

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

SOUTH ZONAL BENCH, COURT HALL No. III

SERVIVE TAX APPEAL No.41893 of 2013

(Arising out of Order-in-Appeal No.52-2013-ST, dated 21.03.2013 passed by Commissioner of Central Excise (Appeals), No.1, Foulk's Compound, Anai Road, Salem 636 001).

The Commissioner
Namakkal Municipality,
Thanthai Periyar Maligai,
145, Paramathi Road,
Namakkal 637 001

...Appellant

Versus

The Commissioner of Central Excise
No.1, Foulks Compound, Anai Road,
Salem 636 001

...Respondent

WITH

SERVIVE TAX APPEAL No.42345 of 2013

(Arising out of Order-in-Original No.MAD-CEX-000-COM-000005-2013, dated 16.08.2013 passed by Commissioner of Central Excise & Service Tax, Madurai Central Excise, Bibikulam, Madurai 625 002).

M/s. Palani Municipality
Gandhi Road,
Palani.

...Appellant

Versus

The Commissioner of Central Excise & Service Tax ...Respondent
Central Revenue Buildings,
Bibikulam,
Maudrai 625 002.

WITH

SERVIVE TAX APPEAL No.40499 of 2014

(Arising out of Order-in-Appeal No.03/2014 CE dated 08.01.2014 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Foulk's Compound, Anai Road, Salem 636 001).

The Commissioner
Kangeyam Municipality,
Kangeyam,
Erode District 638 701

...Appellant

Versus

Service Tax Appeal Nos. 41893, 42345 of 2013
 Service Tax Appeal Nos. 40499, 41374, 41765, 41766, 42492 of 2014
 Service Tax Appeal No. 41335 of 2015

The Commissioner of Central Excise & Service Tax ...Respondent

No.1, Foulks Compound, Anai Road,
 Salem 636 001

WITH

SERVIVE TAX APPEAL No.41374 of 2014

(Arising out of Order-in-Appeal No.86/2014-S.T. dated 20.03.2014 passed by Commissioner of Central Excise and Service Tax (Appeals), No.1, Foulk's Compound, Anai Road, Salem 636 001).

The Commissioner

Conoor Municipality,
 Coonoor, The Nilgiris

...Appellant

Versus

The Commissioner of Central Excise & Service Tax ...Respondent

No.1, Foulks Compound, Anai Road,
 Salem 636 001

WITH

SERVIVE TAX APPEAL No.41765 of 2014

(Arising out of Order-in-Appeal No.143/2014-ST, dated 16.06.2014 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Foulk's Compound, Anai Road, Salem 636 001).

The Commissioner

Gudalur Municipality,
 Gudalur 643 211,
 The Nilgiris

...Appellant

Versus

The Commissioner of Central Excise & Service Tax ...Respondent

No.1, Foulks Compound, Anai Road,
 Salem 636 001

WITH

SERVIVE TAX APPEAL No.41766 of 2014

(Arising out of Order-in-Appeal No.154/2014-ST, dated 10.07.2014 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Foulk's Compound, Anai Road, Salem 636 001).

The Commissioner

Gudalur Municipality
 Gudalur 643 211
 The Nilgiris

...Appellant

Service Tax Appeal Nos. 41893, 42345 of 2013
 Service Tax Appeal Nos. 40499, 41374, 41765, 41766, 42492 of 2014
 Service Tax Appeal No. 41335 of 2015

Versus

The Commissioner of Central Excise & Service Tax ...Respondent
 No.1, Foulks Compound, Anai Road,
 Salem 636 001

WITH

SERVIVE TAX APPEAL No.42492 of 2014

(Arising out of Order-in-Appeal Nos.174 & 175/2014, dated 14.08.2014 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Foulk's Compound, Anai Road, Salem 636 001).

The Commissioner
 Namakkal Municipality,
 145, Paramathy Road,
 Thanthai Periyar Maligai
 Namakkal 637 001

...Appellant

Versus

The Commissioner of Central Excise
 No.1, Foulks Compound, Anai Road,
 Salem 636 001

...Respondent

AND

SERVIVE TAX APPEAL No.41335 of 2015

(Arising out of Order-in-Original No.MAD-CEX-000-COM-02-2015 dated 25.02.2015 passed by Commissioner of Central Excise & Service Tax, Central Revenue Buildings, Bibikulam, Madurai 625 002).

The Commissioner
 Oddanchatram Municipality,
 Oddanchatram,
 Dindigul District

...Appellant

Versus

The Commissioner of Central Excise and Service Tax
 Madurai Commissionerate,
 Central Revenue Buildings,
 No.4, Lal Bahadur Shastri Road, Bibikulam
 Madurai 625 002

...Respondent

Service Tax Appeal Nos. 41893, 42345 of 2013
Service Tax Appeal Nos. 40499, 41374, 41765, 41766, 42492 of 2014
Service Tax Appeal No. 41335 of 2015

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Shri M. Ambe, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.40488-40495/2024

Date of Hearing :15.04.2024
Date of Decision:29.04.2024

ORDER : Per Ms. SULEKHA BEEVI C.S.

The issue involved in all these appeals being the same they were heard together and are disposed of by this common order.

2. Brief facts are that the appellants are various municipalities and *inter alia* are engaged in renting / leasing out of their immovable properties including vacant land for commercial purposes. The department noted that these municipalities did not register with the department under the category of Renting of Immovable Property Services and did not discharge service tax on the said services. Show Cause Notices were issued to these appellants proposing to demand service tax under the category of Renting of Immovable Property Service for different periods from the date of introduction of the said service (June 2007). After due process of law, the department confirmed the demand of service

tax along with interest and also imposed penalties. Aggrieved by such impugned orders, the appellants are now before the Tribunal.

3. The Ld. Counsel Shri M.N. Bharathi appeared and argued for the appellants. The facts in the case of ST/41335/2015 filed by the Commissioner, Oddanchatram Municipality was taken as a reference case for explaining the facts. It is submitted that a Municipality is a sovereign body constituted under Article 243 Q of the Constitution of India. It caters to the civic needs of the people living within the Municipal jurisdiction. A Municipality is a Self-government for the administration of civic facilities to the public. The definition of "Municipality" is given under Article 243 P (e) of the Constitution of India and reads as under.

"Municipality" means an institution of self-government constituted under article 243Q.

3.1. As per Article 243 X, 'The Legislature of a State may, by law – (a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits; (b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits; (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys there from. The powers, authority and responsibilities of Municipalities are provided in Article 243W. The legislature of a State by law can endow upon the Municipality powers for performance of function and implementation of schemes including

those listed in the 12th schedule. The list in twelfth schedule of the Constitution is as under.

TWELFTH SCHEDULE

1. Urban planning including town planning;
2. Regulation of land use and construction of buildings;
3. Planning for economic and social development;
4. Roads and bridges;
5. Water supply for domestic, industrial and commercial purposes;
6. Public health, sanitation conservancy and solid waste management;
7. Fire services;
8. Urban forestry, protection of the environment and promotion of ecological aspects;
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
10. Slum improvement and up-gradation;
11. Urban poverty alleviation;
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds;
13. Promotion of cultural, educational and aesthetic aspects;
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums;
15. Cattle pounds; prevention of cruelty to animals;
16. Vital statistics including registration of births and deaths;
17. Public amenities including street lighting, parking lots, bus stops and public conveniences;
18. Regulation of slaughter houses and tanneries;

3.2. The Ld. Counsel submitted that the municipalities have to deal with diverse functions as above and there is lack of man power for discharging these functions which are in the nature of welfare and facilities to the citizens. Certain functions are outsourced by these municipalities in the form of assigning rights to individuals to carry out the specific work. These outsourced functions include the right to collect entry fee on each cattle brought in for slaughter, the right to collect entry fee to the public market, the right to collect fee on each head load of vegetables brought in to the market, parking fee for parking vehicles etc. Such rights to collect fees and levies are assigned to the bidders through open bidding and by floating of tenders. The bidders with highest bidding will get the right to collect the levies and fees as per the norms laid down by the municipality in the Municipalities Act.

3.3. The Ld. Counsel submitted that main part of the demand in the Show Cause Notices is that these municipalities have rented immovable property to tenants and received rental charges and thereby rendered 'Renting of Immovable Property Services' as defined under Section 65 (105) of the Finance Act 1994. It is submitted that some activities are not at all in the nature of renting of immovable property. The demand in the Show Cause Notice has been raised on the fees and levies collected by the municipality as explained above by employing outsourced persons. In such situations there is no taxable service rendered by the municipality which attracts levy of service tax. The fees collected are itself in the nature of tax and therefore there cannot be a levy of tax again on such amounts. The Ld. Counsel adverted to the demand raised for the period 2007-08, 2011-2012 in the case of Oddanchatram municipality and submitted that the department has demanded

service tax on entry fee collected for bus stand, market fee, parking fee and slaughter fee etc. These activities are not taxable and do not fit into the definition of Renting of Immovable Property Service. The assignment of rights and issue of permissions by a sovereign body, can never be interpreted to mean that they are rendering any service.

3.4. From the definition of 'Renting of Immovable Property', it can be seen that there should be letting/leasing/ renting of immovable property for use in furtherance of business and commerce. The amounts on which the demand has been raised are fees and levies collected which are due to the Municipality and cannot be equated with consideration for service. A few petty shops have been given for rent in the bus stand and market places, which are facilities provided as per the Municipalities Act.

3.5. It is further submitted that the appellant being a municipality, did not fall within the term "person" which is used in the definition of 'Renting of Immovable Property Service' as under Section 65 (105) zzzz. The Hon'ble Jurisdictional High Court vide judgement dated 22.03.2021 in the case of **Cuddalore Municipality Vs. Jt. Commissioner of CGST and Central Excise and (Others) 2021 (4) TMI 500** Madras High Court considered the issue as to whether the demand of service tax under Renting of Immovable Property Service against municipalities can sustain or not. It was observed by the Hon'ble High Court that the definition of 'person' applied to a 'local authority' only with effect from 01.07.2012. The definition of 'person' as per Section 65 B (37) w.e.f. 01.07.2012 reads as under:

"person" includes –

- (i) An individual,
- (ii) A Hindu undivided family,
- (iii) A Company,
- (iv) The society,
- (v) A limited liability partnership,
- (vi) A Firm,
- (vii) An association of persons or body of individuals, whether incorporated or not,
- (viii) Government,
- (ix) A local authority, or**
- (x) Every artificial juridical person not falling within any of the preceding sub clauses

3.6. Again, 'local authority' is defined under Section 65 B (31). It is submitted by the Ld. Counsel that though local authority (Municipality) were brought within the definition of person w.e.f. 01.07.2012, as per the Mega Exemption Notification Municipalities are exempted from payment of service tax in terms of Sl. Nos. 38 & 39 of the Mega Exemption Notification no.25/2012-ST dated 20.06.2012. The Hon'ble Jurisdictional High Court considered the issue as to whether Municipality is liable to pay Service tax under Renting of Immovable Property Service prior to 01.07.2012 as well as post 01.07.2012. In the decision of Cuddalore Municipality case, it was held by the Hon'ble High Court that the demand of service tax cannot sustain.

3.7. The Ld. Counsel was fair enough to submit that the Hon'ble High Court of Madras at Madurai Bench in the case of **Madurai Corporation Vs. Commissioner of Central Excise** vide judgement dated 9.9.2020 in writ petition (MD Nos.7559 and 7637

of 2015 and connected matters has taken a contrary view and held that Municipality is liable to pay service tax under Renting of Immovable Property Services. The Ld. Counsel pointed out that the said decision of the Madurai Bench is rendered prior to the decision in the case of Cuddalore Municipality.

3.8 In a recent decision the Hon'ble High court in the case of ***St.Thomas Mount Cum Pallavaram Cantonment Board Vs. Additional Commissioner of GST and Central Excise, Chennai*** decided on 23.01.2023 reported in 2023 (71) GSTL 123 (Madras) referred to the decision of the single member judge in the case of Cuddalore Municipality (supra) and remanded the matter for fresh consideration. The Ld. Counsel prayed that the matters may be remanded to the adjudicating authority to consider the issue of taxability afresh.

4. The Ld. Counsel put forward arguments on the ground of limitation also. It is submitted that the appellants being local authority discharging sovereign functions cannot be saddled with the burden of suppression of facts with intent to evade payment of service tax. The entire transactions have been accounted in the books of the municipality which are subjected to periodical audit. The demand raised invoking the extended period may be set aside as being raised without any basis. So also the penalties may be set aside.

5. The Ld. AR Shri M. Ambe appeared for the department. The findings in the impugned order was reiterated. The Ld. AR submitted that the Hon'ble High Court at Madurai Bench had considered the very same issue as to whether Municipalities are liable to pay service tax under Renting of Immovable Property

Service. In the said judgement, the Hon'ble High Court held that the demand is sustainable and that Municipality is liable to pay service tax. The Ld. AR prayed that the appeals may be dismissed.

6. Heard both sides.

6.1. The common issue that arises for consideration in all these appeals is whether the demand of service tax under the category of 'Renting of Immovable Property Service' as well as other services is sustainable against appellants (Municipalities).

6.2. The Hon'ble High Court of Madras in the case of Cuddalaore Municipality (supra) had analysed the matter in detail for the period prior to 01.07.2012 and post 01.07.2012. It was held that prior to 01.07.2012, the word 'person' was not defined in the Finance Act, 1994. The definition of the taxable service used the word 'person' and so did not include Municipality prior to 01.07.2012. The definition of 'Renting of Immovable Property Service' introduced w.e.f. 01.06.2007 under Section 65 (90a) reads as under:

"Renting of Immovable Property' includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include-

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre'.

6.3. The taxable service as under Section 65 (105) (zzzz) reads as

‘to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce’.

The definition underwent a small amendment in 2010 and reads as:

‘to any person, by any other person, by renting or immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce’.

6.4. The definition uses the words ‘to any person, by any other person’. It was held by the Hon’ble High Court in the case of Cuddalore Municipality that service tax was payable only if such services were provided ‘by any other person’ which means other than the owner to any person. In the case of Cuddalore Municipality, the Hon’ble High Court set aside the demand for the period prior to 30.06.2012. The relevant discussion of the Hon’ble High Court reads as under:

22. I have considered the arguments advanced by the learned counsel for the petitioner and the respective learned Senior Standing Counsel for the respective respondents in the respective Writ Petitions.

23 Since the dispute pertains to the period prior to July 2012 and thereafter, I shall deal with the issues in two parts, i.e. for the period prior to July 2012 and for the period after July 2012. The period prior to 2012 is partly covered by W.P.No 12489 of 2018.

24 in WP.No.12489 of 2018, the petitioner has challenged Order in Original No 05/2018-ST in C.No V/ST/15/21/2018 ST.Adj. Dated 06.04.2018. For the period prior to July 2012, the demand is confined to levy of tax under Section 65(105)(zzzz) of the Finance Act, 1994 read with definition of "Renting of Immovable Property Services under Section 65(90a) of the Finance Act, 1994

25 From the category of service and income generated from the petitioner, it appears that the petitioner was renting out the stops in bus stand and other areas where it was having immovable properties.

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26. Service Tax on Renting of Immovable Property Service was introduced in 2007 vide 65(105) (2222) of the Finance Act, 1994. The expression of renting of immovable property was defined in Section 65 (90a) of the Finance Act, 1994

27. The High Court of Delhi in **Home Solutions Retail India Ltd. & Others Vs. UOI**, 2009 (237) E.L.T 209 (Del) by its order dated 18.04.2009 however struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce did not involve any value addition and therefore, cannot be regarded as service.

28. The tenants all over the country therefore stopped reimbursing the tax element to the land owner. Since landlords were receiving regular demand notices from the department but such notices were being subjected to stalemate, the Finance Act. 2010 amended the provision with retrospective effect and attempted to cure the defect pointed out by the Delhi High Court.

29 Thus, definition of taxable service of "renting of immovable property" and "renting of immovable property was amended to read as follows-

Definition of Taxable Service taxable service of in “renting of immovable property” Section 65(105) (zzzz)) of the Finance Act, 1994	Definition of “renting of immovable property” inSection 65 (90a) of the Finance Act, 1994
To any person, by any other person, by renting of immovable property or any other service in relation to such renting, for the use in the course of or furtherance of business or commerce. Explanation 1: For the purpose of this subclause, “immovable property” includes- (i) building or part of a building, and the land are pertinent thereto; (ii) land incidental to the use of such building or part of a building, the common or shared areas and facilities relating thereto, and (iii) the common or shared areas and facilities relating thereto: and (iv) in case of a building located in a complex or an industrial estate, all	"Renting of immovable property” includes renting letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include- (i) renting of immovable property by a religious body or to a religious body, or (ii) renting of immovable property to an educational body, imparting skills orknowledge or lessons on any subject of field, other than a commercial, training or coaching centre. Explanation 1 For the purpose of this

common areas and facilities relating thereto, within such complex or estate, but does not include- (a) vacant land solely used for agriculture, aquaculture, farming forestry animalhusbandry, mining purposes (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land, (c) land used for educational sports circus entertainment and parking purposes, and (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels boarding houses, holiday accommodation tents, camping facilities (v) vacant land given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce”. Explanation 2 For the purposes of this subclause, and immovable property, partly for use in the course of furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course of furtherance of business commerce.	clause "for use in the course of furtherance of business or commerce includes use of immovable property as factories, office buildings, warehouses theatres,exhibition halls and multiple-use buildings; Explanation 2: For the removal of doubts, it is hereby declared that for the purpose of this clause “renting of immovable property "includes allowing or permitting the use of space in and immovable property, irrespective of the transfer of possession or control of the said immovable property.
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30. The Delhi High Court in the 2nd Home Solutions Retails (India) Ltd. v. Union of India 2011 (24) STR 129 (Del) upheld the constitutional validity of the amended definition in Section 65(105)(zzzz) in 2010 with retrospective effect with the following observation-

"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 I. 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 I of the Seventh Schedule of the Constitution and falls under the residuary entry, that is, Entry 97 of List I.

31. This Court has also upheld the validity of the above provision. Similar view has been taken by the other High Courts also. There is no doubt that the petitioner municipality was renting immovable property to various persons in the course of or furtherance of business or commerce of the lessee as defined in Section 65(90) of the Finance Act, 1994 as it stood during the period between April 2012 and June 2012. However, merely because there was renting of immovable property by itself was not sufficient to attract the levy.

32. To attract levy under Section 65(105) (zzzz) of the Finance Act, 1994, there should be renting of immovable property or provision of any other service in relation to such renting, for use in the course of or furtherance of business or commerce to "any person". Only if service was provided by "any other person", i.e., by a person other than the owner, such service was liable to service tax.

33. The expression "any other person" can only mean any other person other than the owner of the property. Therefore, owner of the immovable property is not liable to pay tax under Section 66 of the Finance Act, 1994 for the period up to 30.06.2012.

34. An owner can be held liable to pay tax for renting of immovable property service only if there was an appropriate notification issued under Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994.

35. If the legislature intended to include both owner and a person other than the owner of the property in Section 65(105)(zzzz) of the Finance Act, 1994, the legislature would have simply adopted a wider expression such as "any person" instead of "any other person". The expression "any other person" restricts the scope of exposure to levy of service tax to a different class of service providers. It is perhaps for this purpose, the expression "any other service in relation to such renting" has been used in the Section to indicate that service tax has to be charged only where there is a value addition.

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36. May be renting of immoveable property service partly overlapped with the taxable service of a "real estate agent This was because there was no definition for the expression "service" till July, 2012 and therefore there was scope for such overlap in the definition. The definitions are reproduced below-

Section 65(88)	Section 65(89)
"Real Estate Agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant	"Real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception design, development, construction, implementation, supervision maintenance marketing, acquisition or management, of real estate
Definition of taxable service in Section 65(105)(v)	
any service provided or to be provided to a client, by a real estate agent in relation to real estate	

37. Since the interpretation given for the expression "any other person" in this order may have a large scale ramification, it is therefore made clear the interpretation given in this order for the expression "any other person qua Section 65(105)(zzzz) cannot be uniformly applied to other provisions of the Finance Act, 1994 unless they are examined separately and individually on case to case basis for the other services

38 In my view, service tax was payable only if such services were provided "by any other person" other than the owner, to any person by such renting, for use in the course of or in furtherance of, business or commerce.

39. As the owner of the immovable property who rents out the property simplicitor was not in contemplation in the definition of taxable service of "renting of immovable property" in Section 65(105)(zzzz) of the Finance Act. 1994, demand against the petitioner was without jurisdiction

40. Since the petitioner municipality is the owner of property, question of it being made liable to pay service tax for any service in relation to such renting of immoveable property does not arise even if it had rented out its immoveable property for use in the course of or for furtherance of, business or commerce of the person who was renting it.

41 In the light of the about discussion, W.P. No. 12489 of 2017 filed Vridhachalam Municipality for the period April 2012 June 2012 deserves to be allowed. To that extent impugned Order-in-Original No. 5/2018-ST in C No V/ST/15/21/2017-ST. Adjn, is liable to be quashed straight away

6.5. In the very same judgement the Hon'ble High Court has considered the demand proposed and confirmed for the period after 30.06.2012 also. It was held that a Government or local authority is exempted from payment of service tax on Renting of Immovable Property Service being services rendered in terms of their sovereign right to business entities. Section 66D (a) - (d) of the Finance Act 1994 reads as under:

66D. Negative list of services.

The negative list shall comprise of the following services, namely:-

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of-

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk

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packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

The relevant para of the judgement in the case of Cuddalore Municipality reads as under:

"52. Services which are provided by government in terms of their sovereign right to business entities, and which are not substitutable in any manner by any private entity, are not support services.

53. In fact, in the Education Guide, list of activities such as grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under Section 18 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 and therefore such services are performed by CAG under the statute and cannot be performed by the business entity themselves and thus do not constitute support services.

54 If the activity carried out by the Petitioner Municipalities are categorised as "Support Service", it cannot be held that there was a provision of taxable service and such service was liable to tax under Section 66B of the Finance Act, 1994 as in force with effect from 01.07 2012.

55. However, for such support services, service tax was payable by the recipient of such service in terms of Rule 2(1)(d)(E) of the Service Tax Rules, 1994 as amended by notification No.36/2012-ST dated 20.6.2012 with effect from 1.17.2012

56. For support service provided, the recipient was liable to pay tax on reverse charge basis under Rule 2(1) (d)(E) of the Service Tax Rules, 1994 as amended by notification No. 36/2012-ST dated 20.06.2012 as in force from 01.07.2012

57. Therefore, the Petitioner Municipalities can be held liable to pay service tax only for service specified in Sub-Clauses in (i), (ii) and (iii) of Clause (a) of Section 66D of the Finance Act, 1994.

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58 As far as renting of immoveable property is concerned, though under Rule 2(1)(d)(E) of the Service Tax Rules, 1994, service tax is payable by the service provider, it has to be held that if such services are provided by a Government or Local Authority, they are exempted under Section 65D(1)(a) of the Finance Act, 1994 as amended and as in force from 01.07.2012. Only ancillary service provided by a third party towards renting of immovable property of a non-governmental or local body will be able to pay service tax like any other service provider. Therefore, service tax is payable by the service provider himself.

59. That apart, it is seen that some of the services provided are also exempted under the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 vide Sl. Nos.38 and 39. They are reproduce below:-

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

60. Thus, there is no jurisdiction in the impugned Show Cause Notices/Orders-Original issued by the respondent in the light of the above discussion, demand proposed in the impugned S.C.N.No. 04/2018 (ST) in C.No.V/ST/15/2/2018-ST. Adjn. Dated 07.03.2018 and demand confirmed in Order-in-original No 3/2017- STC No IV/09/04/2017-ST Adjn. (RO OC No 100/2016, dated 24.03.2017 and Order-in-Original No.5/2018-ST in C.No.V/ST/15/21/2018-ST.Adj, dated 06.04.20/18 are able to be quashed and are accordingly quashed.

61. In the result,

- i. W.P.No.3969 of 2018 as mentioned above is dismissed as infructuous
- ii. W.P.No.890 of 2018, W.P.No.31799 of 2017 and W.P.No.12489 of 2007 are allowed.
- iii. No cost. Consequently, connected Miscellaneous Petitions are closed."

6.6. The above decision was rendered by the Hon'ble High Court on 22.03.2021. However, prior to this the Hon'ble jurisdictional High Court at Madurai Bench in the case of Madurai Corporation had considered the issue of taxability of renting of immovable property and held that Municipality is liable to pay service tax. The relevant paragraph of the judgement in the case of Madurai Corporation reads as under:

This Court heard the learned counsel for the petitioner at considerable length. Though I found the contentions to the worthy of <http://www.judis.nic.in> consideration, as rights pointed out by the learned standing counsel, the issue is no

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longer res integra. The Division Bench of the Madras High Court had already decided the issue in the decision reported in 2014-

TIOL-2545-HC-MAD-ST (G.V.Matheswaran vs the Union of India and others) After upholding the validity of Section 65(105)(zzzz) of the Act, in Paragraph No 56, the Hon'ble Division Bench observed that it is open to the local body to pass on the burden to the recipient of the service. It is necessary to note that among the petitioners in that batch of writ petitions, there were a few local bodies also. That is why, in R. Nambi vs. Tenkasi Municipality (2015) (37) STR 696 (Mad, a learned Judge of this Court observed as follows

"13 At the out set it has to be pointed out that the petitioner it not a service provider The first respondent Municipality is the service provider, who has been registered with the Department. The onus is on the first respondent Municipality to remit the service tax. In turn, the first respondent Municipality has demanded the same from the petitioner, who is their licensee in respect of four contracts, wherein the petitioner has been given license to collect fees. Furthermore, the petitioner has not challenged the validity of the provisions of the Finance Act nor the notification issued by the second respondent and in such [http www.judis.nic.in](http://www.judis.nic.in) in circumstances a challenge to a demand notice issued by the service provider under whom the petitioner is a licensee has to necessarily fail. Nevertheless, since this Court heard the learned counsel for the petitioner in great length, this Court proposes to consider the submissions made by the parties as regards the jurisdiction to levy the service tax.

14 Renting of immovable property was brought under the Act with effect from 01.06.2007, Section 65(105) defines taxable service, which means any service provided to any person by any other person by 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 and it includes vacant land given on lense or license and the test is as to whether it is used in the course of of furtherance of business of commerce

Admittedly, the petitioner is a licensee of the first respondent Municipality and the property has been used in the course of business or commerce. As noticed above, Section 65(90a)) defines renting of immovable property including renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce.

15 Admittedly, the properties in question de not fall within the two exemptions provided under Section 65(90) <http://www.judis.nic.in> of the Act. Explanation 2 under Section 65(90a) makes it more clear that renting of immovable property includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property. The duty performed by the first respondent Municipality would clearly fall within the ambit of the provisions referred above and therefore they have been remitting service tax to the Department. Further, Section 66D(a)(iv) of the Act deals with negative list of services and Clause (a) provides services by Government or a local authority excluding the following services to the extent they are not covered elsewhere and the relevant clause would be Clause (IV) namely support services, other than services covered under Clauses (i) to (iii), provided to business entities. Therefore the Municipality is bound to pay service tax on the nature of transaction, which they have entered into with the petitioner".

5. When the Division Bench of the Madras High Court has already held that the local bodies are also liable to pay service tax for rendering "renting of immovable properties" service mandap keeper services etc, then, it is not for me to go into the issue once again. Judicial discipline demands that I respectfully follow these binding precedents <http://www.judis.nic.in>

7. It is to be noted that the Hon'ble High Court in the case of Madurai Corporation has followed the decision of the Hon'ble High Court rendered in batch case of ***G.V. Matheswaran Vs. UOI 2014-TIOL-2545-HC-MAD-ST.*** In the case of G.V. Matheswaran the constitutional validity of the levy of service tax of renting of immovable property was under challenge. The main ground raised was that it is a tax on immovable property and that Centre has no powers to levy tax as immovable property (land) falls within the State List. There were decisions passed by various High Courts upholding the validity of the provisions of Section 65 (105) (zzzz) and Section (90a) of the Finance Act. [Shubh Timb Steels Ltd. Vs. UOI (2011) 37 VST 46 (P&H), Utkal Builders Ltd, Vs. UOI 2011 (22) STR 257 (Ori), Entertainment World Developers Ltd. Vs. UOI 2012 (25) STR 231 (M.P), Home Solutions Retails (India) Ltd. Vs. UOI 2011 (24) STR (129) Del (FB) Home Solution II]. In these cases, there was no specific discussion upon the issue whether 'local authority' would be liable to pay service tax on Renting of Immovable Property services. There was also no discussion as to the definition of person; in the case of Madurai Corporation, the Ld. Single Judge sustained the demand mainly on the view that the Hon'ble High Court in the batch case observed that Municipality can pass on the burden of service tax to the tenant (recipient of service); The Ld. Single Judge also referred to the case of R Nambi Vs Tenkashi Municipality 2015 (37) STR 696 (Mad). The petitioner there in was a licensee of the Tenkashi Municipality and challenged the demand notice of service tax served by the Municipality upon him. In these cases, the taxability in general was considered. The

issue as to whether local authority (Panchayat, Municipality, Corporation) would be liable to discharge service tax as these services are provided in discharge of sovereign function was not considered. The Hon'ble High Court in the case of Cuddalore Municipality has considered this specific issue.

8. In a recent judgement, the Hon'ble High Court in the case of ST. Thomas Mount Cum Pallavaram Cantonment Board (supra) had referred to the decision in the case of Cuddalore Municipality (supra) and remanded the matters to consider a fresh the issue as to whether Municipality / Cantonment Board is liable to pay tax. The relevant paragraph reads as under:

4. The petitioner claims that as a Cantonment Board and being a Municipality they are exempted from paying Service Tax. The petitioner had earlier challenged the Show cause notice issued by the respondents in WP. Nos 28468 and 28080 of 2021.

5. A learned Single Judge of this Court by her common order dated 10-8-2022 disposed of the said writ petitions on the ground that at the stage of Show cause notice, writ petitions cannot be entertained. But, however the learned Single Judge has made it clear that the respondent will have to consider the decision rendered by another learned Single Judge of this Court in a batch of writ petitions in WP No 8900 of 2017 in the case of Cuddalore Municipality v. The Joint Commissioner of GST and Central Excise, before passing final orders

6. However the Learned Senior Panel Counsel appearing for the respondent would submit that the order passed in the Cuddalore Municipality case referred to (supra) is the subject matter of challenge in a writ appeal. He would also submit that a contrary view has been taken by another learned single Judge of this Court in another batch of writ petitions in WP (MD) Nos 7599 of 2018 etc batch in its decision dated 9-9-2020. According to him in the said decision, it has been held that a Municipality is liable to pay ServiceTax.

7. The learned Standing Counsel for the respondent would also submit that the decision of the Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti v. Commissioner of C Ex & S.T. Alwar reported in 2022 GSTL 129[2022] 135 laxmann com 354 (S.C.) applies to the case of the petitioner and therefore they are liable to pay Service Tax as demanded under the impugned order. However the same is disputed by the Learned Counsel for the petitioner who would submit that the said decision is not applicable to the case of the petitioner. The matter will have to be examined by the respondent. Admittedly, the *Cuddalore Municipality* case rendered by a Learned Single Judge of this Court referred to (supra) has not been considered by the respondents in the impugned order and therefore, necessarily the impugned order has to be quashed and the matter will have to be remanded back to the respondent for fresh consideration on merits and in accordance with law within a timeframe to be fixed by this Court.

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8. For the foregoing reasons, the impugned order dated 30-9-2022 passed by the respondent is hereby quashed and the matter remanded back to the respondent for fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court. The respondent shall pass final orders, after giving due consideration to the orders of this Court in the cases of (a) *Cuddalore Municipality v. Joint Commissioner of GST and Central Excise* WP. No 8900 of 2017, dated 22-3-2021 as well as (b) *St Thomas Mount Cum Pallavaram Cantonment Board v. The Additional Director's and others* in WP Nos 28468 and 28080 of 2021 dated 10-8-2022, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the aforesaid directions, this writ petition is disposed of No costs
Consequently, connected miscellaneous petition is closed

9. It is represented before us that the department has filed appeal upon the decision passed by the Ld. Single Judge in the case of Cuddalore Municipality and that the assessee has filed appeal upon the decision passed in the case of Madurai Corporation. These appeals are pending before the Hon'ble High Court. Since the Hon'ble High Court in the case of St. Thomas Mount Cum Pallavaram Cantonment Board has remanded the matter for considering the issue afresh, we are of the considered opinion that in the interest of justice, these matters also require to be remanded to the adjudicating authority to consider afresh the issue as to whether Municipality is liable to pay service tax under Renting of Immovable Property Services as well as other demands on the basis of the above observations and judgements rendered by jurisdictional High Court.

10. It is to be seen that some of the amounts falling within the demand pertain to fees and charges collected for carrying out functions specifically listed in 12th schedule. Further, services are carried out as per the provisions of Panchayat Act, Municipalities Act etc. by which State has bestowed the local authority to carry out such functions and services. These issues require to be examined. If sovereign functions, the levy of tax cannot be attracted.

11. The Ld. Counsel has argued on the ground of limitation also. The appellants being local authority, which is a wing of the Government, it cannot be said that appellants had suppressed facts with intention to evade payment of service tax. So also there is no positive act of suppression alleged in the Show Cause Notices against these municipalities. As the matter is remanded, we direct the adjudicating authority to consider the issue of limitation also. All issues are left open.

12. In the result, the impugned orders are set aside. The appeals are allowed by way of remand to the adjudicating authority.

(Order pronounced in the open court on 29.04.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)