EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4

SERVICE TAX APPEAL NO. 53769 OF 2014
WITH
SERVICE TAX STAY NO. 54205 OF 2014

[Arising out of Order-in-Appeal No. 90/2013-14 dated 29.08.2013 passed by the Commissioner Appeals Meerut II]

SATNAM KAUR .....**APPELLANT**

W/o Mr. Khajendra Singh, House No.
03/201, Govindpura, Bhotia Parao
Haldwani, Uttarakhand

Vs.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX-MEERUT-II ......**RESPONDENT**

Opposite Shaheed Smark,
Delhi Road, Bhansali, Ground Meerut
Uttar Pradesh

Appearance:
Present for the Appellant : None
Present for the Respondent: Shri Manoj Kumar, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50390 /2025

Date of Hearing : 04/02/2025
Date of Decision : 10/03/2025

P.V. SUBBA RAO:

1. M/s Satnam Kaur[1] filed this appeal to assail the order dated 29.08.2013 passed by the Commissioner (Appeals) Meerut whereby she upheld the order-in-original passed by the Assistant Commissioner along with interest but set aside the penalty under

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1 The appellant

section 78 of the Finance Act, 1994[2] but imposed a penalty of Rs. 10,000/- under section 77 of the Finance Act on the appellant.

2. Records show that this appeal pertains to the year 2014 and it was listed on several dates. None appeared for the appellant but we do not deem it appropriate to adjourn the matter any further.

3. We have heard learned authorized representative for the Revenue and perused the records.

4. The appellant was registered with the service tax department. During the course of scrutiny of its ST-3 returns, it was found that the appellant was not paying service tax on the gross amount of income received as "renting on immovable property". On perusal of the amount wise details of service tax paid from October 2019 to September 2011, it was felt that the appellant had not paid service tax on the gross amount of income which it had received from its clients. A show cause notice dated 21.09.2011[3] was issued to the appellant proposing to recover the service tax under section 73 (1) of the Finance Act with interest and penalty.

5. The appellant did not submit any written reply in defence nor did it seek personal hearing. However, personal hearings were held on 27.09.2012, 27.12.2012 and 24.01.2013. Nobody appeared for the personal hearings. The Assistant Commissioner passed the order in original dated 28.02.2013 confirming the demand of service tax as proposed under section 73(1). He also

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2 The Finance Act.
3 SCN

confirmed the demand of interest under section 75 of the Finance Act and further imposed an equal amount of penalty under section 78.

6. Aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who passed the impugned order.

7. The Commissioner (Appeals) recorded as follows:

> "The appellant had rented its premises to M/s Koutons Retails India Ltd. and M/s Bharti Retails India Ltd. However, it did not pay service tax on the renting of immovable property service. The appellant continued to dispute the levy of service tax. The appellant relied on the case laws of "Retailers Association of India Ltd" in which the Bombay High Court dismissed the Writ Petition challenging the legal validity of the service tax. The Supreme Court stayed recovery of arrears in that particular case. The appellant relied on the case laws of Retailers Association of India to assert that renting of immovable property service cannot be a taxable service under the Finance Act, 1994. The case of the appellant is that since Retailers Association of India was granted stay of recovery of service tax, the same stay should apply to the appellant also because the facts are similar"

8. It is submitted in the appeal before us that the Commissioner (Appeals) had wrongly upheld the demand of service tax on the renting of immovable property and the impugned order may be set aside.

9. Learned authorized representative appearing for the department reiterated the findings of the impugned order and submitted that the constitutional validity of the levy of service tax on renting of immovable property service was upheld by the Bombay High Court, Delhi High Court, Punjab & Haryana High Court, Orissa High court and Allahabad High Court in the following case laws:

(i) **Home solution Retails (India) Ltd. vs. Union of India**[4]

(ii) **Retailers Association of India (Rai) vs. Union of India**[5]

(iii) **Shubh Timb Steels Limited vs. Union of India**[6]

(iv) **Utkal Builders Ltd. vs. Union of India**[7]

(v) **N.K. Bhasin vs. Union of India**[8]

10. There is no dispute that the service of renting of immovable property was rendered by the appellant. In view of the above, the appeal may be dismissed and the impugned order may be upheld.

11. We have considered the submissions and perused the records.

12. The fact that the appellant had rented its property to two commercial entities is not in dispute. The fact that renting of immovable property service was a taxable service during the relevant period is also not in dispute. The submissions in the appeal are that the renting of immovable property cannot be considered as a service and, therefore, no service tax could be levied by the Central Government.

13. This argument cannot be accepted. Unless the levy of service tax on renting of immovable property service is held to be *ultra vires* by any constitutional court, it will continue to be a valid levy. As a creation of the law, this Tribunal has to follow the law and cannot go beyond its four corners. Further, levy of

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4 **2011 (24)STR 129 (Del.)**
5 **2011 (23) STR 561 (Bom.)**
6 **2010 (20) STR 737 (P&H)**
7 **2011(22) STR 257 (Ori.)**
8 **2017(6) GSTL 370 (All.)**

service tax on renting of immovable property was upheld by five different High Courts as stated above.

14. In view of above, the levy of service tax on the renting of immovable property service by the appellant needs to be upheld. Consequently, the appropriate amount of interest has to be paid. The Commissioner (Appeals) has already set aside the penalty under section 78 in the impugned order but upheld the penalty of Rs. 10,000/- under section 77 of the Finance Act. The impugned order is correct and proper and calls for no interference.

15. The impugned order is upheld and the appeal is dismissed. The stay application is also disposed of.

[Order pronounced on **10/03/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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