

Service Tax Appeal No.59970/2013 (DB)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:27.12.2017

Service Tax Appeal No.59970/2013 (DB)

[Arising out of Order-in-Original No.COMMISSIONER/RPR/ST/70/2013 dated 28.06.2013 passed by the Commissioner, Central Excise, Raipur]

M/s.Municipal Corporation

....Appellants

Vs.

CCE, Raipur

...Respondent

**Appearance:**

Rep. by Shri Gaurav Gupta, CA for the appellant.

Rep. by Shri Amresh Jain, AR for the respondent.

Coram: Hon'ble Shri Ashok Jindal, Member (Judicial)  
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 58617/2017

**Per B. Ravichandran:**

The appeal is against order dated 28.06.2013 of Commissioner of Central Excise, Raipur. The appellant is a local authority functioning under Chattisgarh Municipal Corporation Act, 1956. The present appeal relates to tax liability of the appellant under the category of "Renting of immovable property" in terms of Section 65(90a) of the Finance Act, 1994. The appellants were registered with the Department and were paying service tax under the category of "Mandap Keeper Service". The appellant had buildings/shops, which were given out to people for running business in terms of Mukhyamantri Swalamban Yojna and similar such schemes. The appellants contended that the considerations received for giving out

these shops to the beneficiaries cannot be taxed under “renting of immovable property” service.

2. The Original Authority adjudicating the notice issued against the appellant held that the appellants are liable to service tax of Rs.70,08,745/-. The period covered is 2007-08 to 2011-2012. Penalties were also imposed under Section 76, 77 and 78 of the Finance Act, 1994.

3. Ld. Counsel for the appellant submitted on the following lines:-

- (a) The appellant is a local Government Authority acting in terms of statutory provisions and the Constitution of India to provide civic amenities as well as to undertake welfare activities in pursuance of the Government policies.
- (b) Though the shops were rented out on a consideration called “rent”, in fact, these allotments are scheme based and not to be considered as commercial activity liable to tax.
- (c) Similarly, the vacant land is also provided for construction and renting out to various beneficiaries and cannot be taxed as renting of immovable property for commercial purpose.
- (d) The appellant is a statutory local Government Authority. There can be no case for malafide intend to evade service tax. The demand for extended period, in any case, cannot be sustained. On the same ground, no penalty can be imposed on the appellant.
- (e) There were serious calculation errors in the quantification of demand as the rates of service tax have been wrongly applied

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along with cess separately. It is also submitted that in case of tax liability, as the appellant did not collect any tax from the recipient, the tax calculation should be based in terms of Section 67(2) considering the gross amount as cum-tax value.

4. Ld. AR contested the appeal. He stated that the shops and vacant land were provided to various peoples on a consideration. The term of agreement are very clear and there is no ambiguity that the appellant did provide these shops for a consideration to various persons. There is no exemption from tax liability of such activity. The status of service provider has no consequence for tax liability. He relied on the decision of the Tribunal in **M/s.Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO LTD) – 2017 –TIOL-1725-CESTAT-DEL.**

5. We have heard both the sides and perused the appeal records.

6. On the first issue regarding the liability of the appellant to pay service tax under the category of “renting of immovable property service” , we note that the shops, which are given out on rent are used for commercial purposes. We have perused sample copies of agreements. The appellant could not place on record any exemption extended to them either due to their status or due to the purpose for which the said shops were rented out. These shops were given to a particular sections of people in terms of a Scheme announced by the Government, by itself, does not take away the tax liability. “Renting of immovable property” service is with reference to renting, leasing, licensing, or other similar arrangement of immovable property for use in course for “furtherance of business or commerce.”.

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The exclusion given is with reference to renting of such property by religious body or education body. We could not find any exclusion from the tax entry which will apply to the appellants. Though the appellants are created by an Act and are performing as a local Government, there is no bar in taxing their activities if the immovable property rented out by them is used in the course “for furtherance of business or commerce.” Admittedly, in the present case, the shops premises are used for business or commerce. In such situation, we find no reason for interfering with the findings of the lower authorities regarding tax liability of the appellant under the category of “renting of immovable property”.

7. Regarding service tax liability on renting of vacant land, we note that the Id. AR submitted that the present dispute is not with reference to any vacant land but for such land used for commercial construction for renting out. After 1.7.2010, the same will be liable to tax. This has been held by the Tribunal in case of **Greater Noida Industrial Development Authority – 87 VST 461 (T-Delhi)** as affirmed by the decision of the Hon’ble High Court as **2015 87 VST 496 (Allahabad)**.

8. In view of the above discussion and analysis, we find no case for the appellant against the tax liability as confirmed by the lower authorities. However, we note that the rate applied for tax demand carried certain errors. After applying service tax rate of 12.36%, further, addition of cesses have also been made. This appears to be an apparent error which require re-calculation by the jurisdictional authorities.

9. The appellant strongly contested the demand on limitation also. We note that the appellant is a statutory authority functioning as a local Government. The nature

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and status of the appellant is such that there can be no allegation of malafide, willful intend to evade government tax. We hold that the demand for the extended period cannot be sustained in the present facts of the case. On the same reasoning, no penalty can also be imposed on the appellant. Accordingly, the demand should be restricted to the normal period in terms of Section 73(1) and the penalties are set aside.

10. In view of the above discussions and analysis, while upholding the tax demand for normal period, we direct the jurisdictional authorities to re-quantify the tax liability applying correct rate of tax for the material time. The appeal is disposed of in the above terms.

[Order dictated & pronounced in open court]

( Ashok Jindal )  
Member (Judicial)

( B. Ravichandran )  
Member (Technical)

Ckp.