CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 13516 of 2013-DB

[Arising out of Order-in-Original/Appeal No 144-2013-STC--SKS-COMMR-A--AHD dated 16.07.2013 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD]

Shri Akash Devendrakumar Sharma **.... Appellant**
Akash Fashion Print Pvt Ltd,
93, New Cloth Market, AHMEDABAD, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad **.... Respondent**
7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

WITH

(i) Service Tax Appeal No. 10086 of 2014 (Poonam Nageshkumar Sharma)
(ii) Service Tax Appeal No. 10087 of 2014 (Smt Sheeladevi Devendrakumar Sharma)
(iii) Service Tax Appeal No. 10088 of 2014 (Smt Laxmidevi Nareshkumar Sharma)
(iv) Service Tax Appeal No. 10089 of 2014 (Smt Chetnadevi Umashankar Sharma)

[Arising out of Order-in-Original/Appeal No 144-2013-STC--SKS-COMMR-A--AHD dated 16.07.2013 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD]

APPEARANCE :

Shri Gunjan Shah, Chartered Accountant for the Appellant
Shri Vijay G Iyengar, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING: 20.02.2023
DATE OF DECISON: 05.04.2023

FINAL ORDER NO. A/10788 -10792/ 2023

RAMESH NAIR :

The issue involved in present case is that for renting of property jointly owned by five persons, whether appellants are liable to service tax by clubbing of all five persons or otherwise.

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2. Shri Gunjan Shah, learned Chartered Accountant appearing on behalf of the appellants submits that the property is owned by persons, five appellants equally and as per the lease agreement with Reliance Industries Limited, the every individual is paid a particular amount of rent therefore, all the five individuals are separate service provider. Hence, the rent of all persons cannot be clubbed. There is no legal entity like Body Corporate or Association of Persons therefore, rent received by the individuals cannot be clubbed and charged to service tax. He further submits that as regards the rent received by the individuals, the total rent falls below the threshold limit of exemption under Notification No. 6/2005-ST dated 01.05.2005 therefore, the demand does not sustain. He submits that identical issue has been considered by this Tribunal in the case of Neenaben R Doshi & others (Final Order No.A/10712-10734/2019 dated 16.04.2019). He also relied on the following judgments:-

(a) 2018 (6) TMI 810 – CESTAT NEW DELHI – Anita Singh, Pritam Singh, Prerna Singh vs. CGST, CC & CE, Dehradun.

(b) 2017 (4) GSTL 159 (Tri. Ahmd.) – Sarojben Khusalchand vs. CST, Ahmedabad

(c) 2015 (40) STR 1146 (Tri. Mumbai) – CCEX, Nasik vs. Deoram Vishrambhai Patel

(d) 2018 (10) TMI 559- CESTAT Chennai – A. Akila vs. CCE, Trichy

(e) 2017 (10) TMI 807 – CESTAT Ahmedabad – Sanjay Kanaiyalal Motwani & Ors vs. CST, Ahmedabad

(f) 2018 (10) TMI 476 – CESTAT Chennai – Shri SV Janardhanam vs. Commissioner GST & CCE, Salem

(g) 2018 (10) TMI 400 CESTAT Chennai – Shri Syed Ahamed & Ors vs. Commissioner GST & CE, Trichy

(h) 2017 (49) STR 541 (Tri. All.) – CCEX & ST, Allahabad vs. Luxmi Chaurasia

3. Shri Vijay G Iyengar, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both sides and perused the record. We find that clubbing the property as co-owned by the persons, five appellants own equal share. All the appellants entered into lease agreement with Reliance Industries Limited and for this, each appellant became an independent service provider in respect of renting of immovable property. As per facts, there is no legal entity such as Association of Persons of Body Corporate, each person owns the property. As per lease agreement, every individual is independent owner of his share. The rent is also paid by the service recipient to each individual. In such case, every individual become a separate service provider hence, if at all service tax arises, it needs to be assessed in respect of every individual. Further, the rent received by the individual is well within the threshold limit provided for exemption under Notification No. 6/2005-ST dated 01.05.2005. Therefore, there is no service tax liability on any of the appellant. Identical issue has been considered by this Tribunal in the case of Neenaben R Doshi & others in Appeal No. ST/10248/2013-DB and passed the following order:-

