

(2014) 06 MAD CK 0024

In the Madras High Court

Case No : W.P. Nos. 16400 of 2013, 23983 of 2009, 16789-16790, 21564, 23355-23356, 24234, 25280-25286, 27820-27823, 27917-27918, 28021-28022 & 29188 of 2008, 662, 747-748, 2766-2770, 3995, 6346, 8562, 8613, 8827-8846, 9251, 10494, 10997, 11024-11027, 12016, 122

G.V. Matheswaran

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 246(3), 248
Finance Act, 1994 — Section 65, 65(105)(zzzz), 65(105)(zzzze), 65(105)(zzzzt), 65(90a)
Finance Act, 2010 — Section 77

Citation : (2015) 37 STR 881 : (2015) 86 VST 433

Hon'ble Judges : T.S. Sivagnanam, J; M. Sathyanarayanan, J

Bench : Division Bench

Advocate : K. Govi Ganesan, Advocates for the Appellant; V. Sundareswaran, CGSSC and S.V. Duraisolaimalai, Advocates for the Respondent

Judgement

M. Sathyanarayanan, J.—In this batch of writ petitions, challenge is made broadly to the provisions of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010 on the ground that the said provisions are illegal, arbitrary and ultra vires the Constitution of India and mere renting of immovable property does not amount to service and consequently, Service Tax cannot be levied. In some of the writ petitions, consequential proceedings/orders as to the levy of Service Tax on such service, are also put to challenge.

2. Apart from the above two types of cases, there are some writ petitions, wherein, writ of mandamus/prohibition is also sought. However, the prayer in those writ petitions also are in connection with levy of Service Tax on renting of immovable property only.

3. Thus, since common questions of law and facts are involved and to be adjudicated in these writ petitions, all the writ petitions are decided by this common order.

4. It is also brought to the knowledge of this Court that the validity of the above said provisions has been upheld by various High Courts in the following judgments:

- i. Shubh Timb Steels Limited Vs. Union of India (UOI) and Another, ;
- ii. Utkal Builders Limited Vs. Union of India (UOI), ;
- iii. Entertainment World Developers Ltd. Vs. Union of India, ;
- iv. Cinemax India Ltd. Vs. Union of India, ;
- v. Home Solutions Retails (India) Ltd. Vs. Union of India (UOI) and Others, ; and
- vi. Purshottam Das Malpani Vs. Union of India, .

5. A Full Bench of the Delhi High Court, in the decision in Home Solutions-II case, has upheld the validity of the above said provisions and S.L.P. (Civil) No. 852 of 2012 [2012 (26) S.T.R. J142 (S.C.)] has been preferred against the said decision rendered by the Full Bench of Delhi High Court and the Hon'ble Supreme Court of India has granted leave and passed the following interim order:

"Leave granted.

The appeal will be heard on the SLP Paper Books. Additional documents, if any, may be filed by the parties.

Having heard learned counsel for the appellants on the question of stay with regard to the arrears of Service Tax due as on 30th September, 2011, we direct that on each of the appellant's clearing all the arrears as on the said date in three equated installments, on or before 1st March, 2012; 1st May 2012 and 1st July 2012, no coercive steps shall be taken against the appellants for the recovery of the said arrears. However, in the event of default on the part of the appellants in deposit of any of the installments by the due date, it will be open to the respondents to recover the entire amount in arrears forthwith.

We clarify that there is no stay of imposition of Service Tax under sub-clause (zzzz) of clause (105) of Section 65 read with Section 66 of the Finance Act, 1994 (as amended), insofar as the future liability towards Service Tax with effect from 1st October, 2011 is concerned. Tag with Civil Appeal No. 8390 of 2011."

Similarly, a Division Bench of the Madhya Pradesh High Court has also upheld the validity of the said provisions in the judgment reported in Entertainment World Developers Ltd. Vs. Union of India, has been entertained against the said decision and it was numbered as 3618 of 2012 [2013 (29) S.T.R. J49 (S.C.)] and it is also pending on the file of the Hon'ble Supreme Court of India.

6. The submissions made by the respective learned counsel appearing for the petitioners as well as the learned Standing Counsel appearing for the Revenue, are nothing but the repetition of the arguments made before various High Courts, wherein, the validity of the above said provisions has been upheld and therefore, it may not be necessary to deal with the said submissions inasmuch as it may amount to doing post-mortem in respect of the reasons assigned by the said High Courts and may also amount to re-hearing of the entire issue and as already pointed out in the earlier paragraph, the aggrieved parties had also preferred Special Leave Petitions before the Hon"ble Supreme Court of India challenging the dismissal of the writ petitions, wherein, vires of the said provisions was challenged and Civil Appeals are also pending adjudication on the file of the Hon"ble Supreme Court of India.

7. Originally, Section 65(105)(zzzz) of the Finance Act, 1994, read as follows:

"To any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce."

8. The said provision was put to challenge before the Delhi High Court in Home Solutions Retails (India) Ltd. v. Union of India and Others case and a Division Bench of the Delhi High Court, in the judgment reported in Home Solution Retail India Ltd. Vs. Union of India (UOI) and Others, , (Home Solutions-I case, for brevity) decided on 18-4-2009, has struck down the said provision, being unconstitutional and ultra vires the Constitution of India on the ground that by renting of the immovable property, no value addition was involved in the said transaction. A Special Leave Petition was preferred against the said judgment before the Hon"ble Supreme Court of India and it was admitted, but, no interim orders have been granted.

9. The Government of India, Ministry of Finance, in order to clarify the legislative intent and also to bring in certainty in tax liability, has chosen to amend the relevant definition of "Taxable Service" and also clarified that the activity of renting of immovable property per se, would also constitute a taxable service under the relevant clause and the said amendment was brought forth with retrospective effect from 1-6-2007. The amended provision of Section 65(105) (zzzz) reads as follows:

"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."

10. The respective learned counsel appearing for the petitioners who made a challenge to the above said provisions, submitted that the levy of Service Tax on renting of immovable property is beyond the legislative competence of the Parliament for the following reasons:

a. Taxes on land and buildings are included in List II of the State List and therefore, it is within the power of the State Legislatures to frame appropriate

law and hence, the Union Government is precluded or prohibited from enacting any law on the said subject.

b. Entry 49 of List II (State List) is a specifically enumerated Entry and therefore, primacy has to be given to the said Entry and since the subject matter of Service Tax deals with the relationship of a landlord and a tenant, tax on service provided by the landlord to the tenant, would fall only under Entry 49 of List II.

c. The only source of power under which the Central/Union Government is competent to impose such a tax is the residuary entry, i.e. Entry 97 and though the Constitution (88th Amendment) Act, 2003 came into being on 15-1-2004 by amending the VII Schedule and by including Entry 92-C "Taxes on Services", the said amendment is yet to be notified and therefore, the only source of power is Entry 97 and the said power, being a residuary power, can be made applicable only if there is no applicable Entry.

d. Entry 18 speaks about the rights in land and Entry 49 of List II speaks about taxes on land and buildings and as per Entry 18, land, that is to say, rights in or over land and as such, the power to legislate in respect of rights in or over land, vests with the State Government under Entry 18 of List II and also, the power to impose tax in respect of rights in or over land, also vests with the State Legislature under Entry 49 and for that reason also, the amended provision is to be struck down as illegal and ultra vires the Constitution of India.

11. Some of the petitioners had also made a challenge with regard to the retrospective levy on the ground that the retrospective amendment is unreasonable, arbitrary and is in violation of Articles 14 and 19 of the Constitution of India. According to them, the retrospective amendment may be said to be valid, only if it passes the test of enforceability, compulsion and proportionality and the retrospective amendment does not pass the said test and therefore, it is also invalid.

12. The history of Service Tax has been traced in the judgment reported in Tamil Nadu Kalyana Mandapam am Assn. Vs. Union of India (UOI) and Others, (T.N. Kalyana Mandapam case, for brevity) and All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, .

13. In T.N. Kalyana Mandapam case, challenge was made to sub-section (i) of Section 67 of the Finance Act, 1994, in and by which, Service Tax was levied in relation to service provided by a Mandap-keeper to his client and also other consequential proceedings. The Hon''ble Supreme Court of India has upheld such a levy.

14. In All India Federation of Tax Practitioners case, Service Tax was sought to be levied on performance-based services such as stock brokers, practising Chartered Accountants, practising Costs Accountants, Security Agencies, Tour Operators, Event Managers, Travel Agents, etc. and such a levy was upheld by the Hon''ble Supreme Court of India in the above said decision.

15. In the decision reported in *Infotech Software Dealers Association Vs. Union of India (UOI) and Others*, , two writ petitions were filed seeking to declare Section 65(105)(zzzze) of Chapter V of the Finance Act, 1994 (as amended by the Finance Act 2 of 2009) as null and void in and by which, an Information Technology software is also brought under the meaning of "taxable service" and the said amendment was brought in by virtue of residuary power under Entry 97 of List I of Schedule VII. It was contended that the software, being goods, involves no element of service, when it is sold to customer and therefore, the said provision is unconstitutional and also beyond the legislative competence of the Parliament. A Division Bench of this Court, has dismissed the writ petitions holding that the software is goods and whether such transaction would amount to sale or service, would depend upon the individual transaction and so long as the Parliament has the legislative competence to enact a law, the challenge should fail and accordingly, dismissed the writ petitions.

16. In the decision reported in *M/s. AGS Entertainment Private Limited and Vs. Union of India, The Central Board of Excise and Customs and The Commissioner of Service Tax and Others*, , the validity of Section 65(105)(zzzzt) of the Finance Act, 1994, bringing within the ambit of Service Tax, certain forms of income generated from "temporary transfer or permitting the use or enjoyment" of any copyright as defined in the Copyright Act, 1957, was put to challenge. A Division Bench of this Court, after referring to *T.N. Kalyana Mandapam case* and *All India Federation of Tax Practitioners case* (cited *supra*) and other relevant decisions rendered by the Hon"ble Supreme Court of India, has upheld the said provision.

17. In all the above decisions, the primordial submission was that, by resorting to Entry 97 of List I, the said levy cannot be imposed and the submission made in that regard was negated and it was held that the Parliament is having legislative competence to make such a levy by resorting to Entry 97 of List I. It was also contended that in the absence of any Entries in List III, viz., Concurrent List, as to the levy of Service Tax on rent in respect of commercial premises, levy cannot be resorted to, by invoking Entry 97 of List I.

18. The Revenue has opposed the challenge made to the said provision by contending *inter alia* that the Union Government can validly impose Indirect Taxes like Excise Duty and Customs Duty as they are not Direct Taxes on property or income and since Service Tax is also an Indirect Tax, levy on certain exercise/activity, undertaken by the service provider, cannot be termed as tax on property or income; levy of Service Tax is on the activity of service only and not a tax on property and as such, it can be validly imposed by the Union Government. It is further contended by the Revenue that the validity of the very same provision has been upheld by the High Courts of Delhi, Madhya Pradesh, Orissa, Gujarat and Bombay and the challenge made to the said decisions in the form of Special Leave Petitions/Civil Appeals are also pending adjudication before the Hon"ble Supreme Court of India and therefore, it is unnecessary to decide the very same issue. It is further submitted that the value addition does not

necessarily result in intrinsic changes and value addition is sufficient to impose Service Tax and the activity of renting of immovable property being service, such a kind of tax can be levied. Insofar as challenge made on the ground of retrospective amendment, it is contended by the Revenue that it is always open to the Legislature to clarify or validate a law retrospectively and the object of validating a law is to rectify the defect in overlapping or lacuna and to effectively carry out the object for which the earlier law was enacted.

19. It is a well settled position of law that when the State is empowered to levy taxes on goods, it is empowered to levy such taxes on other aspects of such goods. The levy is a constitutional concept and the mode of collection is a statutory concept. It is also a trite law that the legislative enactment can be struck down only on two grounds, viz., (a) appropriate Legislature lacks competence to make the law and (b) it does not take away or abridge or deprive the fundamental rights enshrined in Part III of the Constitution of India or in other Constitutional provisions.

20. The Hon"ble Supreme Court of India, in a catena of decisions, has laid down certain principles while dealing with the Constitutional validity of a taxation law enacted by the Parliament or Legislature and one such decision is reported in State of M.P. Vs. Rakesh Kohli and Another, . The portion of the said judgment which is apposite is extracted hereunder:

"29. While dealing with constitutional validity of a taxation law enacted by parliament or State Legislature, the Court must have regard to the following principles: (i) there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii) the Court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence (iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v) in the field of taxation, the Legislature enjoys greater latitude for classification."

21. This Court, keeping in mind, the above said settled position of law and coupled with the decisions rendered by a number of High Courts upholding the validity of the said provisions, has carefully considered the rival submissions and also perused the materials available on record.

22. In Home Solutions-II case, similar issue arose for consideration and Hon"ble Mr. Justice Dipak Misra, Chief Justice, Delhi High Court (as the Hon"ble Judge then was), has delivered the judgment of the Full Bench. In the above said decision, the Full Bench of Delhi High Court has referred to all the judgments relied on by the respective learned counsel appearing for the petitioners herein, including T.N. Kalyana Mandapam case and All India Federation of Tax

Practitioners Association case (cited supra) and culled out the principles relating to Service Tax in paragraph No. 52 of the judgment which reads thus:

"52. From the aforesaid pronouncements in the field, the following principles regarding Service Tax can be fruitfully culled out:

- i. The measure of taxation does not affect the nature of taxation and, therefore, the manner of quantification of the levy of Service Tax has no bearing on the factum of legislative competence.
- ii. Taxable services can include providing of premises on a temporary basis for organizing any official, social or business function but also other facilities supplied in relation thereto.
- iii. Levy of Service Tax on a particular kind of service cannot be struck down on the ground that it does not conform to a common understanding of the word "service" as long as it does not transgress any specific restriction embodied in the Constitution.
- iv. Service Tax is a levy on the event of service.
- v. The contempt of Service Tax is an economic concept.
- vi. "Consumption of service" as in case of "consumption of goods" satisfies human needs.
- vii. Service Tax is a value added tax which, in turn, is a general tax applicable to all commercial activities involving provision of service.
- viii. Value added tax is a general tax as well as destination based consumption tax leviable on services provided within the country.
- ix. The principle of equivalence is in-built into the concept of Service Tax.
- x. The activity undertaken in a transaction can have two components, namely, activity undertaken by a person pertaining to his performance and skill and, secondly, the person who avails the benefit of the said performance and skill. In the said context, the two concepts, namely, activity and the service provider and service recipient gain significance."

