

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.70570 of 2013

(On behalf of Appellant)

(Arising out of Order-in-Original No.Commr./B-I/ST-40/2012 dated 06.03.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar I)

M/s Utkal Builders Limited

777, Viraytan, Shahid Nagar, Bhubaneswar-751007, Odisha

Appellant

VERSUS

**Commissioner of Central Excise, Customs & Service Tax,
Bhubaneswar I**

C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

Respondent

APPEARANCE :

Shri Shovit Betal, Advocate for the Appellant

Shri S. Mukhopadhyay, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...77153/2023

DATE OF HEARING : 21.09.2023

DATE OF PRONOUNCEMENT : 27.09.2023

Per Ashok Jindal :

By way of impugned order, the demand of service tax has been confirmed against the appellant for the period from 01.06.2007 to 31.03.2010 under the category of "renting of immovable property" service.

2. The facts of the case are that the appellant is rented out their premises to M/s Pantaloon Retails (India) Limited. The levy of service tax came into knowledge initially from 01.06.2007. The said levy of

S.Tax Appeal No.70570 of 2013

service tax were challenged by the various tenants before the Hon'ble Delhi High Court in the case of Home Solution Retail Vs. Union of India reported in 2009 (237) ELT 209 (Del.), wherein the Hon'ble High Court held that the levy of service tax is ultra vires. Thereafter, vide Section 77 of the Finance Act, 2010, it was made taxable retrospectively w.e.f. 01.06.2007.

2.1 In these set of facts, a show-cause notice dated 10.10.2011 was issued to the appellant by invoking extended period of limitation.

2.2 The matter was adjudicated. The demand of service tax was confirmed along with interest and the penalty was also imposed.

2.3 Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that it is an admitted fact that the period involved from 01.06.2007 to 31.03.2010 and the show-cause notice has been issued by invoking extended period of limitation on 10.10.2011. The said show-cause notice is barred by limitation as the levy of service tax on renting immovable property came into effect by way of amendment in the Finance Act, 2010 retrospectively w.e.f. 01.06.2007. In that circumstances, the extended period of limitation is not invokable. To support, he relied on the decision of this Tribunal in the case of Jindal Vegetable Products Limited Vs. Commissioner of Central Excise, Meerut II reported in 2013 (31) STR 367 (Tri.-Del.). He, therefore, prayed that the impugned order is to be set aside.

4. On the other hand, the Id.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and considered the submissions.

S.Tax Appeal No.70570 of 2013

6. We find that the facts are not in dispute that the appellant is providing renting immovable property service w.e.f. 01.06.2007 and at that time, the wires of levy of service tax was challenged before the Hon'ble Delhi High Court and it was held that the levy of service tax under renting of immovable property is ultra vires. Thereafter, by way of Section 77 of the Finance Act, 2010, the amendment was brought in and the levy of service tax became on renting of immovable property and came retrospectively w.e.f. 01.06.2007.

7. In that circumstances, the show-cause notice issued to the appellant by invoking extended period limitation is not sustainable as held by this Tribunal in the case of Jindal Vegetable Products Limited (supra), wherein this Tribunal has observed as under :

"6. There is no dispute that the activity of the appellant was renting of immovable property. Though "service in relation to renting of immovable property" had been brought within the service tax net w.e.f. 1-6-2007 by introducing Section 65(105)(zzzz), the validity of this levy had been challenged before the Hon'ble Delhi High Court and Hon'ble Delhi High Court vide judgment dated 18th April, 2009 in the case of Home Solution Retail India (supra) held that mere renting of immovable property by itself cannot be regarded as service and would not attract service tax. It is only by retrospective amendment introduced w.e.f. 1-6-2007 by Finance Act, 2010, that the renting of immovable property by itself became a taxable service neutralising the judgment of judgment of Hon'ble Delhi High Court. In the circumstances of the case, I am of the view that the appellant cannot be accused of suppressing the relevant information from the department as during the period of dispute there was doubt about the levy of service on the renting of

S.Tax Appeal No.70570 of 2013

immovable property till the dispute was put to an end by retrospective amendment made by Finance Act, 2010. Hon'ble Apex Court in the case of Continental Foundation Jt. Venture reported in [2007 \(216\) E.L.T. 177](#) (S.C.), has held that when during the period of dispute there was doubt about interpretation of some provisions of law on account of conflicting judgments, which were later on resolved by a Larger Bench, the extended period under proviso to Section 11A(1) cannot be invoked. I am of the view that the ratio of this judgment of Apex Court is squarely applicable in this case and in this case the longer limitation period under proviso to Section 73(1) would not be applicable and for the same reason, the penalty under Section 78 of the Finance Act, 1994 also would not be attracted, as the elements required for invoking longer limitation period under proviso to Section 73(1) are the same as those required for imposing penalty under Section 78 of the Finance Act, 1994. Thus, the entire service tax demand is time barred. The impugned order is, therefore, not sustainable. The same is set aside. The appeal is allowed."

8. In view of this, we hold that the show-cause notice issued to the appellant is barred by limitation as the same has been issued by extended period of limitation. Therefore, no demand is sustainable against the appellant. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in the open court on.....27.09.2023)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

mm