CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 53409 OF 2018

(Arising out of Order–in-Appeal No. 172(AG)/CE/JDR/2018 dated 21.03.2018 passed by the Commissioner (Audit), Central Goods & Service Tax, Jodhpur)

M/s Krishi Upaj Mandi Samiti Baran ....**Appellant**

Versus

Commissioner, CGST & Central Excise Division, Udaipur ....**Respondent**

APPEARANCE:

Ms. Bhanu Shree Jain, Advocate for the Appellant
Dr. Radhe Tallo, Authorized Representative for the Department

CORAM :
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: July 30, 2021
Date of Decision: August 04, 2021

FINAL ORDER No. 51698/2021

JUSTICE DILIP GUPTA :

M/s. Krishi Upaj Mandi Samiti Baran[1] has sought the quashing of the order dated 21.03.2018 passed by the Commissioner (Audit), Central Goods and Service Tax (Audit) Commissionerate, Jodhpur[2], by which the appeal has been partially allowed to the extent that the demand with the statutory interest for the period 01.04.2012 to

1 **the appellant**
2 **the Commissioner (Appeals)**

30.06.2012 has been confirmed but the demand for the period after 01.07.2012 has been dropped.

2. The appellant was established by the Rajasthan State Government under the provisions of The Rajasthan Agriculture Produce Markets Act, 1961. To fulfill the obligations of providing necessary facilities of marketing of agricultural produce cast upon the appellant, the appellant let out shops or godowns within the market area and collected an allotment fee from the merchants or agriculturalists.

3. It is the collection of this amount that led to the issuance of a show cause notice dated 08.05.2014. The show cause notice mentions that the appellant had rented out its immovable properties to various business firms/individuals on periodical rent/lease amount and the services provided by the appellant would fall under the category of 'renting of immovable properties' defined under section 65(90a) of the Finance Act, 1994[3] and made taxable w.e.f. 01.06.2007 under section 65(105)(zzzz) of the Finance Act. The relevant portion of the show cause notice is reproduced below:

> "2. Whereas, it has been gathered that the noticee had rented out its immovable properties to various business firms/individuals for furtherance of their business on periodical rent/lease amounts. The service provided by the notice against receipt of certain amount falls under the category of "Renting of Immovable Property" Service and the amount so received is forming part of the taxable value w.e.f. 01.06.2007.
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> 6. *******
> The notice collected an amount of Rs. 82,67,227/- from the business firms/individuals client as 'Allotment Fee' but on the said amount no Service Tax has been paid by them, thus, they appear to have evaded the Service tax amounting to Rs. 10,21,829/- (Service Tax Rs. 9,92,067/- + Education Cess Rs. 19,841/- + SHE Cess Rs. 9,921/-) during the period from 01.04.2012 to 31.03.2013 (As shown in the Annexure "A"),
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> 9. Now, therefore M/s Krishi Upaj Mandi Samiti, Baran hereby called upon to show cause to the Additional Commissioner Central Excise Commissioner-I, N.C.R. Building, Statue Circle, Jaipur-302005 (Rajasthan) within 30 days from the receipt of this show cause notice as to why:-
>
> (i) Service Tax amounting Rs. 10,21,829/- (Service tax Rs. 9,92,067/- + Education Cess Rs. 19,841 + SHE Cess Rs. 9,921/-) should not be

3 **the Finance Act**

demanded and recovered from them under Section 73(1) of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under Section 75 of the Act ibid; and

(iii) Penalty should not be imposed upon the provision of Section, 76 and 77 of the Finance Act, 1994 for contravention of Section 68, 69 & 70 of the Finance Act of the Finance Act, 1994 read with Rule 4, 6 & 7 of the Service Tax, 1994.

4. The appellant filed a reply, denying the allegations made in the show cause notice. The Adjudicating Authority, however, by order dated 29.12.2016 confirmed the demand with interest and penalty.

