CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86838 OF 2016

[Arising out of Order-in-Original No: KLH-EXCUS-000-COM-059-15-16 dated 29th March 2016 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

Ajara SSK Ltd
Village Gawase, Tal: Ajara, Kolhapur … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
Vasant Plaza, Rajaram Road, Bagal Chowk
Kolhapur - 416001 ***…Respondent***

APPEARANCE:

Shri JN Somaiya, Advocate for appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85695/2025

DATE OF HEARING:	24/02/2025
DATE OF DECISION:	24/02/2025

PER: C J MATHEW

The limited issue in this appeal of M/s Ajara SSK Ltd is the exigibility to tax of ₹ 1,05,49,461, received from M/s Warana Akara

Sakhar Udyog, under section 66 of Finance Act, 1994 in terms of section 65(105)(zzzz) of Finance Act, 1994 for the period from 2009-10 to 2011-12.

2. The order[1] of Commissioner of Central Excise & Service Tax, Kolhapur upheld tax liability of ₹ 1,08,65,945 under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994, besides imposing penalty under section 70, 77 and 78 of Finance Act, 1994 on the finding that, though claimed to be payment made for a particular purpose, in terms of the agreement, liable upon one of the participants in partnership, it was, in effect, recompense for occupying premises of M/s TK Warana SSK Ltd for production of sugar, and that the appellant herein had, at one time, entered into a 'lease agreement' for the period from 2004-05 to 2008-09 with another enterprise with tax liability discharged thereon under section 65(105)(zzzz) of Finance Act, 1994. The adjudicating authority, refuting the claim of principle of mutuality as precluding taxable service being rendered and discarding applicability of the decision cited by appellant herein, relied upon the decision of the Hon'ble High Court of Bombay in *Commissioner of Income Tax v. Common Effluent Treatment Plant*[2] to conclude that the structure envisaged in section 20 of Maharashtra Co-operative Societies Act,

[1] [order-in-original no. KLH-EXCUS-000-COM-059-15-16 dated 29th March 2016]
[2] [income tax appeal no. 2060 of 2009 dated 17th June 2010]

1960 does not create a partnership that is acknowledged under Indian Partnership Act, 1932.

3. According to Learned Counsel for the appellant, they had entered into a partnership with M/s TK Warana SSK Ltd, and in accordance with section 20 of Maharashtra Co-Operative Societies Act, 1960, as the latter had run into financial difficulties and had outstandings owed to their banks. He contended that the amount which was held as liable to tax in the impugned order was nothing but contribution to the joint venture for settling the outstanding dues with the bank and, by no stretch, could be held as consideration for renting of the premises. In support of his claim, the appellant furnished balance sheets incorporating the said amount within 'current liabilities and provisions' for the period from 2009-10 to 2016-17.

4. Learned Authorised Representative elaborated upon the alleged 'subterfuge' deployed for disguising the actual relationship of lessor and lessee by placing reliance on the statements recorded from several persons during the investigation.

5. It is evident from

> *'17.6 In the instant case before me I find that, M/s Ajara has to provide its entire infrastructure for running, managing, conducting and operating sugar mill to M/s Warana and in return M/s Warana has to repay the outstanding liabilities of M/s Ajara to the Banks. The repayment of loans has to be*

made out of the 60% of the surplus as user charges towards the use of sugar factory with all its Assets and infrastructure. The relevant Clause (03) of the said agreement dated 10.02.2010 is as reproduced below.

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From the above clause, it has become crystal clear that, M/s. Warana is only the managing / working partner and M/s. Ajara has no role in the entire business during the agreement period and M/s. Ajara got consideration amount of Rs. 10,54,94,608/- during the period from 2009-10 to 2011-12 out of the 60% share of surplus amount towards the use (i.e. renting of immovable property) of sugar factory with all its Assets & infrastructure. Moreover, the expenses and profits out of the processing of imported Raw Sugar vested with M/s. Warana and M/s. Ajara had no claim over it even though said activity was performed by M/s. Warana in the factory premises of M/s. Ajara during the agreement period i.e. 2009-10 to 2011-12. Therefore I find that, all above three conditions as stipulated by the Apex court are not satisfied thus principles of mutuality are violated. However under Clause (15) of the said agreement dated 10.02.2010, the Members of M/s. Ajara were to be provided with 3 Kg of sugar per share for producing members and 2 Kg for non-producer members at concessional levy rate per month once in year. For this transaction only the Doctrine of Mutuality can be applied.