23. The Full Bench of the Delhi High Court, in the above said decision, has also over-ruled the Division Bench judgment of Delhi High Court in Home Solutions-I case and assigned reasons for upholding the validity of the said provisions in the following paragraphs:

"62. As presently advised, we shall dwell upon the concept of value addition. The hub of the matter is when a premise is let out for use, should a person who rents an immovable property or renders any other service in relation to such letting for use in the course of furtherance of business or commerce be liable to Service Tax.

63. The Division bench in the first Home Solution case (supra), as we have

reproduced hereinbefore, has opined that renting of immovable property for use in the course or furtherance of business or commerce by itself would not constitute service as there is no value addition. In the dictionary clause in Section 65(90A), while defining renting of immovable property, it has been stated that it includes renting, letting, leasing, licencing or other similar arrangements for immovable property for use in the course or furtherance of business or commerce. On a perusal of the decision in the first Home Solution case (supra), it is discernible that the Division Bench has not appositely adverted to the same. The contention that despite the amendment when the value addition as a concept is not attracted to renting, letting, leasing and licencing even for commercial purpose, the ingredients of Service Tax are not satisfied is not well founded. In this context, it is to be appreciated that the concept of service, as is understood in common parlance or common understanding, would not be a factor to hold a provision as unconstitutional. We need not advert to whether the Parliament has, by using of the definition, created a fiction. The terms which are significant are renting, letting, leasing and licencing for use in the course or furtherance of business or commerce. The legislature has not merely said renting of immovable property. It has used the terminology renting of property or any service in relation to such renting and that too in the course or furtherance of business or commerce, the last part being a general tax as well as a destination based consumption tax levied on services. Sometimes services can be "property bases services" and "performance based services". The architects, interior designers and real estate agents would come in the category of performance service providers.

64. It is contended that when a property is leased or rented, the element of service is absolutely absent. In this context, the contempt of rent has to be appositely understood. A rent is basically a reward paid for the use of the land. The tenant or the occupant pays the same to use the premises. In the economic concept, rent can be categorized into two heads, namely, contract rent and economic rent. Contract rent fundamentally refers to the total amount of money paid for use of the land and economic rent is a part of the total payment which is made for the use of land and it is estimated on many a ground. The economic rent can be contract rent minus interest on the capital invested. To give an example, a tenant pays Rs. 20,000/- per year as contract rent but the interest on capital invested is Rs. 3,000/- per year. Thus, the remaining amount, that is, Rs. 17,000/- (Rs. 20,000.00 - Rs. 3,000.00) is paid for the use of the land.

65. The concept of economic rent can also represent an amount which a factor can earn in its next best alternative use. To give an example, a piece of land yields in a particular use Rs. 5,000/- in a year. If it is transferred to its next best use, it can earn a better income. At one point of time, the Theory of Rent was propagated by David Ricardo. According to the Ricardian Theory, rent has differential surplus and the same arises due to certain facets relating to fertility, productivity, extensive cultivation, quality, etc. Ricardo fundamentally considered rent as a surplus accruing to superior land over inferior land called "marginal

land". It also depended upon shifting of population. Be it noted, the rent varies depending upon advantages. To give an example, two decades back, a market is established in zone "A", thereafter, a railway station starts in another zone called "B". The cost of a particular item on being transported from zone "A" to outside the city will cost more than the articles transported from Zone B. Compared to zones "A" and "B", if there are other zones which are farther away like Zones "C" and "D", they will be less advantageous. Thus, the lands or buildings located in Zones A and B would be more advantageous. The value difference comes into play because of transport charges. The surplus arises because of the location and availability of facilities. Appreciated in this context, economic rent is a surplus which arises on account of natural differential advantages and can be treated as service. This apart, scarcity of premises, the pressure of demand and the increase of population are also contributory factors. Consequently, any land or building situated in a particular place does possess certain inherent qualities which distinguishes it from land or building at other places. The factors which really weigh are location, accessibility, goodwill, construction quality and other advantages. A land or building in one area may fetch more rent than in another area. When a particular building is rented or leased or given under arrangement for commercial or business purposes, many factors are taken into consideration. Every building or premises cannot be utilized for commercial or business purposes. When a particular building or premises has the effect potentiality to be let out on rent for the said purpose, an element of service is involved in the immovable property and that tantamounts to value addition which would come within the component of Service Tax. To further clarify, an element of service arises because a person who intends to avail the property on rent wishes to use it for a specific purpose. The value of the building gets accentuated because of scarcity of land or building, goodwill, accessibility and similar ancillary advantages which constitute value addition.

66. The modern economic theory of rent also has a nexus with demand and supply. In this analysis, rental is hiked because supply of land is scarce in relation to its demand. This economic concept is called "scarcity theory of rent". This includes the facet of competition and quality. According to the modern theory, rent is not peculiar to land alone but arises in the case of many a factor which earn over and above the transfer earnings. There is a distinction between "actual earnings" and "transfer earnings". According to the modern analysis of rent, it is not peculiar to land alone and the concept of transfer earning is more attracted towards the building depending upon its use. As an economic concept, it has been developed that rent qua building or premises or, for that matter, land has a nexus, an inseparable one, with the potentiality of its use in a competitive market. The economic growth has an effect on rent. In this regard, modern economists have evolved certain methods, namely, technical progress in methods of production, development in means of transportation and population growth. We have referred to these concepts only to highlight that the legislature has not imposed tax on mere letting but associated it with business or commercial use.

Thus, it comes within the concept of activity and the value addition is inherent. It is worth noting that the language employed in the dictionary clause and the charging section, that is, "commercial use for business" have their own significance. In Black's Law Dictionary, "commercial" has been defined as "relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce". In R.M. Investment and trading Co. Pvt. Ltd. Vs. Boeing Co. and another, , while dealing with the expression "commercial" it has been opined that the expression "commercial" should be construed broadly having regard to the manifold activities which are integral part of international trade today.

68. When premises is taken for commercial purpose, it is basically to sub-serve the cause of facilitating commerce, business and promoting the same. Therefore, there can be no trace of doubt that an element of value addition is involved and once there is a value addition, there is an element of service.

69. In view of our aforesaid analysis, we are disposed to think that the imposition of Service Tax under Section 65(105)(zzzz) read with Section 66 is not a tax on land and building which is under Entry 49 of List II. What is being taxed is an activity, and the activity denotes the letting or leasing with a purpose, and the purpose is fundamentally or commercial or business purpose and its furtherance. The concept has to be read in conjunction. As we have explained that Service Tax is associated with value addition as evolved by the judgments of the Apex Court, the submission that the base of the said decisions cannot be taken away by a statutory amendment need not be adverted to. Once there is a value addition and the element of service is involved, in conceptual essentiality, Service Tax gets attracted and the impost gets out of the purview of Entry 49 of List II of the Seventh Schedule of the Constitution and falls under the residuary entry, that is, Entry 97 of List I."

24. In the aforesaid decision, the retrospective applicability of the said provisions was also considered and by placing reliance upon the decision reported in Bakhtawar Trust and Others Vs. M.D. Narayan and Others, and State of Himachal Pradesh Vs. Narain Singh, , the Full Bench of the Delhi High Court held that it would be permissible for the Legislature to remove a defect in legislation and it can be removed both retrospectively and prospectively by legislative action and the previous actions can be validated. As already pointed out above, in the Special Leave Petition preferred against the said decision rendered by the Full Bench of Delhi High Court, leave has been granted and no stay of imposition of Service Tax under the above said provisions has been granted insofar as future liability with effect from 1-10-2011.

25. A Division Bench of Rajasthan High Court, in the decision reported in Purshottam Das Malpani Vs. Union of India, , had followed the Full Bench decision rendered by the Delhi High Court and upheld the validity of the said provisions.

26. In *The Second Gift Tax Officer, Mangalore, etc. v. D.H. Hazareth etc.*, the High Court of Mysore has declared that the Parliament had no power to legislate with respect to taxes on gift of lands and buildings. The Revenue made a challenge by filing an appeal before the Hon'ble Supreme Court of India. The primordial issue that fell for consideration before the Hon'ble Supreme Court of India in the above said case is to the ambit and scope of Entry in the Union, State and Concurrent Lists. The Hon'ble Supreme Court of India, in the decision reported in *The Second Gift Tax Officer, Mangalore etc. Vs. D.H. Nazareth etc.*, . *The Second Gift Tax Officer, Mangalore, etc. v. D.H. Hazareth etc.*, has considered the scope of Entry 97 and held as follows:

"5. It will, therefore, be seen that the sovereignty of Parliament and the Legislatures is a sovereignty of enumerated entries, but within the ambit of an entry, the exercise of power is as plenary as any legislature can possess, subject, of course, to the limitations arising from the Fundamental Rights. The entries themselves do not follow any logical classification or dichotomy. As was said in *State of Rajasthan v. S. Chawla* the entries in the lists must be regarded as enumeration simplex of broad categories. Since they are likely to overlap occasionally, it is usual to examine the pith and substance of legislation with a view to determining to which entry they can be substantially related, a slight connection with another entry in another list notwithstanding. Therefore, to find out whether a piece of legislation falls within any entry its true nature and character must be in respect to that particular entry. The entries must of course receive a large and liberal interpretation because the few words of the entry are intended to confer vast and plenary powers. If, however, no entry in any of the three lists covers it, then it must be regarded as a matter not enumerated in any of the three lists. Then it belongs exclusively to Parliament under Entry 97 of the Union List as a topic of legislation.

6. The Gift Tax Act was enacted by Parliament and it is admitted that no entry in the Union List or the Concurrent List mentions such a tax. Therefore, Parliament purported to use its powers derived from Entry 97 of the Union List, read with Article 248 of the Constitution. This power admittedly could not be invoked if the subject of taxes on gifts could be said to be comprehended in any entry in the State List. The High Court has accepted the contention of the tax-payers that it is so comprehended in Entries 18 and 49 of the State List. Those entries read:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation."

"49. Taxes on lands and buildings."

7. The argument is that by Entry 18, "land" of all description is made subject to legislation in the States and by Entry 49 taxes of whatever description on lands in that large sense and buildings generally fall also in the jurisdiction of the

State. Reference is made to Entries 45, 46, 47 and 48 of the State List in which certain taxes are to be imposed on land and agricultural land or income from agriculture exclusively by the States in contrast with Entries 82, 86, 87 and 88 where the taxes are imposed on properties other than agricultural land or income from agriculture. It is submitted, therefore, that the general scheme of division of taxing and other entries by which land particularly agricultural land and income therefrom is reserved for the States shows that taxes on lands and buildings read liberally must also cover taxes in respect of gifts of land particularly agricultural land and buildings. If the entry so read can be reasonably said to include the tax, then there can be no question of recourse to the residuary powers of Parliament.

10. The Constitution divides the topics of legislation into three broad categories: (a) entries enabling laws to be made, (b) entries enabling taxes to be imposed, and (c) entries enabling fees and stamp duties to be collected. It is not intended that every entry gives a right to levy tax. The taxes are separately mentioned and in fact contain the whole of the power of taxation. Unless a tax is specifically mentioned it cannot be imposed except by Parliament in the exercise of its residuary powers already mentioned. Therefore, Entry 18 of the State List does not confer additional power of taxation. At the most fees can be levied in respect of the items mentioned in that entry, vide Entry 66 of the same list. Nor is it possible to read a clear cut division of agricultural land in favour of the State although the intention is to put land in most of its aspects in the State List. But, however, wide that entry, it cannot still authorise a tax not expressly mentioned. Therefore, either the pith and substance of the Gift Tax Act falls within Entry 49 of State List or it does not. If it does, then Parliament will have no power to levy the tax even under the residuary powers. If it does not, the Parliament must undoubtedly possess that power under Article 248 and Entry 97 of the Union List."

27. The aforesaid decision of the Hon'ble Supreme Court of India reported in *The Second Gift Tax Officer, Mangalore etc. Vs. D.H. Nazareth etc.*, . The Second Gift Tax Officer, Mangalore, etc. v. D.H. Nazareth etc., was also considered and followed by the Full Bench of Delhi High Court in *Home Solutions-II* case for upholding the validity of the amended provisions, viz., Section 65(105)(zzzz) and Section 66 of the Finance Act, 1994.

28. In *Mineral Area Development Authority etc. Vs. Steel Authority of India and Others*, , the nature of taxation in respect of royalty came up for consideration and the Hon'ble Supreme Court of India, having noted that in view of conflict between the decisions rendered by 5-Judge Bench and 7-Judge Bench, the matter requires consideration by a Bench comprising 9 Judges, had framed 11 questions of law to be decided by a Larger Bench. Question No. 5 is "whether the majority decision in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, , could be read as departing from the law laid down in the 7-Judge Bench decision in *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, .

Question No. 6 is whether "taxes on land and buildings" in List II, Entry 49 of the VII Schedule of the Constitution of India contemplate a tax levied directly on the land as a unit having definite relationship with the land. Of course, reference made to the Larger Bench in the decision reported in Mineral Area Development Authority etc. Vs. Steel Authority of India and Others, , was not brought to the knowledge of the Full Bench of Delhi High Court in Home Solutions-II case. But, the fact remains that the validity of Section 65(105)(zzzz) and 65(90-a) of the Finance Act, 1994, has been upheld by a number of High Courts as stated above and since the very same arguments which have been addressed, have been considered and dealt with, more particularly, in Home Solutions-II case (cited supra), this Court is not persuaded to take any different view from that decision and as already pointed out, in the Special Leave Petition preferred as against the said decision, leave has been granted and the matter is pending adjudication before the Hon"ble Supreme Court of India.

29. Therefore, the challenge made to Section 65(105)(zzzz) and 65(90-a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010, fails and hence, W.P. Nos. 21564/2008, 24234/2008, 25280-25286/2008, 27820-27823/2008, 27917 & 27918/2008, 28021 & 28022/2008, 29188/2008, 16789 & 16790/2008, 662/2009, 747/2009, 2766-2770/2009, 3995/2009, 6346/2009, 8562/2009, 8613/2009, 8827-8846/2009, 12268 & 12269/2009, 19995-20013/2009, 20524/2009, 22687/2009, 23231/2009, 3977/2010, 26377/2009, 26515/2009, 26886/2009, 1141/2010, 1251/2010, 6288/2010, 14116/2010, 14886/2010, 16610 & 16611/2010, 17607/2010, 17916 & 17917/2010, 18347/2010, 19321/2010, 19407, 19409 & 19410/2010, 26510/2009, 20981/2010, 22207/2010, 23492/2010, 24240 & 24241/2010, 24294 & 24295/2010, 24376/2010, 24803/2010, 27548/2010, 30070/2010, 1182/2011, 1190/2011, 1309/2011, 2059/2011, 2407/2011, 2770/2011, 5158/2011, 8140/2011, 9950/2011, 11744/2011, 12308 & 12309/2011, 12540/2011, 13735/2011, 14848 & 14849/2011, 15089/2011, 16123/2011, 18119/2011, 18936/2011, 20181 & 20182/2011, 20221/2011, 20380/2011, 20400/2011, 22176/2011, 25649/2011, 28061/2011, 28883/2011, 28988/2011, 8223/2012, 12090/2012, 3279/2013, 7176/2013, 4516 & 4517/2012, 12035/2010, 28895/2008, 8902/2013, 11095/2013, 5110/2011, 20170 & 20171/2010, 933 & 934/2011, 2318/2011, 32255/2012, 23355 & 23356/2008, 10494/2009, 10997/2009, 11024-11027/2009, 12016/2009, 16251/2009, 18287/2009, 21035/2009, 21041/2009, 21046/2009, 21173/2009, 21182/2009, 22663/2009, 23144/2009, 17238/2009, 402/2010, 2210-2212/2010, 2676/2010, 2685/2010, 3085/2010, 4039/2010, 19408/2010, 25482 & 25483/2009, 24426 & 24428/2010, 24765/2010, 26516/2010, 2616/2011, 6874/2011 and 30395/2011, challenging the vires of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010, are dismissed.

30. W.P. No. 4417 of 2011 is filed seeking to declare levy, impost, demand or

collection of Service Tax from the petitioners by the respondents for the payment of licence/rental fee paid by the petitioner to the fifth respondent as illegal, unconstitutional and ultra vires the Finance Act.

31. W.P. Nos. 24586 and 24588 of 2010 are filed seeking to declare that (i) the impugned provisions, i.e. Section 65(105)(zzzz) read with Section 65(90-a) of the Finance Act, 1994, as amended by the Finance Act, 2010, as null and void and ultra vires and violative of Entry 49, List-II, Seventh Schedule, Articles 14, 19 and 246(3) of the Constitution of India, (ii) Section 76(A)(6)(h) and Section 77 of the Finance Act, 2010 as null and void and ultra vires the Constitution of India insofar as the petitioners are concerned; and (iii) the Notification No. 24/2007 dated 22-5-2007 and Circular 98/1/2008-S.T., dated 4-1-2008 as revived by the Finance Act, 2010, issued by the first respondent, as illegal, null and void and ultra vires the provisions of the Finance Act, 1994, as amended subsequently, insofar as the petitioners are concerned.

32. W.P. Nos. 14887, 19322, 20982 and 24804 of 2010 are filed seeking a writ of prohibition prohibiting the respondents from (a) giving effect to the provisions of Section 65(90a) read with Section 65(105)(zzzz) of the Finance Act, 1994 as amended by the Finance Act, 2007 and Finance Act, 2010 (b) levying or attempting to levy, collect or recover from the petitioner, any Service Tax under the said provisions and (c) levying or attempting to levy, collect or recover from the land owners of the petitioner, any Service Tax, under the said provisions.

33. W.P. Nos. 24589, 24766, 26517, 24427, 24429 and 24587 of 2010 are filed seeking a writ of mandamus forbearing the respondents from giving effect to or acting upon the impugned Notifications or Circulars or impugned provisions of the Finance Act, 2010 on the basis of Section 65(105)(zzzz) read with Section 65(90-a) with retrospective operation on and from 1-6-2007.

34. W.P. Nos. 23109/2009 and 4544/2010 are filed seeking to declare the respective Notification and Circular issued by the second respondent for collecting Service Tax on the renting of immovable property, as illegal, null and void and ultra vires the provisions of the Finance Act, 1994 as amended by the Finance Act, 2007 and Finance Act, 2008.

35. In view of paragraph No. 30 above, upholding the validity of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010, W.P. Nos. 24586 and 24588 of 2010, W.P. Nos. 14887, 19322, 20982 and 24804 of 2010, W.P. Nos. 24589, 24766, 26517, 24427, 24429 and 24587 of 2010 and W.P. Nos. 23109 of 2009 and 4544 of 2010 and 4417 of 2011 are dismissed.

36. W.P. No. 26459 of 2011 filed by Indian Railway Catering and Tourism Corporation Ltd. (IRCTC, for brevity) challenges Section 65(90a) and 65(105)(zzzz) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010. In view of the finding given by this Court in paragraph No. 30 above, this Court is of the considered view that the said

provisions are intra vires the Constitution of India. Accordingly, W.P. No. 26459/2011 is dismissed.

37. W.P. No. 26458 of 2011 is filed by IRCTC, challenging the order dated 9/10-3-2011 passed by the second respondent, wherein, the demand of Rs. 2,84,63,795/-, being the Service Tax payable for the period from 1-6-2007 to 31-1-2009 has been confirmed with consequential interest and penalties under Section 77 and 78 of the Finance Act, 1994.

38. The learned Senior Counsel appearing for the petitioner would contend that when the Railways is an essential public utility service for carriage of goods and transport of passengers throughout the country, a portion of the Railway premises is being used for the Railways for running refreshment stalls and the said part of the railway station premises and catering services through eating joints is nothing but part of essential passenger amenity to enable the traveling public to find easy access to eateries and the said catering service is not done by the railway administration with any profit motive. It is the further submission of the learned Senior Counsel appearing for the petitioner that upto the year 2005, the said act was performed by the Railway administration directly and on account of policy decision, it was entrusted to IRCTC and the Ministry of Railways is having 100% shares in the said Corporation and it is also a Government company; there was change of policy once again in the year 2010 by which, the entire catering service, except food plaza, fast food units and food courts were again taken over by the Railways and licences to run the stalls were granted after inviting tender and the price of eatables and beverages is also fixed by the Railway Board and it was also done by IRCTC during the period between 2005-2010.

39. The learned Senior Counsel appearing for the petitioner would also contend that the catering service rendered by IRCTC/Railway administration by licensing out stalls to successful bidders cannot fall within "renting of immovable property" and the said services are performed to enable the travelling public to get their requirements on the platform of the station itself and therefore, catering service would not come within the definition "renting of immovable property" and hence, Service Tax cannot be levied.

40. The official respondents had filed their common counter affidavit stating inter alia that IRCTC is an extended arm of Railways chosen to provide various services to travelling public and the licensees were chosen by floating tenders and the job of choosing them was left to IRCTC and the successful tenderers are permitted to put up stalls as per the specifications prescribed by Railways/IRCTC and with regard to the user of the land, a fixed percentage out of the licence fee is paid to Railways. It is further stated in the counter affidavit that the activities undertaken by IRCTC/Railways, viz., renting/leasing out specific locations on platforms/concourse area of railway stations to various persons by awarding licences for setting up kiosks, food plazas, etc. and collecting licence fee and usage charges for the same are distinct activities covered by the scope of

definition of "renting of immovable property" and therefore, it is liable to pay Service Tax.

41. The learned Standing Counsel for the Revenue, inviting the attention of this Court to the order passed by the second respondent dated 9-3-2011, would submit that the points urged by the adjudicating authority were considered in detail and in extenso and a finding has been recorded that information has been deliberately withheld to evade payment of Service Tax and activities of IRCTC/ Railways would amount to renting for commercial purposes and therefore, the impugned order came to be passed confirming the demand as well as levying penalty. It is the further submission of the learned Standing Counsel appearing for the Revenue that the person aggrieved by the order passed by the second respondent, can prefer a statutory appeal to the Appellate Tribunal and since effective alternative remedy is available, the writ petition is not maintainable.

42. In W.P. No. 26460 of 2011, challenge is made to the show cause notice dated 14-10-2010 issued by the second respondent, calling upon the petitioner as to show cause as to why Service Tax should not be levied for renting of immovable property for the period 1-2-2009 to 31-8-2010 and the arguments put forth by the learned counsel for the petitioner and the learned Standing Counsel for the Revenue were similar to that of the arguments advanced by them in W.P. No. 26458 of 2011.

43. IRCTC made a challenge to Section 65(90a) and 65(105)(zzzz) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010 by filing W.P. No. 26459 of 2011 and in the light of the decision rendered by the Full Bench of the Delhi High Court and Rajasthan High Court, this Court is of the considered view that the provisions are intra vires the Constitution of India and once the vires of the provisions have been upheld, an obligation is cast upon the petitioner to pay Service Tax. Therefore, the impugned order in W.P. No. 26458 of 2011 came to be passed and it is also appealable and in view of the availability of effective alternative remedy, W.P. No. 26458 of 2011 is dismissed as not maintainable and liberty is granted to the petitioner to approach the appellate forum.

44. In W.P. No. 26460 of 2011, challenge is made to the show cause notice dated 14-10-2010 and since this Court is of the considered view that the second respondent is having jurisdiction to issue show cause notice, challenge made to it, is premature and the petitioner is at liberty to submit its reply to the show cause notice within a period of two weeks from the date of receipt of a copy of this order and therefore, W.P. No. 26460 of 2011 is premature and accordingly, the said writ petition is dismissed with the said liberty.

45. W.P. No. 4052 of 2011 is filed by the District Forest Officer, Tiruchirappalli Division, seeking to declare Section 65(90-a) and Section 65(105)(zzzz) of the Finance Act as ultra vires the Constitution of India. The petitioner would state that the Department of Forest, Government of Tamil Nadu is the owner of a

factory located in Thekkupattu Village, Vaniyambadi Taluk, Vellore District for the manufacture of sandalwood products and it has been leased out on lease rent basis to M/s. Tamil Nadu Forest Plantation Corporation Ltd., Government of Tamil Nadu undertaking and the said Corporation is running the factory and are paying lease rent at the rate of 13% of the sale value of the goods manufactured and sold by them and therefore, details of rent were called for from the office of the District Forest Officer who has let out the said factory in favour of M/s. Tamil Nadu Forest Plantation Corporation Ltd. as to the details of rent received by them and the said official, in turn, has informed the second respondent about the addressing of letter to the Chief Conservator of Forest and records were also submitted and the petitioner has also disputed the jurisdiction of the first respondent to levy and collect Service Tax and the provision is also held to be intra vires of the Constitution of India.

46. In the light of the decision rendered in Home Solutions-II case and the subsequent Division Bench judgment of the Rajasthan High Court reported in Purshottam Das Malpani Vs. Union of India, , W.P. No. 4052 of 2011 is liable to be dismissed and it is accordingly dismissed.

47. W.P. No. 23983 of 2009 is filed by Gobichettipalayam Municipality Kadai Kuthagaikarargal Sangham, W.P. No. 3279 of 2013 is filed by Gudalur Nagaratchi Vaniha Valaga Viyabarigal Nala Sangam and W.P. No. 8562 of 2009 is filed by one V. Chellammal. These three writ petitions are filed seeking to declare the provisions of Section 65(90a) and Section 65(105)(zzzz) of the Finance Act, 1994 as ultra vires the Constitution of India and unenforceable.

48. It is the stand of the Revenue that the Commissioner of the local body was requested to furnish details of rent collected by them and it was also furnished and in fact, the local body was also registered with the Department under the category of Service Tax for vide Registration Certificate bearing No. TMPAX6963ZST001 dated 18-9-2008; show cause notice was also issued calling upon the petitioner as to why Service Tax should not be levied and it is yet to be collected. It is further contended that the local body cannot be an aggrieved person as it is passing on the burden of paying Service Tax to the lessees/licensees and licensees/lessees are using the premises for commercial purposes and hence, they are amenable to Service Tax.

49. Since it has already been held in paragraph No. 29 above that this Court is not inclined to take a different view from that of the decision in Home Solutions-II case and the judgment reported in Purshottam Das Malpani Vs. Union of India, , W.P. Nos. 23983 and 8562 of 2009 and 3279 of 2013 are liable to be dismissed and they are accordingly dismissed.

50. W.P. No. 8932 of 2011 is filed by the Tamil Nadu Slum Clearance Board, seeking to declare the provision of sub-section 9(a) of Section 65 of the Finance Act, as amended by the Finance Act, 2007, as invalid and this Court is not inclined to go into the same as the said provision is intra vires of the Constitution

in view of the decision taken by this Court in paragraph No. 30 above, following the decision in Home Solutions-II case and the judgment reported in Purshottam Das Malpani Vs. Union of India, . Accordingly, W.P. No. 8932 of 2011 is dismissed.

51. In W.P. No. 26012 of 2012, the Tamil Nadu Slum Clearance Board has made a challenge to the order dated 3-12-2010 passed by the first respondent, calling upon the petitioner to pay Service Tax for the years 2007-2008, 2008-2009 and 2009-2010. It is the stand of the petitioner-Tamil Nadu Slum Clearance Board that it mainly caters to the need of poorer and weaker sections of the society and plots are allotted subject to payment of installments and the Tamil Nadu Slum Clearance Board is incurring huge loss for subsidising the cost of housing and rehabilitation of slum dwellers and it is purely a service-oriented one with no element of profit and it is further stated that the Tamil Nadu Slum Clearance Board is also offering space for locating bunk shops to run post offices and ration shops with meagre rent of Re. 1/- per square foot and since it is purely a service-oriented one and in public interest, it is not amenable to Service Tax. It is further submitted by the petitioner that they have also addressed a representation dated 29-3-2011 to the second respondent praying for exemption that until orders are passed, levy of collection of Service Tax may be deferred.

52. The respondents 1 and 2 have filed their counter affidavit contending inter alia that the services rendered by the Tamil Nadu Slum Clearance Board in relation to renting of immovable property are liable to Service Tax and they should get themselves registered and pay Service Tax and they got registered on 16-4-2008 and thereafter, the Superintendent of Service Tax called upon the petitioner to furnish details of income earned as rent from shops and other commercial establishments and on receipt of the reply, the impugned proceedings dated 3-12-2010 came to be passed and if the petitioner is aggrieved, it is entitled to invoke the appellate remedy and if it is of the view that it has to be exempted from levy of Service Tax, the appropriate authority is the second respondent who has to consider and pass orders on the representation dated 29-3-2011.

