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A.S.No.87 of 2022
and
C.M.P.No.19762 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.06.2025

Pronounced on :11.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.87 of 2022
and
C.M.P.No.19762 of 2022

T.Vijaya Kumar,
S/o T.Narayana Rao,
No.28, Prakasam Street,
T.Nagar,Chennai 600 017.

.. Appellant/Plaintiff

/versus/

1.Sree Vijaya Timbers Corporation,
Rep.by Managing Partner T.Subba Rao
No.1A, Sundar Rao Road,
Teynampet,Chennai 600 006.

2.Sree Padmaja Saw Mills,
Rep.by Managing Partnet T.Subba Rao,
No.1A, Sundar Rao Road,
Teynampet Chennai 600 006.



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3.T.Subba Rao,
No.1A, Sundar Rao Raod,
Teynampet, Chennai 600 006.

5.U.Subba Rao,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

6.V.Krishna Rao,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

7.U.Ramababu,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

8.C.M.Parthasarathy,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

9.Raghu Chakravarthy,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600006.

10.V.Kallavara Prasad,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

11.T.Srinivasa Rao,
No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

12.U.Srinivasa Rao,



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No.1A, Sundar Rao Road,
Teynampet, Chennai 600 006.

13.C.H.Easwar,
No.A1 Sundar Rao Road,
Teynampet, Chennai 600 006.

..Respondents/
Defendants

Appeal Suit has been filed under Section 96 r/w Order 41, Rule 1 C.P.C., praying to set aside the decree and judgment dated 21.10.2021 made in O.S.No.5568/17 on the file of Court of the XVI Additional Judge, City Civil Court, Chennai and allow the Original Suit as prayed for and to grant such other relief or reliefs that this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Appellant :Mr.Sheik Abdul Rahim

For Respondents :Mr.N.Jayakumar for R1 to R3, R5 to R13
R4-died

JUDGMENT

The Appellant and the Respondents are landlord and tenants.

2. O.S.No.5568 of 2017 filed by the landlord for recovery of the service tax with interest paid by the plaintiff/landlord for renting his



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premises to the defendants/tenants. Relying on the Hon'ble Supreme Court Judgment rendered in *Union of India –vs- Bengal Sharchi Housing Dev Ltd. Reported in [(2018 (1) SCC 311)]*, the Trial Court dismissed the suit holding that, the plaintiff/landlord, who is the service provider, cannot get reimbursement of the tax paid from the service receiver, in the absence of specific agreement to that effect.

3. Aggrieved by the dismissal of the suit, the present appeal suit is filed by the plaintiff/landlord on the following grounds:

In the proceeding initiated for fixation of fair rent, the Hon'ble High Court fixed Rs.2,00,000/- as rent per month to be paid on or before 5th of every English calendar month. The respondents were depositing Rs.1,80,000/- p.m. after deducting Rs.20,000/- towards TDS. They were not paying the service charges as per the terms of the agreement entered 22.05.2003 but not renewed, after the expiry of the lease period of 5 years due to pending litigation. The tenants were holding over and by entering into compromise for all other purpose the terms of the expired lease continue to



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bind on the parties. While so, the agreement of the year 2003 was prior to the service tax regime. Hence, no specific clause found in that agreement fastening the service tax liability on the service receiver nonetheless, Clause 4 of the lease covenant mandates the leasee (tenants) shall pay all charges, payable for consumption of electricity and water and all other outgoing for its business. Relying on the Judgment of the Delhi High Court in *Meattles Pvt. Ltd. –vs- HDFC Bank Limited* reported in (MANU/DE/5248/2012), the Learned Counsel for the appellant submitted that, the expression ‘all other outgoing charges’ included service tax payable.

4. Per contra, the Learned counsel for the respondents 1 to 3, 5 to 13 submitted that, to demand reimbursement of the service charge from the tenant of a commercial premises, the landlord ought to have got himself registered with the Service Tax Department and should have obtained Service Tax Registration number. Further, there must be expressed agreement between the landlord and tenant that the tenant, who is the service receiver, will pay the service tax.



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5. The trial Court after due consideration of the provisions in the Financial Act, 1994 and the judgment of the Hon'ble Supreme Court has rightly held that renting a premises for commercial purpose is a taxable service under Section 65 (90-a) and (105). Section 68 of the Finance Act, 1994 clearly fix the liability for payment of service tax only on the service provider. The respondents in terms of the compromise vacated the premises. Either during th negotiation for compromise nor during vacating the premises, the landlord claimed service tax. The terms of the compromise entered between the parties is silent about the shifting of liability on the service receiver.

6. The points for determination are:

(1) Whether the liability to pay the service tax under Finance Act, 1994 for the rent received for a commercial building is on the 'service provider' or on the 'service receiver'?

(2) Whether the terms of the expired lease agreement be relied to fix



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the liability to pay the service tax on the service receiver applying the principle of deeming fiction ?

7. Nature and character of Service Tax:

Taxing service was introduced under Chapter V of Finance Act, 1994.

