

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

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 535 of 2012-DB

[Arising out of Order-in-Original/Appeal No STC-31-COMMR-AHD-2012 dated 28.08.2012
passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD]

Shree Jain Vish Oshwal Club

...Appellant

Shri Jethabhai Glabchand Gyati Bhuvan,
Nr. Shreyas Foundation, Ambawadi,
AHMEDABAD
GUJARAT -380015

VERSUS

C.S.T.-Service Tax - Ahmedabad

...Respondent

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad,
Gujarat-380015

APPEARANCE:

Shri S. J Vyas, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (Authorized Representative) for the
Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO.A / 10046 /2023

DATE OF HEARING:08.12.2022

DATE OF DECISION: 12.01.2023

RAMESH NAIR

The brief facts of the case are that the appellant is registered trust carrying out various social and charitable services. Appellant has been giving its property for temporary rent to generate income to boost its charitable activities. The appellant was registered under Mandap keeper service and paying tax regularly. The appellant given the property on temporary basis to M/s Gandhi Associates for providing other related service to such parties taking hall on hire basis. As per the understanding, the total receipt was

divided on sharing basis between the appellant and the contractor. The case of the department is that the share received by the appellant from contractor is liable to Service Tax under Business Auxiliary Service. Accordingly, the SCN was issued which was adjudicated by dropping part of the demand. As regard BAS in respect of contract sharing receipts and also did not impose penalty in respect of renting income. The Learned Commissioner reviewed the order of the Assistant Commissioner and issued notice for review. The Commissioner has confirmed the proposal in the notice and modified the order in original under review and confirmed the demand under BAS as well as under renting services income and imposed penalties. The appellant carried the matter in appeal and this Tribunal vide final Order dated 30.03.2012, remanded the matter. In remand proceedings, the Learned Commissioner has again confirmed the tax and imposed penalty under the impugned order. Being aggrieved from the said Order In Original appellant filed the present appeal.

2. Shri S. J Vyas, Learned Counsel appearing on behalf of the appellant submits that the appellant received the amount not against providing any service but as a sharing of receipt of the contractor for using their premises for Mandap keeper services. On the receipt on sharing basis no Service Tax can be charged as the appellant is not the service provider. He further submits that the demand was confirmed under Business Auxiliary Service, However, the order does not specify under which clause of the definition, the appellant's service falls. He submits that the non specification of the clause is fatal to the demand and the order must be set aside with the consequential relief. He further submits that the calculation of tax is incorrect in as much as the appellant was not extended benefit of cum tax. He further submits that entire demand is time barred, for the reason that the appellant had a bona fide belief that the receipt is not towards the BAS.

He further submits that even if tax would have been paid the same was available to their contractor for availing the Cenvat credit. Therefore, it is a revenue neutral case, for this reason also the extended period was not invokeable. He submits that the Learned Commissioner has erred in appreciating the distinction between the argument for limitation, and the argument for no liability to pay. He submits that appellant have not claimed that due to revenue neutrality tax is not payable. However, the revenue neutrality is a ground to establish that there is no *mala fide* on the part of the appellant and consequentially the demand for extended period cannot be confirmed as regard the renting service. He further submits that the order confirms demand of Rs. 985/- under the category of renting of property service. However, no income tax benefit was extended, which is legally available to the appellant. He submits that the penalty also not imposable as there is no *mala fide* on the part of the appellant. Alternatively, he submits that simultaneous penalty under Section 76 and 78 is not permissible.

3. Shri Rajesh K. Agarwal, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the Service Tax was demanded on the sharing of receipt from the total receipt of the contractor. The contractor provided the service of Mandap keeper to his client in the premises of the appellant. Therefore, out of the Mandap keeper service as per their understanding sharing of the appellant was given. As regard the issue that whether the Service Tax is payable on mere sharing of consideration towards service will not *prima facie* amount to provision of any service on the part of the appellant. Therefore, in our view, the appellant had a *bona fide* belief in non payment of Service Tax. The appellant also submitted that this case is

falling under the principle of revenue neutrality in as much as the tax payment if any made by the appellant is available as the Cenvat credit to the contractor who has used the premises of the appellant. In view of this fact, we find that the suppression of fact and *mala fide* cannot be attributed against the appellant. Accordingly, the demand is hit by limitation as extended period could not have been invoked in the fact of the present case.

5. Therefore, we set aside the demand on the ground of limitation itself. The impugned order is modified to the above extent. Appeal is allowed.

(Pronounced in the open Court on 12.01.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)