5. Feeling aggrieved, the appellant filed an appeal and, as noticed above, the Commissioner (Appeals) partially allowed the appeal. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

> "8. I find that in the appeal, the adjudicating authority vide impugned order has confirmed service tax demand on renting of immovable property, wherein period of demand is from 1.4.2012 to 31.3.2013. As held by Hon'ble Tribunal, there is no service tax liability after 01.07.2012. Following the judicial discipline, I am inclined to conclude that the appellant's renting of immovable property services provided to brokers/traders for agriculture purpose fall under clause (d) of Negative List specified under Section 66(D) of the Finance Act, 1994. **I therefore hold that they are not liable to pay service tax on renting of immovable property services provided to brokers/traders after 1.7.2012.** However, the appellant has also provided renting of immovable property services to brokers/traders before 01.07.2012 i.e. from 01.04.2012 to 30.06.2012, which attracted service tax as per rate prescribed along with interest. The SCN has been issued on 8.5.2014, within time limit of 18 months as the last date for filing ST3 returns for the period 1.4.2012 to 30.6.2012 was extended to 25.11.2012 and therefore the demand is not time barred. I refrain from imposing any penalty on the appellant as the issue was of interpretation of benefit of a notification and tribunal in has its order dated 25.02.2017 already held that there was no malafide Act on part of the appellant to evade Service Tax.
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> 9. In view of above, I partially allow the appeal filed by the appellant to the extent mentioned above and confirm the demand along with statutory interest for the period 1.4.2012 to 30.6.2012. Held accordingly.

6. Ms. Bhanu Shree Jain learned counsel appearing for the appellant made following submissions:

i. The normal period of limitation for the rising demand for non-payment of service tax as per section 73 of the Finance Act for the period 01.04.2012 to 28.05.2012 is one year from the relevant date. In the present case, the relevant date is the due date of filing of return i.e. 25.11.2012. Thus, the period of limitation will expire on 25.11.2013. The impugned show cause notice has been issued on 08.05.2014. Thus, the demand raised for the period 01.04.2012 to 28.05.2012 is barred by limitation; and

ii. Section 73(1) of the Finance Act was amended with effect from 28.05.2012 and the period of limitation was extended to 18 months. It is settled law that the amendment in the period of limitation cannot revive a dead claim. Thus, the demand for the period 01.04.2012 to 28.05.2012 will be governed by the period of limitation existing before amendment.

7. Dr. Radhe Tallo learned Authorized Representative appearing for the Department, however, supported the impugned order.

8. The submissions advanced by learned counsel for the appellant and the learned Authorized Representative of the Department have been considered.

9. Section 73(1) of the Finance Act deals with recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. This section, as it stood prior to 28.05.2012, is reproduced below:

> "**SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —**
> (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within **one year from the relevant date,** serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
> Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —
> (a) fraud; or
> (b) collusion; or
> (c) wilful mis-statement; or
> (d) suppression of facts; or
> (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of

> service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."

10. The aforesaid section 73(1) was amended w.e.f. 2805.2012 and the period of "one year from the relevant date" was amended to "eighteen months from the relevant date".

11. There is no dispute that the relevant date in the present case is 25.11.2012. Prior to this date on 28.05.2012, section 73(1) of the Finance Act was amended and it was provided that the Central Excise Officer could issue a notice within eighteen months from the relevant date. The show cause notice was issued on 08.05.2014, which would be within eighteen months from 25.11.2012.

12. The Commissioner (Appeals), therefore, committed no illegality in holding that the demand for the period 01.04.2012 to 30.06.2012 was within the statutory period of eighteen months from the relevant date.

13. There is, therefore, no illegality in the impugned order dated 21.03.2018 passed by the Commissioner (Appeals). The appeal is, accordingly, dismissed.

(Order pronounced on 04.08.2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

Shreya

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Date of Decision: August 04, 2021

ORDER

Order pronounced.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Shreya