

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA  
REGIONAL BENCH – COURT NO.2**

**Service Tax Appeal No. 75865 of 2017**

(Arising out of Order-in-Original No. 10/ST/Patna/2014 dated 23.05.2014 passed by Commissioner (Appeals) of CGST & Excise, Patna.)

**M/s Bihar State Sugar Corporation Limited,**  
(Sugar Secretariat, Vikash Bhavan, Bally Road, Patna-800015)

**...Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Patna,**  
(C. R. Building (Annexe) Bir Chand Patel Pat, Patna-800001)

**...Respondent**

**APPEARANCE :**

Shri Surendra Kumar, Advocate & Ms. Khushboo Rai, C. A. for the Appellant  
Shri S. Chitkara & Mr. P. Das, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**  
**HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)**

**FINAL ORDER No...75734/2026**

DATE OF HEARING : 12.05.2026

DATE OF PRONOUNCEMENT: 18.06.2026

**Per R. Muralidhar :**

The Appellant leased out certain closed sugar factories to private entrepreneurs, namely: (a) Lauriya Sugar Factory and Sugauli Sugar Factory to M/s HPCL, Mumbai (January 2009); (b) Raiyam Sugar Factory to M/s Tirhut Industries (April 2010); and (c) Motipur Sugar Factory to M/s Indian Potash Limited, Chennai (January 2011). The Department issued a Show Cause Notice vide C. No. V(12) 07/CEP/2011/6926 dated 09.10.2012 alleging that Service Tax has not been paid for the 'Renting of Immovable Property', for the period from 28.03.2008 to 25.03.2011, demanding Service Tax of Rs. 14,59,61,300/-. The appellant submitted their detailed reply contesting the demand both on merits as well as on account of limitation. The Adjudicating authority after due process, confirmed the demand along with interest and penalty. Being aggrieved, the appellant filed their appeal before the Tribunal, which came to be dismissed on account of

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non-compliance of the pre-deposit condition. Thereafter the appellant filed their appeal before the High Court, which directed them to approach the Tribunal after making the requisite pre-deposit. After complying with the pre-deposit requirement before the Tribunal, the appeal has come up for hearing before the Tribunal now.

2. The Ld. CA and the Advocate appearing for the appellant, made the following submissions:

2.1. The Appellant, Bihar State Sugar Corporation Ltd. ( "BSSC"), is a Government Company, incorporated in the year 1974 to manage, operate and control loss-making sugar and distillery units under the control of the Government of Bihar. By the Bihar Sugar Undertakings (Acquisition) Act, 1985 (hereinafter referred to as "the Acquisition Act"), the Sugar Industries inter alia situated at Raiyam (District Madhubani), Lauriya (District West Champaran), Sugauli (District East Champaran) and Motipur (District Muzaffarpur) were acquired and taken over by the Government of Bihar. Upon acquisition, all the aforesaid sugar factories became the property of the State Government and vested in the State free from all encumbrances. Under Section 3(2) of the Acquisition Act, the State Government by notification dated 27.10.1985 handed over the sugar factories to the Appellant.

2.2 The Appellant leased out the closed sugar factories to private entrepreneurs, namely: (a) Lauriya Sugar Factory and Sugauli Sugar Factory to M/s HPCL, Mumbai (January 2009); (b) Raiyam Sugar Factory to M/s Tirhut Industries (April 2010); and (c) Motipur Sugar Factory to M/s Indian Potash Limited, Chennai (January 2011). Primarily, these factory premises were used by the Lessees for storing of their goods. It is submitted that it is more in the nature of leasing out

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of land and not that of any premises for any commercial purposes. Therefore, the appellant never treated this activity as a service falling under Renting of Immovable Property. Accordingly, neither any Service Tax was collected from the lessees nor the same was paid to the Revenue Department.

2.3 It is submitted since the lease was primarily for usage of land of these factories, no Service Tax is payable, since the leasing of land is exempt from payment of Service Tax.

2.4 It is also submitted that the property and income of the Appellant, being a State Government instrumentality, is exempt from Union taxation under Article 289(1) of the Constitution of India.

