CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. I

SERVICE TAX APPEAL NO. 51224 of 2017

[Arising out of Order-in-Original No. 19-20/COMMR/ST/JBP/2017 dated 28.02.2017 passed by the Commissioner, Central Excise, Jabalpur]

The Commissioner
Nagar Nigam Jabalpur **APPELLANT**

VS.

Commissioner of Central Excise,
Jabalpur Division **RESPONDENT**

APPEARANCE:

Present for the Appellant : Shri Manish Mishra, Advocate
Present for the Respondent: Shri Rajeev Kapoor, Authorised Representative

CORAM:
HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING : 02 MAY, 2023
DATE OF DECISION : 02 MAY, 2023

FINAL ORDER No. 50884 /2023

PER HEMAMBIKA R PRIYA

The present appeal has been filed by the Commissioner of Nagar Nigam, Jabalpur to assail the Order-in-Original No. 19-20/COMMR/ST/JBP/2017 dated 28.02.2017. The brief facts are reproduced hereinafter.

2. The appellant is a Municipal Corporation at Jabalpur, Madhya Pradesh and provides various services to the Public. Based on information, the jurisdictional Range Superintendent sought information from the appellant on the service tax paid on 'Lease Rent commercial', 'Rent industrial' and 'Rent other'.

Thereafter, based on this information, the department issued two show cause notices dated 22.08.2013 and 09.09.2014 for the period 2008-09 to 2012-13 and 2013-14 respectively, demanding service tax on amount collected as lease rent of commercial and residential properties. The aforementioned show cause notices were adjudicated wherein demand of Rs.2,26,59,416/- and Rs.24,79,609/- along with interest and penalty under section 77 and equal penalty under section 78 was confirmed.

3. The learned counsel appearing for the appellant submitted that the Commissioner has relied on the Circular No. 89/7/2006 – ST dated 18.12.2006 issued by CBEC regarding the applicability of service tax on the fee collected by public authority while performing statutory duties. He stated that the said circular had clarified that activities which are purely in public interest and is undertaken on mandatory and statutory function and are not in the nature of service to any particular individual or for any consideration, are not leviable to service tax. However, if the nature of such service is not in the nature of statutory activity and the same is undertaken for consideration, then service tax would be leviable. He further submitted that the decision regarding the levy of service tax on commercial lease rent is erroneous as the appellant is the Municipal Corporation constituted under article 243Q of the Constitution. He relied on the Supreme Court decision in the case of **New Delhi, Municipal Corporation vs State of Punjab**[1] where in the Apex Court held that granting of leases is

1 [1997(7)SCC 399]

not in the nature of trade or business and such activity would be exempt from Union taxation. As regards the lease rent on residential premises, he submitted that the respondent department had already settled this issue in favour of the appellant for the period 2014–15. Therefore, this issue regarding service tax on residential lease rent may be treated as settled. In view of the above facts, he prayed that the appeal filed may be allowed.

4. The learned Authorised representative appearing for the department submitted that the issue is no more res integra as the taxability of lease rent on commercial properties has been settled by the Tribunal in its Final order number 53436–53500/2017 dated 25.05.2017 in the case of **Krishi Upaj Mandi Samiti**, which has also been upheld by the Supreme Court in its decision dated 23.02.2022 in Civil Appeal no. 1482 of 2018.

5. We have considered the submissions made by the learned Counsel and the learned Authorised representative. We find that the issue in respect of leviability of service tax on commercial lease is no longer res integra and stand settled by the decision of the Tribunal vide Final Order No. 53436-53500/2017, dated 25.05.2017 in the case of **M/s Krishi Upaj Mandi Samiti vs Commissioner of C.Ex & ST, Jaipur** which was also upheld by the Supreme Court. The relevant portion is reproduced below:

> "14. We have examined the scope of entry in the negative list along with various clarifications issued by the Government. On harmonious construction of all material facts on record, we find that the appellants are not liable to service tax on shops/sheds/platforms/land leased out in the notified market area for traders for temporary storage of agricultural

> produce traded in the market. In respect of shops, premises, buildings, etc, rented/leased out for any other commercial purpose other than with reference to agricultural produce (like bank, general shop, etc.), the same shall not be covered by the negative list and the appellants shall be liable to service tax."

6. As regards the leviability of service tax on residential lease, we note that the relevant Section 65(105)(zzzz) of the Finance Act, 1994 as introduced with effect from 1-6-2007 reads as under:-

> "Taxable service means service provided or to be provided 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."

7. Subsequently, by Finance Act, 2001, Section 65(105)(zzzz) was amended retrospectively and the amended provision reads as "taxable service means any service provided or to be 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." Thus, as per the amended provisions, Section 65(105)(zzzz) covers not only the service of renting of immovable property to any other person for use in the course of furtherance of business or commerce but any other service in relation to such renting. Therefore, the services, which are in connection with the renting of immovable property for business or commerce, would be taxable under this Section. Consequently, the lease rent received from residential property is exempt as it does not fall within the

ambit of the definition, viz., for use in or for furtherance of business or commerce, and therefore not leviable to service tax. Hence, service tax is not leviable on such residential lease rental income. It is also noted that the department has also accepted this contention in the subsequent order in appeal no. BHO/ EXCUS-001-APP-2212-17-18 dated 12.09.2017.

8. In view of the above discussions, we hold that the service tax is leviable only on the lease rent amount received from commercial leases and not on the residence lease rent.

9. We note the bifurcation has been provided of the total lease rent amount collected which was Rs. 22,47,29,804/- on account of lease amount and lease transfer [wherein the service tax liability was Rs.2,51,39,025/-] comprising residential lease as well as commercial lease as shown in the table below:

1	2	3	4	5	6	7
S. No	Financial year	Income from residential lease rent	Income from residential lease transfer	Income from commercial lease rent	Income from commercial lease transfer	Total
1	2008-09	6,71,218/-	20,77,012/-	2,23,739/-	80,19,252/-	1,09,91,221/-
2	2009-10	1,54,25,943/-	2,36,29,473/-	51,41,981/-	59,07,368/-	5,01,04,765/-
3	2010-11	31,50,176/-	2,21,70,236/-	10,50,059/-	55,42,558/-	3,19,13,029/-
4	2011-12	74,25,346/-	3,47,95,147/-	24,75,115/-	86,98,786/-	5,33,94,394/-
5	2012-13	51,74,433/-	2,12,82,025/-	17,24,811/-	53,20,506/-	3,35,01,775/-
6	2013-14	22,87,776/-	64,53,232/-	12,62,701/-	16,13,308/-	1,16,17,017/-
		3,41,34,892/-	11,04,07,125/-	1,18,78,406/-	3,51,01,778/-	19,15,22,201/-

10. This bifurcation needs to be taken into consideration while computing the tax liability of the appellant.

11. We now come to the penalties imposed on the appellant. We note that the Commissioner has been rather harsh in imposing penalty on the Municipal Corporation. Being a statutory body, no malafide intention to evade payment can be ascribed to the appellant. This is an appropriate case for waiver of penalty under section 80 of the Finance Act, as the leviability of service tax on commercial lease rent attained finality with the decision of the Supreme Court in **Krishi Upaj Mandi Samiti vs Commissioner of Central Excise and Service Tax, Jaipur** [2]. Accordingly, we set aside the penalties imposed under section 77 and 78 of the Finance Act, 1994.

12. The order-in-original is modified to that extent only and appeal is allowed to this extent.

(Pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)

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2 [2022 (58) GSTL 129 (SC)].