

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 9 OF 2018

The Commissioner of Service Tax ...Appellant

Versus

M/s. Crescendo Associates ...Respondent

Mr. Swapnil Bangur, a/w Mr. Sham Walve, for the Applicant.

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, JJ.

DATE : 19 September 2018

ORDER :

1. This Appeal under Section 83 of the Finance Act, 1944 read with Section 35G of the Central Excise Act, 1944 challenges the order dated 15 September 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (*“the Tribunal”*).

2. The Revenue in Appeal urges the following questions of law for our consideration:-

- (a) Whether on the facts and circumstances of the case and in law was the Tribunal right in holding that the assessee was not providing Management, Maintenance or Repair Service by collecting amount from prospective flat buyers, for maintaining the building, in the guise of deposits which is not returnable?
- (b) Whether on the facts and in the circumstances of the case and in law was the Tribunal right in setting aside penalty, despite the assessee admitting their liability and paid service tax on Goods and Transport Agency Service, merely for the reason that amount was negligible?
- (c) Whether on the facts and in the circumstances of the case and in law was the Tribunal correct in placing reliance upon its decision in **Kumar Beheray Rathi (2014 (34) STR 139 (Tri. Mum)**

which misconstrued Circular No.89/7/2006 – ST dt. 18.12.2006 while Hon'ble High Court of Kerala had construed the said circular in a different way in the case law of **Kothamangalam Municipality (2014(36) STR 11(Ker))**?

3. We find that the impugned order allowed the Appeal of the Respondent before it by following the decision of its co-ordinate Bench in *Kumar Beheray Rathi (Supra)*.

4. Mr. Bangur, the learned counsel appearing in support of the Appeal very fairly states that the decision of the Tribunal in the case of *Kumar Beheray Rathi (Supra)* was appealed to this Court being CEXA No. 74 of 2017 (*CST Vs. Kumar Beheray Rathi*) along with other Appeals raising identical issue and was decided on 25 January 2018 in favour of the Respondent-Assessee i.e. *Kumar Beheray Rathi (Supra)*. No distinction in facts and/or law in the present facts from the above decision of this Court has been pointed to us.

5. Thus, the questions as proposed do not give rise to any substantial questions of law as issue raised stand concluded by the decision of this Court.

6. Accordingly, the Appeal is dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.]

[M.S. SANKLECHA, J.]