
(2023) 09 CESTAT CK 0034

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal Nos.40032, 40033, 40034 Of 2023

M. Rajeswari And Others

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Finance Act, 1994 — Section 73(2), 77, 78, 80

Citation : (2023) 09 CESTAT CK 0034

Hon'ble Judges : M. Ajit Kumar, Member (T)

Bench : Single Bench

Advocate : R. Balagopal

Final Decision : Disposed Of

Judgement

M. Ajit Kumar, Member (T)

1. These appeals are filed by the appellants against Order-in-Appeal No. 36 to 38 of 2022 dated 22.4.2022 passed by the Commissioner of Central Tax (Appeals), Coimbatore (impugned orders). The appellants are in second round of litigation before this Tribunal.

2. Brief facts of the case are that the appellants are engaged in "Renting of Immovable Property Service". Show Cause Notice was issued to them treating them as 'association of persons' and service tax was demanded from them collectively. The original authority vide Order in Original dated 29.4.2014 confirmed the service tax demand of Rs.13,67,139/- along with other adjudicatory liabilities. On appeal, Commissioner (Appeals) upheld the order of adjudication. The appellants preferred appeals before this Tribunal who vide Final Order No. 40224 to 40240/2019 dated 21.1.2019 while allowing the appeals remanded the matter to the adjudicating authority for the limited purpose of verifying the threshold limit of the individual co-owners as may be applicable during the relevant period of dispute. As per the directions of the Tribunal, the adjudicating authority vide Order in Original dated 16.3.2021 proceeded to

calculate the threshold limit of the service tax demand of three individuals based on the Notifications No. 4/2007-ST dated 1.3.2007 and No. 8/2008-ST dated 1.3.2008 and confirmed service tax demand of Rs.20,556/- each on the appellants by invoking extended period of limitation along with interest under the category of 'Renting of Immovable Property Services' under section 73(2) of the Finance Act, 1994 for the period 1.6.2007 to 31.3.2012. The adjudicating authority also imposed penalties under sections 77 and 78 of the Finance Act, 1994 while refraining from imposing penalty under sec. 76 of the said Act. In appeal, the Commissioner (Appeals) upheld the order. Hence the appellants are before this Tribunal.

3. No cross-objection has been filed by the respondent-department.

4. We have heard Shri R. Balagopal, learned consultant for the appellants and Ms. O.M. Reena, learned Additional Commissioner (AR) for the respondent-department.

5. The learned consultant for the appellants submitted that the appellants are not disputing the service tax demand and the interest as they have already paid the entire service tax liability along with interest. He restricted the appeals only to setting aside the imposition of penalties on the appellants. He relied on the decisions of the Tribunal in the case of R.K. Refreshment & Enterprises (P) Ltd. Vs. CCE, Raipur – 2018 (14) GSTL 281 (Tri. Del.) and Aviacon (India) Vs. CCE, Delhi – 2017 (7) GSTL 356 (Tri. Del.) to contend that in similar circumstances, this Tribunal vide the orders cited above has waived the penalty imposed on the renting of immovable property service by invoking the provisions of sec. 80 of the Finance Act, 1994. He prayed that the penalties may be waived in these appeals as the appellants have already discharged the service tax liability along with interest.

6. Ms. O.M. Reena, learned Additional Commissioner (AR) supported the findings in the impugned order. She submitted that but for the detection by the officers, the same would not have come to light and the authorities have rightly invoked the extended period and the penalties may be confirmed.

7. I have heard the submissions made by both the sides. The impugned order is restricted to imposition of penalties on the appellants and the demand for duty and interest is not an issue. Appellants prayer is also with regard to penalty only. "Renting of Immovable Property Services" have been brought under the purview of Service tax with effect from 1.6.2007. Hon'ble High Court of Delhi, in the case of M/s Home Solution Retail India Ltd & Others v UOI and Ors. 2010 (19) STR 3 (Del.) held that renting per se cannot be regarded as service. Hence, no service tax could be levied on the activity of renting per se. Subsequently changes made by the Finance Act, 2010 in respect of enlargement of scope of Renting of Immovable Property Services' was challenged by the assessee PAN India and during the impugned period, the courts had taken a view that the amendment was unconstitutional and had even granted a stay in this regard. Further, the

Apex Court vide its order in Union Of India vs UTV News Ltd., [2018 (13) GSTL 3 (SC)], while examining a question directly relatable to the scope and ambit of Entry 49 of List II of the Seventh Schedule to the Constitution of India dealing with "Taxes on lands and buildings" has categorically ordered all the cases on this issue to be deferred until the matter before the nine judges Bench in Mineral Area Development Authority and others Vs. Steel Authority of India and others ((2011) 4 SCC 450) is decided. In a case where the constitutional validity of the levy is yet to be decided the dispute is interpretational in nature. Hence reasonable cause has been made out for delayed payment of duty. In fact, due to legal complexities, the appellants are in the second round of litigation before this Tribunal. I, therefore, agree with the appellant that invocation of penalty in such a situation is not justified as per section 80 of the Finance Act, 1994 due to the reasonable cause shown.

8. Thus, the part of the impugned orders i.e. Order-in-Appeal No. 36 to 38 of 2022 dated 22.4.2022 passed by the Commissioner of Central Tax (Appeals), Coimbatore relating to penalties alone are set aside and the appeals are allowed with consequential relief, if any, as per law. The appeals are disposed off accordingly.