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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75131 of 2017

(Arising out of Order-in-Appeal No.92/SH/CE(A)/GHY/2016 dated 17.10.2016 passed by Commissioner (Appeals) of CGST & Central Excise, Guwahati)

M/s ERM Lyngdoh
(M.G.Road, East Khasi Hills, Shillong-793001)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Guwahati
(Nilmonu Phukan Path, Christian Basti, Guwahati-781005)

Respondent

APPERANCE :

Ms.Sonam Agarwal, Chartered Accountant for the Appellant
Mr.S.K.Jha, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75312/2026

DATE OF HEARING : 25 FEBRUARY 2026
DATE OF DECISION : 25 FEBRUARY 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case in brief are that during the period 01.04.2008 to 31.03.2013, it was alleged that the appellant was providing taxable service under the category of "Renting of Immovable Property" service and did not pay service tax by way of suppression of facts with intent to evade payment of service tax.

2.1 Therefore, a show-cause notice was issued to the appellant vide dated 24.10.2014 for recovery of service tax amounting to

Rs.40,97,319/-. The adjudicating authority confirmed the demand of Rs.32,86,688/- along with interest and various penalties.

2.2 The said order was challenged before the ld.Commissioner (Appeals), who confirmed the order of the adjudicating authority.

2.3 Being aggrieved with the said order, the appellant is before us.

3. The ld.Counsel appearing on behalf of the appellant, submits that the appellant has rented out the premises and the tenant of the appellant was Excise & Service Tax Department. Even prior to levy of service tax on "Renting of Immovable Property" service, the Department was knowing that the appellant is providing "Renting of Immovable Property" service themselves to them and did not pay any service tax to them. In that circumstances, malafide intention on the part of the appellant cannot be alleged. It is further submitted that the Excise & Service Tax Department is not engaged in the activity of business or commerce, therefore, the said activity is not liable to be taxed. It is further submitted that an agreement on "Renting of Immovable Property" service entered at the behest of Govt. of India wherein they have taken the premises of the appellant on Lease for use of the Department of Central Excise & Customs and the said agreement clearly establishes that no element of service tax was contemplated . Consequently, in the year, 2012, the amendment was introduced to the original agreement for the purposes of service tax on rent. For the period prior to 27.11.2011, she submits that the demand of service tax is not sustainable. She further submits that the appellant has paid the service tax as under :

Sl.No	Particulars	Total rent receipt including service Tax	Taxable Value	Service Tax	Edu Cess	S &H Cess	Total payable service tax
1	Apr' 2012 to Mar' 2013 (as per SCN page 28 of appeal)	1,40,24,718	1,24,81,949	14,97,834	29,957	14,978	15,42,769
2	Oct' 2011 to Mar' 2012 (as per sheet submitted)	58,45,328	52,99,481	5,29,948	10,599	5,299	5,45,847
3	Total Service Tax liability						20,88,615
4	Service Tax already paid via various challans before issuance of SCN page 53 of appeal						20,35,921
5	Difference paid on 24.02.2026						52,694

Therefore, no liability arises against the appellant and in the facts and circumstances of the case, penalty is not imposable.

4. The ld.A.R. for the Revenue has justified the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the appellant has let out the premises to the respondent and as per the agreement , no service tax was payable by the appellant and the appellant was under bonafide belief that the respondent is not engaged in the activity of business and commerce. Therefore, no service tax is payable. Later on, the appellant has paid service tax as per Chart mentioned hereinabove and as per their submissions, the appellant had paid the service tax in full. In that circumstances, it would be in the interest of justice to remand the matter back to the original authority to consider the submissions made by the appellant and find out whether the appellant has paid the full amount of service tax or not ? If the service tax calculated as per the Chart mentioned hereinabove,is correct,then no demand of service tax is sustainable and the extended period of limitation is not invokable in the facts and

circumstances of the case. Consequently, no penalty is imposable on the appellant.

7. With the above observations, the appeal is disposed of by way of remand for calculation purposes.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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