CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 05.09. 2017

ST Appeal No. 1171 / 2010
(Arising out of order-in-appeal No. 31(ST/RPR-I/2010 dated 06.05.2010 passed by the Commissioner (Appeals-I) Central Excise, Customs & Service tax, Raipur).

M/s Chhattisgarh State Industrial Development Corpn. Limited — Appellant

Vs.

CCE, Raipur — Respondent

Appearance:

Sh. Vishal Kumar, Advocate for the appellant
Dr. Neha Garg, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 56471 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. 31(ST/RPR-I/2010 dated 06.05.2010 passed by the Commissioner (Appeals-I) Central Excise, Customs & Service tax, Raipur. The period of dispute is 01.06.2007 to 31.03.2008.

2. Brief facts of the case are that the appellant is Government of Chhattisgarh State Undertaking who is engaged in leasing out land to entrepreneurs on behalf of Govt. of Chhattisgarh. The appellant is collecting lease rent and other charges from the lessee against the assets of open industrial land. The appellant does not

engage in any activity of construction of building before leasing out the land. The appellant leases out vacant land without undertaking any other activity. The department has brought the said activity under the clutches of the Service Tax net under the heading of "lease rent and other charges". Being aggrieved, the appellant has filed the present appeal.

3. With this background, we heard Sh. Vishal Kumar, ld. Advocate for the appellant and Dr. Neha Garg, ld. AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that the department has relied on the Notifications dated 10.05.2008 and 01.07.2010 which is subsequent to the period in dispute. By these notifications, the said amendment is perspective in nature as per the clarification given by the Department in the Budget Circular D.O.F. No. 334/1/2010-TRU dated 26.2.2010 pertaining to the change in service tax where it was mentioned that –

> "10. *Renting of vacant land*
>
> *10.1 Under the definition of taxable service pertaining to renting of immovable property, the renting of vacant land used for agriculture, farming, forestry, animal husbandry, mining, education, sports, circus, entertainment and parking purposes, is excluded from the purview of service tax. Further, 'vacant land', whether or not having facilities clearly incidental to the use of such vacant land has also been excluded from the tax net.*
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> *10.2 It has been reported that in many states, the local industrial corporations or PSUs or even private organisations rent vacant land on a long term leases with an explicit understanding that lessee would construct factory or commercial building on that land. In such cases the ownership of the land is not transferred to the lessee and thus it is a service provided by the lessor to the lessee. The situation is similar to renting out a constructed structure for commercial purposes except that at the time of executing the lease agreement the land is in a vacant state and that later the lessee constructs commercial structure thereon after executing the lease deed. Such lease agreements escape service tax because of the exclusion mentioned above.*

> *10.3 Suitable amendment in the definition of taxable service relating to renting to immovable property is being made so as to provide that tax would be charged on rent of a vacant land if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commercial during the tenure of the lease".*

5. In the light of above discussion and by following clarification (supra) we find no reason to sustain the impugned order. The same is hereby set aside.

6. In the result, appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)	(Justice (Dr.) Satish Chandra)
Member (Technical)	President

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