

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Service Tax Appeal No. 51136 of 2017**

(Arising out of Order-in-Original No. JOD-EXCUS-000-COM-101-16-17 dated 31.03.2017 passed by the Commissioner of Central Excise, Jodhpur)

**M/s. Shree Shubham Logistics Ltd.**

**....Appellant**

3<sup>rd</sup> Floor, City Centre Building,  
Near Sanchi Petrol Pump, Station Road,  
Jodhpur-342001

VERSUS

**Commissioner of Central Excise,  
Jodhpur**

**....Respondent**

117/5 P.W.D. Colony, Riktiya Bheruji Circle,  
Jodhpur, 342001

**WITH**

**Service Tax Appeal No. 52384 of 2018**

(Arising out of Order-in-Appeal No. 05(RK)ST/JPR/2018-19 dated 02.04.2018 passed by the Commissioner (Appeals) & ADG DGGSTI, Jaipur Zonal Unit, Jaipur)

**M/s. Rajasthan State Warehousing  
Corporation**

**....Appellant**

82, Bhawani Singh Road,  
Near JDA Office,  
Jaipur-302 015

VERSUS

**Commissioner of CGST & Central Excise,  
Jaipur**

**....Respondent**

New Central Revenue Building,  
Statue Circle, 'C' Scheme,  
Jaipur - 302 005

**WITH**

**Service Tax Appeal No. 51681 of 2019**

(Arising out of Order-in-Original No. JOD-EXCUS-0000-COM-020-18-19 dated 30.03.2019 passed by the Commissioner of Central Goods & Service Tax and Central Excise, Jodhpur)

**M/s. Shree Shubham Logistics Ltd.**

**....Appellant**

Unit No.72, 7<sup>th</sup> Floor, Kalpataru Square,  
Kondivita Lane, Andheri Kurla Road,  
Andheri (East), Mumbai-400059

VERSUS

**Commissioner of Central Goods &  
Service Tax and Central Excise,  
Jodhpur**

G-105, Road No. 5, New Industrial Area,  
Basni, Opp. Diesel Loco Shed,  
Behind AIIMS, Jodhpur-342003

**....Respondent**

**WITH**

**Service Tax Appeal No. 50372 of 2021**

(Arising out of Order-in-Appeal No. 341(CMR)ST/JDR/2020 dated 23.11.2020  
passed by the Commissioner (Appeals) of Central Excise and GST, Jodhpur)

**M/s. Shree Shubham Logistics Ltd.**

H-11, Krishi Upaj Mandi,  
Basni, 1<sup>st</sup> Phase,  
Jodhpur- 342005

**....Appellant**

VERSUS

**Commissioner of Central Goods &  
Service Tax and Central Excise,  
Jodhpur**

G-105, New Industrial Area,  
Basni, Opp. Diesel Loco Shed,  
Jodhpur (Raj.)-342001

**....Respondent**

**APPEARANCE:**

Shri Tarun Gulati, Senior Advocate and Mr. Gopal Mundhra, Advocate for  
the Appellant

Shri Ravi Kapoor, Authorized Representative of the Department

**AND**

**Service Tax Appeal No. 50743 of 2021**

(Arising out of Order-in-Appeal No. 71(SM)/ST/JPR/2021 dated 12.02.2021 passed  
by the Principal Commissioner, CGST & Central Excise Commissionerate, Jaipur)

**The Principal Commissioner,  
CGST & Central Excise Commissionerate,  
Jaipur**

**....Appellant**

VERSUS

**M/s. Rajasthan State Warehousing  
Corporation,**

82, Bhawani Singh Road, Near JDA Office,  
Jaipur, Rajasthan

**....Respondent**

**APPEARANCE:**

Shri Ravi Kapoor, Authorized Representative of the Department

Shri Tarun Gulati, Senior Advocate and Mr. Gopal Mundhra, Advocate for the Respondent

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing: 15.05.2023**

**Date of Decision: 11.08.2023**

**FINAL ORDER NO's. 51046-51050/2023**

**JUSTICE DILIP GUPTA:**

The details of the three appeals filed by Shri Shubham Logistics Ltd<sup>1</sup>, relating to the demand of service tax on 'support services of business or commerce' defined under section 65(104c) of the Finance Act, 1994<sup>2</sup> and 'renting of immovable property' as defined under section 65(90a) of the Finance Act are as follows:

<b>Appeal No.</b>	<b>Period Involved</b>	<b>Business Support Services</b>	<b>Renting Service</b>	<b>Order date</b>
ST/51136/2017	Oct 2010 to Mar 2015	Rs.7,52,62,866/-	Rs.2,47,441/-	31.03.2017
ST/51681/2019	Apr 2015 to Sep 2016	Rs.2,33,79,391/-	NIL	30.03.2019
ST/50372/2021	Oct 2016 to Jun 2017	Rs.1,97,09,108/-	NIL	17.07.2020

2. Rajasthan State Warehousing Corporation has also filed an appeal relating to demand of service tax on 'intellectual property services' defined under section 65(55b) of the Finance Act as also

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**1. Shubham Logistics**

**2. The Finance Act**

'support services of business or commerce' provided to Shubham Logistics and the details of the appeal are as follows:

<b>Appeal No.</b>	<b>Period Involved</b>	<b>Business Support Services</b>	<b>IPR Service</b>	<b>Order date</b>
ST/52384/2018	Apr 2010 to Sep 2014	Rs.90,27,041/-	Rs.88,24,449/-	14.02.2017

3. The Department has also filed an appeal against Rajasthan State Warehousing Corporation on the demand relating to 'intellectual property service' and 'support service of business and commerce' and the details of the appeal are as follows:

<b>Appeal No.</b>	<b>Period Involved</b>	<b>Business Support Services</b>	<b>IPR Service</b>	<b>Order date</b>
ST/50743/2021	Apr 2016 to Jun 2017	Rs.22,30,608/-	Rs.38,06,232/-	27.08.2019

4. It also needs to be noted that for the period from October 2014 to March 2016, the Commissioner (Appeals) had dropped the demand raised against Rajasthan State Warehousing Corporation by order dated 28.06.2019 and it is stated by the learned senior counsel appearing for Rajasthan State Warehousing Corporation that an appeal has not been filed to assail this order.

5. Shubham Logistics had entered into a Memorandum of Understanding dated 05.03.2010 with Rajasthan State Warehousing Corporation to jointly work towards development of an efficient warehousing system, which would ultimately benefit the customers by providing various facilities to farmers, traders and other trade participants concerning agriculture commodities and to provide better

storage facilities and development and an efficient warehousing system.

6. The relevant portions of the aforesaid Memorandum of Understanding containing the 'Objective' and 'Role and Responsibilities' of Shree Shubham Logistics' are reproduced below:

**"1. Objective**

- (a) **Both Parties will work together towards providing various facilities to farmers traders and other trade participants related to agri/non agri-commodities and to provide better storage facilities to farmers and traders and other trade participants and to facilitate availability of finance and evolve functional models for the purpose of development of an efficient warehousing system.**
- (b) Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. wish to cooperate in order towards development of warehousing system encompassing specialized warehousing infrastructure functionalities and services.

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**3. Role and Responsibilities of Shree Shubham Logistics Ltd.**

- (1) To obtain warehousing license under applicable laws for the time being in force, in the name of Shree Shubham Logistics Ltd. for Shree Shubham Logistics Ltd. owned warehouses.
- (2) To handle receipt, storage. custody and relense of commodities/goods/ stocks.

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- (4) To raise invoice on clients towards storage charges etc and arrange to collect the same from the clients.
- (5) To issue Warehouse/Storage receipt for commodities stored at the Current Agreed Locations as mentioned in Annexure I and IL of this MOI, using

Rajasthan State Warehousing Corporation logo along with Shree Shubham Logistics Ltd. logo. The Warehouse/ Storage Receipts so issued shall be jointly signed by the authorized signatory of both the Parties at Current Agreed Locations as mentioned in Annexure I and I of this MOU.

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(9) To install Warehouse Management Software at Current Agreed Locations as mentioned in Annexure I and it of this MOU within six (6) English calendar months from the Effective date of this MOU and Shree Shubham Logistics Ltd. will provide training to Rajasthan State Warehousing Corporation staff and cost of training will be borne by Shree Shubham Logistics Ltd.”

7. The 'Role and Responsibilities' of Rajasthan State Warehousing Corporation are contained in clause 4 of the Memorandum of Understanding and are reproduced below:

**"4. Role and Responsibilities of Rajasthan State Warehousing Corporation**

(a) To obtain all the necessary licenses and ensure compliance with all statutory requirements for providing of warehouse building at the Current Agreed Locations as mentioned in Annexure I of this MOU.

(b) To provide existing facilities at Warehouse excluding Managers residence.

(c) To ensure regular maintenance of the warehouse building/s as felt appropriate by Rajasthan State Warehousing Corporation at the Current Agreed Locations as mentioned in Annexure I of this Mou.

(d) To carry out monthly inspection of the transactions with respect to commodities at Current Agreed Locations as mentioned in Annexure of this MOU.

To inspect the commodities stored and the relevant documents to be maintained at any day & any time.

(e) Disinfestations and pest control activities will be undertaken by Rajasthan State Warehousing Corporation a at all the locations under this MOU as per the rates

agreed for different activities of pest control. like preventive /eradication /treatment fumigation etc. The income arising from such activities shall be shared between Shree Shubham Logistics Ltd., and Rajasthan State Warehousing Corporation in the ratio as provided in Annexure III of this MOU.

(f) To collect storage charges from government clients at Current Agreed Locations as mentioned in Annexure I of this MOU and release the share of Shree Shubham Logistics Ltd., as provided in Annexure III of this MOU on monthly basis/realization.

g) The Lock and Key of all the warehouse premises at the Current Agreed Locations as mentioned in Annexure I of this MOU shall remain with the authorized personnel of Rajasthan State Warehousing Corporation."

8. The clause relating to payment of storage income is as follows:

**"6. Payment of storage income from Storage and other Activities**

(a) All payments towards storage income, commodity funding etc. and other payment as applicable under this MOU shall be made within forty five (45) days from the date of receipt of invoice/debit note by either Parties, subject to realization of payment.

(b) Either Party shall claim their respective share as provided in Annexure III of this MOU through monthly invoice/debit notes.

(c) If due to any reason beyond the control of Shree Shubham Logistics Ltd. or Rajasthan State Warehousing Corporation, the storage charges are not recoverable from the clients, the loss would be shared between Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. in the same ratio in which charges are shared as provided in Annexure III of this MOU."

9. Clause 7 deals with 'use of logo' and is as follows:

**"7. Use Rajasthan State Warehousing Corporation Logo**

(a) Shree Shubham Logistics Ltd. shall ensure that the use of the logo of Rajasthan State Warehousing Corporation is as per directions of Rajasthan State Warehousing Corporation.

(b) Shree Shubham Logistics Ltd. shall be held liable for any default in using the logo of Rajasthan State Warehousing Corporation and appropriate penalty shall be imposed by M.D."

10. An Addendum to the Memorandum of Understanding was also executed on 01.11.2012 and clause 3(24) as amended is as follows:

"Shree Shubham Logistics Ltd. will offer all its owned dry storage/ cold storage warehousing (Metric Tonnes) capacity in the state of Rajasthan to Rajasthan State Warehousing Corporation under the MoU. In case of having some tie-ups/business arrangements with other organisations, at present on dry storage cold storage in the state of Rajasthan, the arguments will not be extended any further beyond existing contract period and on expiry of present contract all the existing capacity will be included in this MOU on same terms and conditions."

11. Annexure-3 to the Memorandum of Understanding is the revenue sharing arrangement and the relevant clauses are as follows:

**"I. For Shree Shubham Logistics Ltd. owned Agri Logistics Parks (ALPS) mentioned in Annexure II of this MOU**

**1. Warehousing Storage Charges**

The total gross storage income billed every month will be shared in the ratio of 15:85. between Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. respectively (i.e. 15% to Rajasthan State Warehousing Corporation and 85% to Shree Shubham Logistics Ltd.) on all stocks stored in Shree Shubham Logistics Ltd. owned warehouses. income billed shall mean the storage income billed. excluding actual pest control/ fumigation charges incurred.



**2. Commodity Funding**

Income arising out of Commodity Funding will be shared in the ratio of 50:50 between Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. respectively (i.e. 50% to Rajasthan State Warehousing Corporation and 50% to Shree Shubham Logistics Ltd.). Rajasthan State Warehousing Corporation share in income will be remitted by Shree Shubham Logistics Ltd. on the receipt of the payment from respective banks

**3. Testing and Certification charges**

The total gross income generated on account of testing and certification services provided by Shree Shubham Logistics Ltd. will be shared in the ratio of 20:80 between Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. respectively (i.e. 20% to Rajasthan State Warehousing Corporation and 80% to Shree Shubham Logistics Ltd.) excluding taxes.

**4. Weigh Bridge Charges**

The total gross income generated on account of weigh bridge services provided by Shree Shubham Logistics Ltd. will be shared in the ratio of 20:80 between Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. respectively (i.e. 20% to Rajasthan State Warehousing Corporation and 80% to Shree Shubham Logistics Ltd.) excluding taxes.

**5. Disinfestations charges**

All disinfestations/pest control activities will be undertaken by Rajasthan State Warehousing Corporation at agreed locations of both Shree Shubham Logistics Ltd. and Rajasthan State Warehousing Corporation warehouses. The income thus generated will be shared in the ratio of 10:90 between Shree Shubham Logistics Ltd. and Rajasthan State Warehousing Corporation respectively.

**II. For Rajasthan State Warehousing Corporation warehouses mentioned in Annexure I of this MOU****1. Warehousing Storage Charges**

The total gross storage income billed every month will be shared in the ratio of 68.32 between. Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. respectively (i.e. 68% to Rajasthan State

Warehousing Corporation and 32% to Shree Shubham Logistics Ltd.). Total gross storage income billed shall mean the storage income billed excluding actual pest control/ fumigation charges incurred.

## **2. Commodity Funding**

Shree Shubham Logistics Ltd. shall have the exclusive right to facilitate warehouse receipt based funding at all Rajasthan State Warehousing Corporation owned warehouses and net income arising out of Commodity Funding will be shared in the ratio of 50:50 between Rajasthan State Warehousing Corporation and Shree Shubham Logistics Ltd. respectively (i.e., 50% to Rajasthan State Warehousing Corporation and 50% to Shree Shubham Logistics Ltd.). Rajasthan State Warehousing Corporation's share in income will be remitted on the receipt of debit note by Shree Shubham Logistics Ltd. on the receipt of the payment from respective banks."

12. The Department believed that Shubham Logistics was providing operational as well as administrative assistance to Rajasthan State Warehousing Corporation while providing storage and warehousing service, for which it received consideration from Rajasthan State Warehousing Corporation which consideration would be taxable under the category of 'business support service'. To arrive at such a belief, the department relied upon Explanation-3 to section 65B (44) of the Finance Act and the clarification given by the Central Board of Indirect Taxes and Customs in the Circulars dated 13.12.2011 and 24.09.2014. The Department also believed that the warehousing income received by Shubham Logistics from NCMSL after October 2010 until March 2011 would actually be 'rental' income taxable under the category of 'renting of immovable property'.

13. The allegations contained in the show cause notice dated 22.04.2016 issued to Shubham logistics and Rajasthan State Warehousing Corporation are as follows:

**I. Demand on Shubham Logistics under Business Support Service-**

(i). Shubham Logistics was providing operational as well as administrative assistance to Rajasthan State Warehousing Corporation in respect of 38 warehouses of Rajasthan State Warehousing Corporation. Service tax demand has been computed on the amount retained by Shubham Logistics in respect of services provided through Rajasthan State Warehousing Corporation warehouses.

**II. Demand on Rajasthan State Warehousing Corporation under Business Support Service-**

(i) Rajasthan State Warehousing Corporation provided operational as well as administrative assistance to Shubham Logistics in respect of 6 warehouses of Shree Shubham Logistics Ltd. Service tax demand has been computed on the amount retained by Rajasthan State Warehousing Corporation in respect of services provided through Shubham Logistics warehouses.

**III. Demand on Rajasthan State Warehousing Corporation under Intellectual Property Service-**

(i) Rajasthan State Warehousing Corporation permitted Shubham Logistics to use the Rajasthan State Warehousing Corporation logo for issuing warehouse/storage receipts for commodities stored at the warehouses owned by Shubham Logistics. Service tax demand has been computed on the amount retained by Rajasthan State Warehousing Corporation in respect of services provided through Shubham Logistics warehouses.

**IV. Common Allegations in respect of demand under Business Support Service:**

(i) Arrangement between Rajasthan State Warehousing Corporation and Shubham Logistics resulted in formation of an Unincorporated Joint Venture.

Therefore, any activity carried out by any of the parties to Unincorporated Joint Venture for a consideration is a service. For this reliance has been placed on Circulars dated 13.12.2011 and 29.04.2014. Exemption on the main service relating to warehousing of agricultural produce is not available as the nature of service provided by Shubham Logistics to Rajasthan State Warehousing Corporation is support services for services relating to warehousing of agricultural produce.

14. Shri Tarun Gulati, learned senior counsel assisted by Shri Gopal Mudhra submitted that a revenue sharing arrangement in itself does not necessarily imply provision of service, unless service provider and service recipient relationship is established and in this connection placed reliance upon following decisions of the Tribunal:

- (i) **M/s. Ruchi Infrastructure Limited vs. Commissioner of Central Excise, Customs & Service Tax, Indore<sup>3</sup>;**
- (ii) **M/s. Mormugao Port Trust vs. Commissioner of Customs, Central Excise & Service Tax, GOA-(Vice-Versa)<sup>4</sup>; and**
- (iii) **M/s. Delhi International Airport P.Ltd & Mumbai International Airport P. Ltd vs. Union of India & Ors.<sup>5</sup>**

15. Shri Ravi Kapoor, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

16. The submissions advanced by the learned senior counsel for the appellant and the learned authorised representative appearing for the department have been considered.

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3. 2019(11) TMI 249-CESTAT NEW DELHI

4. 2016 (11) TMI 520-CESTAT MUMBAI

5. 2017 (2) TMI 775- DELHI HIGH COURT

17. The case of the appellant is that in terms of the various clauses of the Memorandum of Understanding dated 05.03.2010 entered into between Shubham Logistics and Rajasthan State Warehousing Corporation, it would be clear that they had agreed to jointly work towards development of an efficient warehousing system and had not provided support service related to business and commerce prior to 01.07.2012 to each other.

18. Prior to 01.07.2012 warehousing of agricultural produce service was exempted from service tax and even for the period post 01.07.2012 the same continued to be exempted since they were covered under the negative list provided under section 66D(v) of the Finance Act. In fact even procurement of agriculture produce is covered under the negative list under section 66D of the Finance Act.

19. It transpires that Shubham Logistics and Rajasthan State Warehousing Corporation entered into a Memorandum of Understanding titled 'Revenue Sharing Agreement' dated 05.03.2010 read with Addendums dated 01.11.2012 and 17.04.2013 to jointly work together towards providing various facilities to farmers traders and other trade participants related to agriculture commodities and for providing better storage facilities and for developing an efficient warehousing system.

20. For the purpose of determining service tax liability, the true nature of the transaction has to be understood. In **Ruchi Infrastructure Limited**, on which reliance has been placed by learned senior counsel for the appellant, the appellant was in the business of storage infrastructure. The appellant and the MP Warehousing and Logistics Corporation entered into a joint venture

for providing warehouses in different parts of Madhya Pradesh where the appellant had storage facilities and the income generated from the Customers were shared. The contention of the department was that the amount received by the appellant was a consideration for 'renting of immovable property' service rendered by the Corporation and accordingly, service tax was proposed to be levied. In this connection, the Division Bench of the Tribunal in **Ruchi Infrastructure** observed as follows:-

"13. Section 65(105)(zzzz) of the Finance Act, 1994 provides for charging service tax on "any service provided or to be provided to any person, by any other person by renting of immovable property or any other service in relation to such renting for use in the course of or for furtherance of business or commerce". **For a tax to be levied under this heading, there must be a service provider and a service recipient and the service which is provided must be renting of immovable property and such renting must be for use in the course of furtherance of business or commerce. A plain reading of the arrangement between the Appellant and MPWLC as narrated in the Show Cause Notice as well as in the impugned order clearly shows that it was a joint venture with an income sharing arrangement. In such a relationship there is neither a service provider nor a service recipient but only partners in business.** For this reason alone, we find that no service tax can be levied on renting of immovable property in the present case. **We also find no evidence that there was any renting of the warehouses by the Appellant to MPWLC was for use in the course of or furtherance of business or commerce.** Thus, we find there is no renting, no service provider and no service recipient in their arrangement and hence is not covered by the charging section."

**(emphasis supplied)**

21. In **Mormugao Port**, the Tribunal examined whether royalty was a consideration received for any particular service or whether it was a revenue sharing from joint business activity between the appellant and M/s. South West Port Limited and the relevant observations of the Tribunal are as follows:-

**"16.** In the instant case the agreement entered into between the Assessee and SWPL envisages that the Assessee would make available the land and the water front, while the obligation of constructing, operating, maintaining, repairing the bulk cargo handling jetty on the same was that of SWPL. The agreement between the two also stipulates that SWPL will construct, modify, repair and maintain the facility only after the detailed plan, design and drawings have been approved by the Appellant. Further while SWPL was to operate and maintain the facility the Assessee was also responsible inter alia to undertake the several activities for the smooth operation of the said two bulk cargo handling jetties, as set out in Clauses 5.10, 5.11 and 6.2.1 which we have referred to earlier. **It thus clearly comes out from the agreement between the Assessee and SWPL, that the two had come together with the common objective of earning revenue by jointly rendering port services at Jetty Nos. 5A and 6A. There is joint control over the operations as it is clear from the agreement that the strategic financial and operating decisions such as those relating to the basic design, capability functionality, etc., of the bulk cargo handling jetty and its subsequent upgradation, upkeep, modifications, repair, maintenance, dredging, installations, etc., are to be unanimously agreed upon by the two co-venturers.** We are therefore of the view that the agreement between the Assessee and SWPL is joint venture between the two, where the two co-venture are jointly controlling a common activity and sharing the revenue therefrom.

**17. The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture**

**(partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership).** In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. **All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture.** A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

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**19.** We are accordingly of the view that activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed.

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**21.** The Commissioner has tried to support his conclusion to levy tax on Royalty by citing the Appellants own action of paying service tax on Royalty after April, 2012 when the negative list regime of taxation was introduced. Since there is no estoppel in law, we find this aspect to be totally irrelevant for deciding the Appellant's liability for the past period. In any case, we find that under the negative list regime the most significant change having a bearing on the issue in hand is the insertion of explanation (iii) in the definition of service in Section 65B(44). The said explanation (iii) reads as under:



Explanation 3. - For the purposes of this Chapter, -

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

In our view all that the explanation stipulates is that an unincorporated association or a body of persons and members thereof, shall be treated as distinct persons. This explanation in our view does not have the effect of rendering the activities undertaken by the partner/co-venturer, which are actually for his own benefit, as being a service rendered by it to the partnership (joint venture). What the partner/co-venturer does is for his own benefit cannot ipso facto be considered as a service rendered to the partnership (joint venture). The mere fact that the partnership (joint venture) may also benefit from the same is irrelevant as there is no contract of service agreed upon or performed by the partner (co-venturer) to the partnership (joint venture). Additionally, there is no consideration agreed upon or provided. In the absence of there being a quid pro quo the essential requirement of the definition of service is not met with."

**(emphasis supplied)**

22. It is more than apparent from the terms of the Memorandum of Understanding dated 05.03.2010 entered into between Shubham Logistics and Rajasthan State Warehousing Corporation that:

- (i)** Both the parties agreed to cooperate to jointly works towards providing storage and other facilities to farmers traders and other trade participants;
- (ii)** There would be consultation with Rajasthan State Warehousing Corporation to decide storage charges for Rajasthan State Warehousing Corporation warehouses;

- (iii)** Shubham Logistics will raise invoices for storage charges on all clients, except in the following situations where Rajasthan State Warehousing Corporation will raise invoices:

  - (a)** Government stocks at all locations; and
  - (b)** Non-NCDEX stocks at Rajasthan State Warehousing Corporation locations
- (iv)** Shubham Logistics will raise invoices for weighment service, testing and certification services, and commodity funding services. Rajasthan State Warehousing Corporation will raise invoices for disinfestations charges;
- (v)** Shubham Logistics will issue warehousing receipts (to be jointly signed) for all locations using Rajasthan State Warehousing Corporation logo along with Shubham Logistics;
- (vi)** Testing and certification report will bear joint names;
- (vii)** Shubham Logistics has undertaken to manage the entire procurement jointly with Rajasthan State Warehousing Corporation;
- (viii)** Revenue would be shared as per the pre-determined ratio; and
- (ix)** Loss on account of non-recovery of charges from the clients will be shared in the same ratio.

23. It would, therefore, be clear that a revenue sharing arrangement came into existence between Shubham Logistics and Rajasthan State Warehousing Corporation and it would not be leviable to service tax.

24. It also needs to be noted by an order dated 28.06.2019, the Commissioner (Appeals) had dropped the demand for the period from October 2014 to March, 2016. The Commissioner (Appeals) examined clauses 3 and 4 of the same Memorandum of Understanding dated 05.03.2010 and observed as follows:

"8. **From the above, it is clear that the appellant and M/s. SSL have entered in to MOU dated 05.03.2010 to work jointly towards development of warehousing system** encompassing specialized warehousing infrastructure functionalities and service for providing various facilities to farmers traders and other trade participants related to agri/non-agri-commodities and to provide better storage facilities to farmers and traders and other trade participants and to facilities availability of finance and evolve functional models for the purpose of development of an efficient warehousing system. **The role and responsibility of the appellant and M/s. SSL is defined in detail in para 3 and 4 of the said MOU dated 05.03.2010. The revenue sharing ration is clearly mentioned in Annexure-III of the same MOU dated 05.03.2010.**

9. In the present case the period under dispute is from October, 2014 to March, 2016. \*\*\*\*\*

10. As such from the above provisions of law, it is clear that w.e.f. 1<sup>st</sup> July 2012, any activity carried out by a person for another for consideration qualified as a 'service' and attracts service tax (unless covered under Negative List or exempted otherwise: but in the present case the appellant primarily argued that the warehousing activities carried out by the appellants and SSL are purely on the terms of the MOU entered between them. **The appellants are not providing services to SSL and vice versa, thus, there cannot be any levy of service tax on the share of revenue earned by them for the warehousing service jointly provided under the revenue sharing agreement (MOU) and the revenue sharing agreement between the appellants and SSL amounts to jointly providing services to the customer under one roof."**

**(emphasis supplied)**

25. After referring to the decision of the Tribunal in **Mormugao Port** and other decisions, the Commissioner (Appeals) also observed:

**"15. Thus considering the issue totality and in view of the facts of case mentioned above as well in view of the above mentioned decisions, I hold that the appellant have not provided any taxable services to M/s. SSL as alleged in the Show Cause Notice dated 29.09.2017 and confirmed by the adjudicating authority vide the impugned order. On the contrary the appellant and M/s. SSL provided services jointly as per terms and conditions of MOU dated 05.03.2010 to the end users."**

**(emphasis supplied)**

26. It is stated by the learned senior counsel for the appellant that the order dated 28.06.2019 passed by the Commissioner (Appeals) has attained finality as no appeal has been filed by the department. This fact as has not been refuted by the learned authorised representative appearing for the department.

27. In Service Tax Appeal No. 50743 of 2021 filed by the department, the same Commissioner (Appeals), by order dated 15.02.2021, has allowed the appeal filed by M/s Rajasthan State Warehousing Corporation for the period April 2016 to June 2017. After placing reliance upon the earlier order dated 20.06.2019 passed in the appeal filed by M/s Rajasthan State Warehousing Corporation, the Commissioner (Appeals) observed as follows:

**"7. From the above, it is clear that the appellant and M/s. SSL have entered in to MOU dated 05.03.2010 to work jointly towards development of warehousing system** encompassing specialized warehousing infrastructure functionalities and service for providing various facilities to farmers traders and other trade participants related to agri/non-agri-commodities

and to provide better storage facilities to farmers and traders and other trade participants and to facilities availability of finance and evolve functional models for the purpose of development of an efficient warehousing system. The role and responsibility of the appellant and M/s. SSL is defined in detail in para 3 and 4 of the said MOU dated 05.03.2010. **The revenue sharing ration is clearly mentioned in Annexure-III of the same MOU dated 05.03.2010.**

8. **In the present case the period under dispute is from April, 2016 to June, 2017. \*\*\*\*\*.**

\*\*\*\*\*

13. **Thus considering the issue in totality and in view of the facts of case mentioned above as well in view of the above mentioned decisions, I hold that the appellant have not provided any taxable service to M/s. SSL as alleged in the Show Cause Notice dated 12.04.2019 and confirmed by the adjudicating authority vide the impugned order. On the contrary the appellant and M/s. SSL provided services jointly as per terms and conditions of MOU dated 05.03.2010 to the end users.**

14. **I also observe that in identical issue of the same appellant for earlier period, appeal has been allowed by the undersigned vide Order-in-Appeal No. 262(SM)ST/JPR/2019 dated 28.06.2019."**

**(emphasis supplied)**

28. When the order dated 28.06.2019 passed by the Commissioner (Appeals) has attained finality and it has also been followed by the Commissioner (Appeals) in the subsequent order dated 15.02.2021, it would not be open the department to urge in the present appeals that revenue sharing arrangement had not been arrived at in terms of the Memorandum of Understanding. Such being the position, service tax could not have been levied upon the appellant.

29. It is not possible, for all the reasons stated above, to sustain the orders dated 31.03.2017, 02.04.2018, 30.03.2019 and 23.11.2020 assailed in Service Tax Appeal No. 51136 of 2017, Service Tax Appeal No. 52384 of 2018, Service Tax Appeal No. 51681 of 2019 and Service Tax Appeal No. 50372 of 2021 respectively. The orders are, accordingly, set aside and the appeals are allowed. Service Tax Appeal No. 50743 of 2021 filed by the department to assail the order dated 12.02.2021 is dismissed.

(Order pronounced on **11.08.2023**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**

Archana, Shreya, Jyoti, Shenaz