

(Arising out of **Orders-in-Appeal** Nos. HYD-SVTAX-000-APP-0159-15-16-ST, HYD-SVTAX-000-APP-0160-15-16-ST, HYD-SVTAX-000-APP-0161-15-16-ST, HYD-SVTAX-000-APP-0162-15-16-ST, HYD-SVTAX-000-APP-0163-15-16-ST, HYD-SVTAX-000-APP-0164-15-16-ST dated 30.11.2015 passed by Commissioner (Appeals-ST), Hyderabad)

Commissioner of Central Tax .. **APPELLANT**
Secunderabad GST
Secunderabad Commissionerate,
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

VERSUS

Sri Ramesh V Tolani, .. **RESPONDENT**
No. 204, East Marredpally,
SECUNDERABAD – 500 026.
Telangana

WITH

Service Tax APPEAL No.30219 of 2016

(Arising out of **Orders-in-Appeal** Nos. HYD-SVTAX-000-APP-0159-15-16-ST, HYD-SVTAX-000-APP-0160-15-16-ST, HYD-SVTAX-000-APP-0161-15-16-ST, HYD-SVTAX-000-APP-0162-15-16-ST, HYD-SVTAX-000-APP-0163-15-16-ST, HYD-SVTAX-000-APP-0164-15-16-ST dated 30.11.2015 passed by Commissioner (Appeals-ST), Hyderabad)

Commissioner of Central Tax .. **APPELLANT**
Secunderabad GST
Secunderabad Commissionerate,
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

VERSUS

Sri Gopal V Tolani, .. **RESPONDENT**
No. 72/4, East Marredpally,
SECUNDERABAD – 500 026.
Telangana

WITH

Service Tax APPEAL No.30220 of 2016

(Arising out of **Orders-in-Appeal** Nos. HYD-SVTAX-000-APP-0159-15-16-ST, HYD-SVTAX-000-APP-0160-15-16-ST, HYD-SVTAX-000-APP-0161-15-16-ST, HYD-SVTAX-000-APP-0162-15-16-ST, HYD-SVTAX-000-APP-0163-15-16-ST, HYD-SVTAX-000-APP-0164-15-16-ST dated 30.11.2015 passed by Commissioner (Appeals-ST), Hyderabad)

Commissioner of Central Tax Secunderabad GST .. **APPELLANT**
Secunderabad Commissionerate,
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

VERSUS

Sri Bhagwan V Tolani, .. **RESPONDENT**
Flat No. 11, Amar Apartments,
East Marredpally,
SECUNDERABAD – 500 026.
Telangana

AND

Service Tax APPEAL No.30221 of 2016

(Arising out of **Orders-in-Appeal** Nos. HYD-SVTAX-000-APP-0159-15-16-ST, HYD-SVTAX-000-APP-0160-15-16-ST, HYD-SVTAX-000-APP-0161-15-16-ST, HYD-SVTAX-000-APP-0162-15-16-ST, HYD-SVTAX-000-APP-0163-15-16-ST, HYD-SVTAX-000-APP-0164-15-16-ST dated 30.11.2015 passed by Commissioner (Appeals-ST), Hyderabad)

Commissioner of Central Tax Secunderabad GST .. **APPELLANT**
Secunderabad Commissionerate,
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.
Telangana

VERSUS

Sri Mohan V Tolani, .. **RESPONDENT**
No. 72/4, East Marredpally,
SECUNDERABAD – 500 026.
Telangana

Appearance
Shri A.V.L.N. Chary, Superintendent/AR for the appellant
Shri Maninder, CA for the Respondents.

Coram: Hon'ble Mr. S.S. GARG, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30628 – 30633/2019

Date of Hearing: 10.07.2019
Date of Decision: 10.07.2019

[ORDER PER: Mr. S.S. Garg)

1. Revenue has filed these six appeals against the common impugned order, dt. 30.11.2015 passed by the Commissioner (Appeals), whereby the Commissioner (Appeals) has allowed the appeal of the respondents and set aside the Order-in-Original. Since the issue involved in all these appeals is identical and there is a common impugned order, therefore all these six appeals are taken up together for discussion and disposal.

2. Briefly, the facts of the present case are that the appellants are joint owners of certain properties, leased out for furtherance of business or commerce. Investigation into their transactions in respect of six properties revealed that they provided the taxable services 'Renting of Immovable Property' during the material period October 2007 to March 2012; that no tax was discharged nor periodical returns filed. A show cause notice dated 19.04.2013 was issued alleging, inter-alia, that each property leased out is registered under a single title deed; that the rental incomes are shared equally; that one of the appellants Shri Ramesh V Tolani has been vested with GPA by the others, to enter into the lease agreements in respect of the impugned properties; that the municipal taxes are jointly paid in the name of 'Mohan V Tolani & others'; that the transactions are taxable under Sections 65(90a) and 65(105)(zzzz) of the Finance Act, 1994; that the appellants suppressed material facts unearthed only with departmental intervention; that the service tax of Rs. 23,82,416/- including Cess is to be recovered with interest under proviso to Section 73(1) and Section 75 and penalties for the violations to be imposed under Section 77 and 78 ibid.

3. After following due process, the original authority confirmed the tax demand to the extent of Rs. 23,82,416/- along with interest under section 73(2) and 75 of the Finance Act, 1994 and imposed penalty of Rs. 5,000/- under section 77 for contravention of various provisions and also imposed equal penalty under section 78 with an option to pay the reduced penalty within time frame specified. Aggrieved by this order, the assessee filed an appeal before the Commissioner (Appeals) who allowed the appeal of the assessee. Aggrieved by the order of Commissioner (Appeals), the Department is in appeal before the Tribunal.

4. Heard both sides and perused the material on record.

5. Ld. AR for the Revenue submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the relevant notification 6/2005-ST, dated 01.03.2005. He further submitted that the service provided jointly by these persons constitute association of person and therefore the small service provider exemption is not applicable to each individual. He submits that the respondents are an association of persons as they are combination of persons entered into common deeds in a joint enterprise of renting properties with a common purpose of earning income from the renting activity. He further submitted that the Commissioner (Appeals) has wrongly relied upon the ratio of Hon'ble Allahabad High Court decision in the case of CIT vs. Sunita Rani Agarwal [2012(20) taxman.com 623 (All.] which is not applicable to the facts of the present case. He further submitted that the respondents joined in income producing activity and engaged in the activity of renting of premises pursuant to a combined will of the persons which is reflected in the joint receipt of the rental income and also joint receipt of the safety deposit amount and jointly paying the municipal taxes. He also submitted that the ratio laid down by CESTAT, Mumbai in the case of CCE Nasik vs. Deoram Vishrambhai Patel as reported at [2015(40)S.T.R. 1146 (Tri.-Mumbai)] relied upon by the Commissioner (Appeals) is squarely distinguishable where the assessee had received the monthly rent separately after deducting the tax.

6. On the other hand, Ld. Consultant appearing for the respondent defended the impugned order and submitted that the said issue of eligibility for threshold exemption by each of the co-owner has been considered by various Benches of the Tribunal and has ruled in favour of the assessee. He further submitted that this issue is no more *res-integra* and has been settled by the following decisions of the Tribunal.

(a) A. Akhila vs. CCE [2018(10)TMI 559 – CESTAT-Chennai]

(b) Anil Saini & Others vs. CCE, CESTAT Chandigarh.

(c) CCE vs. Kushiram M Ratanchandani & others [2017(10)TMI 1190-CESTAT, Ahmedabad.

(d) Sarobjen Khusalchand & Others vs. CST [2017(5)TMI 240-CESTAT-Ahmedabad.

(e) Jasdeep Singh & Others vs. CCE [2017(5)TMI-CESTAT-Chandigarh.

7. He further submitted that in the present case, the joint owners are not engaged in any acts to produce income, they have merely come together to buy the properties with common share and receive the rent to the extent of their individual share. The income generating activity is different from revenue sharing. Mere sharing of revenue without sharing of risks/rewards or income would not amount to a common activity being conducted by an association of persons. He further submitted that in the present case, the rents are collected by each of the joint owner proportionate to his share and the same does not exceed the threshold limit under notification No. 6/2005-ST, dated 01.03.2005 and that is why the appellants have not registered under Service Tax and not collected any service tax and paid. Ld. Consultant also produces the Bank account statements as well as income tax returns filed by each of the individual owners showing the rental income from these properties.

8. After considering the submissions made by both parties and perusal of the material on record, we find no infirmity in the impugned order passed by Commissioner (Appeals). Further, we find that this issue is no more *res-integra* and has been settled in favour of the assessee by various decisions relied upon by the respondent cited supra. Further, we find that in the case of Sarobjen Khusalchand & Others vs. CST [2017(5)TMI 240-CESTAT-Ahmedabad], CESTAT, Ahmedabad has relied upon the decision of Hon'ble Apex Court to conclude that the threshold exemption is available for each individual co-owner. Further, we find that in the present case, risks and rewards are not shared as each of the co-owner brought money from their own sources to buy properties and they are receiving rents separately. Further, we find that the Commissioner (Appeals) has rightly relied upon the decision in the case of Sunita Rani Agarwal (cited supra). Further we find that in the case of Commissioner of Income Tax vs. Shiv Sagar Estates (Aop), Bombay High Court has held that lease rent from the property owned by co-owners accrues to individual co-owners and not to any association of persons. It has also been held that mere receipt of income jointly is not enough to consider that income is earned out of joint enterprise.

9. In view of above discussion, we are of the considered view that there is no infirmity in the impugned order which we uphold by dismissing all the appeals of the Revenue.

10. The impugned order is upheld and all the six appeals filed by Revenue are dismissed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(S.S. GARG)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Vrg