CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70797 of 2016

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-0040-16-17 dated 13-05-2016 passed by Commissioner (Appeals) Customs, Central Excise, Noida)

M/s Nagar Palika Parishad, **.....Appellant**
(Loni, Ghaziabad)

VERSUS

Commissioner of Central Excise &

Service Tax, Ghaziabad **....Respondent**

(CGO-II, Kamla Nehru Nagar, Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Ms Chitra Srivastava, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70126/2025

DATE OF HEARING : 24 September, 2024
DATE OF PRONOUNCEMENT : 13 March, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.GZB-EXCUS-000-APP-0040-16-17 dated 13-05-2016 passed by Commissioner (Appeals) Customs, Central Excise, Noida. By the impugned order following has been held:-

"5. On consideration of facts, circumstances, relevant statutory provisions and aforementioned findings, -

(a) service tax liability determined in respect of renting of shops is upheld;

(b) interest liability on the service tax liability as per (a) above is upheld;

(c) service tax liability determined in respect of renting of land for parking space is set aside;

(d) penalties imposed in terms of sections 70, 77(1) and 78 of the Act are upheld & the penalty under section 78 shall be equal to amount of service tax liability as per (a) above.

As the quantum of service tax liability in respect of renting of shops is not worked out separately in the impugned order, the original authority is directed to quantify such service tax liability and communicate the same to the appellant within a period of ten days of receipt of this order. The appeal is disposed of in above terms."

2.1 Appellant is engaged in providing taxable services namely Renting of Immovable Property. However, they did not get registration with the Department and did not pay service tax by contravening the provisions of Rule 4 and Rule 6 of Service Tax Rules.

2.2 Inquiries were made vide letter dated 02.09.13, 13.09.13, 24.09.13, 18.10.13, 24.10.13 (Ist), 24.10.13(2nd), 13.02.14 and 18.02.14 and on the basis of replies received vide letters dated 30.09.13, 17.01.14, 12.03.14(Ist), 12.03.14(2) and 20.03.14, it is observed that appellant is engaged in (1) Renting of Shops which are partially constructed up to the level of Foundation/DPC(Damp Proof course) by them on the land owned by NPP and construction of shops above this level is got completed by the clients to whom the shops are allotted on auction basis. NPP is collecting lump sum non-refundable premium amount through auction of the shops in terms of sample copy of agreement between Nagar Palika, Loni and the allotee of the shop, Also, the ownership of property is not transferred to the allotee as no sale deed is involved in the process. Later on, the allottees get the shops constructed above DPC level and pay the fixed rent to NPP as per agreement between them. Undoubtedly, these shops are used for furtherance of business or commerce. (ii) Renting/leasing of land for Parking Space to Parking contractors by way of auction of Parking space on yearly basis in Loni Municipal Area. These Parking contractors use this land/parking space for providing public parking on collection of charges from individuals. In this manner the rented parking land is being utilized in furtherance of commerce or business.

2.3 After inquiries and examination it was observed that appellant had short paid service tax as detailed in table bellow:-

Year	Gross Amount Received			Total Cum Tax Value (Rs.)	S.Tax Rate %	Less- Tax value (Rs.)	S.Tax (Rs.)	Edu Cess 2% (Rs.)	SH Edu Cess 1% (Rs.)	Total (Rs.)
	Fixed rent of shops) (Rs.)	Lump- sum premiu m for shops (Rs.)	Auction Money/ rent of parking space (Rs.)							
2008-09 (Oct,08-March,09)	36216	0	1712500	1748716	12.36	1556351	186762	3735	1868	192365
2009-10	114432	1848000	3775000	5737432	10.30	5201661	520166	10403	5202	535771
2010-11	128918	0	4213000	4341918	10.30	3936462	393646	7873	3936	405456
2011-12	128918	2523000	4645000	7296918	10.30	6615519	661552	13231	6616	681399
2012-13 & April, 13	128918	2154242 5	5834140	27505483	12.36	2447978 2	293757 4	58751	29376	3025701
Total	537402	2591342 5	20179640	46630467		4178977 6	469970 0	93994	46997	4840691

2.4 Show cause notice dated 21.04.2014 was issued to the appellant asking them to show cause as to why-

"1. Service Tax amounting to Rs. 48,40,691.00 (Rs. Forty Eight Lac Forty Thousand Six Hundred Ninety One Only) (Rs. 46,99,700 S. Tax+ Rs. 93, 994 Edu Cess+ Rs. 46997 SHEdu Cess) should not be demanded and recovered from them under proviso to section 73(1) of the Finance Act, 1994.

