

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

REGIONAL BENCH - COURT NO.II

**Service Tax Appeal No.70420 of 2020**

(Arising out of Order in Appeal No.GZB-EXCUS-000-APPL-MRT-331-2019-20, dated-29/01/2020 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

**Ghaziabad Development Authority,**  
(Vikas Bhawan, Ghaziabad, Uttar Pradesh 201002)

**.....Appellant**

VERSUS

**Commissioner, CGST, Ghaziabad**  
(CGO Complex-II, Kamla Nehru Nagar, Ghaziabad)

**....Respondent**

**APPEARANCE:**

Shri Atul Gupta, Advocate for the Appellant

Shri A. K. Choudhary, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)  
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER NO.70787/2025**

DATE OF HEARING : 15.07.2025

DATE OF DECISION : 13.11.2025

**SANJIV SRIVASTAVA:**

This appeal is directed against the Order in Appeal No.GZB-EXCUS-000-APPL-MRT-331-2019-20, dated-29/01/2020 passed by Commissioner (Appeals) CGST & Central Excise, Meerut. The Order-In-Original No.08/ADC/ST/GZB/2018-19 dated 30.10.2018 held as follows:-

ORDER

1) *I confirm and order for recovery of the Service Tax including Cess amounting to Rs Rs.1.33,53,897/- (Rupees One Crore Thirty Three Lakh Fifty Three Thousand Eight Hundred Ninety Seven only) for the period from April, 2015 to November,*

2016 against of taxable service in relation to 'Renting of Immovable Property from M/s Ghaziabad Development Authority, Vikas Bhavan, Ghaziabad under the provisions of section 73 of the Finance Act, 1994.

- 2) I confirm and order for recovery of interest at the applicable rates on the amount of service tax mentioned at (1) above, under the provisions of Section 75 of the Finance Act, 1994 from M/s Ghaziabad Development Authority, Vikas Bhavan, Ghaziabad.
- 3) I impose a penalty of Rs. 13,35,389/- (Rupees Thirteen Lakh Thirty Five Thousand Three Hundred and Eighty Nine only) upon M/s Ghaziabad Development Authority, Vikas Bhavan, Ghaziabad under the provisions of section 76 of the Finance Act, 1994;
- 4) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) under Section 77 (life) of the Finance Act, 1994 upon them for their failure to appear before the Officer during enquiry;
- 5) I confirm late fee amounting to Rs. 4000/- for late filing ST-3 returns under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

1.2 By the impugned order the Order-In-Original No.08/ADC/ST/GZB/2018-19 dated 30.10.2018 holding as above has been set aside and the matter was remanded to the Original Authority for redetermination of the issue in light of the observation made.

2.1 The Appellant was registered with the Service Tax Department having Registration No.AAALG0072CSD001 for the provision of various services. The Show Cause Notice dated 09.05.2016 for the period 2010-11 to 2014-15 was issued to the Appellant demanding Service Tax in respect of the lease rent for property. The Show Cause Notice made demand of Service Tax short paid as detailed in the table below:-

S. No	Period	Amount Collected	Service Tax @ (%)	Service Tax	Remark
1	2010-11	14,70,80,910	10.3	1,51,49,334	As per B/S provided vide letter dated 08.08.15
2	2011-12	40,33,90,992	10.3	4,15,49,272	
3	2012-13	16,69,62,043	12.36	2,06,36,509	
4	2013-14	7,30,87,962	12.36	90,33,672	As provided vide letter dated 19.11.2015
5	2014-15	12,89,03,273	12.36	1,59,32,445	
		TOTAL		10,23,01,232	

2.2 The Show Cause Notice was adjudicated by the Order-In-Original No.06/COMM/ST//GZB/2017-18 dated 06.06.2017 confirming the demand for the normal period of limitation. Aggrieved Appellant filed appeal to this Tribunal bearing Service Tax Appeal No.70608 of 2017. This appeal has been dismissed vide Final Order No.70118 of 2023 dated 13.10.2023 for non-prosecution.

2.3 The Appellant was called to furnish information for the subsequent period vide Letter dated 21.08.2017, 08.09.2017, 15.09.2017, 26.09.2017 & 27.02.2018 for the period from April 2015 to June 2017. Summon dated 12.01.2018, 29.01.2018 and 08.02.2018 were also issued to the Appellant to appear alongwith desired records.

2.4 The Appellant vide their Letter dated 20.01.2018, 05.03.2018 and 09.03.2018 furnished detail of value of service for the period April 2015 to November 2016 but they showed inability to show the balance sheet and P&L for the period 2016-17 and Trial Balance for the period of 2017-18(upto June 2018). After the examination of the records it was observed that the Appellant have short paid Service Tax as detailed in the Table below:-

Period	Rent for					Service Tax @ (incl. Cess) (%)	Service Tax payable
	commercial shops	Community Service	Educational institutions	Lease of Vacant land	Total		
Apr 15 - May 15	1365460	1558168	1142683	1643428	5709739	12.36	705724
Jun 15- 14 <sup>th</sup> Nov 15	4017797	6559774	0	8439928	19017499	14	2662450
15 <sup>th</sup> Nov 15 -Mar 16	2637702	6422950	9803992	4649949	23510193	14.5	3408978
Apr 16 - May 16	1128613	5283183	0	598347	6920143	14.5	1003421
Jun 16 -Nov 16	2974120	23260876	4263826	4656676	37155498	15	5573325
<b>Total</b>	<b>14123692</b>	<b>43084951</b>	<b>15210501</b>	<b>19893928</b>	<b>92313072</b>	<b>-</b>	<b>13353897</b>

2.5 The Show Cause Notice dated 19.04.2018 has been issued to the Appellant asking them to show cause as to why:-

- 1) Service Tax including Cess amounting to Rs. 1,33,53,897/- (Rupees Ons Crore Thirty Three Lakhs Fifty Three Thousand

*Eight Hundred Ninety Seven Only) not paid during the period from April, 2015 to November, 2016 against provision of taxable service in relation to Renting of Immovable Property should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994;*

- 2) *Interest at the appropriate rate should not be charged and recovered from them under Section 75 of the Finance Act, 1994;*
- 3) *Penalty should not be charged and recovered from them under Section 76 of the Finance Act, 1994;*
- 4) *Penalty under Section 77 (1)(c) of the Finance Act, 1994 should not be imposed upon them for their failure to appear before the Officer during enquiry.*
- 5) *Late Fees/Penalty amounting to Rs. 4000/- for late filing ST-3 returns should not be demanded and recovered from them under Section 70 of the Finance Act read with Rule 7C of the Service Tax Rules, 1994.*

2.6 The Show Cause Notice has been adjudicated as per the Order-In-Original referred in Para 1 above.

2.7 Aggrieved Appellant filed appeal to the First Appellate Authority which has been disposed of by the impugned order.

2.8 Hence this appeal.

3.1 We have heard Shri Atul Gupta, Advocate for the Appellant and Shri A. K. Choudhary, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:-

- (a) The Appellant is not liable to pay service tax on lease rent amount:- In this regard he placed reliance on the decision of the Tribunal in the case of **Greater Noida Industrial Development Authority v. C.C.E. & S.T., Noida, 2015 (38) S.T.R. 1062**, affirmed by the Hon'ble Allahabad High Court in **Commissioner of Service Tax, Noida v. Greater Noida Development Authority, 2015 (40) S.T.R. 46**,

- (b) Demand of service tax on vehicle parking charges and rent received from educational institutions is not

sustainable on account of being exempt:- In this regard reliance is placed on the definition of 'Governmental Authority' as defined in Sl. No. 39 of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 02/2014 dated 30.01.2014 and the Twelfth Schedule of the Constitution of India.

(c) Interest is not recoverable from the Appellant and penalty is not imposable:- In this regard reliance is placed on following judgements:-

- H.M.M. Limited, 1995 (76) ELT 497 (SC)
- Pratibha Processors [1996 (88) ELT 12 (SC)]

3.3 Learned Authorized Representative for the Revenue has reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of arguments. The impugned order records the findings as follows:-

*"6. I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. I find that during the period under dispute, the renting of mmovable property (RIP) was covered under Section 66E (a) of the Act by virtue of Section 65B (44). However, any activity constituting merely transfer of title of immovable property, in any manner, was excluded from the purview of the term "service". I find that the appellant has contended that the commercial lump sum lease rent received against the vacant plot was not chargeable to service tax as the same was nothing but a premium amount received against the land which has been held not taxable by the Hon'ble Tribunal in the case of Greater Noida Industrial Development Authority vs CCE & ST Noida [2015 (38) STR 1062 ( The Delif duty upheld by the Han ble High Court at Allahabad. I find that the appellant vide his Letter dated 30.12.2019 submitted details of lease rent received during the year 2015-16 and 2016-17 along with copy of registries/ receipts evidencing receipt of lease rent. On perusal of the same find that the appellant, during the*

said period received the amounts for the various customers to whom the land was allotted, under three categories viz premium amount of the land, one time lump sum Lease Rent for the rent period of 90 years, and conversion charges from lease hold to free hold I find that the premium amount received by the appellant was for obtaining lease of an immovable property and the same was normally termed as 'capital receipt, whereas, the lease rent was made for use and occupation of the property leased and the same was normally said to be 'revenue receipt'. It is, therefore evident that the nature of the amount received as premium and that received as lease rent is different. The Hon'ble CESTAT in the case of Greater Noida Industrial Development Authority vs. CCE & ST Noida [2015 (38) STR 1062 (Tri Del)] duly upheld by the Hon'ble High Court, Allahabad in their judgement in the case of Commissioner of Central Excise & Service tax, Noida vs in the case of Commissioner of Service Tax, Noida vs. Greater Noida Industrial Development Authority [2015 (40) STR-46 (All)], interalia, held that-

"Demand - Service Tax Renting of immovable property One time premium amount charged in respect of long-term lease - Premium is price paid for obtaining lease of an immovable property while rent is payment made for use and occupation of immovable property leased Service Tax leviable under Section 65(105)(zzzz) of Finance Act, 1994 read with Section 65(90a) ibid is on renting of immovable property Service Tax not chargeable under Section 65(105)(zzzz) ibid read with Section 65(90a) ibid on 'premium' or 'salami paid by lessee to lessor for transfer of interest in property from lessor to lessee as such amount is not for continued enjoyment of property leased - Demand not sustainable. [para 10.1]"

In the light of the above only the premium amount received by the appellant against the allotment of vacant land was not chargeable to service tax. However, the lease

rent received by the appellant was for the service of RIP and chargeable to service tax. Therefore, the contention of the appellant that the amount received as lease rent was premium or salami was not tenable. Regarding charges received by the appellant towards Conversion of leasehold right to free hold rights, I find that the conversion of lease hold property to free hold property was neither the renting of immovable property nor was it in any way relatable to the RIP but the same was for the transfer of the title of property on free hold basis, in fact there was no element of service in the said transaction. Therefore, this amount is not includable in the taxable amount. Regarding rent received from educational body, I find mat w.e.f. 11.07.2014 the exemption available to the renting of immovable property to an educational institution was withdrawn vide Notification No. 6/2014-ST dated 11.07.2014, therefore, the property leased to educational institution by the appellant was chargeable to Service Tax w.e.f. 11.07.2014. Similarly lease rent received against the renting of land for the purpose of parking was exempted up to 31.03.2013 in terms of clause 24 of the Notification No 25/2012-ST dated 20.06.2012. This exemption had been withdrawn vide Notification No. 3/2013-ST dated 01.03.3013 with effect from 01.04.2013. Therefore, during the entire period of demand from April-15 to November-15, the appellant was liable to pay service tax on the said receipts The appellant, during the personal hearing also contended that service tax on ark entry fee and parking fee was not payable as being a government authority, he was exempt from service tax as the activities were covered under Article 243W of the Constitution. In this regard I find that the services provided by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution are exempted under Sl. No. 39 of the Notification No. 25/2012-ST dated 20.06.2012. In this regard I find that

*the appellant was an entity created under Section 4 of the Urban Planning and Development Act, 1973, the relevant Section 4 of which reads as under-*

*4 The Development Authority -*

*(1) The State Government may, by notification in the Gazette, constitute for the purpose this Act, an Authority to be called the Development Authority for any development area;*

*(2) The Authority shall be a body corporate, by the name given to it in the said notification having perpetual succession and the common seal and power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sued and be used;*

*.....*

*I find that the exemption under St No 30 of the Notification No 25/2012-ST dated 20.06.2012 was available to the Governmental Authority However, the appellant has not submitted required evidence in support of his contention regarding his being a governmental authority The claim and contention of the appellant is, therefore, required to be examined by the adjudicating authority. The appellant is also directed make necessary submissions and produce evidence before the adjudicating authority to substantiate his claim and contention in the denovo proceedings*

*6.1 The appellant has contended that the adjudicating authority, on page 10 of the OIO. had concluded that the park entry fee was taxable w.e.f 01.06.2015, but the adjudicating authority had not dropped the demand for the said period. In this regard, I find that the contention of the appellant is tenable and the same needs to be considered by the adjudicating authority during the denovo proceedings and the demands re-quantified accordingly*

6.2 The appellant has also contended that he had paid the service tax in respect of renting of shops and submitted the details to the adjudicating authority but the adjudicating authority has confirmed the demand on renting of commercial shops by discarding the submission made by the appellant. I find that the adjudicating authority in para 19 of the impugned order has observed that the appellant had neither given the details of the specific amount of service tax deposited against these services (renting of immovable property) nor had anywhere tendered the relevant TR-6 Challans, in this regard. Under the circumstances, the adjudicating authority is directed to ascertain the factual position regarding payment of service tax and re-adjudicate the demand accordingly.

6.3 The appellant has further contended that the service tax has been calculated incorrectly as the amounts received by him are inclusive of service tax. In this regard I find that the appellant was an entity created by the Government of UP, under the Urban Planning and Development Act 1973, for carrying out the activities related to preparation of master plan for Ghaziabad and its implementation, development, control and construction of housing and urban infrastructure and other similar activity under the control of Government of UP. There can, therefore, be no intent to evade as the appellant was not doing the said activities for profit as an individual. Under the circumstances, the appellant is entitled to the cum tax benefit which should be allowed by the adjudicating authority in respect of the demand of service tax made against the appellant and the demand should be re-quantified accordingly.

6.4 Regarding contention of the appellant that the demand up to March 16 was time barred I find that the ST-3 return for the period from April-15- to September-15 was filed on 09.12.2015 and ST-3 returns for the period from October-

15 to March-16 was filed on 10.05.2016. As per the provisions of Section 73 of the Act w.e.f. 14.05.2016, show cause notice for demand of service tax was to be served upon to the service provider within thirty months of the relevant date and the show cause notice was issued within the period so prescribed. The contention of the appellant was, therefore, not tenable.

6.5 Regarding penalty imposed upon the appellant under Section 76 of the Act, I find that the fact that the appellant had neither self-assessed the service tax nor had paid the same to the Government exchequer is not in dispute. He was, therefore, liable to penalty under Section 76 of the Act. However, taking into account the fact that the appellant was a government body and has made out a case for having a bonafide belief that service tax was not payable on the lease rent which constitutes the lions share of demand, there was, therefore, no justification for the imposition of maximum penalty of 10% of the demand under the said Section 76 *ibid*. The adjudicating authority should, therefore, re-adjudicate the penalty under the said Section 76 which shall not be in excess of 2% (two percent) of the total demand.

6.6 Regarding penalty imposed upon the appellant under Section 77 (1) (c) of the Act, I find that the demand was raised on the basis of documents provided by the appellant during the course of enquiry. I find that the adjudicating authority has nowhere mentioned the details the documents which were not provided by the appellant. Therefore, the penalty imposed upon the appellant under Section 77 (1) (c) of the Act is not justified. The same is, therefore set aside. I find that the late fee imposed upon the appellant has not been contested by him.

6.7 Regarding applicability of Section 80 of the Act, I find that the Section 80 of the Act had already been omitted by the Finance Act, 2015 w.e.f. 14.05.2015. Therefore, the same. was not available in case of the appellant.”

4.2 We find that the Appellant have challenged the findings recorded in respect of the lease rent received in respect of renting of the properties by relying upon the decision of the Tribunal in the case of Greater Noida Industrial Development Authority V/s C.C.E. & S.T., Noida 2015 (38) S.T.R. 1062 affirmed by the Hon'ble Allahabad High Court in Commissioner of Service Tax, Noida V/s Greater Noida Development Authority 2015 (40) S.T.R. 46.

4.3 It is the submission of the Appellant that lease rent was collected in lump sum amount is premium/ salami for transfer of interest lease to assessee. Thus this activity should not be taxable.

4.4 We do not find any merits in the said submission made by the Appellant. The issue under consideration in the above two decisions was for the period prior to amendment made in the Finance Act, 1994 by the Finance Act, 2010 w.e.f 1<sup>st</sup> July, 2010. Hon'ble Allahabad High Court in the case of Commissioner of Service Tax, Noida V/s Greater Noida Development Authority reported in 2015 (40) S.T.R. 46 (All.) has held as under:-

**"12.** *The Tribunal under the order impugned dated 28th August, 2014 has confirmed the demand of the Service tax under the order-in-original dated 19th July, 2012 only for the normal period of limitation commencing from 1-7-2010 the amount whereof has been directed to be quantified by the Commissioner on remand. Penalty upon the assessee under Sections 77 and 78 has been set aside. The order-in-original dated 30th April, 2013 has been set aside and the matter has been remanded to the Commissioner for de novo adjudication in light of the order of Tribunal. The department being aggrieved has filed the present Central Excise appeal.*

**13.** *Clause (v) to the Explanation 1 added under Finance Act, 2010 to Section 65(105)(zzzz) reads as follows :-*

*"(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;"*

**14.** *The Excise appeal was admitted by the Court on following grounds :*

*"(I) Whether the Tribunal has committed an error of law in holding that the renting of vacant land by way of lease or license (irrespective of the duration of tenure), for construction of building or a temporary structure for use at a later stage in furtherance of business or commerce is a taxable service only from 1-7-2010, and not so, earlier to this date?"*

*(II) Whether the CESTAT has committed an error of law in interpreting the leviability of Service tax on vacant land, for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce is taxable service only from 1-7-2010, whereas exclusion of vacant land as per (a) and (b) only signifies that renting of vacant land was already covered under definition and there was legislative intent to exclude certain category of vacant land and since there has been no change in exclusion after insertion of clause (v) only signifies that clause (v) was already part of main definition?"*

**15.** *Before adverting to the merits of this appeal it may be recorded that the appeal filed by the assessee before this Court, being Central Excise Appeal 54 of 2015, against the same order of the Tribunal dated 28-8-2014 has been dismissed by us under the judgment and order dated 30-3-2015 and the findings of the Tribunal under challenge in the said appeal, insofar as it was against the assessee, has since been affirmed.*

**16.** *What has been argued before us by the counsel for the department is that the renting of vacant land was under the*

*ambit of Service tax w.e.f. 1st June, 2007 in view of Section 65(105)(zzzz) of the Finance Act, 1994 and for the purpose reference is made to the said section, which reads as follows :-*

