

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41328 of 2015

(Arising out of Order-in-Appeal No. 37/2015-ST dated 19.03.2015 passed by Commissioner of Central Excise (Appeals), No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Velur Town Panchayat

Paramathi Velur Taluk,
Namakkal – 638 182.

...Appellant

Versus

Commissioner of GST and Central Excise

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

...Respondent

APPEARANCE:

For the Appellant : Shri R. Balagopal, Consultant

For the Respondent : Shri M. Selvakumar, Authorised Representative

CORAM:

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

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40111 / 2025

DATE OF HEARING : 09.01.2025

DATE OF DECISION : 21.01.2025

Order :- Per Mr. VASA SESHAGIRI RAO

Service Tax Appeal No. ST/41328/2015 has been filed by M/s. Velur Town Panchayat (hereinafter referred to as 'Appellant') assailing the Order-in-Appeal No. 37/2015-ST dated 19.03.2015 passed by the Commissioner of Central Excise (Appeals), Salem which upheld the Order-in-Original No. 21/2014 dated 01.12.2014 confirming the demand of service tax amounting to Rs.4,82,206/- under Section 73(2) of the Finance Act, 1994 (Act) along with appropriate interest besides imposing penalties of

Rs.30,000/- under Section 77(2) for non-filing and also under Section 76 of the ACT.

2. Facts briefly stated are that, the Appellant was rendering services under the category of "Renting of Immovable Property Service" by renting out immovable properties such as shops, commercial complex, etc. The department alleged that the Appellant had failed to obtain service tax registration and remit Service Tax. A Show Cause Notice dated 17.04.2013 was issued to the Appellant demanding service tax for the period from October 2007 to March 2012 which was adjudicated and appealed against. Subsequently, a statement of demand was issued for the period from April 2012-March 2013 proposing to demand service tax of Rs.4,82,206/- along with interest and to impose penalties. The Adjudicating Authority confirmed the demand and imposed penalties under Section 77(2) and Section 76 of the Act. On appeal by the Appellant, the Lower Appellate Authority dismissed their appeal and upheld the Order-in-Original dated 01.12.2014. Aggrieved, the Appellant is on appeal before this forum.

3. This Tribunal *vide* Final Order No. 42129/2018 dated 19.07.2018 kept the appeal in abeyance pending the decision of the Hon'ble Supreme Court in the case of *Mineral Area Development Authority and Others Vs. Steel Authority of India Ltd.* [(2011) 4 SCC 450], *Union of India Vs. UTV News Ltd.* [2018 (13) GSTL 3 (SC)], *Home Solutions Retails India Ltd. Vs. Union of India* [2011 (24) STR 129 (Del.)] and *Ritika Pvt. Ltd. dated 23.09.2011*. The appeal was statistically closed with the discretion to re-open the matter in case of any change of circumstances. Subsequently the Department filed a Miscellaneous application seeking restoration of appeal

citing the Tribunal Final Order No. 42545-42548 of 2018 dated 01.10.2018 passed in the case of *Punjai Puliampatty Municipality*. Accordingly vide Miscellaneous order No. 40079/2021 dated 23.08.2021, this Tribunal restored the appeal and is being taken up for disposal.

4. The Ld. Consultant Shri R. Balagopal representing the appellant has submitted that M/s. Velur Town Panchayat owns a number of immovable properties, vacant land, markets, etc., which have been leased for specific period by tender-cum-public auction as per the State Government orders, which is a creature of an Act of the Tamil Nadu Legislature and is the statutory body being governed by the Tamil Nadu District Municipalities Act, 1920 and it is an autonomous self-government in terms of the Article 243Q of the Constitution of India. He has submitted that the law is well settled that municipalities are covered under the definition of the 'State' as enshrined under the Article 12 of Constitution of India.

5. The Ld. Authorised Representative Shri M. Selvakumar representing the Department has affirmed the findings of the impugned order and submitted that the Appellant is liable to pay service tax on the income generated out of renting out / leasing out immovable properties of the municipality under 'Renting of Immovable Property service' as upheld by various High Courts and the Tribunal. It was therefore prayed for dismissal of the appeal filed by the Appellant.

6. We have carefully considered the submissions made by both the sides and also evidences available on records especially Final Order No.

42129/2018 dated 19.07.2018 and also Final Order Nos. 40754-40755/2024 dated 25.06.2024.

7. The only issue that arises for determination in this appeal is whether the demand of service tax under the category of Renting of Immovable Property service on the appellant is sustainable or not?

8. We find that in similar circumstances, this Tribunal had in the Appellants own case for the previous period *vide* Final Order No. 40754-40755/2024 dated 25.06.2024 had remanded the matter to the Adjudicating Authority by taking note of the judgement passed by the jurisdictional High Court in the case of *Cuddalore Municipality Vs. Jt. Commissioner of CGST and Central Excise and (Others) [2021 (4) TMI 500]*, *G.V. Matheswaran Vs. UOI [2014-TIOL-2545-HC-MAD-ST]* and the subsequent decision 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)]*. Relevant portions of the Tribunal, Chennai's order in the appellant's own case relating to demand of service tax under Renting of Immovable Property Service reads as follows: -

"6. The issue that arises for consideration in all these appeals is whether the demands of service tax under various services including 'Renting of Immovable Property Services' are sustainable or not? The Tribunal in the appellant's own case had occasion to consider the similar issue. After taking note of the judgement passed by the Hon'ble High Court in the case of Cuddalore Municipality Vs. Joint Commissioner of GST and Central Excise, Tiruchirappalli (supra) and St. Thomas Mount Cum Pallavaram Cantonment Board Vs. Additional Commissioner of GST and Central Excise, Chennai [2023 (71) GSTL 123 (Mad.)] wherein the Tribunal remanded the matter to the adjudicating authority to reconsider the issue afresh. After giving the appellant an opportunity to put forward evidence and also for personal hearing. The relevant part of the order passed by the

Tribunal vide Final Order No.40469-40482/2024 dated 24.04.2024 is reproduced as under :

“6. The common issue that arises for consideration in all these appeals is whether the demands of service tax under various services including Renting of Immovable Property Services are sustainable or not?

7. It is required to be stated that major part of the demand is on Renting of Immovable Property Services. Some amount has been raised under cleaning services, fees and charges collected for bus stand, public toilet, slaughter house, market place, etc. The Hon’ble High Court in the case of Cuddalore Municipality (supra) had analysed the issue as to whether demand of service tax can be raised in regard to services / facilities provided by Municipality / Corporation. It was held that Municipalities (local authority) were rendering such services as sovereign function and therefore the amounts received is outside the purview of levy of service tax. In the said judgment, the Hon’ble High Court considered the liability to pay service tax for the period prior to 01.07.2012 as well as after 01.07.2012. The relevant paragraphs of the judgment in the case of Cuddalore Municipality supra reads as under:-

“58. As far as renting of immovable 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 1-7-2012. Only ancillary service provided by a third party towards renting of immovable property of a non-governmental or local body will be liable 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-S.T., dated 20- 6-2012 vide Sl. Nos. 38 and 39. They are reproduced 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 243W of the Constitution.”

60. Thus, there is no jurisdiction in the impugned show cause notices/Orders-in-Originals 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 7-3-2018 and demand confirmed in Order-in-Original No. 3/2017-ST in C. No.

IV/09/04/2017-ST. Adjn. (RO OC No. 100/2016), dated 24-3-2017 and Order-in-Original No. 5/2018-ST in C. No. V/ST/15/21/2018-ST.Adj., dated 6-4-2018 are liable 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. 8900 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.”

7.2 *It was held that the Government or local authority is exempted from payment of service tax on Renting of Immovable Property Services or for other services.*

7.3 *The above decision was rendered by the Hon’ble High Court on 22.03.2021. However, prior to this decision, the Hon’ble Jurisdictional High Court at Madurai Bench in the case of Madurai Corporation Vs. The Commissioner of Central Excise [W.P.(MD) No. 7559 of 2015] had considered the issue of taxability of renting of immovable property and vide judgment dated 09.09.2020 held that Municipality is liable to pay service tax. The relevant paragraphs of the judgment in the case of Madurai Corporation (supra) reads as under:-*

“4.This Court heard the learned counsel for the petitioner at considerable length. Though I found the contentions to be worthy of consideration, as rightly pointed out by the learned standing counsel, the issue is no 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) S.T.R 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 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) (zzzz) 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 lease or license and the test is as to whether it is used in the course of or 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 do not fall within the two exemptions provided under Section 65(90a) 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."

7.4 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. the Union of India [2014- TIOL-2545-HC-MAD-ST]. In the case of G.V. Matheswaran the constitutional validity of the levy of service tax on Renting of Immovable Property Service was under challenge. The main ground raised by the petitioner therein was that it is a tax on immovable property and that the Centre has no power to levy tax for the reason that immovable property (land) falls within the State list. There were various decisions passed by other High Courts upholding validity of the provisions of Section 65(105)(zzzz) and Section 65(90a) of the Finance Act, 1994.

- i. Shubh Timb Steels Ltd. Vs. Union of India [2011 (37) GST 46 (P&H)]
- ii. Utkal Builders Ltd. Vs. UOI [2011 (22) STR 257 (Ori.)]
- iii. Entertainment World Developers Ltd. Vs. UOI [2012 (25) S.T.R. 231 (M.P.)]
- iv. Home Solution Retail (India) Ltd. Vs. UOI [2011 (24) S.T.R. 129 (Del.)], Home Solution II

In these cases there was no specific discussion upon the issue whether local authority would be liable to pay service tax. In the case of Madurai Corporation, the Ld. Single Bench Judge sustained the demand mainly on the view that it was observed by the Hon'ble High Court in the batch case that the Municipality can pass on the burden of service tax to the tenant (recipient of service tax). The Ld. Single Judge also referred to the case of R. Nambi vs. Tenkasi Municipality [(2015) (37) S.T.R 696 (Mad.)]. The petitioner therein was a licensee of the Tenkasi Municipality and challenged the demand of service tax served by the Municipality. 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 (supra) has considered this specific issue. In a recent judgment, 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 [2023 (71) GSTL 123 (Mad.)] as referred to the decision in the case of Cuddalore Municipality (supra) and remanded the matter to consider the issue as to whether Municipality / Cantonment Board is liable to pay service tax. The relevant paragraphs 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 W.P. 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 W.P. 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 W.P. (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 Service Tax.

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 (58) G.S.T.L. 129 = [2022] 135 taxmann.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.

8. For the foregoing reasons, the impugned order dated 30-9-2022 passed by the respondent is hereby quashed and the matter is 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 in W.P. No. 8900 of 2017, dated 22- 3-2021 as well as (b) St. Thomas Mount Cum Pallavaram Cantonment Board v. The Additional Directors and others in W.P. 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."

7.5 It is represented before us that the Department has filed appeal against the decision passed by the Ld. Single Judge in the case of

Cuddalore Municipality and that assessee has filed appeal against 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 (supra) 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 and other Services. It is to be noted 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, all these services are carried out as per the provisions of Coimbatore City Municipality Corporation Act, 1981. The State (Tamil Nadu) has bestowed the local authority vide the above enactment to carry out certain functions and services in consequence to Article 243X read with Article 243W of the Constitution. These issues have to be examined in detail. If the activities are in discharge of sovereign right / function, the levy of service tax cannot be attracted.

8. The Ld. Counsel has argued on the ground of the limitation also. The assessee being a local authority, which is a wing of the Government, it cannot be said that assessee has suppressed facts with intent to evade payment of service tax. So also, there is no positive act of suppression alleged in the Show Cause Notice against these Municipalities. As the matter is remanded, we direct the Adjudicating Authority to consider the issue on limitation also.

9. The Department has filed appeal aggrieved by dropping or reducing the demands. In case the demand of service tax is sustainable, the Adjudicating Authority is directed to quantify after looking into the actual amounts received in respect of each services. All issues are left open.

10. In the result, the impugned orders are set aside. The appeals are allowed by way of remand to the Adjudicating Authority. Cross objections are disposed, accordingly."

9. Further, the Hon'ble High Court in the case of St. Thomas Mount Cum Pallavaram Cantonment Board (supra) after referring to the above conflicting decisions, held it proper to remand the matter back to the file of original authority with the following observations: -

"8. For the foregoing reasons, the impugned order dated 30-9-2022 passed by the respondent is hereby quashed and the

matter is 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 in W.P. No. 8900 of 2017, dated 22-3-2021 as well as (b) St. Thomas Mount Cum Pallavaram Cantonment Board v. The Additional Directors and others in W.P. 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."

10. In view thereof, following the above decisions, we are of the considered opinion that the matter requires to be remanded to the Adjudicating Authority who is directed to consider the issue afresh after giving an opportunity to the Appellant to furnish evidence and for personal hearing. All issues are left open including the issue on limitation.

11. In the result, the impugned Order-in-Appeal No. 37/2015-ST dated 19.03.2015 is set aside. The appeal is allowed by way of remand to the Adjudicating Authority on above terms.

(Order pronounced in open court on 21.01.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

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

MK