# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI.

## PRINCIPAL BENCH - COURT NO. III

## Service Tax Appeal No.50920 of 2019

[Arising out of Order-in-Appeal No.DDN/EXCUS/000/APP/07/2018-19 dated 27.12.2018 passed by the Commissioner (Appeals), Central Goods and Service Tax, Dehradun]

**Krishi Utpadan Mandi Samiti** **Appellant**,
Anil Sonali & Associates,
15-B, Vishnu Garden,
Haridwar,
Uttarakhand-249 404.

**Versus**

**Commissioner of Central Goods & Service Tax and Central Excise,** **Respondent**
Central Excise, E- Block
Nehru Colony, Haridwar Road,
Dehradun, Uttarakhand-248 001.

**APPEARANCE**:

Shri Anil Kumar Jain, Chartered Accountant for the appellant.
Shri Harsh Vardhan, Autorised Representative for the respondent.

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**
**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.58772/2024**

**DATE OF HEARING:30.09.2024**
**DATE OF DECISION:07.10.2024**

**BINU TAMTA:**

Krishi Utpadan Mandi Samiti [1] has challenged the Order-in-Appeal No.DDN/EXCUS/000/APP/07/2018-19 dated 27.12.2018 confirming the demand for the period 2009-10 to 2014-15 towards the service tax demand of Rs.17,22,685/- along with interest and penalty.

[1] The appellant

2. The issue raised in the present appeal is whether the activity of letting out shops/AARATHS and other premises for shops and canteen, banks, etc. is liable to service tax. Both sides agree that the issue has been decided in **Krishi Upaj Mandi Samiti, New Mandi Yard Vs. Commissioner of Central Excise and Service Tax, Alwar**[2]**.** The Tribunal referring to the Education Guide dated 20.06.2012 issued by the Board that any service provided by such bodies, which is not directly related to the agriculture and agricultural produce will be liable to tax e.g. renting of shops or other properties, passed the following order:-

> "**18.** In view of the above discussions and analysis, the appeals are disposed of in the following terms :-
>
> (I) The appellants are liable to pay Service Tax under the category of "renting of immovable property service" for the period up to 30-6-2012.
>
> (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."

3. The Apex Court[3] affirmed the view of the Tribunal, *inter alia,* observing as under:-

> "Even otherwise, it is to be noted that on and after 1-7-2012, such activities carried out by the Agricultural

[2] 2017(4)GSTL 346
[3] 2022(58) GSTL 129 (SC)

> Produce Market Committees is placed in the Negative List. If the intention of the Revenue was to exempt such activities of the Market Committees from levy of service tax, in that case, there was no necessity for the Revenue subsequently to place such activity of the Market Committees in the Negative List. The fact that, on and after 1-7-2012, such activity by the Market Committees is put in the Negative List, it can safely be said that under the 2006 circular, the Market Committees were not exempted from payment of service tax on such activities. At this stage, it is required to be noted that it is not the case on behalf of the Market Committees that the activity of rent/lease on shop/land/platform as such cannot be said to be service. However, their only submission is that the Market Committees are exempted from levy of service tax on such service/activity as provided under the 2006 circular, which as observed hereinabove has no substance."

4. On the main issue whether the appellant is liable to pay service tax stands decided and in that view, the appellant is liable to service tax for the normal period w.e.f. 1.10.2012 to 31.03.2014, which is the post-negative period, as the activities undertaken was for the furtherance of business or commerce which does not fall in the Negative List provided under Section 66D, as interpreted in the above decisions.

5. The grievance of the learned counsel for the appellant is that the authorities below have failed to bifurcate the amount for the purpose of evaluating the threshold limit available to the small scale service provider in terms of the Notification No.6/2005-ST dated 01.03.2005 [4]. We find that the Commissioner (Appeals) vide its order-in-appeal dated 18.03.2016 was pleased to remand the matter to the Adjudicating Authority to determine whether the appellant has crossed the threshold limit of exemption during the period under consideration and on the basis of the documentary evidence produced by the appellant to re-determine

[4] The Notification

the service tax liability on "renting of immovable property", after allowing the benefit of exemption notification. On remand, the Adjudicating Authority passed the order dated 30.03.2017 agreeing that each Mandi Samiti is an independent legal entity and should be treated as separate body. The Adjudicating Authority took note of the submissions made in the appeal and observed as under:-

> **"14.** During the course of personal hearing, the party has submitted a copy of appeal dated 06.02.2016submitted by them before the Commissioner (Appeals). In this appeal, at para-5 of the "Statement of facts" portion, the party has taken into account the rent receipts of Kisaan Bazar, PCO, Gol Market, Canteen and Sabji Mandi only and sum total of these rent receipts is shown below Rs.10 lakhs, but they have not added the rent receipts of 'Godown', 'B' & 'C' category of shops and "Vacant space(fad)". As I have already observed in the preceding paras that the total amount received by the party against rent of property from all the clients has been found correct by the Commissioner(Appeals) for the purpose of arriving at aggregate value. Hence bifurcation of rent receipts at this stage will not be in conformity to the order of the Commissioner (Appeals). **I further find that the party could not submit any documentary proof that shows the value of their taxable services is within the threshold limit in each financial year, instead they vide letter dated 07.03.2017 have reiterated their earlier submissions that all the services by any Agricultural Produce Marketing Committee or Board are exempted in view of Para (vii) of Section 66D(d) of the Finance Act, 1994.** They have also not disputed the figures of rent receipts of all categories of clients already submitted by them vide their letters dated 30.12.2013, 12.06.2014 and 07.11.2014. Further, Department' view of liability of service tax on this issue has not been contradicted by the Commissioner (Appeals) in the aforesaid Order-in-Appeal, hence there remains no space to further deliberate on this issue."

Thereafter considering the provisions of notification as well as the contents of the show cause notice enumerating the gross rent receipt and rate of service tax payable thereon, the Adjudicating Authority noted as under:-

> **"17.** As per Notification No.06/2005-ST dated 01.03.2005, as amended, taxable services of aggregate value upto Rs.10 lakhs in any financial year is exempted since 01.04.2008. As per the aforesaid show cause notice, gross rent received by the party during the financial years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 has crossed threshold limit of Rs.10 lakhs. **It is also observed that as per balance sheet submitted by the party for the financial year 2008-09 along with its letter dated 30.12.2013, the total amount of rent receipt was Rs.18,84,459/- which implies that the party had already crossed the threshold limit of Rs.10 lakhs in the financial year 2008-09 itself.** Therefore, benefit of aforesaid exemption notification cannot be given to the party for the succeeding year i.e. for the financial year 2009-10."

6. On appeal, the order has been affirmed, observing that the total receipts of the appellant during the subsequent financial years from 2009-10 to 2012-13 were above the threshold limit for the exemption and hence they are not eligible to SSI exemption benefit.

7. The contention of the learned counsel for the appellant that the Authorities below ought to have bifurcated the rent of shop into exempted rents and taxable rents is unsustainable. In view of the Notification No.33/2012-ST dated 20.06.2012, which provided for "aggregate value" in Clause (vii) and (viii) of Para-2 and Explanation-B, which are quoted herein below:-

> **"**(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and
>
> (viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.
>
> (B) "**aggregate value**" means the sum total of value of taxable services charged in the first consecutive invoices

> issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification.**"**

8. The provisions of the Notification, under which the appellant is claiming exemption it is mandatory to follow the conditions for evaluating the threshold limit by arriving at the "aggregate value" of one or more taxable services provided by the service provider from one or more of the premises and not separately for each premises or each services. Further, Clause (viii) in clear terms sets out that the "aggregate value" of the taxable services rendered by the service provider from one or more premises shall not exceed Rs.10 lakhs in the preceding financial year. It is not permissible to pick and choose from the notification what is beneficial and discard what is against the party. The Notification has to be considered in entirety and the party claiming the benefit therein has also to satisfy the conditions enumerated therein. The Apex Court in **Krishi Upaj Mandi Samiti (supra)** has observed that it is a settled law that the notification has to be read as a whole and if any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of the notification and exception or exempting provisions in the taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard. Further, it was observed that in a taxing statute, it is the plain language of the provisions that has to be preferred and where the language is plain and is capable of determining a defined meaning, strict interpretation is to be accorded. In the impugned order, the Commissioner (Appeals) arrived at a finding that

the total receipts of the appellant during the subsequent financial years from 2009-10 to 2012-13 were above the threshold limit for the exemption and hence they are not eligible to SSI exemption benefit. We do not find any infirmity in the impugned order and the same is hereby affirmed.

9. The appeal is, accordingly, dismissed.

[Order pronounced on 7th October, 2024]

**(Binu Tamta)**
**Member (Judicial)**

**(Hemambika R.Priya)**
**Member (Technical)**

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