

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

Service Tax Appeal No.40948 of 2014

(Arising out of Order-in-Appeal No. 77/2014-ST dated 27.2.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

Executive Officer

Karamadai Town Panchayat
Karamadai, Coimbatore – 641 104.

Appellant

Vs.

Commissioner of GST & Central Excise

No. 1, Foulks Compound
Anaimeadu, Salem – 636 001.

Respondent

APPEARANCE:

None for the Appellant
Smt. Anandalakshmi Ganeshram, Supdt. (AR)

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40831/2023

Date of Hearing : 24.08.2023
Date of Decision: 22.09.2023

Per M. Ajit Kumar,

This appeal is against Order in Appeal No. 77/2014-ST dated 27.2.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. Brief facts of the case are that the appellant is providing 'Renting of Immovable Property Service' as defined in section 65(105)(zzzz) of the Finance Act, 1994 during the period 1.4.2011 to 31.3.2012.. The appellant has failed to pay service tax of Rs.2,62,124/- on the gross amounts collected from the clients for rendering the above service on

the due date specified in Rule 6 of the Service Tax Rules, 1994 r/w sec. 68 of the Finance Act, 1994 and have failed to file ST-3 returns. Show Cause Notice dated 16.10.2012 was issued proposing demand of service tax of Rs.2,62,124/- with interest and imposition of penalties under the Finance Act, 1994 and recovery of late fee under Rule 7C of the Service Tax Rules, 1994 r/w sec. 70 of the Finance Act, 1994. After due process of law, the original authority confirmed the demand along with interest and imposed penalties. On appeal, Commissioner (Appeals) upheld the same. Hence the appellant is before this Tribunal.

3. None appeared for the appellant. Smt. Anandalakshmi Ganeshram learned Superintendent (AR) appeared for the respondent.

4. The above appeal was listed for hearing on several dates, and none appeared on behalf of the appellant right from the first hearing on 11/12/2014. In our order dated 31/07/2023 we were constrained to record as under:

"None for the appellant nor is there any request for adjournment.

We find that vide Misc. Order No. 42378/2014 dated 11.12.2014, this Bench had ordered waiver of predeposit and stay of recovery, pending appeal. However, it appears that the appellant is not serious in pursuing the appeal even after obtaining stay of recovery. In the interest of justice, one more opportunity is given to the appellant, failing which the appeal will be disposed of after hearing the Revenue. Call on 23.8.2023. Registry to issue notice by RPAD.

On 24/08/2023 when the matter was listed for hearing again there was no one present to represent the appellant. Hence, we proceed to dispose of the appeal on merits based on the appeal and materials before us after hearing the submissions made by Revenue.

5. Smt. Anandalakshmi Ganeshram, learned Superintendent (AR) has stated that renting of immovable properties by the Panchayat falls

under the definition of Renting of Immovable Property for use in the course of furtherance of business of commerce as defined under sec. 65(90a) of the Finance Act, 1994. Also as per sec. 65(105)(zzzz) of the said Act, the above said activity is a taxable service on which the appellants are liable to pay service tax. The appellant has accepted the demand for duty and is only aggrieved by the imposition of penalties. The Service tax demand has been appropriated vide the impugned order, however interest remains to be paid. Further by not paying service tax initially and not filing the ST3 Returns they have suppressed information from the department with the intention to evade payment of duty. She hence prayed that the order may be upheld.

6. We find from the appeal filed by the appellant that the service tax amount which is due is already remitted and appropriated to the Government. They have stated that since the appellant is a statutory body they were of the opinion that amount collected by the Panchayats from such immovable properties, will not attract service tax. Once their liability to pay taxes was explained by the service tax authorities, they immediately applied for the registration and got their panchayat registered with the service tax authorities. Non-filing of returns is a technical lapse, hence they prayed that further proceedings be dropped and the lapse be condoned.

7. We find that the appellant has paid the service tax involved and the same has been appropriated to Government by the impugned order. Further interest is necessarily linked to the duty payable, and such liability arises automatically by operation of law. As per the Hon'ble Supreme Court's judgment in **Commissioner of Central Excise,**

Pune Vs M/s SKF India [2009-TIOL-82-SC-CX] interest is to be paid on delayed or deferred payment of duty for whatever reasons. The status of payment of interest could not be ascertained as the appellant has not indicated the same and they were also not represented before us whenever the matter came up for hearing. In any case the appeal pertains to the penalties imposed. On the issue of penalties it is seen that the Apex Court vide its order in **Union Of India vs UTV News Ltd.**, [2018 (13) GSTL 3 (SC)], while examining a question directly relatable to the scope and ambit of Entry 49 of List II of the Seventh Schedule to the Constitution of India dealing with "Taxes on lands and buildings" has categorically ordered all the cases on this issue to be deferred until the matter before the nine judges bench in **Mineral Area Development Authority and others vs. Steel Authority of India and others** ((2011) 4 SCC 450) is decided. One of the issues involved in the appeal is whether "taxes on lands and buildings" in Entry 49, List II of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land? In a case where the constitutional validity of the levy is yet to be decided the dispute is interpretational in nature. Hence there exists sufficient cause for the appellant not to have paid the tax due on time and there does not appear to have been any intention on their part to evade payment of duty. Hence, they are eligible for a waiver of penalties as per section 80 of the Finance Act 1994.

8. Based on the discussions above, we hold that the impugned order dated 10.01.2014 passed by the Commissioner (Appeals), Salem

vide Order in Appeal No. 77/2014-ST dated 27.2.2014 is partially modified and all penalties are set aside. The appeal is allowed on the said terms with consequential relief as per law, if any.

(Pronounced in open court on 22.09.2023)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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