2. Interest on the above said amount should not be demanded and recovered under Section 75 of the Finance Act, 1994

3. Penalty under Section 78 of the Finance Act, 1994 should not be imposed upon them.

4. Penalty should not be imposed upon them under section 77 (1) (a) of the Finance Act 1994 for violation of Section 69 ibid read with Rule 4 of the Service Tax rules, 1994.

5. Late fees under Section 70 of the Finance Act, 1994 should not be recovered for non-submission of returns ST-3 as per para 10 above."

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 04.06.2015 by holding as follows:-

"**Order**

1. I confirm the demand of Service tax amounting to Rs.48,40,691/- (Rs.forty eight lacs forty thousand six *hundred ninety one only) under proviso to Section 73(1) of the Finance Act, 1994 against M/s Nagar Palika Parishid, Loni, District Ghaziabad.*

2. I also confirm the demand of interest on said amount in terms of section 75 of the Finance Act, 1994.

3. I also impose penalty of Rs. 48,40,691/- (Rs.forty eight lacs forty thousand six hundred ninety one only) on M/s Nagar PalikaParishid, Loni, District Ghaziabad under the powers conferred upon me in terms of Section 78 of the Act ibid.

4. I also impose penalty of Rs.100000/- (Rs. one lacs) on M/s Nagar Palika Parishid, Loni, District Ghaziabad under the powers conferred upon me in terms of Section 77(1) of the Act ibid.

5. I also order for recovery of late fees amounting to Rs.1,80,000/- (Rs. one lacs eighty thousand only) against the M/s Nagar Palika Parishid, Loni, District Ghaziabad under the powers conferred upon me in terms of Section 70 of the Act ibid."

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals), who by the impugned order modified the Order-in-Original to the extent as indicated in para 1 above.

2.8 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Rajesh Chhibber learned Counsel appearing for the appellant and Ms Chitra Srivastava, learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- The appellant is a body established by the State of UP in accordance with Article 243P deriving its powers, authorities and responsibilities under Article 243W and collecting and expending under Article 243X of the Constitution of India. Hence, they were of the firm belief that there was no service tax liability on their part.
- As regard renting of shops, the issue being recurring in nature, the department raised demand for the period 2013-14 and 2014-15 on renting, which has been set aside

by the Appellate Authority vide Order In Appeal No.GZB/EXCUS/000/APPL-MRT/153/2018-19 dated 19.06.2018 had held said activity taxable, but the total amount on account of renting received in year being much less than Rs.10 lakhs, the demand has been set aside by granting benefit of exemption under notification no.6/2005-ST as amended upto date.

- During the period of dispute the threshold limit as per the Notification No.4/2007 dated 1/3/2007, the said limit was Rs.8 lakhs. The appellant collected rent much bellow the said exemption limit.
- The appellant has filed a chart as per which the total rent collected during the said period otherwise is below the threshold exemption limit. Hence, no service tax is payable on the said amounts.
- As regards one time premium collected at the time of auction, in no way could be considered as renting activity and, therefore, in any case, said activity was not liable for service tax.
- Reliance is placed on the following decisions:-
    - Greater Noida Industrial Development Authority Vs CST 2015 (38) STR 1062 (Tri.-Del.).
    - CCE Goa Vs Mormugao Municipal Council 2017 (7) GSTL 228 (Tri.-Mumbai).

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities. Further, she placed reliance by the decision of Hon'ble Allahabad High Court in the case of M/s Greater Noida Industrial Development Authority, Noida 2015 (40) STR 95 (All.).

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 We find that there are two issues involved in the present case i.e.-

i. service tax on one time premium collected.

ii. On renting of shops.

4.3 In respect of first issue i.e. service tax on one time premium collected, we find the issue is squarely covered by the decision of Hon'ble Allahabad High Court in the case of M/s Greater Noida Industrial Development Authority, Noida 2015 (40) STR 95 (All.) wherein following has been held:-

> "***28.*** *We may record that under show cause notice dated 22nd March, 2012 demand of Service Tax including the Education Cess was made for the period between July, 2010 to May, 2011. So far as the second show cause notice dated 17th October, 2012 is concerned, Service Tax was demanded along with interest for the period between May, 2007 to March, 2012 on the following amounts :*
>
> *(a) one time premium amount;*
> *(b) annual lease rent;*
> *(c) fee charged for examination of the applications;*
> *(d) transfer charges;*
> *(e) rent received from the staff*
> *(f) other misc. income as compliance fees etc.*
> *(g) misc. income as malba charges etc.*
>
> ***29.*** *We may not dilate any further on the said aspect, inasmuch as the Tribunal under the order impugned has already remanded the matter to the Commissioner to examine the challenge to the second show cause notice by de novo proceeding and to given a specific finding on the plea of overlapping raised by the assessee.*
>
> ***30.*** *It is left open to the appellant to raise all such legal as well as factual issues in respect of the second show cause notice dated 17th October, 2012 during remand de novo proceedings.*
>
> *The plea of the appellant that it is performing statutory duties and is a creation of a statute and therefore cannot be subjected to Service Tax does not appeal to us. Suffice is to mention that the Finance Act, 1994 makes no*

distinction between a statutory body i.e. a juristic person and an individual.

31. *As far as the circular dated 23rd August, 2007 issued by the Government of India, which has been so heavily relied upon by the appellant is concerned, we may record that under Clause 032.01, it has been provided that the Prasar Bharati Corporation (Doordarshan and All India Radio), which has been constituted under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is liable to pay Service Tax for broadcasting services.*

32. *Similarly under Clause 999.01 with regard to the sovereign/public duties/functions, it has been clarified that activities assigned to and performed by the sovereign/public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account. Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to be performed by a sovereign/public authority under the provisions of any law, do not constitute taxable services. Any amount/fee collected in such cases are not to be treated as consideration for the purposes of levy of Service Tax.*

33. *However, if a sovereign/public authority provides a services, which is not in the nature of an statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, Service Tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.*

> ***34.*** *Letting of immovable property for consideration, which is determined on the basis of offers received from public at large by the assessee Greater Noida Industrial Development Authority is a service provided for consideration and not on payment of statutory fees, neither it is a statutory service performed by the assessee. It may be that the statute permits such activities of letting out of immovable property for augmenting its finances but the same cannot be termed as the service in public interest nor it is a mandatory or statutory functions of the Development Authority. Accordingly such activity of leasing do constitute a taxable service, in our opinion."*

4.3 In view of the above referred decision of Hon'ble Jurisdictional High Court in our view, the order of Commissioner (Appeals) cannot be upheld to this extent. Similar order has been passed by Mumbai Bench of this Tribunal in the case of M/s CIDCO Ltd. 2015 (37) STR 122 (Tribunal-Mumbai). Similar view has been expressed by Delhi Bench of this Tribunal in the cases of M/s NEW OKHLA INDUSTRIAL DEVELOPMENT AUTH. 2015 (39) STR 443 (Tri.-Delhi) & M/s Bhilai Steel Plant 2022 (61) GSTL 56 (Tri.-Delhi).

4.4 The decision of the tribunal in case Greater Noida Industrial Development Authority [2015 (38) STR 1062 (Tri.-Del.)] relied upon has not been agreed to by the larger bench of Tribunal in case of Rajasthan State Industrial Development and Investment Corporation Ltd. [INTERIM ORDER NO"s. 1/2025 & 1/2025 dated 27.01.2025 in Service Tax Appeal No 50553 of 2017 and Service Tax Appeal No. 89766 of 2013 (Mumbai Bench)] and Larger Bench has observed settled the issue stating as follows:

> *"31. In Greater Noida Industrial Development Authority, this issue was examined in paragraph 10.1 of the judgment, which paragraph has been reproduced above. In paragraph 16 of the judgment, the Division Bench noticed that in Panbari Tea the Supreme Court drew a distinction between*

premium and rent, but then proceeded to hold that since the taxing event under section 65(105)(zzzz) of the Finance Act is "renting of immovable property", service tax would be leviable only on the element of rent and not on the value of "premium" or "salami". The Division Bench failed to notice that the definition of "renting of immovable property" includes „leasing", which under section 105 of the Transfer of Property Act includes both premium and periodical rent.

32. The Division Bench of the Tribunal in Kagal Nagar Parishad merely followed the earlier decision of the Tribunal in Greater Noida Industrial Development Authority.

33. In view of the fact that „lease", as defined under section 105 of the Transfer of Property Act, includes both the one time premium amount and the periodical rent amount, it has to be held that the one time premium amount received by the lessor from the lessee for transfer of interest in the property would be leviable to service tax under section 65(105)(zzzz) of the Finance Act.

34. It is, therefore, not possible to accept the view expressed by the two Division Benches of the Tribunal in Greater Noida Industrial Development Authority and Kagal Nagar Parishad.

……..

49. In view of the aforesaid discussion, the inevitable conclusion that follows is that the value of "premium" during the period prior to 01.07.2012 and during the period w.e.f. 01.07.2012 would be exigible to service tax under "renting of immovable property".

50. The reference would, therefore, have to be answered in the following manner:

> *"The value of "premium" or "salami" is exigible to service tax under "renting of immovable property" for the period prior to 01.07.2012 under section 65(105)(zzzz) of the Finance Act and from 01.07.2012 under section 66B of the Finance Act."*

4.5 In view of the above decision of Larger Bench, we do not find any merits in the submissions made by the appellant in respect of levy of service tax on the "value of premium" or "salami" under the category of 'renting of immovable property' for the period in dispute.

4.6 The argument of the appellant to the effect that the activity of construction of shops etc would be covered under the category municipal functions as per article 243P, 243W and 243X was rejected by the Mumbai Bench in the case of Mormugao Municipal Council [2017 (7) G.S.T.L. 228 (Tri. - Mumbai)] observing as follows:

> ***9.*** *In the Cross objection respondent have sought to challenge the levy of service tax on shops rented out by MMC under the pretext that the said shops are part of the market developed by MMC as their constitutional responsibility. Ld. Counsel has sought to rely on the Article 243W and 12th Schedule of 243W, more particularly Entries 12 and 17 thereof. The said article and the 12th Schedule reads as under :-*
>
> *"Article 243W reads as under :-*
>
> ***"243W*** *- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow -*
>
> *(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to -*
>
> *(i) the preparation of plans for economic development and social justice;*
>
> *(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

The Twelfth Schedule of Article 243W [sic] reads as under :-

"TWELFTH SCHEDULE

(Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries."

10. *On perusal of Entries 12 and 17 clearly shows that or has been mentioned thereunder is provisions of urban amenities and facilities, such as parks, gardens, playgrounds. The market cannot be considered to be similar in nature and therefore provision of markets cannot be considered to be the responsibility under Sr. No. 12 of the 12th Schedule. Similarly Sr. No. 17 relates to street lighting, parking lots, bus stops and public convenience. These amenities do not include market by any stretch of imagination. Thus to state that construction of market is a constitutional responsibility cast upon the MMC is misplaced. We do not find force in the argument made by the respondent.*

4.7 As we do not find any merits in the submissions made by the appellant in respect of the levy of service tax on the "one time premium" or "salami" collected by them, the value of taxable services provided during each financial year for the period in the dispute would be more than the threshold exemption limit as provided by the Notification No 4/2007-ST dated 01.03.2007 as amended from time to time.

4.8 Thus, we do not find any merits in the appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on- 13 March, 2025)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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