17.7 Further, in this connection I rely on the judgement of Hon'ble Bombay High Court's decision dated 17.06.2010 in the Income Tax Appeal No. 2060 of 2009 in the matter of Commissioner of Income Tax Vs. M/s. Common Effluent Treatment Plant wherein also Doctrine of Mutuality and aforesaid three principles were laid down by the Apex court.

The Relevant Paras of Common Effluent Treatment Plant case (supra) are reproduced below.

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17.8 The aforesaid ratio of Hon'ble Bombay High court is applicable to the present case. In the present case, M/s. Ajara has leased out its factory premises alongwith infrastructure and manpower to M/s. Warana which is undisputable taxable service under the category of "Renting of Immovable Property" for which M/s. Ajara had earlier paid service tax under the said category for transactions entered with M/s. SRSL for the period from 2004-05 to 2008-09. There exists a service provider and a service recipient relationship. This relationship did not get extinguished by virtue of entering into an agreement under Partnership of Societies as it has been stipulated under Section 20 of Maharashtra Co-operative Societies Act, 1960. The said Section 20 of Maharashtra Co-operative Societies Act, 1960 merely authorizes the societies to enter into partnership for carrying out any specific business or businesses for which the provisions of the Indian Partnership Act, 1932 are not applicable. Here sharing the manufactured sugar between the members of either M/s. Ajara or M/s. Warana at concessional rate satisfies the conditions of mutuality. However, the profit which has derived out of business transactions held with third parties i.e. other than M/s. Ajara and M/s. Warana did not satisfy the 3 conditions as stipulated by Apex court which was also referred and further analyzed by Hon'ble Bombay High Court in the aforesaid cases. Hence, the income of 60% share which was agreed to be utilized to recover the loan liability of M/s. Ajara is nothing but consideration amount received by M/s. Ajara for providing the services of leasing out their factory premises *which was classifiable under the "Renting of Immovable property" are exigible / chargeable under Service Tax laws. Hence, I find that there existed the service provider and service recipient relationship in the agreement dated 10.02.2010 entered into between M/s. Ajara and M/s. Warana and the consideration amount of Rs. 10,54,94,608/- received by M/s. Ajara by way of Bank Cheques/ Debit Notes utilized for the payment of loans of M/s. Ajara are chargeable under Service Tax and Service Tax of Rs, 1.08,55,945/- on the gross amount of Rs. 10,54,94,608/- by applying appropriate rate are correctly recoverable from M/s. Ajara under the category of "Renting of Immovable Property" service. The aforesaid arrangement of distribution and adjustment of the consideration against Bank loan is nothing but a barter system of monetory transactions between M/s. Ajara and M/s. Warana.*

17.9 M/s. Ajara at the time of hearing have produced a Certificate issued by M/s. Mahesh Gurav & Co. Chartered Accountants stating that amount of Rs. 10,54,94,608/- was taken on loan by M/s. Ajara for paying their Joans and liabilities and the said amount is to be paid back to M/s. Warana Ajara Sakhar Udyog. Part of the amount has been paid back and remaining amount is shown as payable / liabilities in books and accounts of M/s. Ajara. In this regard, I find that the certificate did not give any details of part payment & balance amount remaining out of the transactions. On going through the agreement it is revealed that there was no such term or condition agreed upon by either of the parties that the amount received by M/s. Ajara is on loan basis. No evidence such as Balance Sheet and ledger account of M/s. Ajara has been produced at the time of hearing. Therefore the certificate, in absence of any evidence and no such term or condition in the agreement, is not tenable.'

in the impugned order that the adjudicating authority has not examined the financial statements and the purpose for which the payments were received; if the appellant was merely acting as a 'pass-through' for repayments of outstanding on behalf of a failing industrial enterprise, taxability should not arise. The absence of examination of this contention deprives the impugned order of the certainty that is expected in assessing tax liability.

6. For the above reason, the impugned order is set aside and the matter remanded back to the original authority for a fresh determination on the liability to tax arising in the circumstances pleaded by the appellant herein.

(Operative part of the order pronounced in the open court on 24th February 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*