
(2014) 08 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Miscellaneous No. 54845 Of 2014, Service Tax Stay No. 57977 Of 2013, Service Tax Appeal No. 57373 Of 2013

? M/s. Singhania Enterprices

APPELLANT

Vs

CCE, Raipur

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Finance Act, 1994 — Section 65(30a), 65(91a), 65(zzzz), 76, 77, 78

Citation : (2014) 08 CESTAT CK 0009

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : B.L. Narsimhan, Amresh Jain

Final Decision : Allowed

Judgement

1. M/s. Singhania Enterprises (hereinafter referred to as the appellants) filed the miscellaneous application for early hearing of their stay application as

the interim stay granted by Honâ??ble Chhattisgarh High Court will expire soon. They had filed the stay application No. St/S/57977/2013 along their

appeal No. ST/57373/2013-CU [DB] against Order-in-Original No. C/RPR/ST/24/2013 dated 31.01.2013 in terms of which demand of Rs.49,64,881/-

has been confirmed along with interest and penalties under sections 76, 77 and 78 of Finance Act, 1994 have also been imposed. It is seen that the

adjudicating authority vide the aforesaid Order-in-Original has confirmed service tax demands of (i) Rs.29,77,552/- under Construction of complex

service, (ii) Rs.8,11,725/- under renting of immovable property service and (iii) Rs.11,75,604/- under the transport of goods by road service. The

appellants have essentially contended that the demand confirmed under the construction of complex service is not sustainable because they did not

construct residential complex at all. Regarding the demand confirmed under renting of immovable property service, the appellants have contended that

the renting was not for commercial purpose in as much as the flats were given on rent to Hidayatullah National Law University and / or Central

Reserve Police Force to be used as a hostel by the former and as residences by the employees of the latter.

2. Having regard to the appellantsâ?? prayer and the nature of the case and with the consent of the learned AR, we proceed to decide the appeal

itself waiving the pre-deposit.

3. It is seen that out of the amount of Rs.29,77,552/- confirmed under the category of construction of complex service, an amount of Rs.8,81,135/-

relates to construction of load dispatch center for Chhattisgarh state Electricity Board and the remaining amount of Rs.20,96,417/- relates to

construction of University of kushabhauthakre patrakarita and Jansanchaar. For the sake of convenience the definition of construction of

complex as given in Section 65(30a) of Finance Act 1994 reproduced below:

(i) â??Construction of Complexâ?? means-

(a) construction of a new residential complex or a part thereof; or

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall

covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic

applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;

Residential Complex is defined in Section 65(91a) as under:

(ii) â??Residential Complexâ?? means any complex comprising of-

(i) a building or buildings, having more than twelve residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment

system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but

does not include a complex which is constructed by a person directly engaging

any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

4. From para 10.10 of the impugned order, it is evident that the demand of Rs.8,81,135/- has been confirmed on an amount of Rs.23705930/- the details of which are available in the table given in para 10.5 of the same order. This amount is the sum total of the amounts mentioned at serial Nos.

2e, 3c, 4c & 5b of the table given in the said para 10.5. It is evident from the details given against these serial numbers that this amount represents the payment received for construction of office building (load dispatch data center). Thus, it is clear that this amount does not pertain to construction of

any residential complex or completion & finishing of residential complex or repair, alteration, renovation or restoration in relation to residential

complex. Thus it hardly requires any further discussion to hold that the said component of impugned demand confirmed under the Construction of

Complex Service is totally untenable.

Similarly, the remaining impugned demand of Rs.20,96,417/- confirmed under Construction of Complex Service is in relation to the amounts charged

for rendering service as mentioned at serial numbers 2f, 3d, 4d and 5c of the table given in the said para 10.5 of the impugned order. It is seen that the

description of work mentioned in the said table against these serial numbers is, quote "University of Kusha Bhau Thakre Patrakarita and

Jansanchaar at Khathadi Raipur", end-quote, and in the last column of the table against these serial numbers it is mentioned "office building".

Thus as per the OIO itself this amount of Rs.5,48,37,243/- which is the total of the amounts mentioned against serial nos. 2f, 3d, 4d and 5c of the table

given in para 10.5 relates to construction of office building. Therefore it is totally misconceived that this should be classified under Construction of

Complex service. Accordingly confirmation of demand of Rs.20,96,417/- in respect of the construction of office building for University of Kusha Bhau

Thakre Patrakarita and Jansanchaar under construction of complex services is totally unsustainable.

5. Coming to demand confirmed under renting of immovable property service, it is seen that the appellants have contended that this rental income was

against flats given on rent to Hidayatullah National Law University for being used

as hostel and to CRPF for being used as residences for their employees. It is seen that under section 65(zzzz) of Finance Act, 1994 renting of immovable property service is defined as under:

â??65 (zzzz) 5 [to any person, by any other person, by renting of immovable property or any other service in relation to such renting for use in the course of or, for furtherance of business or commerce.]

Explanation 1.-

For the purposes of this sub-clause, â??immovable propertyâ? includes- (i) building and part of a building, and the land appurtenant

thereto;

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex

or estate,

[(v) Vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of

business or commerce.]

but does not include-

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes; and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation , including hotels, hostels, boarding

houses, holiday accommodation, tents, camping facilities.

Thus, prima facie, as per the contention of the appellants the rental income in respect of which demand has been confirmed would not be liable to

service tax as it cannot be said to have been rented for use in the course of furtherance of business or commerce. Also if the contention that the flats

which were rented out were used either as hostel or as residential accommodation then also they would not be liable to service tax in view of

explanation 1(d) above.

However, it is seen that at the time of adjudication, the appellants had not made this argument and had not claimed the exemption on the basis of what

is stated at the time of appeal before the Tribunal. Regarding the contention in their appeal that vide their letter dated 12.10.2012 they had brought this

to the notice of the adjudicating authority, we have perused that letter and it nowhere clearly brings out that the rental income was from for renting

out the property for hostel/residential purpose and was not for business or commerce. Therefore it is only fair that this portion of the demand is

remanded for denovo adjudication so that the appellants can submit their claim along with the evidence before the adjudicating authority.

6. Regarding the impugned demand of Rs.11,75,604/- under GTA service, the appellants have claimed that the same is not sustainable because the

freight was less than Rs.750/- for each trip. The appellants have submitted certain invoices in support of their claim. However the adjudicating

authority in the impugned Order-in-Original has observed that the only defense which the appellants had taken at the time of adjudication was that this

point was not raised in the audit report. The adjudicating authority rightly observed that merely because the point was not raised in the audit report,

that cannot be a ground that a Show Cause Notice in that regard cannot be issued. However as the appellants are now contending that the entire

freight amount received pertained to freight charges where the freight was less than Rs.750/- for each trip, and hence would be exempt from service

tax, the evidence produced by the appellants in the form of vouchers etc. would need to be examined/verified vis-à-vis their claim for such exemption

and therefore this component of demand also needs to be looked afresh by the adjudicating authority.

7. In the light of the foregoing, we pass the following order:

(i) We set aside the impugned order relating to the demand of Rs.29,77,552/- confirmed under construction of complex service.

(ii) As regards the demand of Rs.8,11,725/- confirmed under renting of immovable property service and the demand of Rs. 11, 75,604/- confirmed

under GTA service, we set aside the impugned order relating thereto and remand the case for denovo adjudication with the direction that the

appellants shall be given an opportunity to present their case and related

evidence with regard to these two components of the impugned demand.