

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 20039 of 2022**

(Arising out of Order-in-Appeal No. 15-17/2022 dated 27/01/2022  
passed by Commissioner of Central Tax (Appeals), Bengaluru.)

**Gautam Bhattacharya**

12024, spring Field Apartment, 19/20,  
Ambalipura, Sarjapura Road,  
BANGALORE - 560 102.  
KARNATAKA

Appellant(s)

*VERSUS*

**Commissioner of Central Tax**

C.R. Building, Queens Road  
Bangalore - 560001  
Karnataka

Respondent(s)

**AND**

**Service Tax Appeal No. 20040 of 2022**

(Arising out of Order-in-Appeal No. 15-17/2022 dated 27/01/2022  
passed by Commissioner of Central Tax (Appeals), Bengaluru)

**Yatin Vijaya Patil**

B-808, Purva Sun Shine  
Sarjapuroad  
BANGALORE - 560102

Appellant(s)

*VERSUS*

**Commissioner of Central Tax**

C.R. Building, Queens Road  
Bangalore - 560001  
Karnataka

Respondent(s)

**APPEARANCE:**

Shri Prasad Paranjape, Advocate (LUMIERE LAW PARTNERS ADVOCATES  
AND SOLICITORS) for the Appellant.

Mrs. C.V. Savitha, Superintendent, Authorised Representative for the Respondent.

**CORAM:**

**HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER  
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER**

**Final Order No. 20090-20091 / 2022**

Date of Hearing: 04/03/2022

Date of Decision: 04/03/2022

**Per : ASHOK JINDAL**

Both the appeals are having common issue, therefore, they are taken up together and decided by common order.

2. Brief facts of the case are that the appellants are the partners of partnership firm namely M/s. Ernst & Young, LLP. The appellants had filed their income tax returns showing components such as 'sale of services', against which partners have shown certain amount received from the partnership firm as their income. The said income tax returns were supplied to the authorities below, who after examining the same raised a query to the appellants, why not on account of sale of service be taxed under the Finance Act, 1994. The appellants replied to the queries but authorities below confirmed the demands on account of service tax payable by the appellants. Aggrieved by the said orders, the appellants are before us.

3. The learned counsel appearing on behalf of the appellants submits that appellants are partners of partnership firm and they received certain remuneration and distribution of profit and same amount is shown as profit in their income tax returns. The said amount is nothing but a remuneration received as a partner of the partnership firm and they have not provided any service to anybody else except to their partnership for which they are the owners. In that circumstance, no service tax is payable by the appellant. He further drew our attention to the decision of Hon'ble Mumbai High Court in the case of Amrish Rameshchandra Shah vs. Union of India and Others in Writ Petition No.387 of 2021, order dated 8.3.2021, who

is another partner in the same partnership firm and the Hon'ble High Court directed to withdraw the show-cause notice against the said partner. He further submits that in another partner of the same partnership firm, in the case of Shri Nambiseshan Balaji, the Deputy Commissioner, Anna Nagar Division, Chennai has also dropped the show-cause notice vide Order-in-Original No.5/2022 dated 27.1.2022. He also drew our attention to the decision of the Hon'ble apex court in the case of Commissioner of Income Tax, Madras vs. R. M. Chidambaram Pillai and Others reported in (1997) 4 SCC 766 to say that any remuneration received by a partner of a partnership firm is not a service i.e., only a share in the profit of the partnership firm. Therefore, he prays that impugned order is to be set aside.

4. On the other hand, the learned Authorised Representative reiterated the findings of the impugned order.

5. Heard the parties. Considered their submissions.

6. On going through the records placed and arguments advanced before us, we find that the service recipient at the best in this case is only a partnership firm. The partner of a partnership firm is none other than the same, therefore, one would not provide service to oneself. As there is no recipient of service in this case, no service has been provided by the appellant. In the income tax returns, the figures shown by the appellants as sale of service is just a portion of the profit earned by them from the partnership firm. In that circumstance, on merits itself, the appellants are not liable to pay service tax. Moreover, our view has got support from the decision of the Hon'ble Mumbai High Court in the case of Amrish Rameshchandra Shah (supra) who is the another partner of the appellants wherein the Hon'ble High Court has observed as under:

"5. On going through the reply affidavit, we find that the impugned show-cause notice was issued on the basis of information retrieved from the Income Tax Department.

However, upon verification respondents have now come to the conclusion that activities of the petitioner are not liable to service tax under the Finance Act, 1994 and to this extent, the show-cause notice may be withdrawn. However, it is stated that certain clarifications are still needed regarding income from other sources. Relevant portion of the affidavit reads as under:-

*"3. I say that on the basis of information retrieved from the Income Tax Department, a show-cause notice was issued to the Petitioner Shri Amrish Rameshchandra Shah by Deputy Commissioner, Division-X, CGST & CX, CGST, Mumbai South vide F. No. CGST/MS/Dn-X/R-1/ITR-TDS/UR/345/2020-21 dated 30.12.2020 for Rs.32,60,835/- for the period October, 2014 to June, 2017.*

*4.I say that on the basis of verification, the activities undertaken by the Petitioner are Ernst and Young LLP & SRBC and Associates LLP as a partner (profit sharing) or salaried individual are not liable to service tax under the Finance Act, 1994. To this extent, the show-cause notice may be withdrawn.*

*5. However, the income from other sources requires certain clarification. On receipt of such satisfactory clarification, the proceedings may be concluded by the adjudicating authority.*

*6.As the Honourable Court is seized of the case, it is requested that the petitioner may be directed to appear before the adjudicating authority for the clarifications as mentioned in Para 5 above."*

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7....

8. After hearing learned counsel for the parties and on due consideration, we set aside and quash the impugned show cause-cum-demand notice dated 30.12.2020 issued to the petitioner by respondent No.3, clarifying that respondents would be at liberty to pursue with the verification as to income of the petitioner received from other sources and may issue fresh show cause notice in accordance with law if the circumstances so warrant."

7. In view of above discussion, we do not find any merit in the impugned orders, we set aside the same.

8. In the result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court on **04/03/2022.**)

**(ASHOK JINDAL)**  
**JUDICIAL MEMBER**

**(C. J. MATHEW)**  
**TECHNICAL MEMBER**

rv...