CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 89163 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85134 OF 2019

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Beena Borade
Flat No. 203, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89166 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Rashmi Khataokar
Flat No. 403, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89167 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

West Dadar CHS Ltd
Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89169 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Mangala Karmarkar
Flat No. 305, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89174 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Ramanlal Kambati
Flat No. 204, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89175 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Dr Sumukh Prabhudesai
Flat No. 201, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89178 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Kiran G Saranghdar
Flat No. 202, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89179 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Mohan Pawar
Flat No. 306 & 401, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89181 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Sanjay Kadam
Flat No. 206, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89183 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Smt Dr SM Mayekar
Flat No. 404, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89184 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Shashikant Cheda
Flat No. 404, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89186 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Narayan Juker
Flat No. 304, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89187 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85131 OF 2019

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

K S Rambha
Flat No. 103, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89188 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85133 OF 2019

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Lalita V Patil
Flat No. 406, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89192 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Satish S Kamath
Flat No. 301, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89193 OF 2018

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Yeshwant Rane
Flat No. 303, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89195 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85132 OF 2019

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Shashikant V Patil
Flat No. 104, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89429 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85135 OF 2019

[Arising out of Order-in-Appeal No: PK/153 to 188/MC/2017 dated 29th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Dr Girish D Lad
Flat No. 302, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89168 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Ramanlal Khambati
Flat No. 204, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89170 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Narayan Juker
Flat No. 304, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89171 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Dr Sumukh Prabhudesai
Flat No. 201, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89172 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Beena Borade
Flat No. 203, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89173 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Shashikant Cheda
Flat No. 404, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89176 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Mohan Pawar
Flat No. 306 & 401, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89177 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Mangala Karmarkar
Flat No. 305, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89180 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Shashikant V Patil
Flat No. 104, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89182 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

K S Rambha
Flat No. 103, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89185 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Smt Dr SM Mayekar
Flat No. 404, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89189 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85129 OF 2019

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Satish Kamath
Flat No. 301, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89190 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85128 OF 2019

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

West Dadar CHS Ltd
Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89191 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Kiran G Saranghdar
Flat No. 202, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89194 OF 2018

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Yeshwant Rane
Flat No. 303, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89196 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85125 OF 2019

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Rashmi Khataokar
Flat No. 403, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89197 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85127 OF 2019

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Lalita V Patil
Flat No. 406, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

WITH

SERVICE TAX APPEAL NO: 89198 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85126 OF 2019

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Sanjay Kadam
Flat No. 206, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

AND

SERVICE TAX APPEAL NO: 89199 OF 2018
WITH
SERVICE TAX CROSS-OBJECTION NO: 85130 OF 2019

[Arising out of Order-in-Appeal No: PK/133 to 150/MC/2017 dated 26th September 2017 passed by the Commissioner of GST & Central Excise (Appeals – II), Mumbai.]

Dr Girish D Lad
Flat No. 302, Gitanjali Bldg., Ranade Road
Dadar (W), Mumbai - 400028 … ***Appellant***

versus

Commissioner CGST & Central Excise
Mumbai Central
GST Bhavan, 115 Maharshi Karve Road, Churchgate
Mumbai - 400020 ***…Respondent***

APPEARANCE:

Shri Anand Desai, Chartered Accountant for the appellants

Shri CS Pavan, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85117-85152/2026

DATE OF HEARING:	04/11/2025
DATE OF DECISION:	23/01/2026

PER: C J MATHEW

A very peculiar set of appeals from individual members of West Dadar Co-Operative Housing Society Ltd, the collective entity in appeal too, is before us. The period of dispute is between April 2007 to October 2012. The Society, formed in the year 1967-68, put up the building, including the ground floor and basement, in 1971 which was, then leased to State Bank of India; rental thereon subsidized the periodical maintenance cost of the appellants herein, as compensation for contributing to the construction, with the possession of rented premises jointly held by all of them. A trust, registered in 2001 under the name and style of West Dadar Premises Trust, and with the then Chairman of the Society as trustee, obtained allotment of the impugned premises following which lease deed was entered into between the

Trust and State Bank of India for the period from March 2001 and February 2006. Owing to internal dispute, which was finally litigated with the ownership of the impugned premises confirmed in the name of the seventeen original owners, rent was also ordered to be transferred pro-rata to the individual co-owners which continued thereafter.

2. On the premise that the rent had been unbundled to avoid levy under Finance Act, 1994, service tax authorities initiated proceedings for recovery of tax on the monthly rental amount as provider of 'renting of immovable property' service. It is against the affirmation of fastening of the tax liability in the impugned orders[1] [2] of Commissioner of GST & Central Excise (Appeals – II), Mumbai that the appellants are before us.

