

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.282 of 2012

(On behalf of Appellant)

(Arising out of Order-in-Appeal No.101/ST/KOL/2012 dated 12.03.2012 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Champa Properties Limited

25A, Shakespeare Sarani , Kolkata-700017

Appellant

VERSUS

Commissioner of Service Tax, Kolkata

180,Shantipally,Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

Shri Sanjoy Bhowmick, Advocate for the Appellant

Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...76763/2023

DATE OF HEARING : 15.09.2023

DATE OF PRONOUNCEMENT : 22.09.2023

Per Ashok Jindal :

By way of this appeal, the appellant challenged the confirmation of demand of service tax on rent received by them under the category of "Renting of Immovable Property Service".

2. The facts of the case are that the appellants were having three properties, namely, (a) 25A,Shakespeare Sarani, Kolkata-700017, (b) 106,Diamond Harbour Road, Kolkata-700023 & (c) 114/1A,Cotton Street, Kolkata-700020.

2.1 It was alleged that the appellant has received advance payment of rent on the property at 25A,Shakespeare Sarani, Kolkata-700017 in the month of February, 2005 for the period April, 2005 to May, 2007

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and again on 28.02.2008 for the future period. The appellant also received rent from 106, Diamond Harbour Road, Kolkata-700023 for the financial year 2007-08 & 2008-09 and from 114/1A, Cotton Street, Kolkata-700020 and the appellant has not paid the service tax on the rent received.

2.2 The appellant contested the issue before the adjudicating authority by filing a defence submission and the adjudicating authority by way of the impugned order, confirmed the demand of service tax against the appellant along with interest and imposed penalty also.

2.3 Against the said order, the appellant is before us.

3. The appellants submitted that they have received rent in respect of the premises situated at 25A, Shakespeare Sarani, Kolkata-700017 in terms of an agreement dated 03.02.2005 and the same shall be for the future period and the appellant has adjusted the said payment of rent received by them for the relevant period by paying service tax thereon, which is not disputed by the authorities, but the demand of service tax has been confirmed alleging that at the time of receiving the rent, the appellant was required to pay service tax. It is the submission of the appellant that as the appellant has paid the service tax while providing services to the service recipient, therefore, no differential service tax or interest is payable by the appellant

3.1 With regard to payment of rent in respect of 106, Diamond Harbour Road, Kolkata-700023, it is the submission that they received rent during the financial year 2007-08 amounting to Rs.10,18,508/-

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from various tenants and the aforesaid amount consists of an amount of Rs.5,19,447/- received towards rent for the period prior to 01.06.2007, where no service tax was payable on the category of "Renting of Immovable Property Service".

3.2 The appellant further submits that an amount of Rs.1,22,544 has been received towards rent for residential purpose, for which, no service tax is payable by them and they have received an amount of Rs.3,76,517/- towards rent for the business purposes in respect of premises situated at 114/1A,Cotton Street, Kolkata, it is their submission that the appellant has received an amount of Rs.2,64,938/- towards rent during the period 2007-08 from various tenants in respect of premises situated at the above address, they received rent an amount of Rs.1,01,988 for the period prior to 01.06.2007, for which, no service tax is payable by them and Rs.59,010/- was received towards rent for residential purpose, for which, no tax is payable. It is the submission that by the order of the Hon'ble High Court dated 16.03.2009, all the above properties have been transferred to separate entities, namely (i) M/s Legacy Services (P) Limited, (ii) M/s Om Durga Estate (P) Limited & (iii) M/s Legacy Properties (P) Limited w.e.f. 01.04.2008. Therefore, the appellant is not liable to pay service tax as the appellant is not being the owner of the said properties.

4. The Id.A.R. for the Revenue reiterated the findings of the impugned order.

5. Heard both sides and considered the submissions.

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6. We find that prior to 01.06.2007, no service tax is payable under the category of "Renting of Immovable Property Service", therefore, for rent received by the appellant for the period prior to 01.06.2007 in respect of all the three properties, the appellant is not liable to pay service tax.

7. With regard to the property situated at 25A,Shakespeare Sarani, Kolkata-700017, we find that although the appellant has received the rent in advance, but started paying service tax as and when they provided the services. Therefore, as they have paid the service tax thereon, the demand of service tax is not sustainable against the appellant, which is evident from the record placed before us.

8. Further, we find that for the premises at 106,Diamond Harbour Road, Kolkata-700023 and 114/1A,Cotton Street, Kolkata-700020, the same parts of the premises were rented out for residential used for which, no service tax is payable for the amount received towards under the category of "Renting of Immovable Property Service" for residential purposes, therefore, no service tax is payable.

9. Further, we also take note of the fact that all the properties vide the order of the Hon'ble High Court dated 16.03.2009, has gone to (i) M/s Legacy Services (P) Limited, (ii) M/s Om Durga Estate (P) Limited & (iii) M/s Legacy Properties (P) Limited w.e.f. 01.04.2008, therefore, the appellant was not the owner of the above properties with effect from 01.04.2008. Therefore, on 01.04.2008 onwards, the appellant was not liable to pay service tax.

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10. Whatever property was rented out for business purposes, on which no service tax is paid by the appellant, the same is payable along with interest.

11. In view of the above observations by invoking under Section 80 of the Finance Act, 1994, we waive the penalty imposed on the appellant.

12. With these observations, the appeal is disposed off.

(Pronounced in the open court on **22.09.2023**)

Sd/
(Ashok Jindal)
Member (Judicial)

Sd/
(K.Anpazhakan)
Member (Technical)

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