*"Section 65(105) "taxable service" means any service provided or to be provided,-*

*\*\*\*\*\**

*(zzzz) to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce."*

**17.** *It is his case that the amendment carried out under the Finance Act of 2010 was only clarificatory in nature and vacant land other than that used for the agriculture, aquaculture, farming, forestry, animal husbandry, mining purpose was clearly defined to be under the purview of the Service tax for the purposes of levy. The insertion of clause (v) under the Finance Act of 2010 w.e.f. 1st July, 2010 did not alter the taxable event of letting of the vacant land on lease or license for business/commerce purpose.*

**18.** *The Tribunal has recorded a specific finding that prior to the introduction of new clause on 1st July, 2010 the renting of vacant land within the enumerated taxable service was not embarrassed upon.*

**19.** *With reference to its earlier order in the case of assessee itself dated 11-12-2013 it has been recorded as follows :-*

*"12. Introduction of sub-clause (v) in Explanation I has significantly altered and extended the scope of the taxable service, with effect from 1-7-2010 and consequently vacant land given on lease or licence, for construction of a building or a temporary structure, to be used at a later stage for furtherance of business or commerce, would be 'immovable*

*property' and renting of this immovable property would be the taxable service, since 1-7-2010.*

*13. In view of clear exclusion of vacant land from the ambit of immovable property prior to 1-7-2010 it cannot gainfully be contended by Revenue, that clause (v) to Explanation I (introduced in 2010), was a mere clarificatory endeavour, explicating the implicit and inherent meaning of Section 65 (105)(zzzz). Clause (v) is clearly an amendment which expands the scope of the taxable service; and prospectively.*

*14. Clause 75 of the Bill (which later came to be enacted as Finance Act, 2010) has proposed insertion of sub-clause (v) in Explanation I in Section 65(105)(zzzz) of the Act. The memorandum explaining the provisions in Finance Bill, 2010 also indicates that the amendments are being made in the definition of 'renting of immovable property' service inter alia levy of service tax on renting of vacant land where there is an agreement between lessor and lessee for undertaking construction of building or structure on such land for furtherance of business or commerce during the tenure of the lease. The C.B.E.&C. Board Circular No. 334/2010-TRU, dated 26-2-2010 (in paragraph 3) explains the purpose of the amendments to Section 65(105)(zzzz). Accordingly, the Circular explains that amendments are being made in the definition of this taxable service to provide that renting of vacant land where there is an agreement or contract between the lessor and lessee for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease, shall be subjected to service tax. The statement of objects and reasons accompanying the Finance Bill, 2010 also clarify that clause 75 of the Bill seeks to amend Chapter V of the Finance Act, 1994; to modify the scope of certain taxable services including the taxable service defined and enumerated in Section 65(105)(zzzz),*

*of the Act. These several contemporaneous exposition and administrative constructions and the scope of sub-clause (v) of Explanation I in Section 65(105)(zzzz) fortify the conclusion the scope of sub-clause (v). To modify and expand the scope of the taxable service to cover and include vacant land on lease or licence for construction of a building or a temporary construction at a later stage to be used for furtherance of business or commerce, within the ambit of 'immovable property' is thus the taxable service. Since the introduction of this sub-clause in Explanation I expands the scope of the taxable service and renders the taxable (a) hitherto non-taxable transaction, and absent of explicit retrospective reach provided to the amendment and insertion of this sub-clause, these transactions covered by this sub-clause of the Explanation have only the prospective operation.*

*15. On the above analysis, renting of vacant land by way of lease or licence (irrespective of the duration or tenure), for construction of a building or a temporary structure for use at a later stage in furtherance of business or commerce is a taxable service only from 1-7-2010, and not so, earlier to this date."*

**20.** *In our opinion the findings recorded by the Tribunal on the aforesaid aspect of the matter are legally justified and we see no good reason to take any different view in the matter."*

4.5 Even otherwise we do not find any merits in the said submission because the Larger Bench of the Tribunal in the case of Rajasthan State Industrial Development & Investment Corporation Ltd. & Others V/s Commissioner of Central Excise & Service Tax in Service Tax Appeal No.50553 of 2017 having Interim Order No.01/2025 dated 27.01.2025 while commenting on the Tribunal judgment referred by the Appellant in case of Greater Noida has observed 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. "*

4.6 However be that it is we are concerned that the period after 01.07.2012 in this case Larger Bench has in the above order observed follows:-

**From 01.07.2012**

*41. The period involved in the appeal filed by RIICO is from 01.10.2014 to 30.06.2015.*

42. Section 65B was inserted in the Finance Act by the Finance Act 2012 w.e.f. 01.07.2012. "Service" has been defined under section 65B(44) of the Finance Act to mean any activity carried out by a person for another for consideration, and includes a declared service, but will not include an activity which constitutes merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of article 366 (29A) of the Constitution; or a transaction in money or actionable claim.

43. Section 66B of the Finance Act deals with charge of service tax on and after the Finance Act 2012. It provides that there shall be levied a service tax at the rate of fourteen percent on the value of all services, other than those service specified in the negative list. Section 66D of the Finance Act deals with negative list of services. Section 66E of the Finance Act deals with "declared services" and, amongst others, includes at (a) "renting of immovable property".

44. Learned counsel for the appellant submitted that section 65B(44) of the Finance Act, which defines "service", excludes an activity which constitutes merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner and as the word "title" is not restricted to absolute ownership of any immovable property but would also include ownership of subsidiary rights, lease of immovable property would be a transfer of "title" in the immovable property and, therefore, would fall outside the ambit of "service". Elaborating this submission, learned counsel submitted that though the term "title" is neither defined under the Finance Act or the Central Excise Act, it includes all rights capable of being enjoyed and secured under the law. Learned counsel also submitted that holding a legal title to land would certainly be included, but rights amounting to less than full legal title would also be included.

*According to the learned counsel, as the word "title" means right to ownership of property, and property really includes and means the totality or the bundle of rights which constitute the ownership, there is really no distinction between the passing of title and the passing of the property in the goods.*

*45. Learned special counsel appearing for the department, however, refuted the aforesaid contentions advanced by the learned counsel for the appellant and submitted that "premium" would also be eligible to service tax from 01.07.2012.*

*46. The contention of the learned counsel for the appellant that "renting of immovable property" is excluded from leviability of service tax by virtue of sub-clause (a)(i) of section 65B (44) of the Finance Act cannot be accepted. It needs to be noted that "renting" has been defined in section 65(41) of the Finance Act to mean allowing, permitting or granting access, entry, occupation, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.*

*47. "Premium" is a payment for being allowed to take possession of the immovable property. It is a price paid for a transfer of a right to enjoy the property. The lessor, who owns and possesses the property transfers the possession to another for a price. There can, therefore, be no doubts that „premium" is the amount received for "renting" of immovable property.*

*48. This apart, section 65B (44) of the Finance Act defines "service" to mean any activity carried out by a person for another for consideration, and includes a "declared service". It is seen that consideration is received in the form of premium which would be included in the definition of "renting". "Renting of immovable property" is a "declared*

*service” under section 66E of the Finance Act. Once “renting of immovable property” is a declared service and so taxable under section 66B of the Finance Act, it cannot be contended by the appellant that it will also be included in those services which are excluded under section 65B (44) of the Finance Act, for it can never be the intention of the legislature to include a “service” as exigible to service tax and at the same time also exclude that “service” from taxability. The contention of the appellant that it is excluded from taxability under sub-clause (a)(i) of section 65B(44) of the Finance Act cannot also be accepted for this reason.*

### **CONCLUSION**

*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.”*

4.7 In light of the above, we do not find any merits in the submissions made by the Appellant/Counsel for the Appellant in this regard.

4.8 With regards to the demand in respect of the parking chargers, the impugned order do not records any adverse findings but has remanded the matter to re-quantify. Even otherwise it is now settled that commercial activities by the Statutory Authorities are subject to Service Tax. The Hon’ble Supreme Court in the case of *Krishi Upaj Mandi Samiti 2022* (58) G.S.T.L. 129 (S.C.) has observed as follows:-

"6. At the outset, it is required to be noted that the respective Market Committees are claiming exemption under the 2006 circular. The exemption circular issued by the Board reads as under :-

**Circular No. 89/7/2006, dated 18-12-2006 :-**

"A number of sovereign/public authorities (i.e., an agency constituted/set up by Government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.

A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

The issue has been examined. The Board is of the view that the 2. activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provision of the relevant statute, and it is deposited into the

*Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/ public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.*

*However, if such authority performs a service, which is not in the 3. nature of statutory activity and the same is undertaken for consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.”*

**7.** *As per the exemption circular only such activities performed by the sovereign/public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning.*

**8.** *The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.*

**8.1** *It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.*

**8.2** *The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.*

**8.3** *As per the law laid down by this Court in a catena of decisions, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is so not found in the present case.*

**8.4** *Now, so far as the submission on behalf of the respondent that in the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption notification, when it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language. Thus, there is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification.*

**9.** *In the present case, it is the case on behalf of the appellants that the activity of rent/lease/allotment of shop/land/platform/space is a statutory activity and the Market Committees are performing their statutory duties cast upon them under Section 9 of the Act, 1961 and therefore they are exempted from payment of service tax on such activities.*