3. We have heard Learned Counsel for the appellants and Learned Authorized Representative.

4. Learned Counsel for the appellants drew our attention to the decision of the Tribunal in *Commissioner of Central Excise, Nashik v. Deoram Vishrambahi Patel [2015 (9) TMI 790 CESTAT-MUMBAI]*

5. It is also seen from the facts that the dispute pertaining to receipt of rent had been litigated over a long period of time and that it was on the direction of the judicial determination that State Bank of India paid

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[1] [order-in-appeal no. PK/153 to 188/MC/2017 dated 29th September 2017]
[2] [order-in-appeal no. PK/133 to 150/MC/2017 dated 26th September 2017]

rent directly to the individuals. There was, thus, no reason for the service tax authorities to conclude that subterfuge, with intent to evade tax, motivated this abnormal scheme of rent payment. In *re Deoram Vishrambahi Patel*, the Tribunal affirmed the findings of the first appellate authority thus:

> *'8. On deeper perusal of impugned order, we find that the first appellate authority has considered all the angles in the dispute and came to the correct conclusion. The findings of first appellate authority is as under.*
>
> > *"6.2 On mere reading of the Order-in-Original, it is evident that the adjudicating officer has considered above named four persons as one person for determining tax liability and imposition of penalties without telling any legal basis for doing so. The appellants have contested the Order in Original mainly on the grounds that rented property belongs to four separate persons (all brothers) but the service tax has been demanded wrongly by the department from the appellants by clubbing the rent received by all the co-owners and, therefore, the demand off tax is not maintainable on this ground alone. In support they have produced a City Survey Extract as evidence regarding ownership of the rented property which shows that the said property was purchased in 2003 and is owned jointly by all the four co-owners. Further, the lease agreements with M/s. Max New York Life Insurance Co. Ltd., Oriental Bank of Commerce, Axis Bank, Kotak Mahindra Bank and HDFC Standard Life Insurance Ltd. are also entered into by the appellants in their individual capacity, as per SCN also, all four co-owners have obtained separate Registration Certificate on 10-4-2012 and all the four co-owners individually paid their Service tax liability along with interest on 14-2-2012. Thus, the ownership of the Property and providing of taxable renting of immovable Property by the four appellants in this case is in their individual capacity and, therefore, their tax liability should have been determined by considering their individual rental receipts and not collective one. From the various lease agreements made with above mentioned Commercial firms, it cannot be disputed that monthly rent was paid by the above named concerns to each appellant after deducting tax at their end.*
> >
> > *6.3 From the show cause notice dated 19-10-2012, it is evident that the appellants had received rent as detailed below :-*

	Sr. No.	Period	Amount (Rs.)	
	1	*2007-08 (1-6-2007 to 31-3-2008)*	*Rs. 29,21,048/-*	
	2	*2008-09*	*Rs. 36,27,024/-*	
	3	*2009-10*	*Rs. 46,72,744/-*	
	4	*2010-11*	*Rs. 52,63,304/-*	
	5	*2011-12*	*Rs. 44,28,360/-*	

But as the rent was distributed equally among each of the appellant, it is evident that each of them received an amount lesser than Rs. 8 lakhs and 10 lakhs in the years 2007-08 and 2008-09 respectively which is below the exemption limit of eight lakhs and ten lakhs during the relevant period. The appellants were, therefore, not liable to pay service tax on the amounts received by them during these two years by virtue of Notification No. 6/2005-S.T., dated 1-3-2005. The appellant's case is also supported by the Tribunal's decision in the case of Dinesh K. Patwa v. CST, Ahmedabed which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-22, the receipt off rent by each appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax along with interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional tax liability has been worked out for the said period in OIO.

6.4 Since the appellants were individually liable to pay service tax and eligible for the exemption under general exemption Notification 6/2005-S.T., dated 1-3-2005 during the period 2007-08 and 2008-09, no service tax was payable during the said period. Hence, the question of penalty under Section 76 for the said period does not arise. For the subsequent period i.e. 2009-10 & 2010-11, the appellants have already accepted their tax liability and paid Service tax along with interest on 14-2-2012. The said payment of service tax is certainly a delayed payment, but was made by the appellants on their own when they realized that their taxable value for renting of property had exceeded the exemption limit of Rs. 10 lakhs. The adjudicating authority has claimed in his order that the appellants paid service tax only after Department started investigation, but it is not supported by any evidence or the facts on record. The SCN or the OIO do not talk of any audit objection or Preventive action or any Inspection etc. on the basis of which not payment of service tax by the appellants was pointed out. Instead in the SCN, one statement of Shri Chandulal Vishrambhai Patel is only referred to which was recorded on 22-2-2012 which is 8 days after the appellants had paid service tax along with interest on their own. Thus, the claim of the appellant that they had paid service tax for the years 2009-10 and 2010-11 on their own initiative and there was no suppression of facts etc. on their part with any intention to evade service tax cannot be denied. Considering all these facts, I agree with the appellant's contention that this case was squarely covered

> *under sub-section (3) of Section 73 which provided not to issue any notice under sub-section (1) of Section 73 if the service tax not levied or paid was paid along with interest by the person concerned before service of notice on him and informed the Central Excise Officer of such payment in writing. Further in Explanation 2 of the said sub section it is also clearly provided that no penalty under any of the provisions of the Act or the Rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon. Hence, in fact no SCN was required to be issued in this case for recovery of service tax and imposition of penalty and even when it has been issued, no penalty under Section 76 or 78 is imposable in this case for the period 2009-10 and 2010-11.''*

6. In view of the factual matrix above and the judicial decisions cited *supra*, we find that the fastening of tax liability in the impugned order is inappropriate and is set aside to allow the appeals. Cross-objections are also disposed off.

(Order pronounced in the open court on 23/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*