Section 65 of the said Act, defines expression taxable service. Renting of immovable property for commercial purpose became a taxable service with effect from 01.06.2007 through Finance Act, 2007 (Act 22 of 2007), as per Section 65(105) and as per section 68 (1) the person who provides the service ie the landlord is liable to pay the service tax at the rate specified. Exercising the power conferred under Section 94 of the Act, Service Tax Rules, 1994 framed. Rule 2(1) (d) clarifies again that the person liable to pay service tax in respect of renting/leasing building for commercial purpose shall be the provider of such service.

8. The Hon'ble Supreme Court had explained the reason for imposing service tax and the meaning of service tax in *All India Federation of Tax*



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Practitioners –vs- Union of India and others reported in [2007(7) SCC 527]. Following this judgement in Association of Leasing and Financial Service Companies –vs- Union of India and others reported in [2011(2) SCC 352] and Union of India –vs- Bengal Shrachi Housing Developmnt Limited and another reported [2018(1) SCC 311], the circumstances under which the duty of taxpayer be passed on to the recipient of the service .

9. In all these Judgments, the Apex Court had unequivocally held that service tax is an indirect tax, meaning thereby that the said tax can be passed on by the service provider to the recipient of the service. There is no legal impediment for the parties by agreement pass on the liability. In *Bengal Shrachi case* cited above and relied by the respondents also, the Hon'ble Supreme Court after explaining the expressions like “taxable persons”, “taxable event” and “ tax primarily leviable” after affirming the legal position that service tax on rent of commercial building is payable only by the service provider and the term tax primarily leviable will not cover service tax which is an indirect tax and not primarily leviable, however taking note of the



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sanction letter issued by the Government/ the tenant in that case, admitting the responsibility to pay the registration charges, stamp duty, **service taxes**, etc. (emphasis supplied) held that in such circumstances, the duty to pay service tax had passed on from service provider to service recipient.

10. In the words of the Hon'ble Supreme Court, the taxable event is the provision of the service of renting the immovable property and the 'taxable person' is the service provider. After the clarification by the Hon'ble Supreme Court, in more than one case there can be no doubt that service tax being an indirect tax and levied on the activity, passing on the liability to the service recipient is permissible, if the covenant in the lease or by consent the service recipient agree to pay the service tax explicitly or by implied inference on interpreting the language of the covenant in the lease agreement.

11. Turning to the language of the covenant in the lease agreement, as stated earlier the lease entered between the parties was renewed time to time



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and the last renewal was on 22.05.2003 for a period of 5 years. At that time service tax on rental transaction not in force. Therefore, parties have not envisaged about referring it. The covenant regarding payment of charges is found in clause (4) which reads as below:-

The Lessee shall pay all charges, payable for consumption of electricity and water charges payable to the concerned authorities and all other outgoings for its business.

12. According to the Learned Counsel for the Appellant, the lease deed dated 22.05.2003 expired on 21.05.2008 due to efflux of time the respondents continue to occupy the premises. The litigation between them for fixation of fair rent was pending when levy of service tax on rent came into force with effect from 01.06.2007. In a similar factual circumstances, the Delhi High Court in *Meattles Pvt. Ltd. case (citedsupra)*, while considering the expression 'outgoing' employed in the covenant had held that the expression is wide enough to include service tax.



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13. Per contra, the Learned Counsel for the respondents submit that, the expression, “**all other outgoings for its business**” does not have the same meaning and effect as the expression “**other outgoings in respect of the premises**”. The respondents' contention is that the principle of ‘ejusdem generis’ is to be applied for interpretation of an expression found in the lease covenant and while so applying, the outgoing charges which are connected to the business alone to be paid by the respondents/tenants and not the service tax on rent collected which is apparently charges in connection with the premises.

14. This Court on considering the submissions in the light of the judicial pronouncements and the expression found in the lease agreement holds that after the lease deed expired due to efflux of time, the surviving covenants are deemed to be in force and enforceable. In *Meattles case cited supra*, the Hon’ble Delhi High Court held that the passing on the duty to the service recipient permissible since the covenant of the lease deed though expired fasten the liability to pay tax. The parties in their agreement clause



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7.1 had agreed to pay the charges and other outgoings in respect of the premises. Hence, Delhi High Court took this view. Whereas in the case under consideration, clause (4) of the agreement between the parties pass on all other outgoings for its business. Obviously, service tax for renting out building for commercial purpose is outgoings in respect of premises and not in respect of business. Therefore, *the Meattles Pvt Ltd case* relied by the appellant is not supportive to the appellant.

15. In view of the above discussion, this Court hold that, for letting premises for rent to be used for commercial purpose, the service tax to be paid by the service provider/landlord. The responsibility to pay the service tax can be passed on to the service receiver/tenant by agreement. In the instance case, there is neither explicit nor implicit agreement to that effect. Therefore, dismissal of the suit by the Trial Court is confirmed.

16. Accordingly, Appeal Suit No.87 of 2022 stands dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to



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costs.



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Index:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

The XVI Additional Judge,
City Civil Court, Chennai.



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Dr.G.JAYACHANDRAN,J.

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delivery judgment made in
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