

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

Service Tax Appeal No.41891 of 2013

(Arising out of Order-in-Appeal No. 53/2013-ST dated 21.3.2013 passed by the Commissioner of Central Excise (Appeals), Salem)

Commissioner, Namakkal Municipality

Municipality Office
145, Paramathi Road
Namakkal – 637 001.

Appellant

Vs.

Commissioner of GST & Central Excise

No. 1 Foulkes Compound
Anaimeedu, Salem – 636 001.

Respondent

APPEARANCE:

Shri D. Jaishankar, Advocate for the Appellant

Shri N. Satyanarayanan, AC (AR) and

Smt. Anandalakshmi Ganeshram, Supdt. (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

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

Final Order No. 40535/2023

Date of Hearing : 03.07.2023

Date of Decision: 05.07.2023

Per M. Ajit Kumar,

This is an appeal filed by Commissioner, Namakkal Municipality against Order in Appeal No. 53/2013-ST dated 21.3.2013 passed by the Commissioner of Central Excise (Appeals), Salem.

2. The facts of the case are that the appellant had not paid service tax, education cess, secondary and higher education cess amounting to Rs.12,93,104/- on the "Renting of Immovable Property Service" rendered by them for the period from 1.4.2010 to 31.3.2011. The Original Authority after issue of show cause notice to the appellant and

following the formalities addressed the question as to whether demand under "Renting of Immovable Property Service" is sustainable or not during the impugned period, in his order. He confirmed the demand for duty relying on the Hon'ble High Court's decision in **Home Solutions Retail India Ltd Vs Union of India** [2011 (24) STR 129 (DEL)] wherein the leviability of Service Tax on Renting of Immovable Property Services has been held constitutionally valid and the amendment giving retrospective effect from 01/06/2007 was also upheld. Interest was also demanded, and a penalty imposed. The appellant filed an appeal against this order before the Commissioner (Appeals) who rejected the appeal. Aggrieved by the said decision the appellants are before us.

3. We have heard Shri D. Jai Shankar, learned counsel for the appellant and Shri N. Satyanarayanan, learned AC (AR) and Smt. Anandalakshmi Ganeshram, Superintendent (AR) for the Revenue.

4. The learned counsel for the appellant submitted that the matter is no longer res integra and the above issue has already been settled by the judgment of the Hon'ble High Court of Madras in the case of **Cuddalore Municipality Vs. Joint Commissioner of GST & Central Excise, Trichy** – 2021 (4) TMI 500 (Mad.), wherein it was held that merely because there was renting of immovable property by itself was not sufficient to attract levy of Service Tax and its only when the service is provided by "any other person" i.e. by a person other than the owner, such service was liable to Service Tax. He also submitted that the appellant out of the total demand of Rs.12,93,104/-, the appellant has already paid an amount of Rs.11,04,302/-. He drew

attention to the judgment of the Apex Court in **Star India (P) Ltd. Vs. CCE, Mumbai & Goa** reported in [(2005) 7 SCC 203] to state that liability to pay interest and penalty would not arise in the case of a retrospective legislation as it was in the nature of a quasi-punishment. He hence submitted that the prayer in their appeal may be allowed.

5. The learned AR Smt. Anandalakshmi Ganeshram appearing for Revenue submitted that the appellant's prayer in their appeal is for waiving the interest demanded and the penalties imposed and that the appellant is not disputing the levy of service tax as confirmed in the impugned order. She also submitted that the appellant is liable to pay both interest and penalty and placed reliance on the decision of the Tribunal in the case of **Coal Mines Provident Fund Organisation Vs. CCE** reported in 2020 -TIOL-1726-CESTAT-KOL.

6. We have heard both the parties. We find that the prayer made in this case is as under:-

"Under the circumstances, the appellant requests the Hon'ble CESTAT to consider the above submissions and waive the interest demanded and penalties imposed.

Apart from the above, the appellant once again submits that the Namakkal Municipality is a local body / a government machinery / functionary constituted by the Tamil Nadu Government.

Under the above detailed circumstances and in view of the fact that the appellant had already discharged the major portion of the service tax liability, the appellant prays that Hon'ble CESTAT, Chennai to be kind enough to pass appropriate orders. However, before taking a final decision, it is requested that the appellant may be permitted to be heard in person. Further, the appellant reserves his right to submit any additional submissions or documents at the time of personal hearing."

7. We find that this is a case where a retrospective amendment was made to the definition of 'Renting of Immovable Property Service' in order to clarify the legislative intent and also bring in certainty in tax

liability. The amendment clarified that the activity of renting of immovable property per se would also constitute a taxable service under the relevant clause. It was given retrospective effect from 01.06.2007. Para 9 of Annexure – B of D.O.F. No.334/1/2010-TRU, dated 26/02/2010 which clarifies the matter is reproduced below;

“9. Renting of immovable property service

9.1 This service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. The tax on rent paid is available as input credit if the commercial activity involves provision of taxable service or manufacture of dutiable goods. However, the Hon’ble High court of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others vs. UOI has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce does not involve any value addition and therefore, cannot be regarded as service. Apart from the revenue loss caused to the exchequer, the judgement has placed the landlords in a very precarious situation. In view of this judgement, the commercial tenants have stopped them reimbursing the tax element. However, the landlords are receiving regular demand notices from the department issued to protect government’s revenue for the interim period.

9.2 In order to clarify the legislative intent and also bring in certainty in tax liability the relevant definition of taxable service is being amended to clarify that the activity of renting of immovable property per se would also constitute a taxable service under the relevant clause. This amendment is being given retrospective effect from 01.06.2007”

The appellant has paid a major portion of the duty and is only seeking a waiver of the interest demanded and penalties imposed. They have relied upon the judgment of the Hon’ble Supreme Court in the case of **Star India (P) Ltd.** (supra) to support their stand. The relevant portion of the judgment is extracted below:-

“7. In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and tribunals or other authorities, which were required to be neutralized by the

validation clause. We can only assume that the judgments, decrees or orders etc. had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the validation section which says that no act or acts on the part of any person shall be punishable as an offence which would have been so punishable if the section had not come into force.

8. The liability to pay interest would only arise in default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect.”

8. We find, as sated in the DO letter of the Joint Secretary (Tax Research Unit-II) dated 26/02/2010, that an amendment was made to the 'Renting of immovable property service' in order to overcome the earlier judgment of the Hon'ble High court of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others vs. UOI wherein the Hon'ble Court it had struck down the levy as not being a service. This being so liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect as decreed by the Apex Court in **Star India (P) Ltd.** (supra). Further, in para 10 of the said judgment, it is stated that where the amendment expressly makes a provision for the payment of the retrospectively amended tax liability within a specified time, in such circumstance, the appellant is not entitled to pay interest if the monies are paid within the said date and that they would be liable to pay interest only after the said date. We find that no provision of time has been made in the present amendment for payment of retrospectively assessed duty. Hence, the interest would be in the nature of a quasi-punishment as per the above judgment and is not payable by the appellant. This is based on the well settled principle of constitutional law that sovereign legislative bodies can make laws with retrospective

operation however no ex post facto penalty is permissible. In the light of the same no penalty is also payable by the appellant. Hence the appellant is liable for waiver of interest and penalty. The Hon'ble Tribunal's judgment in **Coal Mines Provident Fund Organisation** (supra) cited by Revenue is not on an issue related to demands based on retrospective amendment to a legislation and is distinguished, moreover it will have to give way to a judgement of the Apex Court on the matter. The judgment of the Hon'ble High Court in **Cuddalore Municipality** (supra) cited by the appellant is not relevant as the appeal is only with regard to the waiver of interest and penalty.

9. In the light of the discussions above, we allow the prayer of the appellant and set aside the interest and penalties confirmed in the impugned order. The impugned order is hence partly modified as above. The appeal is disposed of accordingly.

(Pronounced in open court on 5.7.2023)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)