2.5 Therefore, the Service Tax demand is not legally sustainable on account of merits.

2.6 Canvassing their arguments on time bar, it is submitted the legal position with respect of Service Tax liability on Renting of immovable property remained in a state of flux throughout the relevant period (28.03.2008 to 25.03.2011). In 2009, the Hon'ble Delhi High Court, in the case of **Home Solution Retail India Ltd. & Ors vs. Union of India [2009 (14) STR 433 (Del.)]**, struck down the levy of service tax on renting of immovable property as "*ultra vires*" the Finance Act, 1994, while deciding 26 writ petitions referred to it by the Supreme Court. The Court held that Section 65(105)(zzzz) does not entail that the renting out of immovable property for use in the course or furtherance of business or commerce would by itself constitute a taxable service and be eligible to service tax under the said Act. Pursuant to this judgment, the Parliament through the Finance Act, 2010 amended Section 65(90a) and Section 65(105)(zzzz) with retrospective effect from 01.06.2007, to overcome the Delhi High

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Court's ruling. The amendment redefined 'taxable service' so that a service provided "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 was brought within the tax net. Significantly, the Finance Act, 2010 itself declared: "*No act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.*" This retrospective amendment was again challenged before the Delhi High Court in **Home Solutions Retail India Ltd. vs. Union of India [W.P.(C) No. 3398/2010]**, wherein interim stay was granted on 18.05.2010.

2.7. Thus, during the entire period of the alleged default (28.03.2008 to 25.03.2011), the taxability of renting of immovable property was under a judicial cloud. The initial levy was struck down by the Delhi High Court, then reinstated retrospectively, then again stayed, and only finally upheld on 23.09.2011. No reasonable person could have been expected to understand the true legal position and voluntarily register and pay Service Tax during this period of profound legal uncertainty. The very Parliament that enacted the retrospective amendment acknowledged this by inserting the safeguard clause in the Finance Act, 2010 that no person shall be punished for any act or omission during this period.

2.8. In the present case, the Appellant is a Government Company, wholly owned by the State of Bihar. It is inconceivable that a State Government instrumentality would deliberately suppress facts or wilfully evade taxes. The non-payment of Service Tax was clearly attributable to the legal uncertainty surrounding the taxability of renting of immovable property, and the Appellant acted under a bona fide belief based on the then-prevailing judicial pronouncements.

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2.9. The CESTAT Chandigarh Bench in **Onkar Associates vs. Commissioner of Central Excise & Service Tax [Service Tax Appeal No. 51110 of 2015, decided on 27.10.2025]** on identical facts of renting of immovable property for the period June 2007 to March 2011, held that the demand was time-barred, relying on the **Home Solutions** judgment and the principle that where there are divergent judicial views, extended period cannot be applied. The Tribunal specifically referred to the Delhi High Court's ruling in **Home Solution Retail India Ltd.** and noted that the retrospective amendment in the Finance Act, 2010 itself created ambiguity for assessees, and that the Department had not established any deliberate suppression or intent to evade tax.

2.10. It is further submitted that the Appellant had a bona fide belief in view of the judgments cited supra that it was not liable to pay service tax. Reliance is also placed upon the decision of the CESTAT Chandigarh Bench in the case of **VIR Enterprises vs. CCE, Chandigarh-I [Final Order No. 60065/2025 dated 13.01.2025 in ST/1101/2011]** wherein the Tribunal held that when the extended period of limitation is invoked and the same is not found invocable, the demand for the normal period also cannot be sustained, following the judgment of the Hon'ble Calcutta High Court in the case of **Infinity Infotech Parks Ltd. vs. Union of India [2014 (36) STR 37 (Cal.)]** decided on 30.04.2014.

2.11. In view of the above submissions, the demand for the extended period cannot be sustained on account of time-bar. Since the Show Cause Notice has been issued on 09.10.2012, at that time the unamended Section 73 resulted in setting aside the entire demand even for the normal period, if the extended period is found to not invocable.

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Accordingly, it is prayed that the entire confirmed demand may be held as time barred and the appeal may be allowed.

3. The Ld AR submitted that the appellant is a Public Sector Undertaking. They have leased out the factory premises to various other commercial entities. For the lease amount received as consideration, the appellants are bound to pay the Service Tax. There is no exemption available to the appellant as a Govt owned PSU from payment of Service Tax. The Agreements show that the leasehold consists of the entire factory premises including all the plant, godowns and barren land. Therefore, the appellant is not correct to state that only the land has been leased out. Further only on account of detailed verification, the contravention of non-payment of Service Tax has come to light. Therefore, the Ld AR justifies the confirmed demand and prays that the appeal may be dismissed.

4. Heard both the sides. We have gone through the appeal papers and other relevant documents placed before us.

5. We find that the demand has been quantified as per the following Table in the SCN :

Sl No.	Name of the Sugar Factories	Name of the lessee	Date of agreement	Consideration amount	Amount paid
01.	Lauria Sugar Factory	HPCL Mumbai	Jan'2009	45.00	45.00
02.	Sugauli Sugar Factory	HPCL Mumbai	Jan'2009	50.00	50.00
03.	Raiyam Sugar Factory	Tirhut Industries	April,2010	09.11	09.11
04.	Motipur Sugar Factory	Indian Potash Ltd,	Jan'2011	56.20	28.10
				Total: 16031	132.21

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Sl. No.	Period	Amount received	Rate of S. Tax	Service Tax	Ed. Cess @2% of S.T.	S & H Ed. Cess @1% of S.T.	Total
01.	28.03.2008 to 12.01.2009	47.50	12%	5.70000	0.11400	0.05700	5.87100
02.	05.03.2010 to 25.03.2011	47.50+9.11+28.10=84.71	10%	8.47100	0.16942	0.08471	8.72513
		Total : 132.21		14.17100	0.28342	0.14171	14.59613

6. On going through the Agreements, it is seen that the factory premises as such have been leased out. Therefore, the appellant is in error in taking the stand that the lease is only for the land. No exemption would be available to the appellant on this ground.

7. Secondly, we do not subscribe to the view of the appellant that since they are a Public Sector Undertaking working under the Bihar Govt., they would go out of the purview of the Service Tax. This notion of the appellant is misconceived. All the PSUs are commercial entities and are meant to carry on business and earn profit. No exemption has been granted for payment of Service Tax in respect of any of the services rendered by the PSUs.

8. Therefore, we find that the arguments of the appellant on these counts are devoid of merits and hence the appeal stands rejected on merits.

9. Now coming to the submissions made on account of time bar, we feel force in the arguments of the appellant basically on the following grounds :

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9.1 The appellants have been given charge of the loss making closed sugar mills to generate some income, for which they have leased out the same to various other PSUs / Private entities.

9.2 Renting of Immovable service was indeed under litigation and as a matter of fact in the case of **Home Solution Retail India Ltd. & Ors vs. Union of India [2009 (14) STR 433 (Del.)]**, on 18.04.2009, the Delhi High Court struck down the levy of service tax on renting of immovable property as "ultra vires" the Finance Act, 1994, holding as under:

*35. From this analysis, it is clear that we have to understand as to whether renting of immovable property for use in the course or furtherance of business or commerce by itself is a service. There is no dispute that any service connected with the renting of such immovable property would fall within the ambit of [Section 65\(105\)\(zzzz\)](#) and would be exigible to service tax. The question is whether renting of such immovable property by itself constitutes a service and, thereby, a taxable service. We have already seen that service tax is a value added tax. It is a tax on the value addition provided by some service provider. Insofar as renting of immovable property for use in the course or furtherance of business or commerce is concerned, we are unable to discern any value addition. Consequently, the renting of immovable property for use in the course or furtherance of business of commerce by itself does not entail any value addition and, therefore, cannot be regarded as a service. Of course, if there is some other service, such as air conditioning service provided alongwith the renting of immovable property, then it would fall within [Section 65\(105\)\(zzzz\)](#).*

*36. In view of the foregoing discussion, we hold that [Section 65\(105\)\(zzzz\)](#) does not in terms entail that the renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be eligible to service tax under the said Act. The obvious consequence of this finding is that the interpretation placed by the impugned notification and circular on the said provision is not correct. Consequently, the*

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*same are ultra vires the said Act and to the extent that they authorize the levy of service tax on renting of immovable property per se, they are set aside.*

9.3. Consequent to the adverse judgement of the Delhi High Court, retrospective amendment was carried out vide Finance Act 2010. This retrospective amendment was challenged vide **Home Solutions Retail India Ltd. vs. Union of India [W.P.(C) No. 3398/2010]**. The Delhi High Court vide their judgment dated 23.09.2011, held the retrospective amendment to be constitutionally valid. Therefore, it can be said that only on 23.09.2011 the finality on this issue was reached. We find that the period of litigation in the present proceedings is between 28.03.2008 to 25.03.2011. It gets clarified that during this entire period, the issue was *sub-judice* before the High Court. In such a case, suppression with an willful intent to evade Service Tax cannot be fastened on the appellant.

9.4. Further, it is on record that carrying a bonafide belief about non-applicability of Service Tax on the services rendered by them, the appellant has not charged any Service Tax on the lessees. There is no allegation to this effect in the SCN. As also rightly pointed out by the appellant, being a PSU, they cannot be said to have any intention to evade any Service Tax payment to the Govt of India.

10. Therefore, we conclude that the Revenue has not made out any case to fasten the suppression clause on the appellant and hence, we hold that the extended period provisions could not have been invoked in this case. Consequently, the confirmed demand for the extended period gets aside on this ground.

11. Now coming to the argument about the effect of setting aside of the extended period demand on the normal period demand, we find that the amendment was carried out by way insertion of sub-Section (2A) to Section 73 with effect from 10<sup>th</sup> May 2013, which reads as under :

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“(2A) Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,—

(a) fraud; or

(b) collusion; or

(c) wilful misstatement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,

has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of eighteen months, as if the notice was issued for the offences for which limitation of eighteen months applies under sub-section (1).”;

12. There is nothing to suggest that this amendment has any retrospective effect. Therefore, it is clear that prior to 10.05.2013, there was no provision to confirm the demand for the normal period, if the Tribunal held that the extended period demand is not sustainable.

13. This issue had also come up before the Hon’ble Kolkata High Court in the case of **Infinity Infotech Parks Ltd. vs. Union of India [2014 (36) STR 37 (Cal.)]** decided on 30.04.2014, wherein it has been held:

86. The condition precedent for issuance of a show cause notice by invoking the extended limitation is reason to believe that service tax has not been levied or has been short-levied, or has not been paid or has been short-paid or has erroneously been refunded by reason of fraud or collusion or wilful suppression or misstatement or wilful contravention of the provisions of the Central Excise Act or the Finance Act, 1994 as the case may be or any rules framed thereunder to evade payment of tax

87. Where the Commissioner asserts that there are reasons to believe that service tax has not been levied or paid or has been short levied or short-paid or erroneously

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refunded by reason of fraud; or collusion; or wilful misstatement; or suppression of facts; or contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax by the person chargeable with the service tax or his agent, the Commissioner is bound to disclose the reasons for formation of such belief.

88. As observed above, mere contravention of provision of Chapter V or Rules framed thereunder does not enable the Service Tax Authorities to invoke the extended period of limitation. The contravention necessarily has to be with intent to evade payment of service tax.

89. On a perusal of the impugned notice it appears to this Court that the Commissioner proceeded on the basis that there had been contravention, as a result of which, some tax payable had not been paid. The Commissioner of Service Tax did not address the issues, which were required to be addressed, for issuing a notice by invoking the extended period of limitation.

92. When a notice is issued in support of transactions spread over a period of time and it is found that the extended period of invocation has been invoked, the notice cannot be treated as within limitation for some of the same transactions, once it is found that the extended period of limitation is not invocable. This proposition find support from the judgment of the Supreme Court in Collector of Central Excise, Jaipur v. Alcobex Metals reported in (2003) 4 SCC 630 = 2003 (153) E.L.T. 241 (S.C.).

14. This decision of the Hon'ble High Court was relied on and followed by the Chandigarh Bench in the case of **Onkar Associates vs. Commissioner of Central Excise & Service Tax - Appeal No. 51110 of 2015 Final Order No. 61628/2025 dated 27.10.2025**, on identical issue of demand on account of Renting of Immovable Service, has held as under:

*11. We also find that the decision of the Tribunal has been upheld by the Hon'ble Gujarat High Court as reported in 2009 (245) ELT 49 (Guj.). Further, we find that this Bench of the Tribunal, in the case of M/s VIR Enterprises Vs CCE, Chandigarh-I (cited supra), by following the judgment of the Hon'ble Kolkata High Court in the case of Infinity Infotech Parks*

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*(supra) has held that when the extended period is not invocable, the demand for the normal period cannot be sustained.*

15. In the present case, the SCN has been issued on 09.10.2012, i.e., prior the amendment. We find that the ratio laid down by the Hon'ble Kolkata High Court, also relied on by the Chandigarh Bench, is squarely applicable to the facts of the present appeal. Accordingly, we hold that in the present case, the demand even for the normal period does not sustain.

16. As a result, we set aside the entire confirmed demand on account of time-bar. The Appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on...18.06.2026..)

Sd/-  
**(R. Muralidhar)**  
**Member (Judicial)**

Sd/-  
**(Rajeev Tandon)**  
**Member (Judicial)**

Tushar