

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.30 of 2012

(Arising out of OIA-RKA-309-SRT-I-2011 dated 14/10/2011 passed by Commissioner of Service Tax-SURAT-I)

Shree Textile Prints

3008, Momai Complex,
Surat, Gujarat

.....Appellant

VERSUS

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

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

.....Respondent

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant

Shri. Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 10501 /2023

DATE OF HEARING: 14.02.2023

DATE OF DECISION: 22.03.2023

RAMESH NAIR

The following issues are involved in the present case:-

- (i) Whether the renting of vacant land surrounded by boundary wall is liable for service tax or otherwise.
- (ii) Whether the tax paid on service of renting beyond one year from the relevant date is time barred under Section 11A .
- (iii) Whether the refund of service tax paid on vacant land is hit by mischief of unjust enrichment.

02. Shri Hardik Modh, learned counsel appearing on behalf of the appellant submits that there is no dispute that the land which was given on rent is a vacant land. Merely, because it is surrounded by boundary wall, it does not lose the character of vacant land. He referred to the definition of immovable property under the category of Renting of Immovable property service wherein, he pointed out that the vacant land is falling under exclusion category therefore, the same is not taxable. As regard the part of the refund

rejected on time bar, he submits that since there was no levy of service tax on vacant land, the service tax paid by the appellant cannot be treated as service tax hence, the provision of section 11B for claiming any such service tax does not apply.

2.1 He further submits that the refund was also rejected on the ground of unjust enrichment. It is his submission that the appellant have borne the service tax themselves, the same was not collected from the service recipient therefore, the refund cannot be rejected on the ground of unjust enrichment. In support of his above submission on the issues, he placed reliance on the following judgments:-

- NATRAJ AND VENKAT ASSOCIATES- 2010 (17) S.T.R. 3 (Mad.)
- ITC LIMITED- 1993 (67) E.L.T. 3 (S.C.)
- KVR CONSTRUCTION- 2012 (26) S.T.R. 195 (Kar.)
- NATIONAL INSTITUTE OF PUBLIC FINANCE & POLICY- 2019 (20) G.S.T.L. 330 (Del.)
- PARIJAT CONSTRUCTION- 2018 (9) G.S.T.L. 8 (Bom.)
- 3E INFOTECH- 2018 (8) G.S.T.L. 410 (Mad.)
- JOSHI TECHNOLOGIES INTERNATIONAL- 2016 (339) E.L.T. 21 (Guj.)
- EVERON PROJECT CONSULTANT LTD.- 2017 (7) G.S.T.L. 465 (Tri.-Chan.)
- KRISHI UPAJ MANDI SAMITI- 2020 (43) G.S.T.L. 204 (Tri.-Del.)
- SICAL DISTRI PARKS LTD.- 2012 (28) S.T.R. 525 (Commr. Appl.)
- MORMUGAO PORT TRUST- 2016 (45) S.T.R. 469 (Tri.-Mumbai)
- ROLEX RINGS PVT. LTD.- 2019 (25) GSTL 398 (T)
- Way2welath Brokers Pvt. Ltd.- 2022 (61) GSTL 349 (Kar.)

03. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He also filed a compilation of following judgments:-

- PATEL CONSTRUCTION COMPANY- 2017 (50) S.T.R. 257 (Guj.)
- ASSISTANT COLLR. OF CUS.- 1997 (90) E.L.T. 260 (S.C.)
- XL TELECOM LTD.- 2006 (206) E.L.T. 303 (Tri.-Bang.)
- SHUBH TIMB STEELS LIMITED- 2010 (20) S.T.R. 737 (P & H)
- HERANBA IND. LTD.- 2022 (65) GSTL 84 (Tri-Ahmd)
- COMEXX vs. CST, AHMEDABAD- A/10859/2020 dated 18.03.2020

04. We have carefully considered the submission made by both the sides and perused the records. We now deal all the three issues one by one. As

regard the issue that whether renting of vacant land is taxable under the category of Renting of Immovable Property Service, it is not necessary to read the relevant definition as provided under Sub-section (90a) of Section 65 of the Finance Act, 1994 which reads as under:-

65[(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include-

- (i) renting of immovable property by a religious body or to a religious body; or*
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.*

Explanation. 65[1]-For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

Explanation 2.-For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;]

From the above definition of renting of immovable property, it can be seen that a vacant land has been excluded from the term "Immovable Property". It clearly justifies that even though such vacant land having facilities merely incidental to the use of such vacant land also falls under the exclusion category. As per the facts of the present case, on the vacant land there is only boundary wall which can be categorized as a facility incidental to use of such vacant land therefore, even though the land is surrounded by boundary wall, it fall under the term "Vacant land" provided in the definition of immovable property therefore, we are of the considered view that as per the facts of the present case, the vacant land is not liable for service tax being excluded from definition of immovable property.

4.1 As regard the refund of service tax paid on such vacant land, there are two issues, one is limitation under Section 11B and other is unjust enrichment. As regard the time limit, the submission of the appellant is that the amount paid is not a service tax as there was no statutory levy on the vacant land therefore, the amount which was paid will not be governed for refund under Section 11B therefore, the limitation of one year provided under Section 11B shall also not apply mutatis mutandis. We find that the appellant have admittedly paid the service tax under the head of service tax of renting of immovable property service and the same was declared in the

ST-3 returns as payment of service tax. In this fact, since the amount was admittedly paid as service tax, the refund of service tax shall be governed by Section 11B.

4.2 As regard the judgments relied upon by learned counsel on the issue of limitation, we find that the jurisdictional High Court of Gujarat in the case of PATEL CONSTRUCTION COMPANY (supra) has held that the relief claimed by the petitioner in seeking direction to the adjudicating authority to condone delay in filing refund claim is contrary to statutes accordingly, the petition was dismissed. We find that this judgment of Hon'ble Gujarat High Court being binding as a judgment of jurisdictional high Court, we following the same are of the view that the limitation of one year is clearly applicable in the case of refund of service tax in the present case therefore, the refund for the period beyond one year is time barred. Considering the submissions and perusal of records, we find that the appellant have collected the service tax as follows:-

Month	Rent	Service Tax	ST Rate	Total Rent		Less	TDS Rate	Cheque	Date of
				As Agreed in agreement		TDS		Amount	Cr.in Bank
Apr.07	22100			221000		45526	20.60		
May 07	22100			221000		45526	20.60		
June 07	22100			221000		45526	20.60	663000	04.12.06
July 07	22100			221000		45526	20.60	38896	30.07.07
Aug.07	22100			221000		45526	20.60	175474	22.08.07
Sep.07	22100			221000		49593	22.44		
Oct.07	211760	9240	4.36%	221000		49593	22.44	342815	07.11.07
Nov.07	196689	24311	12.36%	221000		45526	20.60	175474	26.12.07
Dec.07	196689	24311	12.36%	221000		45526	20.60	175474	22.01.08
Jan.08	226193	27957	12.36%	254150	15% increased from this month	52355	20.60	201795	22.01.08
Feb.08	226193	27957	12.36%	254150		52355	20.60		
Mar.08	226193	27957	12.36%	254150		52355	20.60	403590	12.03.08
Apr.08	226193	27957	12.36%	254150		52355	20.60	201795	01.04.08
May 08	226193	27957	12.36%	254150		52355	20.60	201795	20.05.08
Jun.08	226193	27957	12.36%	254150		52355	20.60	201795	13.06.08
July 08	226193	27957	12.36%	254150		52355	20.60	201795	16.07.08
Aug.08	226193	27957	12.36%	254150		52355	20.60	201795	20.08.08
Sept.08	226193	27957	12.36%	254150		52355	20.60	201795	20.09.08
Oct.08	226193	27957	12.36%	254150		52355	20.60	201795	13.10.08

Nov.08	226193	27957	12.36%	254150		52355	20.60	201795	20.12.08
Dec.08	226193	27957	12.36%	254150		52355	20.60		
Jan.09	226193	27957	12.36%	254150		52355	20.60	403590	29.01.09
Feb.09	226193	27957	12.36%	254150		52355	20.60	201795	27.02.09
Mar.09	226193	27957	12.36%	254150		52355	20.60	201795	03.04.09
Apr.09	230417	23733	10.30%	254150		52355	20.60	201795	27.04.09
May 09	230417	23733	10.30%	254150		52355	20.60	201795	18.05.09
June 09	230417	23733	10.30%	254150		52355	20.60	201795	18.06.09
July 09	230417	23733	10.30%	254150		52355	20.60	201795	23.07.09
Aug. 09	230417	23733	10.30%	254150		52355	20.60	201795	07.09.09
Sep. 09	230417	23733	10.30%	254150		52355	20.60	201795	15.09.09
Oct. 09	230417	23733	10.30%	254150		25415	10.00	228735	26.10.09
Nov. 09	230417	23733	10.30%	254150		25415	10.00	228735	13.11.09
Dec. 09	230417	23733	10.30%	254150		25415	10.00	228735	28.12.09
Jan.10	230417	23733	10.30%	254150		25415	10.00	228735	08.01.10

From the above calculation, it can be seen that the appellant have considered the gross rent as cum tax amount and while paying service tax to arrive at the taxable value, the service tax was excluded which shows that the service tax which was paid by the appellant was included in the gross renting recovered by the appellant if this be so, it is clear evidence that the incidence of the service tax paid by the appellant has been passed on to the service recipient for the reason that the gross amount collected from the service recipient includes the service tax amount also. Accordingly, it is established that the appellant have passed on the incidence of service tax paid by them hence, the refund was rightly rejected on the ground of unjust enrichment also.

05. As per our above discussion and findings, we are of the considered view that the appellant is not entitle for the refund. Accordingly, the impugned order is upheld and appeal is dismissed.

(Pronounced in the open court on 22.03.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)