

(2014) 09 MAD CK 0026

In the Madras High Court

Case No : Writ Petition (MD) No.5743 of 2014 and M.P.(MD) Nos.1 & 3 of 2014

R. Nambi

APPELLANT

Vs

Tenkasi Municipality Tenkasi through it's Commissioner

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2015) 1 CWC 585

Hon'ble Judges : Mr. T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Mr. T.S.R. Venkatramana, Advocate, for the Petitioner; Mr. P. Athimoola Pandian, Advocate, for the Respondent No. 1; Mr. B. Vijaya Karthikeyan, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mr. T.S. Sivagnanam, J.—With the consent of both parties, this writ petition is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the order, dated 27.02.2012, passed by the first respondent Municipality, by which the petitioner has been directed to remit service tax in respect of the license granted to him.

3. The impugned demands are in respect of four licenses granted to the petitioner namely the right to collect fees in the Auto Stand, Cycle Stand, Van Stand and entry fee to the new Bus Stand, Tenkasi. Though four demands have been raised by the first respondent Municipality, the petitioner has filed a single writ petition challenging the four demands on the ground that the proceedings number in all the four impugned demands is identical. Strictly speaking, the petitioner ought to have filed four writ petitions since four independent licenses were granted to him and four demands have been issued.

4. Be that as it may, the petitioner has canvassed the legal issue challenging the jurisdiction of the first respondent Municipality in demanding of service tax on the ground that the Finance Act, 1994 (hereinafter referred to as "the Act") does

not provide for levy of service tax on licensees, who have been granted license for parking places.

5. Mr. T.S.R. Venkatramana, learned counsel for the petitioner submitted that unless there is authority of law to collect tax there can be no collection of tax and the respondents have no authority to levy service tax on the license granted to the petitioner and therefore the demand itself is without jurisdiction.

6. By referring to Section 64(3) of the Act, it is submitted that the service tax shall apply to taxable services provided on or after the commencement of Chapter V of the Act and if the services are not taxable, the question of imposing tax does not arise. Further, by referring to Section 65(105)(zzzz), it is submitted that taxable service means any service provided or to be provided to any person or by any other person by renting immovable property or any other service in relation to such renting for use in the course of or for furtherance of, business or commerce. Referring to Clause (c) contained in Explanation 1 under the said Section, it is submitted that immovable property for the purposes of Clause (zzzz) of Section 65 (105) does not include any land used for parking purposes. Therefore, it is submitted that the demand is illegal. Further, it is submitted that after the insertion of Section 66D with effect from 01.07.2012, the negative list shall comprise of the services mentioned in Clauses (a) to (q) in the said provision and this has to be read along with Section 65(105) and unless it is a taxable service, the question of levying service tax does not arise.

7. Mr. B. Vijaya Karthikeyan, learned standing counsel for the second respondent, referred to Section 65(90a) of the Act and submitted that "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include renting of immovable property by a religious body or to a religious body, or 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. By relying upon Explanation 2 contained in Section 65(90a) it is submitted that for the removal of doubts, which has been declared that for the purposes of Clause 65(90a) of the Act "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. Therefore, it is submitted that the type of services provided by the Municipality clearly falls within the definition of Section 65(90a) of the Act. Further, it is submitted that the petitioner is not a service provider, but it is the Municipality, which is registered with the Department and bound to remit service tax.

8. Countering the submissions made by the learned counsel for the petitioner, it is submitted that Clause (c) contained in Explanation 1 to Section 65(105)(zzzz) of the Act does not apply to land used for parking purposes as the words "parking purpose" has to be read in conjunction with land used for educational, sports, circus, entertainment and parking purposes. By referring to Clause (a)

contained in Explanation 1 to Section 65(105)(zzzz), it is submitted that the conjunction "and" is conspicuously absent in Clause (a), which says that vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes. Therefore, it is submitted that the interpretation given by the petitioner is incorrect.

9. Further, it is submitted that on and after 01.07.2012, taxable service has been defined under Section 65B(51) to mean any service on which service tax is leviable under Section 66B. Section 66B of the Act states that there shall be levied a tax at the rate of twelve per cent on the value of services other than those services specifically mentioned in the negative list. It is further submitted that admittedly, the service rendered by the first respondent Municipality is not contained in the negative list and therefore the same does not exempt from levy of service tax. Further, it is submitted that in terms of Section 66E(a) renting of immovable property shall constitute as a declared service.

10. The learned standing counsel referred to the notification issued by the Government of India, dated 05.06.2012, whereby, the Central Government fixed 01.07.2012 as the date with effect from which the provisions of Section 65 of the Act shall not comply except as respects things done or omitted to be done before the said Section 65 so ceases to apply. Further, by referring to Clause 24 of the mega exemption notification, dated 20.06.2012, it is submitted that services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility, alone has been exempted. Further, it is submitted that the petitioner has not challenged the action initiated by the Department nor any notification nor the provisions of the Act and therefore the writ petition challenging the demand issued by the Municipality, who is the service provider and registered with the Department is not maintainable in law.

11. Mr.P.Athimoola Pandian, learned counsel for the first respondent Municipality, at the outset raised a preliminary objection as regards the maintainability of the single writ petition challenging four demand notices. Further, it is submitted that the service tax has been collected as per the demand raised by the second respondent and the petitioner being a licensee is bound to pay the same as it is one of the conditions of the tender and in this regard reference has been made to Clauses (1) and (17) of the terms and conditions of tender as published by the first respondent Municipality and accepted by the petitioner.

12. Heard the learned counsel for the parties and perused the materials placed on record.

13. At the out set it has to be pointed out that the petitioner is not a service provider. The first respondent Municipality is the service provider, who has been registered with the Department. The onus is on the first respondent Municipality to remit the service tax. In turn, the first respondent Municipality has demanded the same from the petitioner, who is their licensee in respect of four contracts, wherein the petitioner has been given license to collect fees. Furthermore, the

petitioner has not challenged the validity of the provisions of the Finance Act nor the notification issued by the second respondent and in such circumstances a challenge to a demand notice issued by the service provider under whom the petitioner is a licensee has to necessarily fail. Nevertheless, since this Court heard the learned counsel for the petitioner in great length, this Court proposes to consider the submissions made by the parties as regards the jurisdiction to levy the service tax.

14. Renting of immovable property was brought under the Act with effect from 01.06.2007. Section 65(105)(zzzz) defines taxable service, which means any service 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 and it includes vacant land given on lease or license and the test is as to whether it is used in the course of or furtherance of business or commerce. Admittedly, the petitioner is a licensee of the first respondent Municipality and the property has been used in the course of business or commerce. As noticed above, Section 65(90a) defines renting of immovable property including renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce.

15. Admittedly, the properties in question do not fall within the two exemptions provided under Section 65(90a) of the Act. Explanation 2 under Section 65(90a) makes it more clear that 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. The duty performed by the first respondent Municipality would clearly fall within the ambit of the provisions referred above and therefore they have been remitting service tax to the Department. Further, Section 66D(a)(iv) of the Act deals with negative list of services and Clause (a) provides services by Government or a local authority excluding the following services to the extent they are not covered elsewhere and the relevant clause would be Clause (iv) namely support services, other than services covered under Clauses (i) to (iii), provided to business entities. Therefore, the Municipality is bound to pay service tax on the nature of transaction, which they have entered into with the petitioner.

16. The question as to whether the service tax is payable on such type of transaction was considered in a batch of cases in W.P.(MD) No.16400 of 2013 etc., batch, dated 20.06.2014. In the said batch of writ petitions, the first writ petition namely W.P.(MD) Nos.16400 of 2013 was by the licensee of a local body namely Gobichettipalayam, Municipality, wherein he had been granted license to collect fee and identical grounds were raised by the petitioner therein and they sought for declaration to declare the provisions of Sections 65(105)(zzzz) and 65(90a) of the Act as invalid. The Honourable Division Bench of the Principal Bench of this Court, after considering all the decisions on the point held as hereunder:

"23. 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 petitioner 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."

24. 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 herein before, has opined that renting of immovable property for use in the course or furtherance of business or commerce by itself would not constitute service s 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, licensing 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. The 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 company Pvt. Ltd. v. Boeing and another*, (1994) 4 SCC 541, 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 subserve 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."

25. In the aforesaid decision, the retrospective applicability of the said provisions was also considered and by placing reliance upon the decision reported in (2003) 5 SCC 298, *Bakhtawar Trust and Others v. M.D. Narayan and Others* and (2009) 13 SCC 165, *State of Himachal Pradesh v. 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 01.10.2011.

26. A Division Bench of Rajasthan High Court, in the decision reported in [2012] 52 VST 409 (Raj.), Puroshottam Das Malpani v. Union of India and Others, had followed the Full Bench decision rendered by the Delhi High Court and upheld the validity of the said provisions.

27. 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 List. The Hon''ble Supreme Court of India, in the decision reported in AIR 1970 SC 999, 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 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; and 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."

28. The aforesaid decision of the Hon'ble Supreme Court of India reported in AIR 1970 SC 999, *The Second Gift Tax Officer, Mangalore, etc. v. D.H. Hazareth 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.

29. In (2011) 4 SCC 450, *Mineral Area Development Authority and Others v. 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 *State of West Bengal v. Kesoram Industries*

Ltd., reported in (2004) 10 SCC 201, could be read as departing from the law laid down in the 7-Judge Bench decision in *India Cement Ltd. v. State of Tamil Nadu* reported in (1990) 1 SCC 12. 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 (2011) 4 SCC 450, 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"

On the above findings, the challenge to the provisions of Sections 65(105)(zzzz) and 65(90a) of the Act was rejected and the writ petitions were dismissed.

17. It is further submitted that Section 66B of the Act deals with charge of service tax on and after Finance Act, 2012 and it states that there shall be levied a tax (service tax) at the rate of twelve per cent on the value of all services, other than those service specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. Further, it is submitted that prior to 10.05.2013, there was an explanation under Section 66B, which states that for removal of doubts, it is hereby clarified that the references to the provisions of section 66 in Chapter V of the Finance Act, 1994 (32 of 1994) or any other Act, for the purpose of levy and collection of service tax, shall be construed as references to the provisions of section 66B. Though initially inserted, it was omitted by Finance Act, 2013 (Act 17 of 2013), dated 10.05.2013. Therefore, it is submitted that Section 66 of the Act has to be read along with Section 66B.

18. It is to be noted that though Explanation under Section 66B was omitted by Finance Act, 2013, dated 10.05.2013, it was inserted as Section 66BA. Sub-section (1) of Section states that for the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 or any other Act for the time being in force, shall be construed as reference to section 66B thereof. In terms of sub-section (2) of Section 66BA, the provision namely Section 66BA shall be deemed to have come into force on 01.07.2012. It is to be noted that on and after the introduction of Section 66B with effect from 01.06.2012, there was a diametric shift in the pattern of levy and collection of service tax by virtue of interpretation of the negative list. Therefore, the provision had to be made with regard to the levy and collection of service tax, after interpretation of Section 66B, for which purpose initially there was an explanation under Section 66B,

which was omitted and inserted as Section 66BA. However, this omission or insertion does not in any manner improve the case of the petitioner, who is not a service provider. Hence, the contention raised on behalf of the petitioner does not merit acceptance.

19. In the light of the above decision of the Honourable Division Bench referred supra, which has been rendered following the earlier decision, squarely covers the case on hand and that apart the petitioner is not the service provider and he has not challenged the power of the second respondent to levy and demand service tax and the first respondent Municipality being the service provider is bound to pay the service tax, which has been remitted. In the light of the above findings, no grounds have been made out by the petitioner to interfere with the impugned proceedings.

20. In the result, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.