

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(ST) 27/RA/A-II/2015-16

ख अपील आदेश संख्या Order-In-Appeal No. AHM-SVTAX-000-APP-0242-16-17

दिनांक Date : 23.02.2017 जारी करने की तारीख Date of Issue 15/3/2017

श्री उमा शंकर,, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No. AHM/SVTAX/000/ADC/013/15-16 Date : 30.10.2015

Issued by ADC STC HQ AbadService Tax, Ahmedabad

घ प्रतिवादी का नाम / Name & Address of the Respondent

M/s. Narayan Litho Offset Works & 16 Others, Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू
मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal
(CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad -
380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेंगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। स्टे के लिए आवेदन- पत्र के साथ रूपए 500/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

Application made for grant of stay shall be accompanied by a fee of Rs.500/



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (जसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मागलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

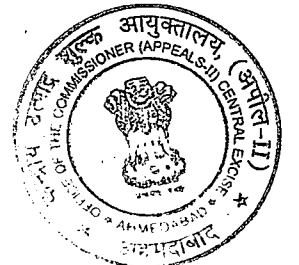
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenval Credit taken;
- (iii) amount payable under Rule 6 of the Cenval Credit Rules.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



ORDER IN APPEAL

Revenue department has filed the present appeals on 01.05.2016 against the Order-in-Original number AHM-SVTAX-000-ADC-013-15-16 dated 30.11.2015 (*hereinafter referred to as 'impugned orders'*) passed by the Addl. Commissioner, Service Tax, HQ, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*) in respect of M/s.Narayan Litho works and others 16 as listed below and having office at Anision, 2nd Floor, Plot No 4/1, Swastik Society, Navrangpura, Ahmedabad-380009 Ahmedabad- 15 (*hereinafter referred to as 'respondents'*);

- (1) M/s. Narayan Litho Offset Works
- (2) Shri Asheshbhai Jashbhai Patel
- (3) Shri Sanjaybhai Jashbhai Patel
- (4) Shri Shalinbhai Sudhakarbhai Patel
- (5) Smt. Khushbuben Shalinbhai Patel
- (6) Shri Pranavbhai Mahendrabhai Patel
- (7) Smt. Devalben Pranavbhai Patel
- (8) Shri Rishibhai Dineshbhai Patel
- (9) Smt. Geetaben Dineshbhai Patel
- (10) Shri Krishnakant Dipakbhai Patel
- (11) Smt. Smitaben Dipakbhai Patel
- (12) Shri Jashbhai Chhotabhai Patel, Karta of HUF Chhotabhai Naranbhai Patel
- (13) Shri Jashbhai Chhotabhai Patel, Karta of HUF Jashbhai Chhotabhai Patel
- (14) Shri Sudhakarbhai Chhotabhai Patel Karta of HUF Sudhakarbhai Chhotabhai Patel
- (15) Shri Mahendrabhai Chhotabhai Patel, Karta of HUF Mahendrabhai Chhotabhai Patel
- (16) Shri Dineshbhai Chhotabhai Patel, Karta of HUF Dineshbhai Chhotabhai Patel
- (17) Shri Dipakbhai Chhotabhai Patel, Karta of HUF Dipakbhai Chhotabhai Patel

The above (17) persons (referred to as "THE AOP" i.e. "THE ASSOCIATION OF PERSONS") all having office at Anision, 2nd Floor, Plot No 4/1, Swastik



Society, Navrangpura, Ahmedabad-380009 were providing services falling under the category of "Renting of Immovable Property Services" as defined under Section 65 (90a) of the Finance Act, 1994, which was a taxable service as per Section 65(105)(zzzz) of the Act

