

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal Nos. 438 and 439 of 2012

(Arising out of Orders-in-Original No. 06 & 07/2012 dated 28.03.2012 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Tamil Nadu Housing Board : **Appellant**
No. 493, Anna Salai, Nandanam,
Chennai – 600 035

VERSUS

Commissioner of Central Excise : **Respondent**
Chennai-I Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

WITH

Service Tax Appeal No. 40374 of 2016

(Arising out of Order-in-Appeal No. 332/2015 (STA-II) dated 27.11.2015 passed by the Commissioner of Service Tax (Appeals-II), Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Tamil Nadu Housing Board : **Appellant**
No. 493, Anna Salai, Nandanam,
Chennai – 600 035

VERSUS

Commissioner of Service Tax, : **Respondent**
Newry Towers, Plot No. 2054, 1 Block, II Avenue, Anna Nagar,
Chennai – 600 040

AND

Service Tax Appeal Nos. 41525 to 41528 of 2017

(Arising out of Orders-in-Original Nos. CHN-SVTAX-002-COM-4 to 7-2016-17 dated 25.01.2017 passed by the Commissioner of Service Tax-II, Newry Towers, No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Tamil Nadu Housing Board : **Appellant**
No. 493, Anna Salai, Nandanam,
Chennai – 600 035

VERSUS

Commissioner of Service Tax, : **Respondent**
Newry Towers, Plot No. 2054, 1 Block, II Avenue, Anna Nagar,
Chennai – 600 040

APPEARANCE:

Shri I. Dinesh, Advocate for the Appellant

Smt. Sridevi Taritla, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 40637-40643 / 2023

DATE OF HEARING: 03.05.2023

DATE OF DECISION: 03.08.2023

Order : [Per Hon'ble Mr. P. Dinesha]

These appeals are filed by the assessee-appellant against the Orders-in-Original Nos. 06 & 07/2012 dated 28.03.2012 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, Order-in-Appeal No. 332/2015 (STA-II) dated 27.11.2015 passed by the Commissioner of Service Tax (Appeals-II), Chennai and Orders-in-Original Nos. CHN-SVTAX-002-COM-4 to 7-2016-17 dated 25.01.2017 passed by the Commissioner of Service Tax-II, Chennai.

2. After hearing both sides, we find that common issues are involved and hence, all the cases are considered for common disposal.

2.1 Facts in brief, as could be gathered from the impugned Order-in-Original dated 28.03.2012, are that the appellant, a body duly constituted by an Act of the Tamil Nadu Legislative Assembly, is engaged in the construction of houses / apartments and allotting dwelling units to eligible persons. They are also engaged in renting of commercial complexes and community centres throughout the State of Tamil Nadu for commercial purposes and the appellant is also registered with the Service Tax

Department for the provision of services under the category of "renting of immovable property".

2.2 It appears that the Department carried out a scrutiny of the records and returns filed by the appellant, during which time they appeared to have noticed that the appellant was collecting charges towards various services provided by them, namely: -

- (1) Maintenance of Government Rental Quarters;
- (2) Supervision charges collected as a percentage of the maintenance charges;
- (3) Testing charges for testing materials like steel, cement, etc.

from the Chennai Corporation for the works undertaken by the appellant.

2.3 From the above, it appeared to the Revenue that the above activities of the appellant for which income was received, were liable for Service Tax under: -

- (1) Renting of Immovable Property
- (2) Management, Maintenance or Repair (MMR)
- (3) Business Auxiliary Service (BAS) and
- (4) Technical Inspection and Certification Agency (TIC)

It is a fact borne on record that the assessee had not registered with the Department for the above services under the respective categories and had also not paid any Service Tax on such services rendered by them to various clients.

2.4 In the light of the above, it appears that the following Show Cause Notices were issued proposing *inter alia* to demand Service Tax on the above services: -

- 1) Show Cause Notice No. 289/2010 dated 21.04.2010 for the period from 2004-05 to 2008-09;
- 2) Show Cause Notice No. 167/2011 dated 08.04.2011 for the period from April 2009 to March 2010.

