IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.40220 of 2015

(Arising out of Order-in-Appeal No. MAD-CEX-000-APP-075/2014 dated 12.9.2014 passed by the Commissioner of Central Excise and Service Tax (Appeals), Madurai)

Nilakottai Town Panchayat **Appellant**
Nilakottai, Dindigul Dt. 624 208.

Vs.

Commissioner of GST & Central Excise **Respondent**
Central Revenue Buildings
Lal Bahadur Shastri Marg
Madurai – 625 002.

APPEARANCE:

Ms. M. Subhasini, Advocate for the Appellant
Shri N. Sathyanarayana, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan, T.V., Member (Judicial)

FINAL ORDER NO. 40166/2025

Date of Hearing : 20.12.2024
Date of Decision: 05.02.2025

Per M. Ajit Kumar,

This appeal is against Order-in-Appeal No. MAD-CEX-000-APP-075/2014 dated 12.9.2014 passed by the Commissioner of Central Excise and Service Tax (Appeals), Madurai (impugned order).

2. Brief facts of the case are that the appellant are providing renting / leasing of their immovable properties for commercial purpose which appeared to be a taxable service under the category of "Renting of Immovable Property Service" as defined under sec. 65 of the Finance Act, 1994 (the Act) as amended. For providing such service, the appellant had not registered the service 'Renting of Immovable Property' with the Service Tax Department and had also not paid

appropriate service tax to the tune of Rs.2,17,255/- on the taxable value received to the extent of Rs.19,83,140/- for the period from June 2007 to March 2012. After due process of law, the Original Authority confirmed the service tax proposed in the Show Cause Notice and imposed a penalty. Aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals). Vide the order impugned, the Appellate Authority upheld the adjudication order. Hence the present appeal.

3. The Ld. Counsel Ms. Subasini appeared for the appellant and Ld. Authorized Representative Shri N. Sathyanarayana appeared for the respondent.

3.1 The Ld. Counsel for the appellant stated that the activity of renting of immovable property by the panchayat was not a taxable activity under the Finance Act 1994. She referred to the judgment of the Hon'ble Jurisdictional High Court in the case of **Cuddalore Municipality Vs. Joint Commissioner of GST and Central Excise, Tiruchirappalli** [2021 (55) GSTL 397 (Mad.)]. The Ld. Advocate stated that the Hon'ble High Court had considered the issue as to whether the services of renting of immovable property provided by Municipality would amount to rendering a sovereign function and had held the issue in favour of the assessee. Even otherwise the amount had not crossed the threshold limit as provided by Notfn. No. 6/2005 dated 01.03.2005. Further the issues involved interpretation of law and hence no penal provisions could have been invoked. She hence prayed that the impugned order may be set aside.

3.2 The Ld. AR took us through the impugned order and reiterated the points given therein.

4. We have heard both sides and have gone through the appeal memorandum and related papers. We find that a Coordinate Bench of this Tribunal, of which one of us [Shri M. Ajit Kumar, Member (T)] was a Member, examined an identical issue in, **The Commissioner, Allinagaram Municipality Theni Vs Commissioner of GST & Service Tax, Madurai** [FINAL ORDER No.41593/2024, dated:10.12.2024], and held as under;

> "5. 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?
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> 6. Having heard the Ld. A.R., we find that in a similar case this Bench in the case of **The Commissioner, Krishnagiri and Others Vs. Commissioner of Central Excise** vide Final Nos. 40613-40615/2024 dated 04.06.2024 has considered the decisions of 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) and the remanded the case to the file of AA. The Hon'ble 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:
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> > *"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 Cam 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."*
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> 7. 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 the 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 Cantontment 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 required to be remanded to

> the adjudicating authority who shall await the judgment in the above case of Hon'ble High Court.
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> 8. 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 are required to be examined. If the appellant is held to be performing sovereign functions, the levy of tax cannot be attracted.
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> 9. In view of the above, we also deem it proper to set aside the impugned order and remand the matter back to the file of original authority who shall adhere to the directions given by the Hon'ble High Court in the case of **St. Thomas Mount Cum Pallavaram Cantonment Board** (supra) and then pass a de novo order in accordance with law. All the contentions are left open. In any case, since the issue involves interpretation there shall not be any scope to levy penalty.
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> 10. The appeal stands disposed of on the above terms."

5. Judicial discipline requires us to follow the judgment of the Coordinate Bench for an earlier period when the issues involved are similar. Thus, having regard to the discussions above we set aside the impugned order and remand the matter back to the Ld. Original Authority for de novo adjudication. The lower authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order. The appeal is disposed of accordingly. The appellant is eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 05.02.2025)

Sd/-	Sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

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