

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.**

Date of Hearing/ Decision: 13/12/2018

Appeal No. ST/52083/2016-(DB)

(Arising out of Order-in-Appeal No. HPU-EXCUS-000-APPEALS-I-509-2015-16 dated 16/02/2016 passed by the Commissioner of Service Tax-MEERUT-I)

NAGAR NIGAM

Appellant

Vs.

C.C.E. & S.T.-MEERUT-I

Respondent

Appearance

Sh. Puneet Sachdeva, CA

for the appellant

Sh G.R. Singh, DR.

for the respondent

**CORAM: Hon'ble Mr. Bijay Kumar, Member (Technical)
Hon'ble Mrs. Rachna Gupta, Member(Judicial)**

Final Order No. 53416/2018

Per Rachna Gupta

1. The appellant herein is the Municipal Corporation in the State of Uttrakhand. Department alleged that the appellant is engaged in providing the services of "renting of immovable property" which is taxable with effect from 1st July 2012, under Section 65 (105) (zzzz) of Finance Act, 1944, and is defined under Section 65 (98) of the said Act. On further enquiry the Department observed that the appellant has received amount of Rs. 48,65,25/- as Tahbazari fee (alleging the same as Tahbazari rent) for the period with effect from 2009-10 to 2014-15 (August, 2014). Show Cause Notice is dated 14/10/2014, was issued proposing demand of service tax amounting to Rs. 12,17,401/- along with the interest at the appropriate rate and the proportionate penalty. The said demand was confirmed as a

whole vide Order-in-Original No. 49 dated 27/8/2013, Commissioner(Appeals) in an appeal thereof, has confirmed those findings vide the order under challenge i.e. one bearing No. 509 dated 16/2/2016, being aggrieved the appellant is before this Tribunal.

2. We have heard Punit Sachdeva, Chartered Accountant for the appellant and Shri G.R. Singh, Ld. DR for the Department.
3. It is submitted on behalf of the appellant that the appellant being a Municipal Corporation is discharging the statutory duty of providing spaces. No rent has been collected for the same, rather it is a fee. It is alleged that Department has wrongly considered it as a service. The demand is alleged to be wrong order is prayed to be set aside. Appeal is prayed to be allowed.
4. While rebutting these argument Ld. DR has impressed upon the definition of "renting of immovable property service" under section 60(90)(a) of the Finance Act, 1944, it is submitted that any amount received for letting, leasing or licensing of the immovable property is leviable to tax under the said provision. The order under challenge is, therefore, justified Appeal is prayed to be dismissed.
5. After hearing both the parties and perusing the records we observe that the amount under question is admittedly collected by the Nagar Nigam Haldwani. Apparently and admittedly the authority is existing under the

Municipal Act, 1960, as came into effect in furtherance of Article 285 of Constitution of India. Section 128 of the said Municipal Act clarifies that the amount received by the Nagar Nigam from the traders permitting them to carry out their activities within the municipal limits shall be collected in the form of the tax. The provision is sufficient to hold that the activity is intended to be a sovereign Act of the Nagar Nigam.

6. Resultantly, we are of the opinion that the authority below has wrongly considered it as a service being rendered by the appellant to the said traders. In such scenario, emphasis on the definition of “renting of immovable property” under the Finance Act has no more significance. Further we observe that the Government of India, Ministry of Finance has given the clarification on the issue regarding the levy of tax on the services provided by Government or the local authorities to be business entity vide circular dated 13th April 2016. Perusal thereof makes it clear that tax on taxes/cesses or duties are not leviable. Though the clarification is post the impugned period, however, being merely a clarification and otherwise also beneficial to the impugned assessee, the same has to be given retrospective effect.

7. In view of above discussion the order under challenge is hereby set aside and appeal is hereby allowed.

(Dictated and pronounced in open court)

(Bijay Kumar)
Member(Technical)

(Rachna Gupta)
Member(Judicial)