MAJESTY LEGAL
Advocates & Solicitors

NO SERVICE TAX ON RENTAL INCOME OF INDIVIDUAL PARTNERS IN JOINTLY OWNED PROPERTY

"M/S SIDHI VINAYAK ASSOCIATES V. COMMISSIONER OF CENTRAL EXCISE, DEHRADUN"

Ld. Customs, Excise & Service Tax Appellate Tribunal, New Delhi in case of ***M/s Sidhi Vinayak Associates v. Commissioner of Central Excise, Dehradun***[1], held that firm's partners, as individual owners, could not be taxed jointly, and each was eligible for individual service tax exemptions under Notification No. 6/2005-ST. The key issue here was Whether service tax liability applied to Sidhi Vinayak Associates as a collective entity (firm) or individually to each partner based on their respective ownership shares in the property. The gist of the case is that M/s Sidhi Vinayak Associates, a partnership firm engaged in "Renting of Immovable Property Services," was issued a demand for service tax totaling Rs. 16,44,367 for non-payment from 2007 to 2013. The Department argued that the firm should be liable as rental agreements were signed jointly with clients, implying collective liability. Penalties under sections 77 and 78 of the Finance Act, 1994 were also imposed. The Commissioner (Appeals) upheld this demand, prompting the firm's appeal. The appellant contended that each partner owned a separate share of the property and received rent individually, backed by deductions for Tax Deducted at Source (TDS) recorded under each partner's name.

Ld. tribunal cited *Deoram Vishrambhai Patel*, agreeing that the firm's partners, as individual owners, could not be taxed jointly, and each was eligible for individual service tax exemptions under Notification No. 6/2005-ST. Further, it observed that Although "Person" was defined to include firms post-2012, it found that no business activity had been conducted by the firm since 2009-10. The firm's non-operational status was supported by a Chartered Accountant's certificate. Since the property was held individually by the partners and agreements were in their names, no service was provided by the firm as a distinct entity.

Hence, The tribunal set aside the impugned order.

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[1] Service Tax Appeal No. 51322 Of 2016

[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 51322 Of 2016

[Arising out of Order-in-Appeal No. DDN-EXCUS-000-APPL-1-435-2015-16 dated 11.01.2016 passed by the Commissioner (Appeals-I), Central Excise Meerut]

M/s Sidhi Vinayak Associates : Appellant (s)
3-Civil Lines Roorkee, Uttarakhand

Versus

Commissioner of Central Excise, Customs : Revenue (s)
And Service Tax, Dehradun
E-block, Nehru Colony, Haridwar Road
Dehradun

APPEARANCE:
Shri Rajesh Chibber, Advocate for the Appellant
Shri Harshvardhan, Authorized Representative for the Department

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 58760/2024

Date of Hearing:01.08.2024

Date of Decision:01.10.2024

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Sidhi Vinayak Associates (hereinafter referred to as the appellant) to assail the Order-in-Appeal No. DDN-EXCUS-000-APPL-1-435-2015-16 dated 11.01.2016 wherein the Commissioner (Appeals) upheld the demand of service tax amounting to Rs. 16,44,367/-.

2. The brief facts of the case are that the appellant is a partnership firm acting through its four partners and is engaged in providing 'Renting of Immovable Property Services' as defined under Section 65 of the Finance Act, 1994. Acting on an intelligence regarding non-

payment of Service Tax on the said services provided by the appellant to various clients, an enquiry was initiated by the officers of Central Excise, Dehradun (Department) and it was found that appellant was not paying service tax on the said services. Accordingly, a show cause notice (SCN) dated 15.04.2014 was issued to the appellant for demanding and recovering Service Tax with interest and penalty. The adjudicating authority vide the impugned order confirmed the demand of Rs. 16,44,367/- under the proviso to Section 73(1) of the Finance Act, 1994(Act) along with interest. Penalty of Rs 16,44,367/- was also imposed under Section 78 of the Act and also a penalty of Rs 10,000/- was imposed under Section 77 of the Act. The appellant filed appeal before the Commissioner (Appeals) who rejected their appeal by upholding the order of the adjudicating authority. Hence, the present appeal has been filed.

3. Learned Counsel for the appellant submitted that the property was purchased by partners in their name separately. The rent was received separately by all the partners, for which the tenant deducted TDS and the rent agreement was jointly signed but having separate mention of their portion in the property.

