IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 262 of 2011

(Arising out of Order-in-Appeal No. 107/ST/Kol/2011 dated 06.04.2011 passed by the Commissioner of Central Excise (Appeals-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

M/s. Texmaco Limited **: Appellant**
Belgharia, P.O. Belgharia,
Kolkata – 700 056

VERSUS

Commissioner of Service Tax **: Respondent**
Service Tax Commissionerate, Kolkata,
180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

Shri Ankit Kanodia, Advocate for the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76415 / 2024

DATE OF HEARING / DECISION: 22.07.2024

ORDER : [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein demand of Service Tax under the category of "support services of business or commerce" has been confirmed against them, for the period from May 2006 to December 2007, by issuance of a Show Cause Notice on 09.11.2009 invoking the extended period of limitation.

2. The facts of the case are that the appellant is engaged in the manufacture of unmachined castings and cast articles of steel, parts of railway wagons, rolling stock, etc. The appellant was having a

composite printing press with requisite permission licence, registration and approval under the applicable laws, for allowing use of such composite printing machine in its Panihati factory premises. The appellant was unable to use the composite printing press and thus, decided to give it on rent to any interested party. Accordingly, vide an Agreement dated 27.12.2000, the appellant rented the factory along with all machineries, to M/s. Hindustan Times Limited for a period of six years, for a monthly charge of Rs.5.65 lakhs. Further, M/s. The Hindustan Times Ltd. by way of a Business Purchase Agreement dated 15.08.2003 transferred its media business to M/s. H.T. Media Limited. With this business purchase agreement, the Agreement dated 27.12.2000 between the appellant and M/s. The Hindustan Times Ltd. was also required to be novated in terms of the Business Purchase Agreement. Accordingly, a Novation Agreement was entered into by and between M/s. The Hindustan Times Ltd., M/s. H.T. Media Ltd. and the appellant on 15.09.2003. By virtue of this Novation Agreement, M/s. H.T. Media Ltd. stepped into the shoes of M/s. The Hindustan Times Ltd., with the same terms and conditions as per the original agreement dated 27.12.2000.

3. With effect from 01.06.2007, the activity of 'renting of immovable property' became taxable under the Finance Act, 1994. The appellant has been paying Service Tax under the said category as 'renting of immovable property service' on their leasing of printing press and filing their Service Tax Returns accordingly. The Revenue accepted the Service Tax paid by the appellant under the category of 'renting of immovable property service'.

4. Later on, the Show Cause Notice dated 09.11.2009 was issued to the appellant for the period from May 2006 to December 2007, to demand Service Tax under the category of business support service and to impose various penalties under the Finance Act.

5. It is the contention of the appellant that as they had rented out their printing press, which is nothing but merely a renting of immovable property service, therefore, they are not liable to pay Service Tax under the category of 'business support service'. Accordingly, the appellant contends that the extended period of limitation is not invokable in the facts and circumstances of the case.

5.1. Further, it is stated by the appellant that since 01.06.2007, the appellant has been paying Service Tax on the renting of printing press under the category of 'renting of immovable property service', which has been accepted by the Revenue and thus the Revenue itself cannot change the classification by invoking the extended period of limitation.

5.2. Therefore, the appellant prays that the impugned order is to be set aside.

6. On the other hand, the Ld. Authorized Representative appearing for the Revenue supported the impugned order.

7. Heard the parties and considered their submissions.

8. We find that in this case, the appellant had started paying Service Tax under the category of 'renting of immovable property service' for their factory premises wherein the printing press is

installed on lease and the payment of Service Tax has been accepted by the Revenue. In these circumstances, we hold that Service Tax cannot be levied on the appellant for the period from May 2006 to December 2007 under the category of 'business support service' by issuance of the Show Cause Notice dated 09.11.2009 which is beyond the normal period of limitation of one year. Therefore, we hold that whole of the demand raised against the appellant is barred by limitation. Accordingly, the demand of Service Tax against the appellant is set aside. Consequently, no penalty is imposable on the appellant.

9. In these circumstances, we do not find any merit in the impugned order and the same is set aside.

10. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd