CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61475 of 2018

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-693-18 dated 19.03.2018 passed by the Commissioner (Appeals), CGST, Ludhiana]

Municipal Council ......**Appellant**
Fatehgarh Churian,
Distt. Gurdaspur, Punjab 143602

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Ludhiana ......**Respondent**
GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

<u>APPEARANCE:</u>

Mr. Naveen Bindal and Mr. Aman Garg, Advocates for the Appellant

Mr. Narinder Singh, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61490/2025

DATE OF HEARING: 29.09.2025
DATE OF DECISION: 13.10.2025

<u>S. S. GARG</u> :

The present appeal is directed against impugned order dated 19.03.2018 passed by the Commissioner (Appeals), CGST-Ludhiana, whereby the learned Commissioner (Appeals) has partially allowed the appeal of the appellants by reducing the service tax liability from

Rs.7,10,469/- to Rs.6,11,589/- after extending benefit of small scale exemption.

2. Briefly stated facts of the present case are that the appellants are engaged in providing taxable services under the category of 'Renting of Immovable Property Services' under Section 65(105)(zzzz) of the Finance Act, 1994. The allegation of the department is that the appellants are getting rent from leasing of various properties but are not paying the service tax and have not got registered with the service tax department. Thereafter, information was sought from the appellants regarding the amount of rent/lease received by them in respect of said services during 01.07.2007 to 31.12.2010. It was found that the appellants had collected the gross amount of Rs.71,13,664/- from 'Renting of Immovable Properties' on which service tax of Rs.7,89,953/- was involved, which was not paid by the appellants. On this allegation, a show cause notice dated 19.09.2012 was issued proposing the demand of service tax amounting to Rs.7,89,953/- along with interest and penalties. After following the due process, the Adjudicating Authority vide the Order-in-Original dated 24.09.2013, gave the benefit of cum-tax and confirmed the service tax demand of Rs.7,10,469/- along with interest and penalties. Aggrieved by the said Order-in-Original, the appellants filed appeal before the Commissioner (Appeals) who vide the impugned order, has reduced the said demand to Rs.6,11,589/- and has also reduced the penalty under Section 78 and dropped the penalty under Section 76.

Aggrieved by the impugned order, the appellants have filed the present appeal before us.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellants submits that the impugned order, confirming the demand by invoking the extended period of limitation, is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 He further submits that the appellants are controlled by the state government and are constituted under the Punjab Municipal Act, 1911; they were under *bona fide* belief that their activity would not attract service tax liability. He further submits that change in respect of enlargement of scope of 'Renting of Immovable Property Services' introduced by the Finance Act, 2010 was challenged by the assessee PAN India and during the impugned period, the Courts had taken a view that the amendment was unconstitutional and had even granted the Stay in this regard.

4.2 He further submits that the Hon'ble Apex Court vide its order in the case of **Union of India vs. UTV News Ltd [2018 (13) GSTL 3 (SC)]**, while examining a question directly relatable to the scope and ambit of Entry 49 of List-II of the Seventh Schedule to the Constitution of India dealing with "Taxes on Lands and Buildings", has categorically ordered all the cases on this issue to be deferred until the matter before the nine judges bench in the case

Mineral Area Development Authority and others vs. Steel Authority of India and others [(2011) 4 SCC 450] is decided.

4.3 He further submits that when the constitutional validity of the levy is yet to be decided finally which is a dispute of interpretation in nature, then invoking the extended period of limitation is not justified. He further submits that extended period of limitation can only be invoked in cases where fraud, collusion, willful misstatement, suppression of facts or contravention of provisions with intent to evade payment of tax etc are established; whereas, in the present case, the Revenue has not been able to establish any of the ingredients which are required to invoke extended period, as laid down by the Hon'ble Apex Court in the case of **Gopal Zarda Udyog vs. CCE [2005 (188) ELT 251 (SC)]**.

4.4 He further submits that allegations of *mala fide* cannot be labelled against the appellants as held in the following cases:

- **Municipal Corporation vs. CCE, Raipur – 2018-TIOL-687-CESTAT-DEL.**
- **Surat Municipal Corporation vs. CCE – 2017 (50) STR 265 (Guj.)**
- **Surat Municipal Corporation vs. CCE – 2006 (4) STR 44 (Tribunal)**

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record. In the present case, the Counsel for the appellants has only argued on limitation and has

submitted that the demand of service tax amounting to Rs.6,11,589/- is barred by limitation. In this regard, we find that demand of service tax on 'Renting of Immovable Properties' has been subject of litigation from the very beginning. There is no dispute that the activity of the appellants was 'Renting of Immovable Properties', though the service in relation to 'Renting of Immovable Properties' has been brought in the Finance Act with effect from 01.06.2007 by introducing Section 65(105)(zzzz); the validity of this levy had been challenged before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court, vide its judgment dated 18.04.2009 in the case of **Home Solution Retail India Ltd vs. Union of India [2009 (237) ELT 209 (Del.)]**, held that mere 'Renting of Property' by itself cannot be called as 'service' and cannot attract service tax. It is only vide retrospective amendment introduced with effect from 01.06.2007 by Finance Act, 2010 that the 'Renting of Immovable Property" by itself became a taxable service neutralizing the judgment of the Hon'ble Delhi High Court. In view of these circumstances, we are of the opinion that the appellants cannot be accused of suppressing the relevant information from the department as during the period of dispute, there was doubt about the levy of service tax on 'Renting of Immovable Property Services' till the decision was put to an end by retrospective amendment made by Finance Act, 2010.

7. Further, we find that the Hon'ble Apex Court in the case the **Continental Foundation Joint Venture vs. CCE, Chandigarh-I**

[2007 (216) ELT 177 (SC)] has held that during the period of dispute when there was doubt about interpretation of some provisions of law on account of conflicting judgment which was later on resolved by a Larger Bench, the extended period under proviso to Section 11A(1) of the Central Excise Act, 1944 cannot be invoked.

8. Further, we find that Chandigarh Bench of the Tribunal in the case of **M/s VIR Enterprises vs. CCE & ST, Chandigarh-I [vide Final Order No. 60065/2025 dt. 13.01.2025 in Appeal No. ST/1101/2011]** as well as Chennai Bench of the Tribunal in the case of **Diocese of Tanjore Society vs. CCE & CGST, Trichy [vide Final Order No. 40795/2023 dt. 15.09.2023 in Appeal No. ST/40813/2014]** have considered the identical issue. The relevant finding of the Chennai Bench in **Diocese of Tanjore Society** (supra)'s case is reproduced herein below:

> "**6**. The appellant has stated that changes proposed by the Union Budget, 2010 in respect of enlargement of scope of Renting of Immovable Property Services' became a part of Finance Act, 2010 and is applicable from the date to be notified. The same was challenged by the assessees PAN India and during the impugned period, the courts had taken a view that the amendment was unconstitutional and had even granted a stay in this regard. Further, the Apex Court vide its order in Union Of India vs UTV News Ltd., [2018 (13) GSTL 3 (SC)], while examining a question directly relatable to the scope and ambit of Entry 49 of List II of the Seventh Schedule to the Constitution of India dealing with "Taxes on lands and buildings" has categorically ordered all the cases on this issue to be deferred until the matter before the nine judges Bench in Mineral Area Development Authority and others vs. Steel Authority of India and others ((2011) 4 SCC 450) is decided. Therefore, the owners were under the bonafide belief that the said activity would not attract service tax liability. In a case where the constitutional

> validity of the levy is yet to be decided the dispute is interpretational in nature. We agree with the appellant hence invocation of extended period is not justified."

9. In view of the circumstances and the nature of levy as well as the decisions of the Supreme Court, the High Court and the Tribunal as cited supra, and retrospective amendment made by Finance Act, 2010, we are of the considered opinion that invocation of extended period of limitation is not justified in the present case.

10. Further, we find that when the extended period is not sustainable, the demand for normal period would also be dropped as held by this Tribunal in the case of **M/s VIR Enterprises** (supra). In the said case, the Tribunal has followed the judgment of Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks [2014 (36) STR 37 (Cal.)** wherein the Hon'ble Calcutta High Court observed as follows:

> "92. When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transaction, once it is found that the extended period of limitation is not invocable. This proposition find support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4SCC 630=2003 (153) E.L.T. 241 (S.C.)."

In the **M/s VIR Enterprises** (supra)'s case, the Tribunal has also followed the decision of Principal Bench of the Tribunal in the case of **Shyam Spectra Pvt Ltd [Final Order No. 56196/2024 dt. 31.07.2024]**. In view of these facts, we find that the impugned demand cannot be sustained even for the normal period.

11. In result, the impugned order is set aside and the appeal of the appellant is allowed.

(Order pronounced in the open court on 13.10.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi