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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76327 of 2014

(Arising out of Order-in-Appeal No. 05/SLG/2014 dated 16.07.2014 passed by the Commissioner of Central Excise (Appeals-III), Kolkata, 180, Santipally, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

Shri Gautam Mukherjee **: Appellant**
Smt. Tripti Mukherjee (Deceased)
Shri Jayanta Mukherjee
Ukilpara, P.O. & District: Jalpaiguri,
West Bengal, PIN – 735 101

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Siliguri Commissionerate

WITH

Service Tax Appeal No. 76771 of 2016

Service Tax Cross Objection No. 75140 of 2017

(Arising out of Order-in-Appeal No. 34/SLG-ST/2016 dated 26.07.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

Shri Gautam Mukherjee **: Appellant**
Ukilpara, P.O. & District: Jalpaiguri,
West Bengal, PIN – 735 101

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Siliguri Commissionerate

WITH

Service Tax Appeal No. 75829 of 2017

Service Tax Cross Objection No. 75171 of 2018

(Arising out of Order-in-Appeal No. 34/SLG-ST/2016 dated 26.07.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

Smt. Tripti Mukherjee (Deceased) **: Appellant**
Ukilpara, P.O. & District: Jalpaiguri,
West Bengal, PIN – 735 101

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Siliguri Commissionerate

AND

Service Tax Appeal No. 75830 of 2017

Service Tax Cross Objection No. 75169 of 2018

(Arising out of Order-in-Appeal No. 34/SLG-ST/2016 dated 26.07.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

Shri Jayanta Mukherjee **: Appellant**
Ukilpara, P.O. & District: Jalpaiguri,
West Bengal, PIN – 735 101

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Siliguri Commissionerate

APPEARANCE:

Shri K.K. Sarkar, Chartered Accountant for the Appellant(s)

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs. 76530-76533 / 2024

DATE OF HEARING / DECISION: 01.08.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order wherein demand of Service Tax has been confirmed against them under the category of "renting of immovable property service".

2. The facts of the case are that the appellants viz. Smt. Tripti Mukherjee (Deceased), Shri Gautam Mukherjee and Shri Jayanta Mukherjee, are the joint owners of the property in question which was let-out under Agreements/Indentures of Leave and Licence.

3. The appellants are the joint owners of the property namely, "Sombhu Nath Bhawan", Kamarpara, Jalpaiguri (W.B.) which was rented out by Late Smt. Tripti Mukherjee, Shri Gautam Mukherjee and Shri Jayanta Mukherjee *inter alia* to M/s. Vishal Retail Limited and M/s. ICICI Bank Limited under two separate lease agreements. In the Leave and Licence Agreement executed with M/s. ICICI Bank Ltd., it is clearly mentioned that all the owners of the property shall get one-third share each as rent in their respective bank accounts and that they are receiving rent separately in their accounts. With regard to the Lease and Licence Agreement in respect of Vishal Retail Ltd., the same shows that there shall be paid a consolidated rent to all the three appellants jointly in favour of the State Bank of India (SBI) from whom the appellants had taken a Bank loan.

3.1. Further, for the subsequent period, the appellants had also entered into Agreements with other parties, for which no records were made available at the time of hearing before this Bench.

4. The appellants claim that the Agreement(s) specifically state that all of them are the joint owners of the property but will get rent in their separate names and that they are receiving separate payments of rent in each of their bank accounts.

4.1. The Revenue is of the view that the appellants are the joint owners and therefore, the rent received by them shall be considered as a consolidated rent and the total rent received by the appellants, jointly, works out to more than the threshold limit specified in terms of Notification No. 06/2005-S.T. dated 01.03.2005.

5. In these set of facts, Show Cause Notices were issued to the appellant for payment of Service Tax under the category of "renting of immovable property service".

6. The matters were adjudicated and demands of Service Tax were confirmed jointly. Against the said orders, the appellant filed appeals before the Ld. Commissioner (Appeals), who vide the impugned orders upheld the confirmation of demands against the appellants.

7. Against the said orders, the appellants are before us.

8. Heard the parties and perused the records.

9. From a perusal of the records, we find that when the premises had been let out to M/s. ICICI Bank Ltd., the property had been let-out by the appellants in their individual capacity separately and the rent received in this regard falls below the threshold limit during the respective period. In these circumstances, we hold that whatever rent was received by the appellants in respect of the said Agreement entered into with M/s. ICICI Bank Ltd., no Service Tax is payable by the appellants.

9.1. With regard to the Agreement entered into with M/s. Vishal Retail Ltd., it is observed that a consolidated Agreement was executed, on which a consolidated rent was paid to the appellants, which has gone to the SBI as per the tripartite agreement entered into between the parties and the same exceeds the threshold limit of taxable services. Therefore, we hold that on the rent received in respect of the Agreement entered into with M/s. Vishal Retail Ltd., the appellants are liable to pay Service Tax, if the consolidated amount of rent received in a Financial Year exceeds the threshold limit available during the relevant period.

10. The ld. adjudicating authority is directed to verify as to how much amount is payable by the appellants, in view of our discussions hereinabove, and thereafter pass an appropriate order in accordance with law.

10.1. The ld. adjudicating authority shall also examine if there were any other tenants and if so, whether the appellants were getting rent from them separately or jointly and thereafter, to consider the same and pass an appropriate order accordingly.

11. In the result, the appeals are disposed of by way of remand, with a direction to the adjudicating authority to calculate the liability of Service Tax payable by the appellants. In these terms, the appeals are disposed of. The cross objections filed by the respondent are disposed of in the above manner.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd