IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/55435 & 55714/2013-[DB]
[Arising out of O-I-O No. 37-39/2012/S.T//JPR-II-Commissioner dated 29.10.2012 passed by Commissioner of Customs, New Delhi]

Service Tax Appeal No. ST/51875/2014-[DB]
[Arising out of Order-In-Appeal No. JAI-EXCUS-002-COM-330-13-14 dated 28.11.2013 passed by Commissioner (Appeals) Jaipur-II]

Service Tax Appeal No. ST/51876/2014-[DB]
[Arising out of Order-In-Appeal No. JAI-EXCUS-002-COM-004-13-14 dated 24.01.2014 passed by Commissioner (Appeals) Jaipur-II]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Krishi Upaj Mandi Samiti ...Appellant
The Secretary-Krishi Upaj Mandi Samiti

Vs.

C.C.E. & S.T., Jaipur-II …Respondent

Appearance:
None appeared for Krishi Upaj Smiti (Appellant)
Mr. Kumar Vikram (Advocate) appeared for (The Secretary)
Mr. Sanjay Jain (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.05.06.2017

Final Order No. 54091-54094/2017

Per S.K. Mohanty:

These appeals are directed against the impugned order dated 29.10.2012, 28.11.2013 and 24.01.2014 passed by the Commissioner of Service Tax, Jaipur, wherein service tax demand were confirmed under the taxable category of renting of immovable property service.

2. None appeared for the appellant M/s Krishi Upaj Mandi Samiti, despite notice. Heard Mr. Kumar Vikram for second appellant. Heard the Ld. DR for Revenue.

3. The Ld. DR submits that the issue arising out of the present dispute is no more res integra in view of the Final Order No. 53436-53500/2017 dated 25.05.2017 of this Tribunal passed in the case of Krishi Upaj Mandi Samiti vs Jaipur – I & II. The period involved in these cases are prior to July 2012. This Tribunal in the case of Krishi Upaj Mandi Samiti (supra) has observed as follows:

> "(I) The appellants are liable to pay service tax under the category of "renting of immovable property service" for the period upto 30.06.2012.
>
> (II) For the period from 1.7.2012 (Negative List Regime), the appellants are not liable to pay service tax under the said tax entry in respect of shed/shop/premises leased out to the traders/others for storage of agricultural produce in the marketing area. The Negative List will not cover the activities of renting of immovable property for other than agricultural produce.
>
> (III) The demands, wherever raised invoking extended period, shall be restricted to the normal period. Penalties imposed on the appellants are set aside.
>
> (IV) The threshold exemption available to the small scale service provider in terms of the applicable notifications during the relevant years, shall be extended to the appellant on verification of their turnover."

4. In these cases, since the period involved is prior to 01.07.2002, the appellants are liable to pay service tax under the category of renting of immovable property service. However, the extended period invoked for confirmation of demand shall not be invokable and the demand should be confined to the normal period. Since, the issue involved interpretation of the statutory provisions and were highly contentious, the penalty imposed on the appellants are set aside. The appeals are disposed of in above terms.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

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