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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76256 of 2014

(Arising out of Order-in-Appeal No. 03/SLG/2014 dated 12.06.2014 passed by the Commissioner of Central Excise (Appeal-III), Kolkata, 180, Shantipally, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

Shri Kamal Kumar Mittal & Others **: Appellant**
PCM Tower, 2nd Mile, Sevoke Road,
District: Jalpaiguri, Siliguri – 734 001

VERSUS

Commissioner of Cus., C.Ex. and S.Tax, **: Respondent**
Siliguri Commissionerate,
Central Revenue Building, 4th Floor,
Haren Mukherjee Road, Hakimpara, Siliguri – 734 001

APPEARANCE:

Shri K.S. Chakraborty, Consultant
Smt. Ankita Mitra, Advocate
For the Appellant

Shri Debapriya Sue, Authorized Representative
For the Respondent

CORAM:

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

FINAL ORDER NO. 77073 / 2024

DATE OF HEARING / DECISION: 25.09.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein demand of Service Tax has been confirmed under the category of 'renting of immovable property service'.

2. The facts of the case are that the appellant is one of the co-owners of the properties in question which have been rented out to various tenants and the appellant along with the other co-owners, being joint owners of the properties, entered into

agreements with the tenants and received rent proportionate to their ownership in the properties.

3. The Revenue is of the view that the properties have been rented out jointly and severally and therefore, the whole of the rent received by all the owners / co-owners of the properties has to be taken together and that on the said amount, the appellant is liable to pay Service Tax jointly or severally.

4. In these set of facts, proceedings were initiated against the appellant and the demand of Service Tax was confirmed by way of the impugned order.

4.1. Aggrieved from the said order, the appellant is before us.

5. Heard the parties.

6. We have gone through the records placed before us. We find that the appellant is one of the co-owners of the properties in question, which were rented out by the appellant. The appellant, along with other co-owners of the properties, have received rent in their proportionate share in the properties. It is the contention of the appellant that if the amount received by the appellant as rent in their proportion is to be treated as the amount of service rendered by them, then the same would fall within the threshold limit in terms of Notification No. 06/2005-S.T. dated 01.03.2005, as amended from time to time. Therefore, it is contended that whole of the rent received by the appellant falls within the threshold limit and accordingly no Service Tax is payable by the appellant.

6.1. We agree with the contention of the appellant. As per the records, the appellant is one of the co-owners of the properties in question and as per the rent agreements, the appellant has been receiving rent in proportion to his ownership in the said properties. If the proportionate rent is to be taken into consideration, then the whole of the rent received by the appellant falls under the threshold limit prescribed under Notification No. 06/2005-S.T. dated 01.03.2005, as amended from time to time.

7. In these terms, we hold that no Service Tax is payable by the appellant since whole of the amount of rent received falls within the threshold limit as prescribed under Notification No. 06/2005-S.T. dated 01.03.2005, as amended from time to time.

8. In the result, we set aside the impugned order and allow the appeal 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