

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40835 of 2014

(Arising out of Order-in-Appeal No. 69/2014 dated 28.02.2014 passed by Commissioner of Service Tax (Appeals), Newry Towers, No. 2054-I, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Rattha Holding Company Pvt. Ltd.

No. 37, TTK Road,
Alwarpet,
Chennai – 600 018.

...Appellant

Versus

Commissioner of GST and Central Excise

No. 2054, I Newry Towers,
2nd Avenue, Anna Nagar,
Chennai – 600 040.

...Respondent

APPEARANCE:

For the Appellant : Ms. Radhika Chandrasekar, Advocate

For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40440 / 2024

DATE OF HEARING/ DECISION: 17.04.2024

Order :-[Per Ms. SULEKHA BEEVI C.S.]

Brief facts are that the appellants are registered with the Department for providing Renting of Immovable Property services. On intelligence gathered that the appellant is not discharging Service Tax under this category as well as on other services, even though consideration was received by them, the Department conducted investigation. It was noticed that the appellant had rented immovable property to M/s. Siesta Hospitality Limited (SHSL) and had not paid the service tax during the period from April 2010 to March 2012 on the rental amount received by

them. So also, they had not discharged Service Tax on the consideration received by them from M/s. Ascott (Mauritius) for selling the shares pursuant to joint venture entered between the appellant and M/s. Ascott (Mauritius). Further, the appellant had not discharged appropriate service tax on Management, Maintenance and Repair services. Show Cause Notice dated 21.02.2013 was issued to the appellant proposing to demand Service Tax under the above categories along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand, interest and imposed penalty. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Counsel Ms. Radhika Chandrasekar appeared and argued for the appellant. In respect of demand raised under Renting and Immovable Property Services, the Ld. Counsel adverted to the discussion made by the Original Authority in Paragraph 5.1 and 5.2 of the impugned order. It is submitted that the building belonging to the appellant was leased out to M/s. Siesta Hospitality Limited (SHSL) for running the business of guest rooms / accommodation. The parties had entered into a lease deed in respect of this transaction and the lease deed would clearly show that the agreement is to provide the premises for conduct of guest rooms as well as providing parking space in connection to such guest rooms. The definition of Renting of Immovable Property Service as under Section 65(105)(zzzz) was adverted to by the Ld. Counsel to submit that the definition excludes buildings solely used for residential premises and used for purposes of accommodation, including Hotels, Hostels, Holiday accommodation etc. It is submitted that the demand of service tax cannot

be sustained for the reason that the premises has been let out by appellant for conduct of guest rooms/accommodation.

3. In regard to the demand raised under Business Auxiliary Services, the Ld. Counsel adverted to the discussions made by the Adjudicating Authority in Paragraph 7.6 of the impugned order. It is explained by the Ld. Counsel that the appellant had transferred a percentage of their holding to their joint venture partner, M/s. Ascott (Mauritius). The transaction was in the nature of sale of shares. There is no service provided. The appellant had not conducted promotion of business of the purchaser of the shares. It is submitted that the very same issue was considered by the Tribunal in the appellant's own case *vide* Final Order No. 42305/2018 dated 27.08.2018. The Tribunal had set aside the demand observing that it is merely sale of shares and there is no provision of service. In regard to the demand raised under Management, Maintenance and Repair Service, the Ld. Counsel submitted that the appellant has paid the service tax along with interest before passing the adjudication order and is confining the contest in this regard on the penalty imposed. It is prayed that the appeal may be allowed, accordingly.

4. The Ld. Authorised Representative Shri Anoop Singh supported the findings in the impugned order.

5. Heard both sides.

6.1 The first issue for consideration is the demand raised under Renting of Immovable Property. The definition under Section 65(105)(zzzz) is reproduced as under:-

Section 65(105)(zzzz): taxable service means any services provided or to be provided to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1.—For the purposes of this sub-clause, "immovable property" 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,*

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.***

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

6.2 From the above definition, it can be seen that when a building is rented out for being used for the purposes of accommodation, including hotels, hostels, the levy of service tax is not attracted. In the present case, the lease deed entered between the appellant and M/s. Siesta Hospitality Limited (SHSL) on 07.12.2008 shows as under:-

- *The assessee has agreed to provide 12 dedicated car parking space in the sixth floor.*

- *The premises should be used only for the Guest Rooms, Kitchen / Dining purpose.*

6.3 The lease deed clearly shows that the premises is to be exclusively used for guest rooms and connected facilities like kitchen, dining room, parking spaces only. The demand of service tax cannot sustain when the premises is rented out for the purpose of accommodation and related activities. We therefore hold that the demand cannot sustain and requires to be set aside, which we hereby do.

7.1 The second issue is with regard to the demand under Business Auxiliary Service. The appellant had transferred certain amount of shares to the joint venture partner, M/s. Ascott (Mauritius). The Department has taken the view that the amount so received by the appellant is a consideration for providing the service of promotion of the business of M/s. Ascott (Mauritius). The transaction is nothing but sale of shares and there is no situation of providing services to M/s. Ascott (Mauritius). The Tribunal in the appellant's own case had considered the very same issue and held that the demand cannot sustain as there is no provision of services. The relevant part of the Final Order reads as under:-

"(iii) The department has demanded service tax under "Business Auxiliary Service" for sale of shares by appellants to M/s. Rattha Ciadels OMR Apart Hotel Pvt. Ltd. Here again, the appellants have paid Income-tax on the profit under Capital Gains under the Income-tax Act, 1961. The amount received has been booked as a Profit on Sale of Shares, in their books of accounts. The main ground for alleging that the transaction would fall within the "Business Auxiliary Service" is that the shares of face value of Rs.10/- has been sold by the appellant at a premium of Rs.21.80/- per share, when the company was reeling under financial loss. Whatever be the circumstances under which the shares were sold or the premium of the shares was fixed between the parties, the transaction of sale of share in no way can be considered as an activity promoting the business of the purchaser of the shares. It is indeed Sale of Shares and, therefore, the

demand on this count cannot sustain and requires to be set aside, which we hereby do."

7.2 Following the same, we are of the opinion that the demand under Business Auxiliary Services requires to be set aside. Ordered accordingly.

8. The demand of service tax along with interest under Management, Maintenance and Repair Services has been paid by the appellant before the order passed by the adjudicating authority. Hence the demand and service tax on this count is upheld. However, taking note of the submission made by the Ld. Counsel for the appellant that the amount of service tax under this category along with interest has been paid before passing of the adjudication order, we set aside the penalty in this regard.

9. In the result, the impugned order is modified to the extent of setting aside the demand, interest and penalties imposed under Renting of Immovable Property and Business Auxiliary Services as discussed above. The demand and interest under Management, Maintenance and Repair Service is upheld. The penalty on this count is set aside. The appeal is partly allowed in above terms with consequential reliefs, if any, as per law.

(Order dictated and pronounced in open court)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)