CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70414 of 2020

(Arising out of Order-in-Appeal No.33-ST/APPL/LKO/2020 dated 05.02.2020 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

Shri Satish Chandra Misra, **.....Appellant**
(17/6, Windsar Place, Council House, Lucknow-226001)

VERSUS

Commissioner, Central Excise & Service Tax, Lucknow **....Respondent**
(7A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Ajit Kumar, Advocate for the Appellant
Ms. Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70266/2026

DATE OF HEARING : 08.07.2026
DATE OF DECISION : 11.08.2026

K. ANPAZHAKAN:

Shri Satish Chandra Mishra (hereinafter referred to as the Appellant) is duly registered with the Service Tax Department for rendering the service of 'Renting of Immovable Property Service', and having Registration No.ADZPM4945LST001.

2. The Appellant has been filling Service Tax Returns regularly and discharging their Service Tax liability. It was observed that during the Financial Year 2014-15, the Appellant reported the following amounts as the 'Rent' received from the properties owned by him:-

Sl. No.	Address of the Immovable Property	Apellant's share of rent (Rs.)
1	76, Sunder Nagar, New Delhi	36,00,000.00
2	House No. 22, Sector - 15A, Noida	1,44,00,000.00
3	17/9, Windsor Place, Lucknow	4,05,000.00
4	Khushalganj Pargana, Kakori, Lucknow	60,000.00

2.1. It was alleged by the Department that the Appellant has not discharged Service Tax on the amount of 'Rent' received by him in respect of the above said properties. On the basis of the above allegations, proceedings were initiated against the Appellant which resulted in confirmation of the demand of Service Tax amounting to Rs.22,82,275/- along with interest, vide the Order-In-Original No.67/JC/SCM/ST/LKO-I/2019-20 dated 17.05.2019. A penalty of Rs.2,28,227/- was also imposed under Section 76 of the Finance Act, 1994.

2.2. On appeal, the Learned Commissioner (Appeals) upheld the demand of Service Tax alongwith interest and penalty as confirmed in the Order-In-Original. Being aggrieved, the Appellant is in appeal before the Tribunal.

3. The Appellant submits that all the four premises mentioned at Sl. Nos 1 to 4 at para 2 supra, have been given on rent for residential purposes and hence the rent received from the said properties were exempt from payment of Service Tax, as provided under Section 66D(m) of the Finance Act, 1994. The Learned Counsel appearing on behalf of the Appellant further submits that in respect of the 03 properties mentioned at Serial Nos. 1, 2 & 3 in the table supra, for the subsequent period i.e., 2016-17, the learned Commissioner (Appeals) has allowed the exemption as provided under Section 66D(m) of the Finance Act, 1994.

3.1. In respect of the property mentioned at Serial No.4 supra, the Appellant submitted that the Agreement entered by them with the tenants vide 'Lease Agreement' dated 01.04.2011, in the Agreement, it is categorically mentioned that the said premises has been rented out for the purpose of residence of the employees. Accordingly, he submits that all the rent received in respect of the above said 04 premises are exempt from payment of Service Tax. Hence, the demand of Service Tax confirmed in the impugned order is legally not sustainable.

3.2. Further, the Appellant submits that they were under the bona fide belief that they were not liable to pay Service Tax and hence no penalties can be imposed on them.

4. The Learned Authorized Representative submits that the Appellant has not submitted the lease agreements in respect of the properties rented out by him, before the Lower Authorities. Accordingly, demand of service tax has been confirmed. Thus, he supported the impugned order.

5. Heard both the sides and perused the appeal documents.

6. We find that the Appellant has rented out the above mentioned 04 properties and claimed that they have given the properties on rent for residential purposes. Section 66D(m) of the Finance Act, 1994 exempts residential dwellings for use as residence, from payment of service tax. For ready reference Section 66D(m) is reproduced below:-

"services by way of renting of residential dwelling for use as residence"

6.1. We find that the demand in this case has been confirmed for the period 2014-15. We also find that for the subsequent periods, the properties mentioned at Serial Nos. 1,2 & 3 supra have been considered as properties rented out for residential purposes and the exemption provided under Section 66D(m) of the Finance Act, 1994 has been extended by Order-In-Appeal No.259-ST/APPL/LKO/2022 dated 06.04.2022 in Appellant's own case for the period 2016-17. For ready reference the observations made by the learned Commissioner (Appeals) while extending the benefit of exemption is reproduced below:-

> "On going through the Lease deed submitted by the appellant entered into between the appellant and M/s P. B. S. Foods Pvt. Ltd. I find that the said Lease deed and its

Supplementary deed was made on 01.09.2009 & 05.09.2009 respectively, in respect to the appellant's 1/3rd owned property situated at premises **76, Sunder Nagar, New Delhi** for a period of five years for rent purpose by M/s P.B.S Foods Pvt Ltd. In the Supplementary deed, it is clearly mentioned at Sr. No.1 that the tenant i.e. M/s P.B.S Foods shall pay Rs.3,00,000/- per month as rent to the appellant against use of the property for residential purpose. The above lease deed was further renewed from 01.09.2014 to 31.08.2019 on the same terms and condition. I find that "services by way of renting of residential dwelling for use as residence" is covered under the clause (m) of Section 66D of the Finance Act, 1994 i.e. its covered under Negative list, therefore, I am in agreement with the appellant's plea that the rent received from that property in F.Y.2016-17 was exempt from Service Tax. As regards the Second Lease deed made between the appellant and M/s Forum Pharma Private Limited, and its Supplementary deed which was made on 30.04.2010 & 10.05.2010 respectively in respect to the appellant's owned property situated at **House No.22, Sector 15A, Noida, Uttar Pradesh** for a period of five years for rent purpose by M/s Forum Pharma Private Limited, I find that in this Lease deed too it is clearly mentioned at Sr. No.1 of the Supplementary Deed dated 10.05.2010, that the tenant i.e. Forum Pharma Private Limited shall pay Rs. 12,00,000/- per month as rent for the appellant owned property against use of the property for residential purpose. The above lease deed was further renewed from 01.04.2015 to 31.03.2020 on the same terms and conditions. Therefore, the rent received by the appellant from M/s Forum Pharma Private Limited in F.Y.2016-17 against this residential property is also covered under clause (m) of Section 66D of the Finance Act, 1994 and exempt from Service tax. Now I examine the third lease deed made between the appellant and M/s Misra and Misra Associates on 01.04.2011, in respect to the appellant's owned property situated at **17/9, Windsor**

Place, Lucknow and find that the same was a residential premise which was rented out for residential purpose only. The same deed was further renewed form 01.04.2014 to 31.03.2017 on the same terms and conditions. In this regard, an affidavit/declaration was also submitted by M/s Misra & Misra Associates wherein it was declared that "rented property was used for residence purpose accordingly same was out of purview of Service Tax. Misra and Misra Associates did not pay any Service tax"

6.2. From the above, we find that the Lower Authority has examined the lease deed executed by the Appellant with the tenants and concluded that the three properties mentioned above at Serial No. 1, 2 & 3 have been rented out for residential purpose and allowed the benefit of Section 66D(m) of the Finance Act, 1994. Thus, we find that the evidence available on record categorically indicate that the said 03 premises mentioned at Serial No. 1, 2 & 3 at para 2 supra are meant for residential purposes. Accordingly, we hold that the Appellant is eligible for exemption as provided under Section 66D, in respect of the 03 properties mentioned at Serial No. 1, 2 & 3 at para 2, as the evidences indicate that they were rented out for residential purposes. Hence, we hold that the demand confirmed in respect of the said three properties in the impugned order is legally not sustainable and accordingly we set aside the same.

6.3. In respect to the fourth property located at Kushalganj Pargana, Kakori, Lucknow, the Appellant submitted the lease deed executed w.e.f. 01.04.2011. For ready reference, the relevant part of the lease deed is reproduced below:-

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

ONE HUNDRED RUPEES

रु. 100

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

उत्तर प्रदेश UTTAR PRADESH

AR 443660

LEASE DEED

This deed is made on 1st day of April - 2011 by and between 1. **Kapil Misra** Son of Shri Satish Chandra Misra, 2. **Kalpna Misra** wife of Shri Satish Chandra Misra and 3. **Satish Chandra Misra** son of Late Shri T.S. Misra all residence of 17/6, Windsor Place, Lucknow hereinafter referred to as the **"LESSOR"**, which expression shall include therein heirs, successors, legal representatives and assigns of the ONE PART.

AND

Ayaz Ahmad, Son of Sh. Shahab Ahmad Resident of 883/4, Sector-8, Vikas Nagar, Lucknow, 226001, Uttar Pradesh, India hereinafter called the "LESSEE" of the OTHER PART.

Kalpna Misra

WHEREAS the **LESSOR** is the absolute owner and in possession of the **Residential Building at Village Khushalganj, Pargana Kakori, Tahsil and District Lucknow** hereinafter called as the 'premises'.

AND WHEREAS the **LESSOR** agrees to let out lease and the **LESSEE** agrees to take on rent the said premises for the purpose of residence of his employees with effect from 1st April, 2011 on the terms and conditions agreed between the parties as hereinafter mentioned.

NOW THIS WITNESSTH AS FOLLOWS:-

1. That the **LESSEE** shall pay to the **LESSOR** of the premises as mentioned above the rent of Rs. 15,000/- [Rupees Fifteen Thousand only] per month on or before 7th day of each calendar month in the following manner:
   (i) i.e. Rs. 5,000/- (Rupees Five Thousand only) per month which is the 1/3rd of total rent in the name of Mr. Kapil Misra.
   (ii) i.e. Rs. 5,000/- (Rupees Five Thousand only) per month which is the 1/3rd of total rent in the name of Smt. Kalpna Misra.
   (iii) i.e. Rs. 5,000/- (Rupees Five Thousand only) per month which is the 1/3rd of total rent in the name of Mr. Satish Chandra Misra.

2. That the lease has been granted for a period of three years, commencing from 01.04.2011, the lease may be further renewed on the expiry of the initial term for such further period and on such terms and conditions as may be mutually agreed upon. After the termination/determination of the lease, the occupation of the **LESSEE** shall be deemed to be unauthorised and the **LESSOR** will be entitled to Mesne Profits from the **LESSEE** @ Rs. 1,000 per day for each day of such unauthorized, occupation which shall be adjustable from the security amount and the balance, if any, to be recovered from the **LESSEE**.
3. The **LESSEE** shall not sublet or part with the demised premises or any other portion thereof during the period of lease. However the **LESSEE** shall be at liberty to use the premises for residential purposes of himself or his staff during agricultural operation in surrounding places. However in all such cases and circumstances the **LESSEE** shall continue to be wholly and solely responsible and liable for compliance of all terms and conditions of this agreement.
4. That Municipal taxes, property tax insurance of the building and for any other statutory levies concerning the premises from time to time shall be paid by the **LESSEE** to the concerned authorities.
5. That the Lessee shall pay electric (power and light) charges as per the meter and telephone and water charges as per the bills of the telephone

Kalpna Misra

6.4. From the lease deed extracted above, we find that the said premises has been rented out for residential purposes of the employees. Accordingly, we hold that the Appellant would be eligible for exemption as provided under Section 66D(m) in respect of the building mentioned at Serial No.4 at Kushalganj Pargana, Kakori, Lucknow, as the documentary evidences submitted by the Appellant indicate that the said property has been rented out for residential purposes. Hence, the demand confirmed in the impugned order in respect of the rent received from this building is also liable to be set aside. Accordingly, we set aside the same.

7. As the demand itself is not sustainable, the question of imposing penalty does not arise.

8. In view of the above, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Pronounced in open court on 11.08.2026)

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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