3.1 He further submitted that for the subsequent period, similar demand was raised which was also contested by the appellant and the appellate authority allowed the appeal by following decision of CESTAT in the case of **CCE vs. Deoram Vishrambhai Patel reported in 2015 (40) STR 1146 (Tri. Mum)**. The appellate authority referred and considered the earlier order in original and the order in appeal. The appellate authority also took cognizance of certificate issued by the chartered accountant that the appellant firm was not carrying any

business since 2009-10 onwards and no TDS was deducted in the name of appellant.

3.2 Learned counsel further submitted that the appellate authority also held that the lease/rent agreement was entered into by four owners and not by the appellant firm. He categorically held that the appellant ceased to exist w.e.f. 1.4.2010. Even otherwise, when the appellate authority in subsequent proceedings has dropped the demand on merits itself, there does not remain any scope for invocation of extended period and imposition of penalty. In support of his submission, learned counsel relied upon the following case laws:-

- **CCE vs. Deoram Vishrambhai Patel 2015(40) STR 1146 (Tri. Mum.):**
- **Sarojben Khusalchand vs. CST 2017 (40) GSTL 159 (Tri. Ahmd)**
- **Anil Saini vs. CCE 2017 (51) STR 38 (Tri. Chan.)**

4. Learned Authorized Representative for the Department reiterating the findings in the impugned order and submitted that since the rent agreement was jointly entered with tenant, the rent amount to be considered as one. Since there was a clause in partnership deed that if any deduction of tax on account of property in question related to the firm in partners name/firm name, deduction will be stands in the name of firm. It was on this basis that the department formed an opinion that tax liability was on the firm. The show cause notice had rightly invoked the demand of service tax raised therein and the original authority was correct in confirming the demand along with interest and penalty.

4.1 He further submitted that under the Partnership Act, a firm is not a distinct person as per the judgement of the Hon’ble Supreme

Court in the case of **Dulichand Lakshminarayan [MANU/SC/0037/1956]**. Ld AR contended that if there is specific provision in a legislation, then that provision will prevail over the general legislation. In support of his submission, he relied upon the following judgements:-

- **Commissioner of Income Tax, Madras vs. R. M. Chidambaram Pillai and Ors. [Manu/SC/0217/1976]**
- **Commissioner of Wealth Tax vs. A. K. Tandon & Ors. [Manu/DE/0214/1991]**
- **Western Agencies Private Limited vs. Commissioner of Central Excise, Chennai [2011 (22) STR 305 (Tri.-LB)**

4.2 Ld. AR further submitted that in the Finance Act, 1994 the terms 'Person' was not defined prior to 01.07.2012 with effect from 01.07.2012 vide Section 65B(37) of the Act, the term 'Person' was defined to the firm. In support of his submission, he relied upon the decision of the Ahmedabad Bench of the Tribunal in the case of **Cadila Healthcare Ltd. vs. Commissioner of Service Tax, Ahmedabad reported as 2021 (50) GSTL 205 (Tri.-Ahmd)**.

4.3 As regards the demand raised for post negative list period, the learned AR submitted that the appellant being an un-registered assessee, as per Section 73 (6) (c), the relevant date for calculation of the limitation period is from the date on which the service tax is to be paid under the act or the rules made thereunder. As per Rule 6 of Service Tax Rules, 1994, the service tax shall be paid to the credit of the Central Government (i) by the 6th day of the month, if the duty is deposited electronically through internet banking, and (ii) by the 5th day of the month, in any other case, immediately following the calendar month in which the service is deemed to be provided. As per Section 73 (1), where any service tax has not been paid, the Central

Excise Officer may issue a notice on the person chargeable with the service tax which has not been paid requiring him to show cause why he should not pay the amount specified in the notice. The said notice as per the relevant was to be issued within eighteen months of the relevant date.

5. We have heard the ld. Counsel for the appellant and the ld. AR for the Department and perused the case records.

6. We find that this issue for the pre-negative period is no more res integra. As submitted by the Ld. Counsel for the appellant, we find that for the pre-negative period, this issue stands decided in the case of **Commissioner of Central Excise, Nasik vs. Deoram Vishrambhai Patel reported in 2015 (40) STR 1146 (Tri. - Mumbai)**, the Tribunal held as follows:

> **"6.** We have considered the submissions made by both sides and perused the records. The issue that needs to be decided in this case is whether the respondent and his brothers are to be treated as association of persons or other vise and service tax liability on it arises, should be confined without the benefit of the Notification No. 6/2005-S.T.
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> **7.** It is undisputed that the property which has been rented out by the respondent and his brothers is jointly owned property; Service Tax liability arises on such renting of property.
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> **8.** On deeper perusal of impugned order, we find that the first appellate authority has considered all the angles in the dispute and came to the correct conclusion. The findings of first appellate authority is as under.
>
> "6.2 On mere reading of the Order-in-Original, it is evident that the adjudicating officer has considered above named four persons as one person for determining tax liability and imposition of penalties without telling any legal basis for doing so. The appellants have contested the Order in Original mainly on the grounds that rented property belongs to four separate persons (all

brothers) but the service tax has been demanded wrongly by the department from the appellants by clubbing the rent received by all the co-owners and, therefore, the demand off tax is not maintainable on this ground alone. In support they have produced a City Survey Extract as evidence regarding ownership of the rented property which shows that the said property was purchased in 2003 and is owned jointly by all the four co-owners. Further, the lease agreements with M/s. Max New York Life Insurance Co. Ltd., Oriental Bank of Commerce, Axis Bank, Kotak Mahindra Bank and HDFC Standard Life Insurance Ltd. are also entered into by the appellants in their individual capacity, as per SCN also, all four co-owners have obtained separate Registration Certificate on 10-4-2012 and all the four co-owners individually paid their Service tax liability along with interest on 14-2-2012. Thus, the ownership of the Property and providing of taxable renting of immovable Property by the four appellants in this case is in their individual capacity and, therefore, their tax liability should have been determined by considering their individual rental receipts and not collective one. From the various lease agreements made with above mentioned Commercial firms, it cannot be disputed that monthly rent was paid by the above named concerns to each appellant after deducting tax at their end.

6.3 From the show cause notice dated 19-10-2012, it is evident that the appellants had received rent as detailed below :-

Sr. No.	Period	Amount (Rs.)
1	2007-08 (1-6-2007 to 31-3-2008)	Rs. 29,21,048/-
2	2008-09	Rs. 36,27,024/-
3	2009-10	Rs. 46,72,744/-
4	2010-11	Rs. 52,63,304/-
5	2011-12	Rs. 44,28,360/-

But as the rent was distributed equally among each of the appellant, it is evident that each of them received an amount lesser than Rs. 8 lakhs and 10 lakhs in the years 2007-08 and 2008-09 respectively which is below the exemption limit of eight lakhs and ten lakhs during the relevant period. The appellants were, therefore, not liable to pay service tax on the amounts

received by them during these two years by virtue of Notification No. 6/2005-S.T., dated 1-3-2005. The appellant's case is also supported by the Tribunal's decision in the case of *Dinesh K. Patwa* v. *CST, Ahmedabad* which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-11, the receipt off rent by each appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax along with interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional tax liability has been worked out for the said period in OIO.

6.4 Since the appellants were individually liable to pay service tax and eligible for the exemption under general exemption Notification 6/2005-S.T., dated 1-3-2005 during the period 2007-08 and 2008-09, no service tax was payable during the said period. Hence, the question of penalty under Section 76 for the said period does not arise. For the subsequent period i.e. 2009-10 & 2010-11, the appellants have already accepted their tax liability and paid Service tax along with interest on 14-2-2012. The said payment of service tax is certainly a delayed payment, but was made by the appellants on their own when they realized that their taxable value for renting of property had exceeded the exemption limit of Rs. 10 lakhs. The adjudicating authority has claimed in his order that the appellants paid service tax only after Department started investigation, but it is not supported by any evidence or the facts on record. The SCN or the OIO do not talk of any audit objection or Preventive action or any Inspection etc. on the basis of which not payment of service tax by the appellants was pointed out. Instead in the SCN, one statement of Shri Chandulal Vishrambhai Patel is only referred to which was recorded on 22-2-2012 which is 8 days after the appellants had paid service tax along with interest on their own. Thus, the claim of the appellant that they had paid service tax for the years 2009-10 and 2010-11 on their own initiative and there was no suppression of facts etc. on their part with any intention to evade service tax cannot be denied. Considering all these facts, I agree with the appellant's contention that this case was squarely covered under sub-section (3) of Section 73 which provided not to issue any notice under

sub-section (1) of Section 73 if the service tax not levied or paid was paid along with interest by the person concerned before service of notice on him and informed the Central Excise Officer of such payment in writing. Further in Explanation 2 of the said sub section it is also clearly provided that no penalty under any of the provisions of the Act or the Rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon. Hence, in fact no SCN was required to be issued in this case for recovery of service tax and imposition of penalty and even when it has been issued, no penalty under Section 76 or 78 is imposable in this case for the period 2009-10 and 2010-11."

9. It can be seen from the above reproduced findings of the first appellate authority, the conclusion arrived at is very correct, as co-owners of the property cannot be considered as liable for a Service Tax jointly or severally as Revenue has taken to identify the service provider and the service recipient for imposing service tax liability, which in this case, we find our individual. The conclusion arrived at by the first appellate authority is correct and he has confirmed the demand raised on the respondents by extending the benefit of Notification No. 6/2005-S.T. We do not find any reason to interfere in such a detailed order."

6.1 Relying on the above decision, the Tribunal in the case of M/s Anil Saini vs. Commissioner of Central Excise, Chandigarh-I reported in 2017 (51) STR 38 (Tri.-Chan.), held as follows:

3. After hearing both the sides, considering the fact that the issue has already been dealt by this Tribunal in the case of *CCE, Nasik* v. *Deoram Vishrambhai Patel* reported in 2015 (40) S.T.R. 1146 (Tri.-Mumbai), ……

4. We further take note to the fact that for the subsequent period the appellants have been granted the benefit of the Notification No. 06/2005-S.T., dated 1-3-2005 ibid.

5. In those circumstances, we hold that the demand of service tax is not sustainable as the appellants are entitled for benefit of

Notification No. 06/2005-S.T., dated 1-3-2005 ibid, therefore, the impugned orders are set aside. The appeals are allowed with consequential relief, if any."

6.2 In view of the above settled legal position, we hold that the demand prior to 30.06.2012 does not sustain.

7. We now address the submissions in respect of the demand made for the period post 01.07.2012. We note that the Ld AR has submitted before us that the term 'Person" was defined for the first time in Section 65B(37) post 01.07.2012, which was as follows:

"65B. In this Chapter, unless the context otherwise requires,–

(37) "person" includes,–

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a society,

(v) a limited liability partnership,

(vi) a firm,

(vii) an association of persons or body of individuals, whether incorporated or not,

(viii) Government,

(ix) a local authority, or

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;"

7.1 It has been submitted before us that the term 'Person' was defined to include any company or association or body of individuals. The appellant was registered as a firm, and therefore post 01.07.2012, the firm was liable to pay service tax on the taxable service being provided by them. We are in agreement that the term Firm was

defined for the first time with effect from 01.07.2012. It was also submitted by the Ld AR that the demand for the post negative list period is within normal period of limitation. In this context, he submitted that for the period 1.7.2012 to 31.03.2013, the due date for payment of service tax was 05/06.04.2013. Consequently, the last date for issuing a show cause notice is 05/06.10.2014 whereas the said notice was issued on 15.04.2014. We are in agreement that the said demand is within the normal time period. However, the Ld. Counsel has also submitted before us that the firm did not carry on any business since 2009-10 onwards, and that no TDS was deducted in the name of the appellant firm. It was also submitted that the appellate authority took cognisance of the CA Certificate submitted by the appellant in this regard. We note that the Department has not submitted any evidence to the contrary. In the Finance Act, 1994, Section 65B(51) defines taxable services as "any service on which service tax is leviable under Section 66B". Section 66B of the Finance Act, 1994 provides that there shall be levied a tax on all services except those mentioned in negative list (Negative list has been defined under Section 65B(34) as services listed in Section 66D of Finance Act, 1994) and provided or agreed to be provided by one person to another in the taxable territory and collected in the manner prescribed. In the instant case, it is noted that post 01.07.2012, the firm was not functional, and the rental agreements are in the name of the individual partner, with regard to the property held by them jointly. So, there cannot be a case of service to oneself. Hence, we hold that they are not liable to service tax. The decision in the case of the Cadila Healthcare relied upon by the Ld AR deals with the

remuneration received by the Director of the firm for providing other independent services, which is not the case of the appellant.

8. In view of the above discussions, we hold that the impugned order is liable to be set aside and is set aside. Consequently, the appeal is allowed.

(Order pronounced in the open Court on 01.10.2024)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.