2.5 There is no dispute that the Show Cause Notices were issued after invoking the extended period of limitation and it appears that the appellant had filed its reply dated 05.07.2011 contending as under: -

- They are a PSU and not a profit making entity.
- They were unaware as to the payment of Service Tax in respect of renting of immovable property. They started remitting the Service Tax only upon getting the registration on 12.12.2008.
- Service Tax for the earlier period was not collected from their clients/tenements.
- They never collected maintenance charges from their tenements, but it was only a kind of reimbursement towards water charges which was collected from their tenements and paid to the Metro Water Department.
- They had constructed flats for Tamil Nadu Government servants at various places which were handed over to the Government and thereafter, they were reimbursed the expenditure incurred on such construction.
- It is out of such reimbursements that the salary of their employees could be paid, which is shown as capital expenditure in their books of accounts and hence, the same could not be taken under BAS.
- They had receipts towards scrutiny fee collected from allottees for scrutinizing their documents.

- The appellant being not a profit making organization which only provided housing facilities to the public at affordable prices, such receipts could not be considered as receipts for the services of BAS.
- The testing charges reflected in their Annual Report was the amount collected from Chennai Corporation towards testing materials procured for construction of bridges.

3. It appears that the appellant had thereafter requested for dropping of the proceedings insofar as MMR, BAS and TIC are concerned, as recorded at paragraph 2.6 of the impugned order.

4. During adjudication, the adjudicating authority appears to have considered the reply filed by the assessee, who was also heard in person and, thereafter, vide impugned Orders-in-Original No. 06 & 07/2012 dated 28.03.2012 has confirmed all the demands proposed in both the Show Cause Notices.

Renting of Immovable Property Service:

5.1.1 With regard to the renting activities of the appellant, Ld. Lower authority/Commissioner has analysed the activity of the appellant vis-à-vis Section 65(105)(zzzz) of the Finance Act, 1994.

5.1.2 At paragraph 4.4 of his order, Ld. Commissioner observes that the assessee had received rental income by renting out commercial complexes and community centres belonging to them and such receipts from rental income had been accounted for and duly stated in their P&L Account. He thereafter observes that the assessee, by renting out immovable property such as commercial complexes and community centres to others, have

provided taxable service of "renting of immovable property" as per Section 65(105)(zzzz) *ibid*.

5.1.3 Ld. Commissioner also observes that even though the appellant had stated that they came to know about the levy only on 25.02.2008, but however, registered with the Department only after nearly a ten-month delay, i.e., on 12.12.2008.

MMR Service:

5.2.1 With regard to MMR, the Ld. Commissioner has analysed the reply filed by the assessee vis-à-vis Section 65(105)(zzg).

5.2.2 At paragraph 4.10, he observes that the assessee, in support of its claim as to non-payment of Service Tax, which is meant for water charges collected from tenements, which is a reimbursement, but however, also observes that the assessee had not produced any evidence to prove that such income shown under the category of 'maintenance of buildings' was only water charges collected from the tenements.

5.2.3 He also observes that the same was clearly shown as income generated out of maintenance of buildings in their Annual Report, which is duly signed by the Chairman of the appellant and also by the Managing Director of the Board.

BAS Service:

5.3.1 With regard to supervision and scrutiny charges, the same has been analysed in the light of Section 65(105)(zzb).

5.3.2 The lower authority has held that the scrutiny charges were collected from the buyers for scrutinizing the documents, apparently, for sale of buildings belonging to the Government, which is a service provided by the appellant to the buyers in connection with the sale.

5.3.3 He observes that supervision charges were also received for supervising the construction of Government Quarters and hence, both the above services were classifiable under BAS.

TIC Service:

5.4.1 With regard to TIC, the same has been analysed in the light of Section 65(105)(zzi).

5.4.2 The assessee apparently had shown income under the category of "Quality Control inspection testing fees" in Schedule 4 to the P&L Account. They have a quality control lab for testing the materials utilized for construction and the testing charges in the Annual Report indicate the amount collected from Chennai Corporation towards testing of materials procured by them.

Larger Period:

5.5.1 With regard to invoking the extended period of limitation, the Ld. Commissioner has observed that the appellant had clearly contravened the provisions of Section 68 of the Act and Rule 6 of the Service Tax Rules, 1994 with an intent to evade payment of Service Tax. Further, there is also a finding that the appellant had not registered with the Department in respect of any of the services as required, they did not file any periodical returns for the above services; they did not even disclose particulars about the services rendered by them and have not reflected any Service Tax paid for the above services in S.T.-3 returns even after obtaining registration under the category of renting of immovable property service; the non-payment of Service Tax, therefore, surfaced only due to the audit of their accounts by the Department and therefore, there was suppression of facts from the Department thereby causing revenue loss to the Government.

5.5.2 We find from the impugned order that there is also an observation, at paragraph 4.15, that the appellant did not contest the issue of invoking of extended period of limitation in their submissions.

6. It is against this order that Service Tax Appeal Nos. 438 and 439 of 2012 have been filed before this forum by the assessee-appellant.

7. In the appeals filed before us, the appellant has raised the following grounds-of-appeal: -

(a) Invoking the extended period of limitation under Section 73(1) is invalid and it is against the provisions of law.

(b) The same cannot be invoked for renting of immovable property service for the period from 2004-05 to 2008-09 since the very service was not under the statute before 01.06.2007. For the later period i.e., after 01.06.2007, it has been held by courts that renting of immovable property itself could not be taxed, but only the services in relation to the service of renting of immovable property could be taxed.

(c) They have raised similar contentions with regard to the services of MMR, BAS and TIC.

(d) Without prejudice to the above, even on merits, following grounds have been urged:

- Tax on renting of immovable property was introduced only with effect from 01.06.2007.
- They have relied on the decision of the Hon'ble Delhi High Court in the case of *M/s. Home Solution Retail India Ltd. v. Union of India* [2009 (14) S.T.R. 433 (Del.)].

- MMR service was relating to water charges collected and remitted to the Chennai Metropolitan & Sewerage Board.
- There was no repair, maintenance or management of property involved in the collection and remittance of water charges.
- The Show Cause Notice was issued and thereupon adjudicated only on the basis of the Annual Report but not on the basis of the audit done by the Service Tax Department.
- The impugned order was passed without considering the explanation and evidences given by the appellant.
- The scrutinizing charges were being collected as charges for scrutinizing application of the customers who are allotted houses by it.
- The same was done by the appellant as principal.
- Fee for Quality Control test was being collected from suppliers for checking the quality of materials supplied by them.
- The above was only a reimbursement of expenses incurred.
- The certificate so issued was generated for the internal use of the Housing Board.
- The above was not a service provided to outsiders and the certificate issued was not accepted by any other party except the appellant and therefore, the same was not a service.

- The gross amount collected was also less than the threshold exemption limit applicable for the concerned period.

8. When the matter was taken up for hearing, Shri I. Dinesh, Ld. Advocate, appeared for the appellant and was heard. He also filed written submissions. His contentions could be summarized, as below: -

- (i) The appellant is a body created by the State Government in 1961 by an enactment namely, the Tamil Nadu Housing Board Act ('TNHB Act' for short), 1961.
- (ii) The appellant registered with the Service Tax Department under renting of immovable property service on 12.12.2008 and since then, it has been filing S.T.-3 returns, but apparently, not paying Service Tax by placing reliance on Circular No. 89/7/2006 dated 18.12.2006.
- (iii) The appellant being a body created by the statute, is not liable under the Service Tax Act.
- (iv) For the period prior to 2012, reliance has been placed on the above exemption Circular No. 89/7/2006 *ibid.* since they claim that they are a sovereign authority performing duties which are in the nature of statutory and mandatory obligations. The fee they were collecting was in terms of the respective provision of law and the fee / amount so collected was deposited into Government treasury.
- (v) The appellant falls under the definition of "State" as defined under Article 12 of the Constitution of India, being a local authority. In this regard, he also referred to the amendment with effect from 01.07.2012 [Negative Regime] wherein the definition of "Government" was inserted.

- (vi) Accounts of the appellant were subjected to audit by the Comptroller and Auditor General of India (C&AG) under Article 150 of the Constitution of India and therefore, the appellant would squarely fall under the term "Government" and hence, exempted from Service Tax.
- (vii) The appellant is a charitable institution having obtained registration under Section 12AA of the Income Tax Act, 1961. It was canvassed before us that even post Negative List, the services by an entity registered under Section 12AA of the Income Tax Act by way of charitable activities are exempt from Service Tax.
- (viii) The Department has nowhere found that there was any diversion of funds, being utilized for purposes other than the object of the appellant.
- (ix) Reliance was placed on the following decisions:
- a. *Krishi Upaj Mandi Samiti v. Commissioner of C.Ex. & S.T., Alwar* [2022 (58) G.S.T.L. 129 (S.C.)]
 - b. *Karnataka Industrial Areas Dev. Board v. Commissioner of Central Tax, Bangalore North* [2020 (40) G.S.T.L. 33 (Tri. – Bang.)]
 - c. *Som Prakash Rekhi v. Union of India* [AIR 1981 SC 212]
 - d. *WATCO v. CIT(E)* [(2023) 146 taxmann.com 4 (ITAT)]
 - e. *Assistant Commissioner of Income Tax (Exemption) v. Ahmedabad Urban Development Authority* [(2022) 143 taxmann.com 278 (SC)]
 - f. *Commissioner of Central Excise v. Ankit Consultancy Ltd.* [2006 SCC online CESTAT 1982]
- (x) Without prejudice to the above, he would contend that the invocation of extended period of limitation by the Commissioner was also not in order

since the entire facts & figures referred to in the Show Cause Notices were taken out from their audited books of account and hence, the same were not from undisclosed sources.

(xi) There was also no omission or suppression or evasion of any income with a *mala fide* intention.

(xii) In this regard, he has placed reliance on the following decisions:

a. Infinity Infotech Parks Ltd. v. Union of India [(2015) 55 taxmann.com 367 (Calcutta)]

b. Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut [(2005) 7 SCC 749 (S.C.)]

(xiii) The Show Cause Notices issued were very vague and cryptic and do not specify as to what was the default on the part of the appellant.

9.1 *Per contra*, Smt. Sridevi Taritla, Ld. Additional Commissioner, relied on the findings of the lower authority. She has specifically invited our attention to the findings of the Ld. Commissioner / adjudicating authority at paragraph 4.10 wherein the adjudicating authority has observed that the assessee did not produce any evidence in support of its claims.

9.2 She would also refer to the concluding portion of paragraph 4.15 of the impugned order dated 28.03.2012 wherein the adjudicating authority has specifically recorded that the appellant did not contest the invoking of extended period of limitation and therefore, this ground may be dismissed. On this, she would submit that by not contesting before the lower authority, there is no specific and elaborate finding given by the adjudicating authority as he was prevented from adjudicating on this issue.

9.3 She would also seriously contend with regard to the appellant's claim as to its status being 'State' under Article 12 *ibid.*, that the same is being taken for the first time

before this forum. Further, there is also no finding on this ground nor is there any discussion since this ground was not at all urged before the lower authority.

10. We have heard the rival contentions and we have carefully perused the documents placed on record. We have also gone through the documents and decisions/orders relied upon during the course of arguments.

11. After hearing both sides, we find that the following issues are to be decided by us: -

(1) Whether the appellant is a 'State' discharging / performing sovereign duty and hence, not amenable to Service Tax?

(2) If the answer to the first question is against the appellant, then:

(a) Whether the service of renting of immovable property by the appellant is correctly taxed?

(b) Whether the demand of Service Tax under MMR service is correct?

(c) Whether the demand of Service Tax under BAS is sustainable?

(d) Whether the demand of Service Tax under TIC service is justified?

(3) Whether the extended period of limitation was rightly invoked?

12.1 With regard to the first issue, the appellant, through its Advocate, has relied on Article 12 of the Constitution of India and claimed that the appellant is a 'State' within the meaning of the said Article and therefore, not amenable to Service Tax.

12.2 We find suffice it to hold that Article 12 of the Constitution defines the term 'State' only for the purposes

of Part III of the Constitution, which deals with fundamental rights. Therefore, this definition will not, apparently, apply to other provisions of the Constitution or indeed, the provisions of statutes. This is clear when we refer to Article 289 in Part XII of the Constitution, which deals with Finance, Property, Contracts and Suits, including taxation. Article 289 (2) permits the Union to tax the States in respect of a trade or business of any kind carried on by or on behalf of such States. Therefore, the fact whether a particular assessee is a State or not within the meaning of Article 12 has no bearing on whether Service Tax could be levied on that assessee.

12.3.1 The other contention urged on behalf of the appellant was that the assessee is a sovereign / public authority performing duties which are in the nature of statutory and mandatory obligations, to be fulfilled in accordance with law.

12.3.2 The Hon'ble Apex Court had an occasion to consider 'Sovereign' in the context of the Industrial Disputes Act, 1947, in the case of *Agricultural Produce Market Committee v. Shri Ashok Harikuni and Another etc.* [AIR 2000 SC 3116]. After considering the rival contentions, the Hon'ble Court held as under: -

"20. In relation to what are "sovereign" and what are "non-sovereign" functions, this Court in Chief Conservator of Forests and Anr. vs. Jagannath Maruti Kondhare and Ors., 1996 (2) SCC 293 , holds;

We may not go by the labels. Let us reach the hub. And the same is that the dichotomy of sovereign and non-sovereign functions does not really exist - it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of Nagendra Rao case. As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in courts of law. It was stated by Sahai, J. that acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in

nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State is immune from being sued in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even martial. Because of this the demarcating line between sovereign and non-sovereign powers has largely disappeared....

...

21. In other words, it all depends on the nature of power and the manner of its exercise. What is approved to be "Sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2(a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. **Even if a statute confers on any statutory body, any function which could be construed to be "sovereign" in nature would not mean every other functions under the same statute to be also sovereign....**

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27. It is true various functionaries under this Act are creature of statute. But creation as such, by itself, cannot confer it the status of performing inalienable functions of the State. The main controlling functions and power is conferred on the market committee whose Constitution itself reveals, except one or two rests are all are(sic) elected members representing some on other class from the public. **In fact, all governmental functions cannot be construed either primary or inalienable sovereign function.**

Hence even if some of the functionaries under the State Act could be said to be performing sovereign functions of the State Government that by itself would not make the dominant object to be sovereign in nature or take the aforesaid Act out of the purview of the Central Act."

(Emphasis supplied)

12.3.3 In view of the above clear observation by the Hon'ble Apex Court, we decide this issue against the appellant.

13. We now proceed to consider the individual issues marked at paragraph 11 (2) above.

Renting of Immovable Property Service:

14.1 Insofar as renting of immovable property is concerned, we find that there is a clear finding by the adjudicating authority that the appellant had in fact received rental income, which was also reflected in their P&L Account and therefore, the fact of rental receipt stands proved.

14.2. The appellant has placed reliance on the decision of the Hon'ble Delhi High Court in the case of *M/s. Home Solution Retail India Ltd. v. Union of India [2009 (14) S.T.R. 433 (Del.)]*, wherein, it has been held that Section 65(105)(zzzz) does not in terms entail that the renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be exigible to service tax under the said Act.

14.3 But the very same Hon'ble Delhi High Court in the subsequent / second *Home Solutions Retails (India) Ltd. v. Union of India [2011 (24) S.T.R. 129 (Del.)] [3-Judges Bench]* has set aside the above decision and the following observations are most crucial: -

"68. When premises is taken for commercial purpose, it is basically to subserve the cause of facilitating

commerce, business and promoting the same. Therefore, there can be no trace of doubt that an element of value addition is involved and once there is a value addition, there is an element of service.

69. In view of our aforesaid analysis, we are disposed to think that the imposition of service tax under Section 65(105)(zzzz) read with Section 66 is not a tax on land and building which is under Entry 49 of List II. What is being taxed is an activity, and the activity denotes the letting or leasing with a purpose, and the purpose is fundamentally for commercial or business purpose and its furtherance. The concept has to be read in conjunction. As we have explained that service tax is associated with value addition as evolved by the judgments of the Apex Court, the submission that the base of the said decisions cannot be taken away by a statutory amendment need not be adverted to. Once there is a value addition and the element of service is involved, in conceptual essentiality, service tax gets attracted and the impost gets out of the purview of Entry 49 of List II of the Seventh Schedule of the Constitution and falls under the residuary entry, that is, Entry 97 of List I.

70. In view of our conclusion, the decision in the first Home Solution case does not lay down the law correctly inasmuch as in the said decision, it has been categorically laid down that even if a building/land is let out for commercial or business purposes, there is no value addition. Being of this view, we overrule the said decision."

14.4 In view of the above 3-Judge Bench decision in *M/s. Home Solutions Retails (India) Ltd. (supra)* the appellant cannot escape the Service Tax liability and hence, we find that the impugned order, to this extent, is in order. The grounds-of-appeal insofar as this ground is concerned are dismissed.

MMR Service:

15.1 The second issue is relating to MMR service. Section 65(64) of the Finance Act, 1994 as it stood during the relevant point of time, reads as under: -

"[(64) "management, maintenance or repair" means any service provided by —

(i) any person under a contract or an agreement; or

(ii) *a manufacturer or any person authorised by him, in relation to, —*

(a) *management of properties, whether immovable or not;*

(b) *maintenance or repair of properties, whether immovable or not; or*

(c) *maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]*

[Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) *"goods" includes computer software;*

(b) *"properties" includes information technology software;]*

15.2 Before us, the appellant has claimed that the appellant, by virtue of being a State within the meaning of Article 12 of the Constitution of India, is not liable to pay any Service Tax. It has been explained by the appellant that having constructed its own buildings, they had let out on rent and collected only water charges from the tenements for supply of water, which was in turn remitted to the concerned State Government department. A sample agreement between the appellant and the Commissionerate Division – III has been placed on record along with sample receipts, apparently to demonstrate that the demand notices were issued to the appellant for paying water charges. This, according to them, was a mere reimbursement of expenditure.

15.3 There is a specific finding by the Ld. Commissioner that the appellant did not file any supporting evidence before him. Here, though certain documents were filed for the first time before us, we do not see any application being made for filing such/fresh documents before us nor is there any application made as prescribed under the CESTAT Procedure Rules for admitting fresh evidence before the

CESTAT. We do not also see anywhere in the pleadings or even the written submissions as to why such documents were not filed before the lower authority. Moreover, there is also no request in the prescribed format placed before us for entertaining new documents.

15.4 It is a well-known fact that the appellant has its own account department, duly supported by accountants / chartered accountants and statutory auditors and hence, they cannot plead ignorance of law and/or procedures prescribed thereunder. Every procedure is applicable to all litigants irrespective of their status. But however, in the interest of justice, we deem it appropriate to remit this issue to the file of the adjudicating authority for fresh consideration. The appellant, if so advised, can file the supporting documents before the lower authority.

BAS Service:

16.1 The appellant has received supervision charges and scrutiny charges from its clients by virtue of which the appellant is held to have rendered BAS within the meaning of Section 65(19) of the Finance Act. The appellant has contended that the tenements to whom the above services were rendered, were not its clients at all. The appellant would collect a nominal fee towards scrutinizing charges from the allottees, which is a part of the sale proceeds, which is fixed by the Government itself. They have referred to Section 66 of the TNHB Act which authorizes the appellant to provide technical advice and scrutinize all projects.

16.2 In the impugned order, the adjudicating authority has only referred to the Annual Report, which is a statutory report wherein the receipts from 'scrutiny charges' have been shown as income in Schedule-4 and the receipts from 'supervision charges for deposit works' have been shown as income in Schedule-3.

16.3 Section 65(19) defines business auxiliary service to mean: -

"(19) "business auxiliary service" means any service in relation to, —

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of, the client;]

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, [but does not include any activity that amounts to manufacture of excisable goods."

But however, the Revenue has not specifically pointed out as to which limb of the above categories covers scope of the alleged services rendered by the appellant. In the impugned order also, the Ld. Commissioner has only referred to Section 65(105)(zzb) which only states - a service to be rendered to a client, by any person, in relation to BAS; and that limb of BAS is not specifically identified by him.

16.4 We are of the opinion that unless a specific charge/service is alleged, put across in the Show Cause Notice and the scope of the services alleged to have been rendered by the appellant stands examined in the context of such service, mere allegation alone is not sufficient to fasten with tax liability. Hence, to this extent, the impugned order cannot sustain and the impugned order is

set aside to this extent. Consequently, the grounds-of-appeal relating to this issue stand allowed.

TIC Service:

17.1 The last issue relates to TIC service. It is not in dispute that the appellant has shown the receipts as income under the category of 'Quality Control inspection testing fees' in Schedule-4 to the P&L Account. It is also admitted by the appellant that they have a in-house quality control lab which tests the materials utilized for construction that are used by the appellant in their projects. The appellant has also claimed in this regard that the above alleged service is not rendered to outsiders, but however, the lab testing charges are being deducted from the total consideration paid to contractors.

17.2 We find that even if it is accepted that the above service is not rendered to outsiders, but nevertheless, the appellant has collected service charges by deducting from the total consideration being paid to the contractors. That means, the said service was rendered to the contractors, for which payment is also made. The income so generated is thus shown as income under the category of 'Quality Control inspection testing fees' in Schedule-4 to their P&L Account. In any case, it is not the case of the appellant that such contractors were not on their rolls and that what was paid to them was only salary. If it is their view that it is not taxable, then why the service charges were deducted from payments and under which provision did they do so has not been explained anywhere by the appellant.

17.3 In view of this, the finding and the consequential demand on this issue in the impugned order is sustained. The grounds-of-appeal on this issue are therefore not entertained.

Extended period of limitation:

18.1 We have seen that the Show Cause Notices cover the periods 2004-05 to 2008-09 and April 2009 to March 2010. We find that insofar as at least one of the issues is concerned, the Service Tax has been collected / deducted from the payment made to contractors, but having so deducted they have not remitted the same with the Government exchequer. This, according to us, is not a *bona fide* act since the collection of Service Tax itself was doubtful, but the non-remittance with the Government account has only aggravated the issue.

18.2 Therefore, we have to hold that it is a clear case of suppression of facts, collecting / deducting Service Tax but withholding the same without remitting to the appropriate Government account, the same has also established the intent to evade payment of tax.

18.3 In view of the above, the extended period of limitation has been rightly invoked and hence, to this extent also, the impugned order is correct. Consequently, the grounds-of-appeal relating to this issue lack merit and they are dismissed.

19.1 The Ld. Advocate has also urged that the services by an entity registered under Section 12AA of the Income Tax Act, 1961 – as a charitable institution, is granted exemption subsequent to 2012 by placing the said service under the Negative List. This, according to him, makes the intention of the legislature clear, to grant immunity from taxation, which applies even to the period prior to 2012; the intention was only incorporated into the statute.

19.2 We do not agree with the said contention of the Ld. Advocate. If the intention of the Government was to exempt such activities from the levy of Service Tax, then, perhaps, there was no need for specifically including the activities of the appellant under the Negative List after 01.07.2012. The decision of the Hon'ble Apex Court in the

case of *Krishi Upaj Mandi Samiti v. Commissioner of Central Excise and Service Tax, Alwar* [2022 (58) G.S.T.L. 129 (S.C.)] has examined the above contention in the context of the Agricultural Produce Market Committee, the appellant therein, and has held as under: -

"11. Even otherwise, it is to be noted that on and after 1-7-2012, such activities carried out by the Agricultural Produce Market Committees is placed in the Negative List. If the intention of the Revenue was to exempt such activities of the Market Committees from levy of service tax, in that case, there was no necessity for the Revenue subsequently to place such activity of the Market Committees in the Negative List. The fact that, on and after 1-7-2012, such activity by the Market Committees is put in the Negative List, it can safely be said that under the 2006 circular, the Market Committees were not exempted from payment of service tax on such activities. At this stage, it is required to be noted that it is not the case on behalf of the Market Committees that the activity of rent/lease on shop/land/platform as such cannot be said to be service. However, their only submission is that the Market Committees are exempted from levy of service tax on such service/activity as provided under the 2006 circular, which as observed hereinabove has no substance."

In view of the above, this contention of the appellant is not entertained.

20. In view of our above discussions, Service Tax Appeal Nos. 438 and 439 of 2012 are partly allowed and partly dismissed, as under: -

- (1) On the issue of renting of immovable property, the appeals are dismissed.
- (2) On the issue of MMR service, the appeals are partly allowed by way of remand.
- (3) On the issue of BAS, the appeals are allowed.
- (4) On the issue of TIC service, the appeals are dismissed.
- (5) The issue of extended period of limitation is also held against the appellant.

21. Insofar as Service Tax Appeal No. 40374 of 2016 is concerned, the same arises against the Order-in-Appeal No. 332/2015 (STA-II) dated 27.11.2015. Service Tax has been demanded / confirmed under: -

(1) MMR Service

(2) BAS

(3) TIC Service

apart from interest under Section 75 of the Finance Act, 1994 and penalty under Section 76 *ibid*.

22.1 Insofar as Service Tax Appeal Nos. 41525 to 41528 of 2017 are concerned, the same arise against the common Orders-in-Original Nos. CHN-SVTAX-002-COM- 4 to 7 - 2016-17 dated 25.01.2017. The above common adjudication order was passed in respect of four SCN/SODs for different periods, which are tabulated hereinbelow: -

S. No.	SCN/SOD No.	Date	Period	Service Tax demanded (in Rs.)	Demand/Interest/ Penalty proposed under
1	98/2013	15.04.2013	2011-12	64,91,045/-	Section 73(1) Section 75 Sections 76 & 77
2	152/2014	23.05.2014	2012-13	35,16,188/-	-do-
3	17/2015	10.03.2015	2013-14	77,85,557/-	-do-
4	14/2016	04.04.2016	2014-15	55,69,648/-	Section 73(1) Section 75 Sections 76(1)

The above Orders-in-Original relate to the demand of Service Tax under:

1) MMR Service

(2) BAS

(3) TIC Service

apart from interest under Section 75 of the Finance Act, 1994 and penalty under Section 76(1) *ibid*.

22.2 In the impugned order, however, the Commissioner-adjudicating authority has specifically observed and held, at paragraph 4.8, that the nature of activity rendered by the appellant would fall under clause (vi) of the definition of 'business auxiliary service' i.e., "provision of service on behalf of the client". The same service, of supervising the construction work, is rendered by the appellant on behalf of its client, namely, Government of Tamil Nadu.

22.3 In that view of the matter, we do not see any infirmity nor has it been specifically controverted by the appellant and therefore, the demand in this regard is upheld.

23. The issues agitated in the above appeals have already been discussed and decided by us in Service Tax Appeal Nos. 438 and 439 of 2012 and hence, by adopting the very same reasons, Service Tax Appeal No. 40374 of 2016 and Service Tax Appeal Nos. 41525 to 41528 of 2017 are partly allowed and partly dismissed, as under: -

(1) On the issue of MMR service, the appeals are partly allowed by way of remand.

(2) On the issue of BAS, in respect of Appeal No. ST/40374/2016, the appeal is allowed and in respect of Appeal Nos. ST/41525-41528/2017, the appeals are dismissed.

(3) On the issue of TIC service, the appeals are dismissed.

24. The appeals are disposed of on the above terms.

(Order pronounced in the open court on **03.08.2023**)

Sd/-
(VASA SESHAGIRI RAO)
 MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
 MEMBER (JUDICIAL)