2. AOP has given on rent jointly owned office premises situated at 301, 302 & 303, Avdhesh House, Opposite Gurudwara, S.G. Highway, Ahmedabad on lease to M/s. Astron Research Ltd., Ahmedabad (herein after referred to as lessee). Lessee used said premises for commercial purpose therefore the rental income received by the AOP was taxable under the category of "Renting of Immovable Property Service". All members of the AOP had separately entered into a Lease and Licence Agreement dated 05.12.2008 and 05.12.2009 with M/s. Astron Research Ltd. for renting said co-owned property. Rental income received by the AOP was individually collected, as shown below in TABLE-A, for the above property for the period, i.e., 2009-10 to 2013-14 did not exceeded the threshold limit of the Small Scale exemption for all above mentioned financial years and therefore liability of the AOP to pay service tax for the said period did not arise.

TABLE-A

Name of Service Provider	% of share	Amount of Rent received by individual (in Rs.)				
		2009-10	2010-11	2011-12	2012-13	2013-14
Chhotabhai Narainbhai Patel HUF	5	112700	158197	169212	178963	189640
Rishibhai Dineshbhai Patel	6	135240	189836	203045	214751	227565
Smitaben Dipakbhai Patel	6	135240	189836	203045	214751	227565
Krishnakant Dipakbhai Patel	6	135240	189836	203045	214751	227565
Gitaben Dineshbhai Patel	6	135240	189836	203045	214751	227565
Devalben Pranavbhai Patel	6	135240	189836	203045	214751	227565
Pranavbhai Mahendrabhai Patel	6	135240	189836	203045	214751	227565
Khushbuben Shaileshbhai Patel	6	135240	189836	203045	214751	227565
Shalinbhai Sudhakarbhai Patel	6	135240	189836	203045	214751	227565
Sanjaybhai Jashbhai Patel	6	135240	189836	203045	214751	227565
Asheshbhai Jashbhai Patel	6	135240	189836	203045	214751	227565
Narayan Litho Offset Works	5	112700	158197	169212	178963	189640
Mahendrabhai C. Patel HUF	6	135240	189836	203045	214751	227567
Dineshbhai Chhotabhai Patel HUF	6	135240	189836	203045	214751	227567
Dipakbhai Chhotabhai Patel HUF	6	135240	189836	203045	214751	227567
Sudhakar Chhotabhai Patel HUF	6	135240	189836	203045	214751	227565
Jashbhai Chhotabhai Patel HUF	6	135240	189836	203045	214751	227562
Total	100	2254000	3163934	3384099	3579191	3792758

3. AOP, as an independent person, was neither registered with the service tax department nor charging service tax to the lessee by claiming separate exemption under Notification No. 6/2005-ST dated 01/03/2005. As per revenue department it is rendering of an indivisible single service of renting and tax liability should be discharge by AOP on single amount arrived by summation of all individual receipt. The AOP received total rent of Rs. 1,61,73,982/- for the period from 2009-10 to 2013-2014. Accordingly, AOP was required to pay service tax amounting to Rs.



18,17,781/- during the said period. In view of above, the Show Cause Notice dated 1.7.2014 was issued to all the members of the AOP. Demand was dropped vide impugned OIO.

4. Being aggrieved with the impugned the revenue preferred an appeal before the Commissioner (Appeals-II) wherein it is argued that-

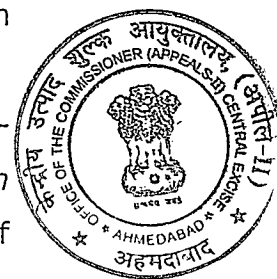
I. A new section 66E was introduced w.e.f. 01.07.2012 in Finance Act, 1994. Under Sub-clause (a) of the said section, renting of immovable property would constitute a declared service. As per Guidance Notes on service tax issued by CBEC on 20th June, 2012, *Renting of immovable property is taxable.*

II. *The term "person" has not been defined in the Finance Act, 1994 but the term person has defined in clause (42) of Section 30 of General Clause Act, 1897 as person shall include any company or association or body of individuals, whether corporate or not. Also, explanation to Section 73D of the Finance Act, 1994 elaborates the category of "person" with their respective authorized representative which includes Association of Persons (AOP) as one of the category of person. Further it is clarified by CBEC as FAQ on Service Tax (November 2007) that the word "person" shall include any company or association or body of individuals, whether incorporate or not, thus this expression include any Individual, HUF, Proprietary Firm or Partnership Firm, Company, Trust. The obligation to pay service tax in case of Renting of Immovable Property for commercial use rests with the owner / lessor of the property as a "person" liable to pay service tax. Person may be Individual, Body of Individuals (BOI), Association of Persons (AOP), Company, Trust, HUF, etc. and accordingly Lessor / Joint Owner will be treated as single entity for liability of service tax.*

III. The definition of assessee includes Individual, Proprietary Firm, Partnership Firm (as per Rule 6 of Service Tax Rules) Body of Individuals, Association of Persons, whether or not incorporated. The term 'person' being an inclusive and having wider meaning, under the General Clauses Act, 1897, it is clear that the legislature intended to include Joint Owners (a particular class of service provider) for providing of taxable service falling within the meaning of Section 65(105)(zzzz) of the said act.



- IV. M/s. Narayan Litho Offset Works & 16 Others, the Joint Owners of the said immovable property have rendered the service of renting of the said property vide a single legal document and entered into transaction with the service recipient as a single / joint party and as such they are covered under the definition of the word "Person" under the category of Association of Person (AOP).
- V. For renting, they acted as a Class of Persons - Joint Owners, persons who have grouped together for a single common purpose. The title of the immovable property is collectively as joint owner.
- VI. Said premises were purchased jointly with the individual share / investment. Moreover, in terms of the conditions in the lease deed, the monthly specific percentage of rent has also been agreed upon to be payable to each of the joint owner of the subject property as can be seen from the statement of Shri Dipak Chotabhai Patel recorded on 03.06.2014
- VII. The service has been provided jointly to the lessee namely M/s. Astron Research Ltd. The service provided is a taxable service falling in the category of Renting of Immovable Property. The recipient of the service has received a single service. It is immaterial whether the recipient of the service has made payment by a single Cheque or multiple Cheques as per the directions of the said noticees i.e. the joint owners of the property. Thus an indivisible single service has been provided jointly by individuals, which cannot be considered to be divided into individual services on the ground that such service has been provided jointly by different individuals, which the adjudicating authority failed to appreciate.
- VIII. The noticees contention that when the immovable property is collectively or jointly owned with specific shares therein, it can not be treated as association of persons & Law nowhere prescribed that they should be treated as association of persons and should be taxed as single unit. is neither proper nor acceptable. Which the Adjudicating Authority failed to appreciate and decided in favour of the assessee on this count.
- IX. The adjudicating authority has relied upon decision reported in 2015-TIOL-1936-CESTAT-Mum in case of CCE, Nashik Vs. Deoram Vishrambhai Patel, to drop the entire proceedings .Aas per Para-8 of the order it is held that:....*"the appellant's case is also supported by the Tribunal's decision in the case of Dinesh K Patwa Vs. CST Ahmedabad which is referred in Para 3(ii) above. However, in the Financial Year 2009-10 and 2010-12, the receipt of rent by each*



①

appellant exceeded the statutory exemption limit of Rs. 10 lakhs and the appellants have paid service tax alongwith interest on their own before receipt of SCN. This fact is not disputed by the department also and no additional liability has been worked out for the said period in OIO. However, the adjudicating authority failed to appreciate that the case of M/s Dinesh K. Patwa v. Commissioner of Service tax, Ahmedabad is still not decided by the CESTAT, Ahmedabad and pending with CESTAT, Ahmedabad for final decision.

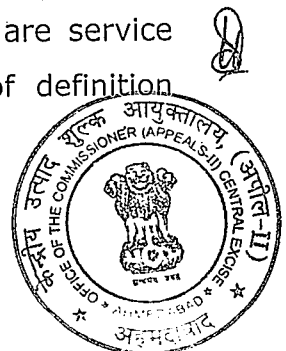
5. Personal hearing in the case was granted on 16.11.2016. Mr. P.P. Jadeje, Mr. Mukesh M. and Mr. Vyas Vishnu, on behalf of respondent appeared before me. They stated that Person defined only in 2012. As per definition of person in 2012, individual liability will come after 2012 as per section 68. Appellants have submitted additional written submission dated 05.12.2016 received in his office on 27.12.2015.

6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the revenue and oral/written submissions made by the respondents at the time of personal hearing.

I find that the main issue to be decided, *inter alia*, is whether the respondents are liable to pay service tax individually or collectively i.e. as AOP. At the outset, I find that the appellants are an AOP (Association Of Persons) and had given immovable property on lease to Lessee. Taxable service is defined in Section 65(105)(zzzz) of the Finance Act, 1994 which reads as under:

"to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce".

Further, I find that the 'person' appearing in the definition is not defined in the Finance Act, 1994 but the same is defined under Section 3(42) of the General Clauses Act, 1897 which says that *"Person shall include any company or association or body of individual, whether incorporated or not."* In the instant case, I find that the appellants are a group or a firm which is nothing but body individual or Association Of Person i.e. AOP and have entered into an agreement with Lessee Hence, the appellants are service provider and Lessee are service receiver. Hence, in terms of definition

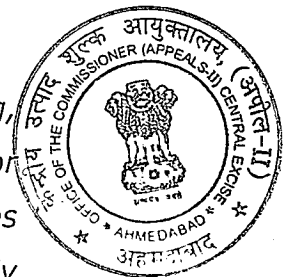


provided in Section 65(105)(zzzz) of the Finance Act, 1994, the appellants are liable to pay Service Tax on renting of immovable property to Lessee

7. It is argued by the appellants that they receive the rent payment separately. They claimed that they are not holding individual Service Tax registration and have not paid duty as within threshold exemption individually. It is confirmed, in their statement that Lessee had paid rent as per share to the partners. In this regard, I find that the said AOP consists of 16 partners. Rent received by all the partners is nothing but income received by the said firm. The conducting agreement entered by Lessee with the appellants is nothing but a devise used to escape from the Service Tax liability. But since all the partners are jointly and severally responsible, unless otherwise specifically provided in the partnership deed, for any act done by the firm as per the provisions of the Indian Partnership Act, 1932, I find that though the amount of rent is received by the partners from Lessee, it is deemed to have been received by the appellants firm and liable to pay Service Tax.

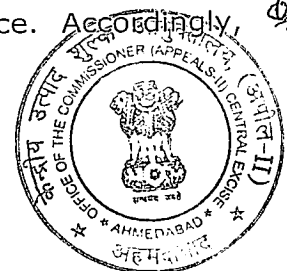
8. It is argued that co-owners are separate service providers and eligible for benefit of SSI exemption limit under Notification number 06/2005-ST dated 01.03.2005 as amended. In this regard, I find that the respondent have rented out the premises, which is owned by partner collectively, to Lessee for a rent agreed upon by them as per the said lease agreement. Renting out of said premises fall under the category of 'Renting of Immovable Property Service' as defined under Section 65(105)(zzzz) of the Finance Act, 1994, taxable w.e.f. 01.06.2007. For the sake of reference, I reproduce the definition of 'Renting of Immovable Property Service' as given under Section 65 (90a):

"renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include (i) renting of immovable property by a religious body or to a religious body; or (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field than a commercial training or coaching centre."



[Handwritten signature]

This exemption Notification No. 8/2008-ST is conditional one. According to the above notification, a taxable service provider whose gross value is within the limit of ₹8.00 lakhs (during the year 2007-08) and ₹10.00 lakhs (during the year 2008-09) need not to pay any Service Tax nor obtain Service Tax registration, provided the service provider should not be under a 'brand name' and not avail any Cenvat Credit for the payment of Service Tax. The appellants had contended that the adjudicating authority has erred in the impugned order wherein it is held that partners are individually eligible for the benefit given under the above Notifications. In order to ascertain whether the respondent are liable to pay Service Tax without availing the benefit of Notification number 8/2008-ST as amended or whether they are individually eligible for the threshold exemption, I find that the said property is owned by the appellants having sixteen different individuals i.e. partners who are not holding absolute ownership of any identifiable part in the property given on rent. I find that as per the provisions contained in the Transfer of Property Act, 1882, the three essential conditions required to determine the ownership of any property viz.; (1) right to possess, (2) right to enjoy and (3) right to dispose off. In the present case, the individual can enjoy or dispose off the share of the property, but does not possess any identifiable area independently. They possess the property as a whole. Any dealings in the property are subject to the consent of other partners. The co-owners only have undivided interests in the whole of the property and no divided interest in separate parts of the property. Accordingly, the appellants cannot lease out their share of the property independently to the lessee. Hence, the services of renting of their property provided by them are indivisible in nature and to be treated as a single service. When a single individual is not the absolute owner of any identifiable area in the property, it can be leased out only as a single unit (WHOLE PROPERTY) only. I find that the property is one which is rented out and the rent is shared by more than one person and this will not make one immovable property into sixteen different properties. In this case, the immovable property is a single entity which has been rented out to Lessee. Hence, I hold that the service rendered is indivisible and it is to be treated as a single service rendered collectively. So, the benefit of SSI exemption under Notification number 8/2008-ST as amended can be availed by the appellants only in the form of AOP and not as individual partners. In view of the definition of the service and the nature of service provided by the appellants, I hold that the service of Renting of the property as stated above by the appellants fall under the category of "Renting of Immovable Property Service" and the rent for the said property received by them is taxable under the said service. Accordingly,



the total rent received by the respondent is well beyond the threshold limit of exemption and therefore, the respondent are liable to pay Service Tax with appropriate interest under section 75 of FA, 1994, on the rent income received by them as AOP.

8.1 Exemption granted is to "taxable service" and not to "taxable service provider". Therefore if single "indivisible taxable service" is provided by "different, albeit collectively, service provider" then small service provider exemption of Notification 5/2006- ST, can not be granted to each one separately. Exemption is "qua-service" not "qua-service provider". In excise "manufacture" and in service tax "rendering service" is taxable event and its proceeds are taxed collectively. It is not that such proceeds are divided between different partners and all partners discharge the liability separately so as to avail small scale exemption. Taxable event, may it be "manufacture" or "rendering service" is event as a whole therefore it can not be divided in sub taxable events so as to escape tax or to avail small scale exemption.

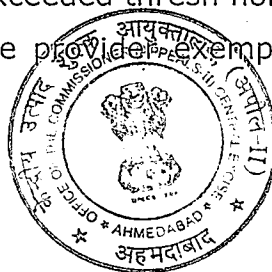
8.2 Moreover in terms of condition 2(viii) of said notification, for determining eligibility in current financial year it is to be seen that-

- a. taxable service provided **by taxable service provider** should not have exceeded threshold limit in preceding financial year and
- b. Taxable service provided **from particular premises** should not have exceeded threshold limit in preceding financial year.

Condition 2(viii) of said notification is reproduced as below-

*"(viii) the aggregate value of taxable services rendered by a provider of taxable service **from one or more premises**, does not exceed rupees four lakhs in the preceding financial year."*

The phrase "**from one or more premises**" is specifically included in condition 2(viii) of said notification, to see that aggregate of taxable service provided from that particular premises also (may be by even different providers) does not exceeds threshold limit. If the intension of statute was to check the threshold limit of service provider only (i.e. not premises wise), then the phrase "from one or more premises" should not have been there in said condition (viii). Statute should be interpreted in a way that not a single word or a phrase or a sentence becomes redundant. I find that taxable service provided from joint premises have exceeded threshold limit in preceding financial years, therefore small service provider exemption is not available to "taxable service" provided.



