

**GIB/TN/CUDDALORE MUNICIPALITY/22.03.2021/HC-181**

**High Court Category :** LEVY OF SERVICE TAX

**State :** Tamil Nadu

**Order No.:** GIB/TN/CUDDALORE MUNICIPALITY/22.03.2021/HC-181

**Name of Entry :**  
CUDDALORE MUNICIPALITY

**Date :** 22-03-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

The petitions municipalities, Cuddalore Municipality and Virdhachalam Municipality have challenged the Show Cause Notices and the impugned Orders-in-Originals passed by the respondent authority proposing and levying service tax on the services provided by the petitioners under the provisions of the Finance Act, 1994.

The impugned Show Cause Notice issued and the Orders-in- Originals passed by the respondent are challenged primarily on the ground that they are without jurisdiction. It is submitted that there is no question of proposing or demanding service tax on the activities undertaken by the respective municipalities under the provisions of the Finance Act, 1994.

The petitioners contended that municipalities were not a “person” within the meaning of Finance Act, 1994 as it stood prior to June 1, 2012 and thereafter. It is therefore submitted that the question of levying tax on services provided by the respective municipalities cannot be taxed under the provisions of the Finance Act, 1994.

The counsel for the petitioners submitted that the services rendered by the petitioners are either not taxable or otherwise exempted. He submitted that for instance, fees on pay and use toilets are exempted from tax under Sl.No.38 to the said Notification. He further submitted that for the period prior to 2012, i.e., the period between April 2012 and March 2013 covered by the challenge wherein Order-in-Original has been challenged, no tax can be demanded as the petitioner was not a person providing any taxable service.

**Decision of Advance Ruling Authority :**

**DECISION:**

**Period prior to 01.07.2012:** To attract levy under Section 65(105) (zzzz) of the Finance Act 1994 there should be renting of immovable property or provision any other service in relation to such renting, for use in the course of or furtherance of, business or commerce to “any

person". Only if service was provided by "any other person", i.e, by a person other than the owner, such service was liable to service tax - The expression "any other person" can only mean any other person other than the owner of the property. Therefore, owner of the immovable property is not liable to pay tax under Section 66 of the Finance Act, 1994 for the period up to 30.06.2012 - An owner can be held liable to pay tax for renting of immovable property service only if there was an appropriate notification issued under Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994.

Service tax was payable only if such services were provided "by any other person" other than the owner, to any person by such renting, for use in the course of or in furtherance of, business or commerce - As the owner of the immovable property who rents out the property simpliciter was not in contemplation in the definition of taxable service of "renting of immovable property" in Section 65(105)(zzzz) of the Finance Act, 1994, demand against the petitioner was without jurisdiction.

Since the petitioner municipality is the owner of property, question of it being made liable to pay service tax for any service in relation to such renting of immovable property does not arise even if it had rented out its immovable property for use in the course of or for furtherance of, business or commerce of the person who was renting it.

**Period post 01.07.2012 :** From 01.07.2012, there was a paradigm shift in the entire structure of the provision of the Finance Act, 1994 in view of the amendments to it by Finance Act, 2010. It introduced a new definition of "service" in Section 65B(44) of the Finance Act, 1944 for the first time - The definition of "Service" as in Section 65B(44) of the Finance Act, 1944 is very wide. Thus, any activity carried out by any person for another for valuable consideration is service. It includes "declared service" as defined in Section 65B(22) of the Finance Act, 1944 read with 66E of the Act.

Certain activities were listed in the negative list. Those services are not liable to tax as Service tax is payable on the value of all services provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed under Section 66B of the Finance Act, 1994. Under Section 66B of the Finance Act, 1994 no tax was payable for the services specified in the negative list - Most services provided by the Central or State Government or local authorities are in the negative. Section 66D of the Finance Act, 1994 gives list of 17 service which were grouped under the "negative list".

If the activity carried out by the Petitioner Municipalities are categorised as "Support Service", it cannot be held that there was a provision of taxable service and such service was liable to tax under Section 66B of the Finance Act, 1994 as in force with effect from 01.07.2012. However, for such support services, service tax was payable by the recipient of such service in terms of Rule 2(1)(d)(E) of the Service Tax Rules, 1994 as amended by notification No.36/2012-ST dated 20.6.2012 with effect from 1.17.2012 - For support service provided, the recipient was liable to pay tax on reverse charge basis under Rule 2(1)(d)(E) of the Service Tax Rules, 1994 as amended by notification No.36/2012-ST dated 20.06.2012 as in force from 01.07.2012. Therefore, the Petitioner Municipalities can be held liable to pay

service tax only for service specified in Sub-Clauses in (i), (ii) and (iii) of Clause (a) of Section 66D of the Finance Act, 1994.

**Renting of immovable property Service:** Though under Rule 2(1)(d)(E) of the Service Tax Rules, 1994, service tax is payable by the service provider, it has to be held that if such services are provided by a Government or Local Authority, they are exempted under Section 65D(1)(a) of the Finance Act, 1994 as amended and as in force from 01.07.2012. Only ancillary service provided by a third party towards renting of immovable property of a non-governmental or local body will be liable to pay service tax like any other service provider. Therefore, service tax is payable by the service provider himself.

That apart, it is seen that some of the services provided are also exempted under the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 vide Sl.Nos.38 and 39 - it includes: Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets and Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Petition disposed off.