*The aforesaid submission seems to be attractive but has no substance. Section 9(2) is an enabling provision and the words used is "market committee may". It is to be noted that in so far as sub-section (1) of Section 9 is concerned, the word used is "shall". Therefore, wherever the legislature intended that the particular activity is a mandatory statutory, the legislature has used the word "shall". Therefore, when under sub-section (2) of Section 9, the word used is "may", the activities mentioned in Section 9(2)(xvii) cannot be said to be mandatory statutory duty and/or activity. Under Section 9(2), it is not a mandatory statutory duty cast upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders. Hence, such an activity cannot be said to be a mandatory statutory activity as contended on behalf of the appellants. Even the fees which is collected is not deposited into the Government Treasury. It will go to the Market Committee Fund and will be used by the market committee(s). In the facts of the case on hand, such a fee collected cannot have the characteristics of the statutory levy/statutory fee. Thus, under the Act, 1961, it cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/platform on rent/lease. If the statute mandates that the Market Committees have to provide the land/shop/platform/space on rent/lease then and then only it can be said to be a mandatory statutory obligation otherwise it is only a discretionary function under the statute. If it is discretionary function, then, it cannot be said to be a mandatory statutory obligation/statutory*

activity. Hence, no exemption to pay service tax can be claimed.

**10.** The next provision relied upon by the appellants - respective Market Committees is Rule 45 of the Rajasthan Agricultural Produce Markets Rules, 1963 (hereinafter referred to as "Rules, 1963"), which reads as under :-

**"45. The Market Committee fund.** - All money received by the Market Committee shall be credited to the fund called the Market Committee fund. Except where Government on application by the Market Committee or otherwise shall direct, all money paid into the Market Committee fund shall be credited at least once a week in full into Government treasury or sub-treasury, or a bank duly approved for this purpose by the Director. All balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn upon except in accordance with these rules."

**10.1** Now, so far as the submission on behalf of the appellants relying upon Rule 45 of the Rules, 1963 that the fees, which is collected shall be deposited with the Government Treasury and therefore also the Market Committees are exempted from payment of service tax is concerned, it is to be noted that on fair reading of Rule 45, the amount of fee so collected on such activities - rent/lease shall not go to the Government. Rule 45 provides how the money received by the Market Committees shall be invested and/or deposited. It provides that all money received by the Market Committee shall be credited to the fund called the Market Committee Fund. It further provides that all money paid into the Market Committee Fund shall be credited once a week in full into Government Treasury or sub-treasury, or a bank duly approved for this purpose by the Director and all balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn except in accordance with the Rules. Therefore, it does not provide that on deposit of the money received by the Market

*Committees into the Government Treasury/sub-treasury or a bank duly approved, it ceases to be the Market Committee Fund. It will continue to be the Market Committee Fund. Even it is the case on behalf of the appellants that the fees collected, which will be deposited in the Market Committee Fund will be utilized by the Market Committee for expanding/benefit of the Market Committee etc.”*

4.9 Hon'ble Allahabad High Court has in the case of Greater Noida Authority [2015 (40) S.T.R. 95 (All.)] has held as follows:

**"30.** ....

*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."*

4.10 In case of Ahluwalia Contracts (I) Ltd. [2015 (38) S.T.R. 38 (Tri. - Del.)] following was observed:

**"6.** *As regards the contentions of the appellants that the flats made for Delhi Development Authority (DDA) were to be treated as meant for DDA's personal use, this contention is totally untenable because these flats were allotted to individuals and not meant for DDA or for its employees. Therefore, the service rendered with regard to construction of flats for DDA is taxable under CCS. The buildings constructed for BSNL, Reliance or Municipal Corporation clearly satisfy the definition of "Commercial or Industrial Construction Service" (CICS). BSNL is a*

*commercial organisation as is Reliance. Even the Municipal Corporation buildings are not outside the purview of commercial or industrial construction; indeed, many of its buildings are rented to various organisations. A claim has been made that the buildings made for the said hospitals is outside the purview of CICS on the ground that they were made for the charitable organisations. In this regard, there is no ambiguity that charitable organisation is not prevented from carrying out commercial activity; the only condition is that the profit so generated has to flow back into the organisation towards fulfilment of its charitable purposes. Thus, merely because the hospitals were constructed for the charitable organisations do not make the hospitals per se non-commercial. Indeed these hospitals are not non-commercial and charge the patients for the medical services."*

4.11 The Order-In-Original discusses various amendments made in the Notification 2012 onwards and find that these services do not fall under the category of exempted services w.e.f. 01.06.2015. The relevant paragraphs of the impugned order are reproduced below:-

*"b) Recipes from Vehicle Parking Charges, Park Entry Fees etc have been tended to be exempted vide Mega exemption Notification No 25/2012 ST dard 20.06 2012. The relevant part of the notification is as under:*

*In exercise of the powers conferred by sub-section (1) of section 9.3 of the Finance Act 10 12 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17 March 2012, published in the Gazette of India Extraordinary, Part II, Section 3, sub section(i) vide number GSR 210(E) dated the 17 March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts the following taxable*

services leviable thereon under section 668 of the said Act, namely:-

*In the said notification*

1. *In the opening paragraph (i) in entry 9 for the words "provided to or by" the word "provided to" shall be substituted.*

.....

