CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51686 of 2016

(Arising out of Order-in-Appeal No. 61-62(AK)ST/JPR/2016 dated 01.03.2016 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Jaipur)

Krishi Upaj Mandi Samiti, **….. Appellant**
Sujangarh, Distt. Churu

VERSUS

Commissioner (Appeals) Central Excise,
Customs & Service Tax, Jaipur I **….. Respondent**

APPEARANCE:

None for the Appellant
Shri Radhe Tallo, Authorized Representative of the Department

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

FINAL ORDER NO. 51118/2022

DATE OF HEARING/DECISISON: November 25, 2022

JUSTICE DILIP GUPTA

This appeal is directed against that part of the order dated 26.02.2016 passed by the Commissioner (Appeals) by which the demand of service tax against the appellant for the period 2011-2012 has been upheld with interest and penalty. It needs to be noted that the demand for the period 2010-2011 has been dropped.

2. The period of dispute in this appeal is from 01.04.2012 to 31.03.2013 and the issue is about levy of service tax of Rs. 54,272/-

under the category of 'renting of immovable property service' under section 65(105)(zzzz) of the Finance Act 1994[1].

3. The case of the Department as set out in the show cause notice is that the appellant had provided services by way of renting out its immovable property of shops and buildings to various persons/firms/organizations for use in the course of furtherance of business of commerce and received monetary consideration on a monthly/yearly basis as per the terms of the contract/agreement but service tax was not paid.

4. Case has been called out but no one has appeared on behalf of the appellant though Shri Radhe Tallo, learned authorized representative appearing for the Department has made submissions.

5. The issue as to whether the appellant would be liable for service tax under the category of 'renting of immovable property' for the period prior to 01.07.2012 and after 01.07.2012 has been settled by the Supreme Court in a recent decision rendered in the case of the appellant in **Krishi Upaj Mandi Samiti** v/s **Commissioner of Central Excise & Service Tax, Alwar**[2] and it has been held that it would be taxable prior to 01.07.2012 but would not be taxable w.e.f. 01.07.2012. The relevant portion of the judgment is reproduced below:-

> **"9. In the present case, it is the case on behalf of the appellants that the activity of rent/lease/allotment of shop/land/platform/space is a statutory activity and the**

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1. the Finance Act
2. 2022 (58) GSTL 129 (SC)

Market Committees are performing their statutory duties cast upon them under Section 9 of the Act, 1961 and therefore they are exempted from payment of service tax on such activities.

The aforesaid submission seems to be attractive but has no substance. Section 9(2) is an enabling provision and the words used is "market committee may". It is to be noted that in so far as sub-section (1) of Section 9 is concerned, the word used is "shall". Therefore, wherever the legislature intended that the particular activity is a mandatory statutory, the legislature has used the word "shall". Therefore, when under sub-section (2) of Section 9, the word used is "may", the activities mentioned in Section 9(2)(xvii) cannot be said to be mandatory statutory duty and/or activity. Under Section 9(2), it is not a mandatory statutory duty cast upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders. Hence, such an activity cannot be said to be a mandatory statutory activity as contended on behalf of the appellants. Even the fees which is collected is not deposited into the Government Treasury. It will go to the Market Committee Fund and will be used by the market committee(s). In the facts of the case on hand, such a fee collected cannot have the characteristics of the statutory levy/statutory fee. **Thus, under the Act, 1961, it cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/platform on rent/lease. If the statute mandates that the Market Committees have to provide the land/shop/platform/space on rent/lease then and then only it can be said to be a mandatory statutory obligation otherwise it is only a discretionary function under the statute. If it is discretionary function, then, it cannot be said to be a mandatory statutory obligation/statutory activity. Hence, no exemption to pay service tax can be claimed.**

10. The next provision relied upon by the appellants – respective Market Committees is Rule 45 of the Rajasthan Agricultural Produce Markets Rules, 1963 (hereinafter referred to as "Rules, 1963"), which reads as under:-

> "45. The Market Committee fund.- All money received by the Market Committee shall be credited to

> the fund called the Market Committee fund. Except where Government on application by the Market Committee or otherwise shall direct, all money paid into the Market Committee fund shall be credited at least once a week in full into Government treasury or sub-treasury, or a bank duly approved for this purpose by the Director. All balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn upon except in accordance with these rules."

10.1. Now, so far as the submission on behalf of the appellants relying upon Rule 45 of the Rules, 1963 that the fees, which is collected shall be deposited with the Government Treasury and therefore also the Market Committees are exempted from payment of service tax is concerned, it is to be noted that on fair reading of Rule 45, the amount of fee so collected on such activities – rent/lease shall not go to the Government. Rule 45 provides how the money received by the Market Committees shall be invested and/or deposited. It provides that all money received by the Market Committee shall be credited to the fund called the Market Committee Fund. It further provides that all money paid into the Market Committee Fund shall be credited once a week in full into Government Treasury or sub-treasury, or a bank duly approved for this purpose by the Director and all balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn except in accordance with the Rules. **Therefore, it does not provide that on deposit of the money received by the Market Committees into the Government Treasury/sub-treasury or a bank duly approved, it ceases to be the Market Committee Fund.** It will continue to be the Market Committee Fund. Even it is the case on behalf of the appellants that the fees collected, which will be deposited in the Market Committee Fund will be utilized by the Market Committee for expanding/benefit of the Market Committee etc.

11. **Even otherwise, it is to be noted that on and after 01.07.2012, 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 01.07.2012, 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.
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> **(emphasis supplied)**

6. As noted above the dispute in the present case is from 01.04.2012 to 31.3.2013. In view of the aforesaid decision of the Supreme Court service tax under the category of renting of immovable property could have been confirmed only for the period from 01.04.2012 up to 30.06.2012. However, no service tax could have been confirmed for the period from 01.07.2012 to 31.03.2013. The order passed by the Commissioner is accordingly modified to the extent indicated above and the appeal is also allowed to the said extent.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Rekha