9. Appellant revenue has pleaded to for imposing penalty under section 76, 77 and 78 of FA, 1994. As regards simultaneous imposition of penalty under Section 76 and 78 of the Finance Act, 1994, after amendment of Finance Act, 2008 w.e.f 16.05.2008 there were no two penalty provision. Penalty under 76 and 78 of finance Act, 1994 can not be invoked simultaneously. I would like to quote the judgment of CESTAT, Ahmedabad in the case of M/s Powertek Engineers vs CCE Daman. In this case the view of the Hon'ble CESTAT is as below;

"By their very nature, Sections 76 and 78 of the Act operate in two different fields. In the case of Assistant Commissioner of Central Excise v. Krishna Poduval - (2005) 199 CTR 58 = 2006 (1) S.T.R. 185 (Ker.) the Kerala High Court has categorically held that instances of imposition of penalty under Section 76 and 78 of the Act are distinct and separate under two provisions and even if the offences are committed in the course of same transactions or arise out of the same Act, penalty would be imposable both under Section 76 and 78 of the Act. We are in agreement with the aforesaid rule. No doubt, Section 78 of the Act has been amended by the Finance Act, 2008 and the amendment provides that in case where penalty for suppressing the value of taxable service under Section 78 is imposed, the penalty for failure to pay service tax under Section 76 shall not apply. With this amendment the legal position now is that simultaneous penalties under both Section 76 and 78 of the Act would not be levied. However, since this amendment has come into force w.e.f. 16th May, 2008, it cannot have retrospective operation in the absence of any specific stipulation to this effect. However, in the instant case, the appellate authority, including the Tribunal, has chosen to impose the penalty under both the Sections. Since the penalty under both the Sections is imposable as rightly held by Kerala High Court in Krishna Poduval (supra), the appellant cannot contend that once penalty is imposed under Section 78, there should not have been any penalty under Section 76 of the Finance Act. We, thus, answer question no. 3 against the assessee and in favour of the Revenue holding that the aforesaid amendment to Section 78 by Finance Act, 2008 shall operate prospectively. In view of the above, penalties can be simultaneously imposed under Section 76 and 78 of Finance



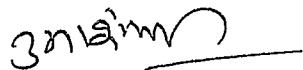
Act, 1994 for the period prior to 16.05.2008 before its amendment when proviso to Section 78 was added."

10. Respondent have devised the way like executing separate lease agreement and receiving separate rent of same co-owned building just to evade the tax and has never disclosed such receipt to department. In view of the facts and discussions hereinabove, since the period involved in the present case is after 16.05.2008, penalty under Section 78 is imposable. I hold that imposition of penalty under Section 76 *ibid* is not sustainable in the eyes of law. I find that respondent have not taken registration, have not correctly assessed their liability and have not filed ST-3, therefore they are liable for penalty under section 77. To decide the quantum of all penalty and interest under section 75 proposed under SCN, keeping in mid facts of the case and my above conclusion, I remand the case back to original adjudicating authority.

11. In view of above, and appeal filed by the revenue is allowed.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


12. The appeals filed by the revenue stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED

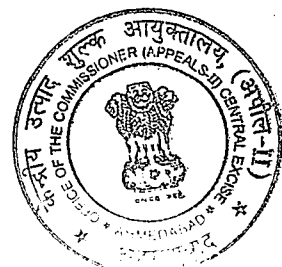


(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.

To,

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Swastik Society, Navrangpura,
Ahmedabad-380009 Ahmedabad- 15



Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, service tax, Ahmedabad
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Dy./Asst. Commissioner, Service tax, Div-III, APM Mall, Ahmedabad.
- 5) The Asst. Commissioner(System), Service tax. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.



