CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4

SERVICE TAX APPEAL NO. 52139 OF 2016

[Arising out of Order in Original No. 31/PC/ST/BPL-ST/2016 dated 30.03.2016 passed by the Principal Commissioner of Customs, Central Excise and Service Tax, Bhopal]

M P HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD **........APPELLANT**
Division-II,
RSS Market, Bus Stop No. 05,
PO Ravi Shankar Nagar, Bhopal

Vs.

PRINCIPAL COMMISSIONER, CUSTOMS, CENTRAL EXCISE AND SERVICE TAX-BHOPAL **.......RESPONDENT**
48, Adminstrative Area, Arera Hills,
Bhopal

WITH

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48, Adminstrative Area, Arera Hills,
Bhopal

Appearance:
Shri Sandeep Mukherjee, Chartered Accountant for the Appellant

Ms. Jaya Kumari, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 50036-50037 /2026

DATE OF HEARING : 16/10/2025
DATE OF DECISION : 08/01/2026

P.V.SUBBA RAO

1. M/s MP Housing and Infrastructure Development Board[1] filed these appeals to assail the order dated 30.06.2016 passed by the Pr. Commissioner of Customs, Central Excise and Service Tax in which he decided the proposals made in two show cause notices covering the period April 2008 to August, 2012 and September, 2012 to April, 2014. In these SCNs demands of service tax were made under three heads which have been confirmed in the impugned order. The details are as follows:

S. No.	**Service**	**Period**	**Demand**
1.	Construction of residential complex service	01.07.2010 to 31.08.2012	30,62,144
		01.09.2012 to 31.03.2014	1,50,55,383
2.	Management, Maintenance or Repair Service	01.04.2008 to 31.08.2012	41,207,69
		01.09.2012 to 31.03.2014	3,76,644
3.	Renting of Immovable Property Service	01.04.2008 to 31.08.2012	25,31,775
		01.09.2012 to 31.03.2014	3,58,606

2. We have heard the learned counsel for the appellant and the learned authorized representative appearing for the department and perused the records.

3. Learned counsel for the appellant submits that the appellant does not dispute the demand of service tax on 'Construction of Residential Complex' service during the period and has also paid the service tax also but with delay. It is his

1 Appellant

submission that the appellant had collected consideration from the house owners in installments and only along with the last installment, it had collected the entire amount of service tax and deposited the same with the department. He contends that no interest should be demanded from the appellant because it had not collected any amount of service tax from the clients and retained it. It only collected and paid service tax along with the last installment.

4. As far as the demand under 'Management, Maintenance and Repair services' is concerned, it is the submission of the appellant that it had not rendered any such service at all. The appellant had entered into tripartite agreements with the home buyers and the Residents Welfare Association (RWA) according to which the appellant had, for some period, collected maintenance charges from the home buyers to handover the amounts to RWA later. Until the RWA took over, the maintenance was done by the appellant by retaining these amounts as a corpus and using interest earned on the corpus for the purpose. He, therefore, contents that no service tax needs to be paid against the appellant had not received any consideration for 'Management, maintenance and Repair services'.

5. As far as the demand of service tax was 'Renting of Immovable Property' is concerned, it is the contention of the appellant that the appellant had not collected any amounts as 'Renting of Immovable Property Service'. The appellant, being a Government of Madhya Pradesh Organization, is governed by

Housing and Habitant Policy, 2007 of the Government of Madhya Pradesh. As per this policy, the appellant procures the land from the Government of Madhya Pradesh on lease hold basis, builds houses and sells them. Since the land is received from the government on a lease hold basis, lease rent has to be paid to the Government of Madhya Pradesh. The appellant collected lease rent from the house owners and deposited it with the Government of Madhya Pradesh. Therefore, although the amounts are indicated in the receipts as lease rent, the appellant had not leased out any immovable property to any customer. All it it did was collected the lease rent on the land (which was given on lease hold basis) from the home buyers and paid it to the Government of Madhya Pradesh. No service tax, therefore, needs to be paid on this amount.

6. Learned authorized representative appearing for the Revenue vehemently supported the impugned order.

7. We have considered the submissions advanced by both sides and perused the records.

8. There is no dispute that the appellant had rendered 'Construction of Residential Complex Service' and the appellant is also not disputing that it had to pay service tax. It is the submission of the learned counsel that the appellant has already been paid the service tax but paid service tax late since it collected service tax from the home buyers along with final installment. Hence, the delay. The finding of the Commissioner on this issue in the impugned order is reproduced below:

> "18. Section 67 of the Act reads as under-
>
> "67 (1)- Subject to the provisions of this chapter, where Service Tax is chargeable on any taxable service with reference to its value, then such value shall-
>
> (1) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided."
>
> 19. Further, Rule 6 of the Service Tax Rules, 1994 (for short 'STR') stipulates
>
> that :-Rule 6 (1) The Service Tax shall be paid to the credit of the Central Government,
>
> (i) by the 6th day of the month if the duty is deposited electronically through internet banking; and
>
> (ii) by the 5th day of the month, in any other case, immediately following the calendar month in which the service is deemed to be provided as per rules framed in this regard."

18 The obligation to pay the service tax arises on account of the charge in the Finance Act, 1994 and is not dependent on whether or not the assessee had collected service tax from its clients. This principle applies to any indirect tax. Central Excise duty, VAT, Sales Tax etc., can be recovered from the buyers/ clients/ customers by the assessee but payment of these duties and taxes within time is responsibility of the assessee. The assessee cannot delay paying service tax on the ground that it had not yet collected the service tax. Rule 6 of the Service Tax Rules, 1994 makes it clear that the service tax has to be paid on the sixth day of the month following the month in which the service was provided or deemed to be provided. The appellant had, therefore, to pay service tax every month and could not have delayed paying service tax. Since there was a delay in paying service tax, interest needs to be paid. In view of the above, we find that the demand of service tax under

'Construction of Residential Complex service' needs to be upheld and is upheld along with applicable interest.

19 As far as the Management, Maintenance and Repair services is concerned, evidently, the appellant had collected amounts from home buyers and retained as deposit to further pass it on to the RWA, it is not a consideration received by the appellant for Management, Maintenance and Repair services. Therefore, the demand of service tax under this head needs to be set aside and is set aside.

20 As far as the demand of service tax on renting of immovable property is concerned, the lease rent said to have been collected by the appellant is not for leasing of any immovable property by the appellant but is the lease rent charged by the Government of Madhya Pradesh (since all land on which the houses were built were on lease hold basis). Therefore, the demand of service tax under the head of renting of immovable property service cannot sustain and needs to be set aside. As far as the penalties imposed under section 76, 77 and 78 of the Acts are concerned, we find that the appellant is a Government entity engaged in providing housing service and he could have, albeit wrongly, resumed that the service tax had to be paid only when it has been collected from the client and not before. During the relevant period, section 80 of the Finance Act, provided for penalty not being imposed for reasonable cause for failure. Invoking section 80 of the Finance Act, we set aside penalties imposed on the appellant.

21 The appeals are partly allowed upholding the confirmation of demand under construction of complex services along with interest and any amounts already paid may be adjusted towards this demand. Rest of the impugned orders are set aside. The appeals are partly allowed.

[Order pronounced on **08/01/2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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