
(2024) 02 CESTAT CK 0044

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 13677 Of 2014

Vadodara Mahanagar Seva Sadan

APPELLANT

Vs

Commissioner Of Central Excise & ST, Vadodara-I

RESPONDENT

Date of Decision : 29-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 285

Finance Act, 1994 — Section 60(90)(a), 73(1), 75, 77, 78

Gujarat Provincial Municipal Corporation Act, 1949 — Section 63(12)

Citation : (2024) 02 CESTAT CK 0044

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Dhaval K. Shah, Rajesh K Agarwal

Final Decision : Allowed

Judgement

C.L. Mahar, Member (T)

1. The brief facts of the matter are that appellant had rented/ leased a number of shops to various persons during the period from June 2011 to March 2012. The department was of the view that the fee charges recovered by the appellant are taxable to service under the category of 'Renting of Immovable Property' as per the provisions of Finance Act, 1994. A show cause notice dated 30.07.2012 demanding service tax was issued to the appellant which got adjudicated by the impugned order-in-original dated 26.02.2014 whereunder the service tax of Rs. 3,25,670/- was confirmed as per the provisions of Section 73(1) of Finance Act, 1994. Penalty under Section 78 as well as under Section 77 has also been imposed. Interest provisions as provided under Section 75 of the Finance Act, has also been confirmed. The appellant has made appeal before Commissioner (Appeals) who vide impugned order-in-appeal dated 21.08.2014 has upheld the order-in-original. The appellant is before us against the above mentioned impugned order-in-appeal.

2. Learned advocate appearing for the appellant submitted that appellant is a

Municipal Corporation and being a statutory authority they are discharging sovereign functions which are provided to be undertaken by them as per the Bombay Provincial Municipal Corporation Act, 1949. It has further been mentioned that the appellant is not renting/ leasing out its property to any private parties for consideration. It has been submitted that in order to discharge its mandatory statutory duties of constructing and maintaining markets and regulating the said markets, the appellant is issuing license to various persons for occupying for selling the designated articles and for providing such licenses, the statutory license fees is being collected from these persons. Learned advocate emphasized that the appellant is not collecting any license fee as Commercial or Business activity but purely discharging its statutory functions in the public interest.

3. Learned advocate has contended that there is no material on record that with the authorities to arrive at the conclusion that the property has been given on rent or lease by Vadodara Mahanagar Municipal Corporation. The appellant submitted that the Municipal Corporation has no power to rent or lease any of his property and therefore it was wrong on the part of the Commissioner (Appeals) to hold that appellant has let out various shops engaged in business or commerce of rent to various persons.

4. Learned advocate has drawn our attention to the CBEC Circular No. 96/7/2007-ST dated 23.08.2007 wherein it has been clarified that activities undertaken as mandatory or statutory functions by public authorities under the provisions of any law does not constitute any taxable service and that any fee or amount collected, in such case, is not to be treated as consideration for the purpose of levy of service tax. The learned advocate has also relied upon the decision of this Tribunal in the case of Nagar Nigam vs. CCE & ST, Meerut reported under 2019 (21) GSTL 436 (Tri. Del.). Learned advocate has also taken us through Section 63, sub-Section 12 of Gujarat Provincial Municipal Corporation Act, 1949 to emphasize that the construction or maintenance of public market and regulation of all markets is statutory function provided under the above mentioned Act and the appellant have acted and collected the required function in order to implement statutory obligations.

5. We have also heard the learned DR who reiterated the findings as given in the order-in-appeal.

6. Having heard both the sides, we are of the view that matter is no longer res-integra as this Tribunal in the case of Nagar Nigam vs. CCE & ST, Meerut -2019 (21) GSTL 436 (Tri. Del.) has held as follows :-

¶3. It is submitted on behalf of the appellant that the appellant being a Municipal Corporation is discharging the statutory duty of providing spaces. No rent has been collected for the same, rather it is a fee. It is alleged that Department has wrongly considered it as a service. The demand is alleged to be wrong order is prayed to be set aside. Appeal is prayed to be allowed.

4. While rebutting these argument Ld. DR has impressed upon the definition of 'renting of immovable property service' under Section 60(90)(a) of the Finance Act, 1994, it is submitted that any amount received for letting, leasing or licensing of the immovable property is leviable to tax under the said provision. The order under challenge is, therefore, justified Appeal is prayed to be dismissed.
5. After hearing both the parties and perusing the records we observe that the amount under question is admittedly collected by the Nagar Nigam, Haldwani. Apparently and admittedly the authority is existing under the Municipal Act, 1960, as came into effect in furtherance of Article 285 of Constitution of India. Section 128 of the said Municipal Act clarifies that the amount received by the Nagar Nigam from the traders permitting them to carry out their activities within the municipal limits shall be collected in the form of the tax. The provision is sufficient to hold that the activity is intended to be a sovereign Act of the Nagar Nigam.
6. Resultantly, we are of the opinion that the authority below has wrongly considered it as a service being rendered by the appellant to the said traders. In such scenario, emphasis on the definition of 'renting of immovable property' under the Finance Act has no more significance. Further we observe that the Government of India, Ministry of Finance has given the clarification on the issue regarding the levy of tax on the services provided by Government or the local authorities to be business entity vide circular dated 13th April, 2016. Perusal thereof makes it clear that tax on taxes/cesses or duties are not leviable. Though the clarification is post the impugned period, however, being merely a clarification and otherwise also beneficial to the impugned assessee, the same has to be given retrospective effect.
7. Following the above decision and because of the fact that the appellant have only collected fee and not rent, we are of the view that the impugned order-in-appeal is without any merit and we set-aside the same. Accordingly, the appeal is allowed.