

OD - 44

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Central Excise]

ORIGINAL SIDE

CEXA/19/2025
IA NO: GA/2/2025
SHRI GOUTAM MUKHERJEE
VS
THE COMMISSIONER OF CENTRAL
EXCISE AND SERVICE TAX

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE UDAY KUMAR
Date : 11th November, 2025

Appearance :

Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Ms. Elina Dey, Adv.
..for the appellant.

Ms. Manasi Mukherjee, Adv.
Mr. Bijitesh Mukherjee, Adv.
...for the respondent.

The Court : Learned counsel appearing for the appellant suggests the following substantial questions of law :

“a) Whether the mere routing of consolidated rent received from M/s. Vishal Retail Ltd. (lessee) into a common bank account, as mandated under the Tripartite Loan Agreement dated May 08, 2009 with the State Bank of India for the repayment of a jointly availed housing loan, can, ipso facto, justify treating the Appellant and the other co-owners as a single taxable entity, notwithstanding their clearly demarcated ownership shares, independent income tax assessments under separate PANs, and distinct treatment as co-owners under Section 26 of

the Income Tax Act, 1961?

b) Whether, in light of the separate ownership, separate PANs, and separate assessment of rental income under the Income Tax Act, 1961 each co-owner must be treated as an independent service provider for the purposes of determining liability of service tax on renting of immovable property under the Finance Act, 1994?

c) Whether in the absence of any formal agreement evidencing a partnership, Hindu Undivided Family (HUF), Association of Persons (AOP), or Body of Individuals (BOI), the Appellant along with the other two co-owners can nonetheless be deemed to be treated as a single taxable 'person' for the purposes of levy of service tax under the Finance Act, 1994?

d) Whether the demand of service tax by clubbing the rental income of three distinct individuals violates the exemption provided under Notification No. 06/2005-ST dated March 01, 2005 to small service providers?

e) Whether the extended period of limitation under Section 73(1) of the Finance Act, 1994 was correctly invoked in the facts and circumstances of the case, particularly where there was no wilful suppression or fraud and the income was duly declared to tax authorities?"

The Tribunal has concluded that "from a perusal of the records, we find that when the premises had been let out to M/s. ICICI Bank Ltd., the property had been let-out by the appellants in their individual capacity separately and the rent received in this

regard falls below the threshold limit during the respective period. In these circumstances, we hold that whatever rent was received by the appellants in respect of the said Agreement entered into with M/s. ICICI Bank Ltd., no Service Tax is payable by the appellants.

With regard to the Agreement entered into with M/s. Vishal Retail Ltd., it is observed that a consolidated Agreement was executed, on which a consolidated rent was paid to the appellants, which has gone to the SBI as per the tripartite agreement entered into between the parties and the same exceeds the threshold limit of taxable services. Therefore, we hold that on the rent received in respect of the Agreement entered into with M/s. Vishal Retail Ltd., the appellants are liable to pay Service Tax, if the consolidated amount of rent received in a Financial Year exceeds the threshold limit available during the relevant period.

The Id. adjudicating authority is directed to verify as to how much amount is payable by the appellants, in view of our discussions hereinabove, and thereafter pass an appropriate order in accordance with law.

The Id. adjudicating authority shall also examine if there were any other tenants and if so, whether the appellants were getting rent from them separately or jointly and thereafter, to consider the same and pass an appropriate order accordingly.

In the result, the appeals are disposed of by way of remand, with a direction to the adjudicating authority to calculate the liability of Service Tax payable by the

appellants. In these terms, the appeals are disposed of. The cross objections filed by the respondent are disposed of in the above manner.”

From perusal of the order of the learned Tribunal passed on August 1, 2024 it is very clear that the matter has been remanded to the adjudicating authority with specific direction to calculate the liability of service tax payable by the appellant. According to us, no substantial question of law arises from such order of the Tribunal.

Accordingly, the appeal along with the connected application [IA NO: GA/2/2025] stands disposed of.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)