IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No.	Appellant	Respondent
ST/41845/2014	Commissioner, Hosur Municipality	Commissioner of GST & Central Excise, Chennai – III
Arising out of Order-in-Appeal No.71/2014 (M-III) ST dated 1.5.2014 passed by Commissioner of Central Excise & Service Tax (Appeals), Chennai		
ST/41976/2015	Commissioner, Ranipet Municipality	Commissioner of GST & Central Excise, Chennai – III
Arising out of Order-in-Appeal No. 138 & 139/2015 (CXA-I) dated 16.6.2015 passed by Commissioner of Central Excise (Appeals – I), Chennai		
ST/41985/2015	Commissioner, Krishnagiri Municipality	Commissioner of GST & Central Excise, Chennai – III
Arising out of Order-in-Appeal No.141 & 142/2015 (CXA-I) dated 16.6.2015 passed by Commissioner of Central Excise (Appeals – I), Chennai		
ST/42343/2015	Commissioner, Thiruvannamalai Municipality	Commissioner of GST & Central Excise, Puducherry
Arising out of Order-in-Original No. 27/2015 (C) (ST) dated 20.8.2015 passed by Commissioner of Central Excise, Puducherry		

Appearance

Shri G. Natarajan, Advocate for the Appellants
Shri A. Cletus, Addl. Commissioner (AR) and
Shri K. Veerabhadra Reddy, JC (AR) for Respondents

CORAM

Hon’ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon’ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **19.07.2018**

Final Order Nos. **42132-42135 / 2018**

Per Bench

The common dispute in all these appeals concern taxability on amounts received by the appellants towards renting of immovable properties such as commercial complex, shops, lands etc. to various parties. The lower authorities in these cases have confirmed the demands of service tax with interest on such amounts under the head Renting of Immovable Property as defined in Section 65(105)(zzzz) of the Finance Act, 1994 and have also imposed penalties under various provisions of the Finance Act, 1994.

2. Today, when the matters came up for hearing, on behalf of the appellants, ld. Counsel Shri G. Natarajan, draws our attention to the judgment of the Hon'ble Supreme Court in Union of India Vs. UTV News Ltd. – 2018 (13) GSTL 3 (SC) wherein the question that was considered was whether levy of service tax under section 65(105)(zzzz) of the Finance Act is within the Legislative competence of Union Parliament. The Hon'ble Supreme Court took note that the very issue of legislative competence is pending before a nine Judge Bench of the Hon'ble Supreme Court on a reference made in Mineral Area Development Authority and Others Vs. Steel Authority of India Ltd. – (2011) 4 SCC 450; that in view thereof, the Hon'ble Supreme Court has opined that the matter should await the decision of the said nine Judge Bench. He also points out that the judgment of the Hon'ble Delhi High Court in Home Solutions Retails India Ltd. Vs. Union of India – 2011 (24) STR 129 (Del.) which had upheld the constitutional validity of levy of service tax of renting of immovable property has been appealed against

and is pending before the Hon'ble Supreme Court as reported in 2012 (26) STR J118 (SC). So also, another judgment of the Hon'ble Delhi High Court in Ritika Pvt. Ltd. dated 23.9.2011 which had held that service tax imposed under section 65(105)(zzzz) of the Act could not be held as unconstitutional has also been appealed against and admitted by the Hon'ble Supreme Court as reported in 2017 (52) STR J204 (SC). The ld. Counsel prays that in view of these developments, the decisions in all these appeals may be deferred till the final decision of the Hon'ble Supreme Court.

3. On the other hand, ld. ARs Shri A. Cletus, and Shri K. Veerabhadra Reddy submitted that the judgments of the Hon'ble High Court of Delhi in Home Solutions (supra) as well as Ritika Pvt. Ltd. (supra) have not been stayed by the Hon'ble Supreme Court and while admitting the appeals, the Hon'ble Supreme Court has clearly mentioned that insofar as future liability towards service tax with effect from 1.10.2010 is concerned, there is no stay. In response to the request made by the ld. Counsel for deferring the decisions in these appeals, they leave the matter to the Bench.

4. Heard both sides.

5.1 The ratio laid down by the Hon'ble High Court of Delhi in Home Solutions Retails India Ltd. (supra) and Ritika Pvt. Ltd. (supra) has been consistently followed by this Bench in all our recent decisions. No doubt, appeals against these judgments have been admitted by the Hon'ble Supreme Court on 14.10.2011 and 16.12.2011 respectively. However, as pointed out by ld. ARs, there is no stay on operation of these judgments.

5.2 Nonetheless, it cannot be ignored that in a subsequent development, vide their order dated 5.4.2018 in the matter relating to UTV News Ltd. and others (supra) relied by the ld. Counsel, the Hon'ble Supreme Court has gone into the question whether levy of service tax under section 65(105)(zzzz) ibid is within the legislative competence of Parliament or otherwise. The relevant portion of the said order of the Hon'ble Supreme Court is reproduced as under:-

> "We have heard the Learned Counsels for the parties at some length.
>
> 2. The question arising is whether "Service Tax" under Section 65(105)(zzzz) of the Finance Act, 1994 on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce is within the legislative competence of the Union Parliament.
>
> 3. The above question is 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". If the impost/levy is directly relatable to the lands/buildings contemplated in Entry 49 of List II of the Seventh Schedule to the Constitution of India we would have had no hesitation in saying that the Union Parliament would lack legislative competence to enact the particular provision in the Finance Act, 1994. At this stage, we are unable to take the said view as has been advanced before us on behalf of the individual Assessees. However, the arguments advanced may indicate that even if there is no direct nexus there may be an indirect one. Whether such indirect connection or relation would be of any relevance to decide the issue of legislative competence appears to be pending before a nine judges Bench of this Court on a reference made in an order in *Mineral Area Development Authority and Others* v. *Steel Authority of India and Others* - (2011) 4 SCC 450. The questions referred are extracted below :
>
> "1. Having heard the matter(s) for considerable length of time, we are of the view that the matter needs to be considered by a Bench of

nine Judges. The questions of law to be decided by the larger Bench are as follows :

1. Whether "royalty" determined under Sections 9/15(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957, as amended) is in the nature of tax?

2. Can the State Legislature while levying a tax on land under List II Entry 49 of the Seventh Schedule of the Constitution adopt a measure of tax based on the value of the produce of land? If yes, then would the constitutional position be any different insofar as the tax on land is imposed on mining land on account of List II Entry 50 and its interrelation with List I Entry 54?

3. What is the meaning of the expression "Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development" within the meaning of Schedule VII List II Entry 50 of the Constitution of India? Does the Mines and Minerals (Development and Regulation) Act, 1957 contain any provision which operates as a limitation on the field of legislation prescribed in List II Entry 50 of the Seventh Schedule of the Constitution of India? In particular, whether Section 9 of the aforementioned Act denudes or limits the scope of List II Entry 50?

4. What is the true nature of royalty/dead rent payable on minerals produced/mined/extracted from mines?

5. Whether the majority decision in *State of W.B.* v. *Kesoram Industries Ltd.* [(2004) 10 SCC 201] could be read as departing from the law laid down in the seven-Judge Bench decision in *India Cement Ltd.* v. *State of T.N.* [(1990) 1 SCC 12]?

6. Whether "taxes on lands and buildings" in List II Entry 49 of the Seventh Schedule to the Constitution contemplate a tax levied directly on the land as a unit having definite relationship with the land?

7. What is the scope of the expression "taxes on mineral rights" in List II Entry 50 of the Seventh Schedule to the Constitution?

8. Whether the expression "subject to any limitations imposed by Parliament by law relating to mineral development" in List II Entry 50 refers to the subject-matter in List I Entry 54 of the Seventh Schedule to the Constitution?

9. Whether List II Entry 50 read with List I Entry 54 of the Seventh Schedule to the Constitution constitute an exception to the general scheme of entries relating to taxation being distinct from other entries in all the three Lists of the Seventh Schedule to the Constitution as enunciated in *M.P.V. Sundararamier & Co.* v. *State of A.P.* [AIR 1958 SC 468 : 1958 SCR 1422] [AIR p. 494 : SCR at p. 1481 (bottom)]?

10. Whether in view of the declaration under Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957 made in terms of List I Entry 54 of the Seventh Schedule to the Constitution and the provisions of the said Act, the State Legislature is denuded of its power under List II Entry 23 and/or List II Entry 50?

> 11. What is the effect of the expression "... subject to any limitations imposed by Parliament by law relating to mineral development" on the taxing power of the State Legislature in List II Entry 50, particularly in view of its uniqueness in the sense that it is the only entry in all the entries in the three Lists (Lists I, II and III) where the taxing power of the State Legislature has been subjected to "any limitations imposed by Parliament by law relating to mineral development"?.
>
> 2. Before concluding, we may clarify that normally the Bench of five Learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram than the Bench whose decision has come up for consideration (see *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra* [(2005) 2 SCC 673 : 2005 SCC (L&S) 246 : 2005 SCC (Cri) 546]. However, in the present case, since *prima facie* there appears to be some conflict between the decision of this Court in *State of W.B.* v. *Kesoram Industries Ltd.* [(2004) 10 SCC 201] which decision has been delivered by a Bench of five Judges of this Court and the decision delivered by a seven-judge Bench of this Court in *India Cement Ltd.* v. *State of T.N.* [(1990) 1 SCC 12], reference to the Bench of nine Judges is requested. The office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders."
>
> 4. In view of the above, we are of the opinion that these matters should await the decision of the nine judges Bench whereafter the hearing of these matters will be taken up once again in the course of which it will be open for the parties to urge such additional points as may be considered relevant. The matter is accordingly deferred until disposal of the issues pending before the nine judges Bench in *Mineral Area Development Authority and Others* (supra)."

5.3 Discernibly, the Hon'ble Supreme Court has found it proper to defer decisions in these matters awaiting the judgment of the nine Judge Bench in Mineral Area Development Authority and Others (supra). Viewed in this light, we are of the considered opinion, that in the interests of justice, all these appeals should be kept in abeyance pending the decision of the Hon'ble Supreme Court in all the three cases referred to supra, namely UTV News Ltd. (supra), Home Solutions Retails India Ltd. (supra) and Ritika Pvt. Ltd. (supra), since the final outcome therein will have a translational impact and affect the decision in all such matters as covered in these appeals.

6. We, therefore, hold that it would be appropriate and prudent to close the files in respect of all these appeals for the purpose of statistics. So ordered. We, however make it clear that the appeal number and year already assigned to these cases shall remain unchanged, that any interim / stay order passed earlier in these cases shall continue on record and that the matters are closed only for statistical purpose. In this regard, we also draw sustenance from Tribunal's Larger Bench decision vide Final Order No. A/10843/2018 dated 26.4.2018 in the case of Small Industries Development Bank of India Vs. CST, Ahmedabad. Both sides are at liberty to file application before the Tribunal to reopen the matter pursuant to the outcome of the aforesaid matter by the Hon'ble Supreme Court or in case of any other change of circumstance. In the result, the appeals are disposed of as files closed for purpose of statistics.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex