

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 58983 of 2013

[Arising out of Order-in-Original No. 83/ST/CHD-II/2012 dated 07.08.2012 passed by the Commissioner of Central Excise, Chandigarh-II]

Rupinder Sagar Garg

.....Appellant

S/o Late Sh. Sham Lal,
House No. 276, Ajit Nagar,
Patiala, Punjab

VERSUS

**Commissioner of Central Excise and
Service Tax, Chandigarh-II**

.....Respondent

Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

WITH

Service Tax Appeal No. 58984 of 2013

[Arising out of Order-in-Original No. 83/ST/CHD-II/2012 dated 07.08.2012 passed by the Commissioner of Central Excise, Chandigarh-II]

Harpreet Kaur

.....Appellant

W/o Sh. Rupinder Sagar Garg,
House No. 276, Ajit Nagar,
Patiala, Punjab

VERSUS

**Commissioner of Central Excise and
Service Tax, Chandigarh-II**

.....Respondent

Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

AND

Service Tax Appeal No. 58985 of 2013

[Arising out of Order-in-Original No. 83/ST/CHD-II/2012 dated 07.08.2012 passed by the Commissioner of Central Excise, Chandigarh-II]

Ram Murti

.....Appellant

W/o Late Sh. Sham Lal,
House No. 276, Ajit Nagar,
Patiala, Punjab

VERSUS

**Commissioner of Central Excise andRespondent
Service Tax, Chandigarh-II**

Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

APPEARANCE:

Mr. Aman Bansal and Mr. Bharat Jain, Advocates for the Appellants

Mr. Yashpal 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. 61646-61648/2025

DATE OF HEARING: 16.07.2025

DATE OF DECISION: 12.11.2025

S. S. GARG :

These three appeals are directed against a common impugned Order-in-Original No. 83/ST/CHD-II/2012 dated 07.08.2012 passed by the Commissioner of Central Excise, Chandigarh-II, whereby the demand of service tax of Rs.12,93,803/- under Section 73 of the Finance Act, 1994, along with interest under Section 75 and penalty under Section 78, was confirmed for the period from 01.07.2010 to 31.03.2011. Since the issue involved in all these appeals is identical and all three appeals are arising out of a common impugned order, therefore, all three appeals are taken up together for discussion and decision.

2. Briefly stated facts of the present case are that all three appellants were joint owner of immovable property situated at 22,

Bhupindra Road, Patiala, Punjab and were receiving rental income from M/s Columbia Asia Hospital Pvt Ltd by renting their above said immovable property. Further, Shri Rupinder Sagar Garg and Smt. Harpreet Kaur were also receiving rental income from other properties owned by them. During the survey conducted to identify the service providers under the category of 'Renting of Immovable Property', it was found that M/s Columbia Asia Hospital Pvt Ltd was paying huge amount as rent to the owners of the land on which the said hospital was constructed. However, all the appellants had shown in their ST-3 Returns 'the gross amount received in money against service provided' as NIL, whereas during the period, they had received the amounts against the service of 'Renting of Immovable Property' as per the data received from M/s Columbia Asia Hospital Pvt Ltd and Income Tax Department. As per the department, the appellants did not provide any details to the department despite letters and summons. On these allegations, a show cause notice dated 31.01.2012 was issued to the appellants proposing the demand of service tax amounting to Rs.60,74,673/- along with interest and penalties for the period 01.09.2007 to 31.03.2011. The Adjudicating Authority, vide the impugned Order-in-Original, adjudicated the said show cause notice; the Adjudicating Authority dropped the demand of Rs.47,42,053/- for the period prior to 01.07.2010 and confirmed the demand of Rs.12,93,803/- for the period post 01.07.2010 under Section 73 of the Act by invoking the extended period along with interest under Section 75 and also

imposed the penalty under Section 78 of the Act. Aggrieved by the said order, the appellants have filed present appeals before us.

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

4. The learned Counsel for the appellants at the outset submits that he does not contest the matter on merits but only confines to invocation of extended period which, according to him, is not sustainable in law.

4.1 He submits that the show cause notice was issued by invoking the extended period of limitation without establishing suppression on the part of the appellants with intent to evade payment of tax. He further submits that each of the elements provided for invoking the extended period of limitation as per proviso to Section 11A(1) of the Central Excise Act or Section 73 of the Finance Act requires the intention to evade payment of tax/duty as laid down by the Hon'ble Supreme Court in the case of **Gopal Zarda Udyog vs. CCE, New Delhi – [2005 (188) ELT 251 (SC)]**.

4.2 He further submits that there is no whisper in the impugned order as to how the elements have been satisfied and therefore, liable to be quashed in light of the judgment of Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks Ltd vs. UOI – [2013 (31) STR 653 (Cal.)]**.

4.3 He further submits that the appellants were under a *bona fide* belief that 'Renting of Immovable Property' is not subject to service tax. The change in respect to 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.

4.4 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 that 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.

4.5 He further submits that the constitutional validity of the levy is yet to be decided finally which is a dispute of interpretation in nature and hence, invoking the extended period of limitation is not justified as held by the Tribunal in the case of **Diocese Of Tanjore Society vs. CCE & CGST, Trichy – [(2024) 21 Centax 422 (Tri. Chennai)]**.

4.6 He also submits that the appellants are eligible for the benefit of exemption contained under Notification No. 06/2005-ST dated 01.03.2005 as the appellants have been wrongly considered as 'Association of Persons'. For this, he relies on the decision of

Tribunal in the case of **Ramesh Kumar Chaudhary vs. CST, Delhi-IV – [(2025) 26 Centax147 (Tri. Chan.)]**.

4.7 As regards the interest and penalty, the learned Counsel submits that when the demand itself is not sustainable, the question of interest and penalty does not arise.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order. Further, he submits that in the present case, the Commissioner has already given the substantial benefit and dropped the demand of Rs.47,42,053/- for the period prior to 01.07.2010.

5.1 He further submits that in the show cause notice, extended period has rightly been invoked because the appellants, despite summons issued to them, did not supply the necessary information sought for by the department; subsequently the department got the information from the leasee i.e. M/s Columbia Asia Hospital Pvt Ltd.

5.2 He further submits that the service tax on 'Renting of Immovable Property Services' was levied by Finance Act, 2007 vide Notification No. 23/2007-ST dated 22.05.2007 w.e.f. 01.06.2007; 'Renting of Immovable Property' is chargeable to service tax under Section 65(105)(zzzz) of the Finance Act as amended.

5.3 He further submits that the appellants took the registration under the Service Tax w.e.f. 17.02.2009 and have suppressed the value of services provided by them from the department to evade

the payment of tax; therefore, the extended period has rightly been invoked.

5.4 In support of his submissions, the learned Authorized Representative relies on the following case-laws:

- **Patanjali Yogpeeth Trust vs. CCE, Meerut – 2018 (363) ELT 144 (Tri. Del.)**
- **Aircell Digilink India Ltd vs. CCE, Jaipur – 2006 (3) STR 386 (Tri. Del.)**
- **Bharti Cellular Ltd vs. CCE, Delhi – 2006 (3) STR 423 (Tri. Del.)**
- **Bajaj Travels Ltd vs. CST – 2012 (25) STR 417 (Del.)**

6. We have considered the submissions made by both the parties and perused the material on record. We find that in the present case, the department had issued the show cause notice by invoking the extended period of limitation. We further find that 'Renting of Immovable Property' was brought in the Finance Act with effect from 01.06.2007 by introducing Section 65(105)(zzzz) and 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 was 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, which was also further challenged before the Hon'ble Delhi

High Court and the Hon'ble Delhi High Court vide its order dated 18.05.2010 granted the Stay; subsequently, the Notification No. 24/2010 dated 22.06.2010 was issued to notify the amendment in the definition of 'Renting of Immovable Property Services' with effect from 01.07.2010; the said amendment was given retrospective effect from 01.06.2007, which was again stayed by the Hon'ble Delhi High Court vide its order dated 14.12.2010.

7. Further, we find that in the case of **Union of India vs. UTV News Ltd** (supra), the Hon'ble Supreme Court has been referred the question of law to the Larger bench of the Supreme Court vide **Mineral Area Development Authority vs. Steel Authority of India** (supra), which is still pending before the Hon'ble Apex Court.

8. Further, we find that when the Lease-Deed in this case was executed on 29.08.2007, at that time 'Renting of Immovable Property' was not taxable, therefore, suppression cannot be alleged against the appellants.

9. Further, we find that the identical issue has been considered by Chennai Bench of the Tribunal in the case of **Diocese Of Tanjore Society** (supra) wherein, after considering the entire history of 'Renting of Immovable Property' and various amendments brought from time to time, the Tribunal has held as under:

"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 assessee 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."

10. Keeping in view the circumstances and the nature of levy as well as the various decisions of the Supreme Court, the High Court and the Tribunal on the identical issue as cited supra, we are of the considered opinion that invocation of extended period of limitation is not justified in the present case.

11. Further, we find that it has been held by the Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks Ltd vs. UOI - [2014 (36) STR 37 (Cal.)]** that when the extended period is not sustainable, the demand for normal period would also be dropped. Relevant finding of the Hon'ble Calcutta High Court is reproduced herein below:

"**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) 4 SCC 630 = 2003 (153) E.L.T. 241 (S.C.).”

12. Further, we also find that the Principal Bench of the Tribunal, in the case of **Shyam Spectra Private Limited vs. Commr of ST, Delhi-II** [vide **Final Order No. 56196/2024 dated 31.07.2024** in **Service Tax Appeal No. 50583 of 2017**] has also followed the ratio of the judgment of Hon’ble Calcutta High Court in **Infinity Infotech Parks Ltd** (supra)’s case and has examined this issue in details.

13. In view of decisions of Hon’ble Calcutta High Court in **Infinity Infotech Parks Ltd** (supra)’s case and the Tribunal in **Shyam Spectra Private Limited** (supra)’s case, we find that the impugned demand cannot be sustained even for the normal period.

14. In result, the impugned order is set aside only on limitation; accordingly, the appeals of the appellants are allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 12.11.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)