IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2
Service Tax Appeal No.77133 of 2017

(Arising out of Order-in-Appeal No.08/ST/RKL-GST/2017 dated 26.09.2017 passed by Commissioner(Appeals), GST, CX & Customs, Bhubaneswar.)

M/s. Chandulal Hiralal Nanda And Bijoy Kumar Nanda
(At-Ward No.5, Bada Bazar, Baripada, Dist: Mayubhanja, Odisha.)
...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Rourkela
.....Respondent
(KK-42, Civil Township, Rourkela-765004, Odisha.)

WITH

(i) Service Tax Appeal No.75893 of 2018 (M/s. Chandulal Hiralal Nanda And Bijay Kumar Nanda Vs. Commissioner of CGST & CX, Rourkela Commissionerate); (ii) Service Tax Appeal No.76097 of 2018 (M/s. Chandulal Hiralal Nanda And Bijay Kumar Nanda Vs. Commissioner of CGST & CX, Rourkela Commissionerate); (iii) Service Tax Appeal No.76098 of 2018 (M/s. Chandulal Hiralal Nanda And Bijay Kumar Nanda Vs. Commissioner of CGST & CX, Rourkela Commissionerate);

(Arising out of Order-in-Appeal No.09-11/ST/RKL-GST/2017 dated 27.09.2017 passed by Commissioner(Appeals), CGST, CX & Customs, Bhubaneswar.)

APPEARANCE

NONE for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 75541-75544/2024

DATE OF HEARING : 18.03.2024
DATE OF DECISION : 18.03.2024

R. MURALIDHAR :

In spite Notice, none has appeared. In the interest of justice, the Appeals are taken up for disposal with the help of the Ld.AR for the Department.

2. The Appellants herein are family members being father and son. They have constructed one commercial complex by the name Hari Kripa Complex and have given the same for rent to one party named M/s.Shyam Retails (India) Pvt.Ltd. (hereinafter referred to as 'Shyam Retails'). The lessee was paying Rs.1,25,000/- per month during the period December 2007 to March 2010 and Rs.1,37,500/- for the subsequent period from April 2010 onwards. The Department conducted verification and recorded the statement of Shri Bijoy Kumar Nanda (the son) on 21.11.2012. He has stated that individually plots were owned by his father Shri Chandulal Hiralal Nanda and by himself i.e. Shri Bijoy Kumar Nanda. They have added both the plots together and have constructed a commercial complex by the name Hari Kripa Complex. They have given the property to Shyam Retails who have been paying the rent by dividing the total rent into two portions and separately paying equal amount in the Bank Account of Shri Bijoy Kumar Nanda and Shri Chandulal Hiralal Nanda separately. The lessee was also deducting TDS individually from both these persons as can be seen from 26AS Certificate issued by Income Tax Department. Therefore, he has submitted that these are the individual incomes for the service of 'Renting of Immovable Property' provided by these two persons separately. Since the amount received by them individually is less than the threshold limit, both these persons have not taken the Service Tax Registration and no Service Tax was paid to the Department. After due process, Show Cause Notices were issued for the period 2007 to 2012 by invoking the extended period provisions and three more periodical Show Cause Notices were issued for the period April 2012 to March 2014. After due process, the demands were confirmed by the Adjudicating authority. On Appeal, the Commissioner(Appeals) has dismissed the Appeals filed by the Appellant. Therefore, the Appellant is before the Tribunal.

3. From the grounds of Appeal it is seen that the Appellants have always taken a stand that their individual plots were bought together to construct the commercial complex. They have also given the details of

their Land Registration details for the plots owned by them and permission granted to them towards the building of a commercial complex. While a single Lease Deed has been executed for letting out the property to Shyam Retails, the lessee has divided the total rent into two equal portions and has paid the rent individually to both the persons. Towards this, the appellants have enclosed copies of their respective Bank Passbooks showing that on a monthly basis, the rent was individually being received by the persons separately. They have also enclosed their 26-AS Form issued by Income Tax Department showing that the rent received by them individually are being subjected to deduction of TDS. They submit that this shows clearly that these are two different individual incomes of two different persons and the same is liable for Income Tax also individually. In view of these facts and the documentary evidence shown, the Appellant submits that the present proceedings initiated on the ground that both the individuals are a common entity and the demand raised for the total rent received from Shyam Retails is legally not sustainable and the confirmed demand is required to be set aside on merits.

4. They also submit that all the rents are received by the individuals through banking channels only and is available in the Bank Passbook and the deduction of TDS is available in the individual IT records. It is also not the case of the Department that the Appellants have collected any Service Tax from Shyam Retails. Therefore, these facts point out that there has been no concealment or suppression on the part of the Appellant. They submit that the Show Cause Notice issued on 06.03.2013 for the period December 2007 to March 2012 is time barred. They prayed that the confirmed demand for the extended period is to be set aside on account of limitation also.

5. The Ld.AR for the Department reiterates the findings of the lower authorities and submits that the commercial complex has been jointly developed by both the individuals and the Lease Deed shows that the lessee has paid a Single amount of rent for the commercial complex

and hence the gross rent has to be taken as consideration received by the Appellant. Therefore, he justifies the confirmed demand.

6. Perused the documents on record and the Appeal papers, and heard the Ld.AR for the Department.

7. I find that the Appellant has clearly brought in the evidence to the effect that they are owning individual plots which were situated side by side and for commercial exploitation they have conjoined these two plots together and constructed the commercial complex. The commercial complex Hari Kripa Complex has been let out to Shyam Retails which were required to pay Rs.1,25,000/- per month during the period December 2007 to March 2010 and Rs.1,37,000/- per month subsequent to April 2010.

8. I have gone through the copies of the Passbooks enclosed by the Appellant. It is seen that the lessee has been separately remitting 50% of Rs.1,25,000/- to the individual Account of Shri Bijoy Kumar Nanda with SB A/c. No.18560110000281 and another 50% in the separate Account of Shri Chandulal Hiralal Nanda having S/B Account No.18560110000274. This Passbook entries show that the total amount was clearly split and being given to the individuals in their respective bank accounts. After this I have gone through the Form 26AS of Shri Chandulal Hiralal Nanda having PAN No.AAMPN 9128N. It is seen that the tax deductions on the 50% of the amount credited to his account has been properly paid by Shyam Retails to the Income Tax Department and the same is getting reflected in Form – 26AS issued by the Income Tax Department. Similarly, I have also gone through the Form 26AS of Shri Bijoy Kumar Nanda having PAN No.AAKPN 9890K. Here also the tax deducted towards the 50% of the rent is clearly getting reflected. The above documentary evidence clearly prove that though the agreement with Shyam Retails for an amount of Rs.1,25,000/- and Rs.1,37,500/- was made, ultimately the lessee was paying the amounts individually to these two persons. Accordingly, even under the Income Tax Act these are treated as individual income received by these two individuals separately. Therefore, Income Tax

assessment is also being done accordingly. In such a case, I do not see any merit in the Revenue's contention that these two amounts should be clubbed together to impose Service Tax burden on the Appellant. Documentary evidence clearly proves that the consideration has been individually received by the Appellant though the service provided is that of 'Renting of Immovable Property'. Therefore, I set aside the impugned orders on merits.

9. Since there has been no concealment or suppression on the part of the Appellant, I hold that the demand in respect of the extended period is not sustainable. Hence, I hold that the confirmed demand towards the extended period is required to be set aside on account of limitation also. I do so.

10. Appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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