*(vi) entry 24 shall be omitted.*

*Further the taxability on receipt of park entry fee may be bifurcated into two periods which is discussed as under*

**Position from 01/07/2012 to 31/05/2015:**

*From in July 2012 on introduction of the negative list-based taxation regime. all services become taxable except few identified under negative list as clearly defined under Section 660 of Finance Act, 1994. As per the Section 660) (Negative List of Services) of Finance Act, 1994 "admission to entertainment event or access to amusement facilities shall not be considered as Services.*

*Thus, the amount paid for getting an access to amusement park/facilities were not attracting Service Tax by way of inclusion in Negative by Government.*

**Position from 01/06/2015 :-**

*Clause (1) of Section 66D of Finance Act, 1994 has been omitted by the Finance Act, 2015 and the activity of access to amusement facility becomes a taxable service with effect from 01.06.2015 vide Notification No. 14/2015-ST dated 19.05 2015. Thus, the receipt towards "**admission to entertainment event or access to amusement facilities**" became a taxable service with effect from 01.06.2015.*

*Further by amendment in the Mega Exemption List of Services, vide notfn. No. 06/2015 dated 01.03.2015 which came effective from 01.06.2015 vide notification No.*

*16/2015-ST dated 19.05.2015, it has been specifically included in entry No 47 that*

*Services by way of right to admission to,*

*(i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet:*

*(ii) recognized sporting event,*

*(iii) award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than Rs 500 per person*

*In view of above discussions, I find that receipt towards vehicle parking charges is taxable in terms of notification no. 03/2013-ST dated 01.03.2013 and receipt towards park entry fee is taxable with effect from 01.05.2016 under the Act *ibid*.*

*Further the assertion of the party as discussed in para 12(1) and 12(2) above, it cannot be inferred from the submissions made by them that they have discharged their service tax liability in respect of aforesaid services viz., Rent on Commercial shops and Rent on Community Centre. They have neither given the details of the specific amount of service tax deposited against these services nor they have anywhere tendered the relevant TR-6 Challan in this regard*

*(c) Renting of immovable property to an educational institution was exempted under notification no. 25/2012-ST dated 20.06.2012 v.no: 9(b)). The relevant part of the notification is as under*

*In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3. Sub section (fi) vide number G.S.R. 210 (E), dated the 17th March, 2012, the*

*Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely*

*1. Services provided to the United Nations or a specified international organization*

.....

.....

*9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-*

*(a) auxiliary educational services; or*

*(b) renting of immovable property:*

*In the regard, I find that Mega Exemption List of Services was amended to notification no. 06/2014-ST dated 11.07.2014, and the said exemption from the services of renting of immovable property, provided to an educational institution was withdrawn vide par 18), the relevant part of the notification No. 06/2014 is being given as under:-*

*In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act 1994 (132 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3. Subsection . vide number G.S.R. 467 (E), dated the 20th June, 2012, namely*

*(1) In the said notification, in the opening paragraph:-*

*(i) After entry 24, the following entry shall be inserted namely:*

*(iii) for entry 9, the following entry shall be substituted namely*

*9. Services provided,*

*(a) by an educational institution to its students, faculty and staff*

*(b) to an educational institution, by way of.*

*(i) transportation of students, faculty and staff.*

*(ii) catering, including any mid-day meals scheme sponsored by the Government*

*(i) security or cleaning or house-keeping services performed in such educational institution:*

*(iv) services relating to admission to, or conduct of examination by, such institution."*

*Thus, on going through the above said notifications, I find that, the amount pertaining to property leased to schools/colleges by the party is chargeable to service tax w.e.f. 11.07.2014 and party's contention regarding the services provided to educational institute to be exempted, is not correct for the period contained in impugned show cause notice."*

4.12 In respect of the rent on community centre and rent on commercial services the Appellant do not dispute the demand. They have submitted before the Original Authority and the Adjudicating Authority that they have discharged the Service Tax liability. However, in this regard they failed to provide documents evidencing payment of the tax. For this purpose demand has been confirmed against the Appellant. In case the Appellant have deposited the tax and produced the relevant documents evidencing payment of tax the demand is liable to be reduced to that extent.

4.13 Penalty under Section 77 has been upheld by the impugned order. In this regard we do not find any merits as the Appellant has indeed not provided the information that was

called from them and as many as five correspondences were made. The Order-In-Original specifically reiterates that they have filed their ST-3 Returns in delayed manner and had agreed to pay late fees of Rs.4,000/- in terms of Section 70 of the Finance Act read with Rule 7C of the Service Tax Rules, 1994. Accordingly, we upheld the penalty under Section 77(i)(c) and the late fees.

5.1 In result, we do not find any merits in the appeal filed by the Appellant and the impugned order is upheld.

5.2 Appeal is dismissed.

(Pronounced in open court on 13.11.2025)

**Sd/-**  
**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**

*Nihal*