53. Since the validity of provisions of Section 65(90a) and Section 65(105)(zzzz) of the Finance Act, 1994 has been upheld in paragraph No. 30 above and further, the petitioner, viz., the Tamil Nadu Slum Clearance Board have got themselves registered with the authorities and thereafter, the impugned order came to be passed on 3-12-2010, it is always open to them to invoke appellate remedy before the competent authority. Moreover, Section 93 of the Finance Act, 1994 gives power to the Central Government to grant exemption from payment of Service Tax and a representation dated 29-3-2011 in this regard has also been addressed by the petitioner seeking exemption from Service Tax. Therefore, W.P. No. 26012 of 2012 is dismissed with liberty to the petitioner to invoke appellate remedy challenging the vires of the order dated 3-2-2010 and with a direction to the second respondent to consider and dispose of the representation dated 29-3-2011 seeking exemption, sent by the third respondent to the second

respondent within a period of twelve weeks from the date of receipt of a copy of this order.

54. In W.P. No. 16400 of 2013, the petitioner is one of the licensees of the local body, viz., Gobichettipalayam Municipality and he seeks to declare the provisions of Section 65(105)(zzzz) and 65(90-a) of the Finance Act, 1994, as invalid.

55. Since the validity of Section 65(105)(zzzz) and 65(90-a) of the Finance Act, 1994, as amended by the Finance Act, 2010, has been upheld in paragraph No. 30 above, it is open to the local body to pass on the burden to the petitioner herein, who is liable to pay Service Tax as demanded by the local body. If the petitioner is aggrieved by the order passed by the adjudicating authority, he is entitled to invoke the appellate remedy in terms of the Finance Act, 1994.

56. W.P. No. 16400 of 2013 is dismissed with the above said liberty.

57. In W.P. Nos. 34221, 34299, 34751 to 34762 of 2007, notices issued by Metropolitan Transport Corporation, demanding Service Tax are put to challenge.

58. The petitioners, being licensees of the shops owned by the Metropolitan Transport Corporation (Chennai) Limited, have filed these writ petitions challenging the legality of the notices in and by which they have been directed to pay Service Tax at the rate of 12.36%.

59. The case of the petitioners is that the respondent Transport Corporation is not empowered to demand Service Tax and such demand is against law, arbitrary and in violation of statutory rules.

60. A Division Bench of the Delhi High Court, in the decision in Home Solutions-I case, has held Section 65(105)(zzzz) of the Finance Act, 1994 as ultra vires the Constitution of India and in order to get over the same, amendment was brought forth in the Finance Act, 2010, by incorporating the amendment that the rent activity itself is regarded as taxable service and the said amendment was given retrospective effect from 1-6-2007. Once again, challenge was made to the said amendment and a Full Bench of the Delhi High Court, in the decision in Home Solutions-II case, has upheld the validity and also the retrospective amendment and further held that the Division Bench judgment of the Delhi High Court in Home Solutions-I case, is no longer a good law and the portion which is apposite in this regard is extracted hereunder:

"75. In view of the aforesaid analysis, we proceed to enumerate four conclusions in seriatim as follows:

(b) The decision rendered in the first Home Solution case does not lay down the correct law as we have held that there is value addition when the premises is let out for use in the course of or furtherance of business or commerce and it is, accordingly over-ruled."

61. Since the order declaring that Section 65(105)(zzzz) of the Finance Act, 1994, is ultra vires, was held to be no longer a good law, in the subsequent

judgment rendered by the Full Bench of the Delhi High Court in Home Solutions-II case and since the Civil Appeal which is filed before the Hon'ble Supreme Court of India, challenging the said Full Bench judgment of Delhi High Court is pending, challenge made by the petitioners with regard to demand of Service Tax is unsustainable. Therefore, W.P. Nos. 34221, 34229, 34751 to 34762 of 2007 are dismissed.

62. In W.P. No. 1644 of 2012, the petitioner has prayed for a declaration declaring that the lease of the respective building/premises owned by them, cannot be subjected to Service Tax under the head "renting of immovable property" by virtue of provisions of Section 66 of the Finance Act, 1994, as it does not fall under the head and also, it does not fall within the purview of Section 65(90-a) and Section 65(105)(zzzz) of the Finance Act, 1994, with effect from 1-6-2007 and for a consequential direction.

63. Since the validity of Section 65(105)(zzzz) and 65(90-a) of the Finance Act, 1994, as amended by the Finance Act, 2010, has been upheld in paragraph No. 30 above, following the decision in Home Solutions-II case and the judgment reported in Purshottam Das Malpani Vs. Union of India, , W.P. No. 1644 of 2012 is dismissed.

64. In W.P. No. 18795 of 2009, the petitioner, took on lease the godown belonging to Tamil Nadu Warehousing Corporation Limited, Ranipet and the said Corporation issued a notice dated 29-9-2008, calling upon the petitioner to pay Service Tax and challenge is made to the said order.

65. Likewise, in W.P. Nos. 23436/2010, 6875/2011, 22175/2011, 29125 & 29126/2011, 13656/2011, 26395/2011 and 13272/2013 also, the respective show cause notice is put to challenge.

66. Since the validity of Section 65(105)(zzzz) and 65(90-a) of the Finance Act, 1994, as amended by the Finance Act, 2010, has been upheld in paragraph No. 30 above, following the decision in Home Solutions-II case and the judgment reported in Purshottam Das Malpani Vs. Union of India, , as a natural corollary, W.P. Nos. 18795/2009, 23436/2010, 6875/2011, 22175/2011, 29125 & 29126/2011, 13656/2011, 26395/2011 and 13272/2013 lack merit and they are accordingly dismissed. However, liberty is given to the petitioners to submit their reply to the show cause notices within a period of two weeks from the date of receipt of a copy of this order.

67. W.P. Nos. 6114/2010, 3259/2011 and 20466/2011 are filed seeking a writ of mandamus forbearing the first respondent from in any manner proceeding with the adjudication of show cause notice, seeking levy of Service Tax on renting of immovable property, as the same is totally without jurisdiction.

68. Here again, since the validity of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010, has been upheld in paragraph No. 30 above, following the decision in Home Solutions-II case and

the judgment reported in Purshottam Das Malpani Vs. Union of India, , as a natural corollary, W.P. Nos. 6114/2010, 3259/2011 and 20466/2011 deserve dismissal and they are accordingly dismissed. However, the petitioners are given two weeks" time, from the date of receipt of a copy of this order, to give reply to the show cause notices.

69. In W.P. No. 20580 of 2009, the petitioner has made a challenge to the communication dated 23-6-2009, sent by the office of the Deputy Commissioner of Service Tax, calling upon him to pay Service Tax, till a favorable decision is accorded by the Supreme Court in respect of the matter/appeal preferred against the decision of the Division Bench judgment of the Delhi High Court in Home Solutions-I case.

70. It is the case of the petitioner that in Home Solutions-I case, since the Division Bench of the Delhi High Court has struck down levy of Service Tax on renting of immovable property for furtherance of business or commerce, it is not open to the above said authority to demand Service Tax.

71. It is to be pointed out at this juncture that after the judgment rendered by the Delhi High Court in Home Solutions-I case, an amendment was brought forth in the Finance Act, 2010 in respect of Section 65(105)(zzzz), whereby, renting activity itself is regarded as taxable service and the said amendment was given retrospective effect with effect from 1-6-2007 and it was also put to challenge and the Full Bench of Delhi High Court, in Home Solutions-II case, has upheld the validity as well as retrospective amendment and also held that Home Solutions-I case did not lay down correct law and further, the Civil Appeal preferred as against the Full Bench judgment of Delhi High Court is pending. This Court has also upheld the validity of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010, in paragraph No. 30 above, following the decision in Home Solutions-II case and the judgment reported in Purshottam Das Malpani Vs. Union of India, .

72. In the light of the reasons assigned above, W.P. No. 20580 of 2009 is dismissed.

73. In W.P. Nos. 8109 of 2009 and 13880 of 2013, M/s. Elnet Technologies Limited, made a challenge to the demand in respect of the show cause notice issued by the Commissioner of Service Tax, Chennai, as to the non-inclusion of electricity charges collected from the occupants of their immovable property in the taxable value.

74. It is to be pointed out at this juncture that after the judgment rendered by the Delhi High Court in Home Solutions-I case, an amendment was brought forth in the Finance Act, 2010 in respect of Section 65(105)(zzzz), whereby, renting activity itself is regarded as taxable service and the said amendment was given retrospective effect with effect from 1-6-2007 and it was also put to challenge and the Full Bench of Delhi High Court, in Home Solutions-II case, has upheld

the validity of the said provisions as well as retrospective amendment. Further, in the Civil Appeal preferred as against the Full Bench judgment of Delhi High Court, the Full Bench judgment of Delhi High Court is yet to be reversed.

75. In the light of the above, W.P. Nos. 8109 of 2009 and 13880 of 2013 are dismissed with liberty to the petitioner to submit its reply to the impugned show cause notices, within a period of two weeks from the date of receipt of a copy of this order.

76. The petitioners in W.P. No. 3522 of 2010 made a challenge to the notice dated 22-1-2010 issued by the Commissionerate of Service Tax, Chennai, calling upon them to furnish particulars and documents as to the rental/lease agreement entered into by the petitioners with their clients with effect from 1-6-2007 onwards.

77. The petitioners would contend that in the light of the decision of the Division Bench of Delhi High Court in Home Solutions-I case, the impugned notice is unsustainable in law.

78. This Court, following the decision rendered by the Full Bench of Delhi High Court in Home Solutions-II case and the subsequent Division Bench judgment of the Rajasthan High Court reported in Purshottam Das Malpani Vs. Union of India, , Purshottam Das Malpani v. Union of India and Others, has upheld the validity of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994 and also the amendment made to the Finance Act, 2010 with retrospective effect and in such a view of the matter, the notice issued by the authority constituted under the Service Act to furnish copies with regard to leasing of the property is sustainable. Accordingly, W.P. No. 3522 of 2010 is dismissed. However, the petitioners are granted two weeks time from the date of receipt of a copy of this order, to furnish their response to the notice calling for details of the lease of the property.

79. In W.P. No. 4100 of 2010, the petitioner makes a challenge to the order passed by the authority constituted under the Service Tax in determining the demand of Service Tax and also with regard to demand of interest and imposition of penalty.

80. This Court, in paragraph No. 30 above, has upheld the validity of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010 by following the decision rendered in Home Solutions-II case and the subsequent Division Bench judgment of the Rajasthan High Court reported in Purshottam Das Malpani Vs. Union of India, and the Special Leave Petition filed as against the judgment given by the Full Bench of Delhi High Court in Home Solutions-II case is pending consideration. That apart, this Court is of the further view that the impugned order is appealable in nature.

81. In the light of the foregoing reasons, W.P. No. 4100 of 2010 is dismissed with

liberty to the petitioner to invoke the appeal remedy in accordance with law.

82. W.P. Nos. 12315 of 2011 and 9251 of 2009 are filed seeking to declare the provisions of Section 65(90a) and Section 65(105)(zzzz) of the Finance Act, 1994 and the consequential respective show cause notice as ultra vires the Constitution of India.

83. It is to be pointed out, at this juncture, that after the judgment rendered by the Delhi High Court in Home Solutions-I case, an amendment was brought forth in the Finance Act, 2010 in respect of Section 65(105)(zzzz), whereby, renting activity itself is regarded as taxable service and the said amendment was given retrospective effect with effect from 1-6-2007 and it was also put to challenge and the Full Bench of Delhi High Court, in Home Solutions-II case, has upheld the validity of the said provisions as well as the retrospective amendment. Further, in the Civil Appeal preferred as against the Full Bench judgment of Delhi High Court, the Full Bench judgment of Delhi High Court is yet to be reversed. That apart, following the decision rendered in Home Solutions-II case and the subsequent Division Bench judgment of the Rajasthan High Court reported in Purshottam Das Malpani Vs. Union of India, , this Court, at paragraph No. 30 above, has upheld the provisions of Section 65(105)(zzzz) and 65(90a) of the Finance Act, 1994, as amended by the Finance Act, 2010 and Section 77 of the Finance Act, 2010. Therefore, in the light of the above, the challenge made to the above said provisions is liable to be rejected.

84. The petitioners were also issued with notice to show cause as to why the amount due and payable towards Service Tax, should not be demanded and so also, interest and penalty.

85. Inasmuch as the validity of the above said provisions has been upheld, the impugned show cause notices are sustainable and therefore, W.P. Nos. 12315 of 2011 and 9251 of 2009 are dismissed. However, the petitioners are given two weeks time from the date of receipt of a copy of this order, to respond to the impugned show cause notice.

86. W.P. No. 748 of 2009 is filed challenging the communication dated 28-11-2008 of the first respondent.

87. The petitioner contended that the levy of Service Tax on the renting of immovable property is not valid in law and the residuary provision cannot be invoked to levy Service Tax.

88. A perusal of the impugned notice would disclose that the petitioner was called upon to get itself registered with the Department as per Section 69 of the Finance Act, 1994 and to pay Service Tax as per Section 68 read with Section 66 of the said Act. Since this Court has already upheld the validity of the said provisions, W.P. No. 748 of 2009 fails and it is accordingly dismissed. However, the petitioner is at liberty to file its response to the impugned notice dated 28-11-2008, within a period of two weeks from the date of receipt of a copy of

this order and on receipt of such response, the first respondent is directed to consider and dispose of the same in accordance with law, as expeditiously as possible.

To sum up:

? W.P. Nos. 4100 of 2010, 26458 of 2011, 26460 of 2011, 26012 of 2012 and 16400 of 2013 are dismissed with liberty to the petitioners to invoke the appeal remedy. If appeal is presented within 30 days from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority and considered on merits without reference to limitation.

? W.P. Nos. 8109 of 2009, 18795 of 2009, 23436 of 2010, 6875 of 2011, 22175 of 2011, 29125 & 29126 of 2011, 13656 of 2011, 26395 of 2011 and 13272 of 2013 and 13880 of 2013, filed challenging show cause notices, are dismissed. Similarly, W.P. Nos. 6114 of 2010, 3259 of 2011 and 20466 of 2011 which are filed seeking mandamus forbearing the first respondent from proceeding with the adjudication of the respective show cause notices, are also dismissed. However, the petitioners are given two weeks" time from the date of receipt of a copy of this order, to give reply to the show cause notices.

? W.P. No. 748 of 2009 is dismissed with liberty to the petitioner as indicated in paragraph No. 90 above.

? Rest of the writ petitions are dismissed.

? If the petitioners had remitted/deposited any amount towards Service Tax by virtue of interim orders, those sums are to be adjusted at the time of adjudication. No costs. Connected Miscellaneous Petitions are closed.