> **"4.** Heard both the sides and perused the records. We find that though in respect of one property, there are joint owner but each joint owner is independent in respect of ownership of respective shares, therefore, whatsoever consideration received by an individual, it is the subject matter of taxation in respect of that individual person either as per income tax or as per service tax. Rental income of other co-joint owner cannot be considered. Therefore, in our considered view receipt of rental income by every individual is only subject to liability of service tax. If the value is below thresh-hold exemption limit in case of any individual, the same will not be taxable being exempted under Notification No. 06/05-ST dated 01.03.2005. At the same time in case of any individual person if the thresh-hold limit exceed in financial year, the same will be liable for service tax. This issue has been considered by this Tribunal in the case of Sarojben Khushalchand (Supra) wherein the Tribunal dealing with the absolute identical issue passed the following order :-
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> > *9. We find force in the contention of the ld. Advocates representing the respective appellants inasmuch as „association of persons‟ has been considered as a separate legal entity under the Income-tax Act for assessment and provided separate PAN number different from the PAN number possessed by individual co-*

owners; who joined together to form an „association of persons‟. In the present case, the show cause notices were issued in many cases to one person among the Joint owners and in other cases to all the persons who had jointly owned the immovable property provided on rent. Needless to mention, the Service Tax Registration of individual assessees for collection of Service Tax is PAN based, hence, collection of Service Tax from one of the co-owners, against his individual Registration for the total rent received by all coowners separately, is neither supported by law nor by laid down procedure. Thus, it is difficult to accept the proposition advanced by the Revenue that all the co-owners providing the service of renting of immovable property be considered as an association of persons and the Service Tax on the total rent be collected from one of the co-owners. Another argument of the Revenue is that since the property is indivisible and not earmarked against each of the co-owners, hence the Service Tax is leviable on the total rent received against the said property without apportioning against each of the co-owners in proportion to their share. We find fallacy in the said argument of the Revenue. Conceptually Service Tax is levied on the service provided, which is an intangible thing and hence it is not necessary to be identified with physical demarcation of the immovable property given on rent against individual co-owners. Once the value of service provided by a service provider is ascertainable Service Tax is accordingly charged. This Tribunal in similar facts and circumstances in the cases of Deoram Vishrambhai Patel, Anil Saini & Others and Luxmi Chaurasia (supra) after considering the issues raised, rejected the contention of the Revenue and allowed the benefit of exemption Notification No. 6/2005-S.T., dt.1-3-2005 as amended to individual co-owners who jointly owned the property and provided the service of renting of immovable property, and received the rent in proportion to the shares in the immovable property.

10. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

In the case of Deoram Vishrambhai Patel (Supra), Tribunal has passed following order:

6. We have considered the submissions made by both sides and perused the records. The issue that needs to be decided in this case is whether the respondent and his brothers are to be treated as association of persons or other vise and service tax liability on it arises, should be confined without the benefit of the Notification No. 6/2005-S.T.

7. It is undisputed that the property which has been rented out by the respondent and his brothers is jointly owned property; Service Tax liability arises on such renting of property.

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*	
	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."

9. It can be seen from the above reproduced findings of the first appellate authority, the conclusion arrived at is very correct, as co-owners of the property cannot be considered as liable for a Service Tax jointly or severally as Revenue has took identify the service provider and the service recipient for imposing service tax liability, which in this case, we find our individual. The conclusion arrived at by the first appellate authority is correct and he has confirmed the demand raised on the respondents by extending the benefit of Notification No. 6/2005-S.T. We do not find any reason to interfere in such a detailed order.

10. Since the respondents are not in appeal against the said impugned order against the imposition of penalty under Section 77 of the Finance Act, 1994 the order to that extent needs to be a upheld.

11. The appeal filed by the Revenue to the extent its challenges the impugned order is devoid of merit and liability to be rejected and we do so.

12. The appeal is rejected.

In case of Anil Saini vs. CCE-Chandigarh-I (Supra) vide final order No. A/61723-61729/2016 the Tribunal observed as under:

"3. After hearing both the sides, considering the fact that the issue has already been dealt by this Tribunal in the case of CCE, Nasik v. Deoram Vishrambhai Patelreported in 2015 (40) S.T.R. 1146 (Tri.-Mumbai), wherein this Tribunal observed as under :

We have considered the submissions made by both sides and perused the records. The issue that needs to be decided in this case is whether the respondent and his brothers are to be treated as association of persons or other vise and service tax liability on it arises, should be confined without the benefit of the notification No. 6/2005-S.T. 6.

It is undisputed that the property which has been rented out by the respondent and his brothers is jointly owned property; service tax liability arises on such renting of property. 7.

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. 8.

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4. We further take note to the fact that for the subsequent period the appellants have been granted the benefit of the Notification No. 06/2005- S.T., dated 1-3-2005 ibid.

5. In that circumstances, we hold that the demand of service tax is not sustainable as the appellants are entitled for benefit of Notification No. 06/2005-S.T., dated 1-3-2005 ibid, therefore, the impugned orders are set aside. The appeals are allowed with consequential relief, if any."

5. In view of decision on the identical issue, the issue in hand is no more under dispute, hence settled. Accordingly, we set aside the impugned orders and allow the appeals in the above terms. MA also stand disposed of.**"**

5. In view of the above decision, the issue is no longer *res-integra*. Accordingly, the impugned order is set-aside and the appeals are allowed.

(Pronounced in the open court on 05.04.2023*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL