CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

SERVICE TAX APPEAL No. 51919 of 2016

(Arising out of Order-in-Original No. 25-28/PC/ST/BPL-ST/2015 dated 31.12.2015 passed by the Principal Commissioner of Central Excise & Service Tax, Bhopal)

Commissioner of Central Excise, Customs & Service Tax ....**Appellant**
48, Administrative Area, Hills,
Bhopal, Madhya Pradesh

Versus

M/s Madhya Pradesh Audyogik Kendra Vikas Nigam Limited ....**Respondent**
1st Floor, Tawa Complex, E5, Arera Colony,
Bhopal, Madhya Pradesh

APPEARANCE:
Shri S.K. Meena authorised representative of the department
Shri Rajat Dosi, advocate for the respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing : 13.05.2026
Date of Decision : 07.09.2026

FINAL ORDER NO. 51428/2026

DR. RACHNA GUPTA:

M/s Madhya Pradesh Audyogik Kendra Vikas Nigam Limited[1], the respondent herein, is a state government owned company created with the objective to develop industrial growth centres and to promote the development of industries in the state of Madhya Pradesh. For the purpose M/s MPAKVNL is to provide land on lease for establishment of industry for which they collect yearly lease rent as used to be agreed in the agreement of lease. M/s MPAKVNL is a company incorporated under Company's Act. The department opined that the said activity of the respondent is the taxable activity of renting immovable property as is defined under section 65/90(a) of

1. M/s MPAKVNL, respondent

the Finance Act, 1994[2] and also qualifies to be called as service in terms of section 65B(44) of the Act which is not covered under section 66D of the Act. However, the respondent was not registered with the service tax department. The M/s MPAKVNL was, accordingly, enquired.

2. On the basis of information provided by the respondent about the amount of lease rent received for renting land/shop/gomtee for the period with effect from 01.06.2007 to 30.03.2014, it was observed that an amount of Rs. 55,89,93,145/- has been received by the respondent for rendering the aforesaid activity without discharging the service tax liability. Based on the said information, following show cause notices have been issued:

S. No.	SCN No. and Date	Period	Amount (in Rs.)
1	56/Commr/ST/BPL-I/2012 dated 10.09.2012	01.06.2007 to 31.08.2011	3,50,67,378/-
2	124/Commr/ST/BPL-I/2012 dated 19.10.2012	01.09.2011 to 30.09.2012	99,68,152/-
3	94/Commr/ST/Adj/BPL-I/2014 dated 29.09.2014	01.10.2012 to 31.03.2013	93,10,680/-
4	17/Commr/ST/Adj/BPL-I/2015 dated 16.04.2015	01.04.2013 to 31.03.2014	96,77,383/-
TOTAL			6,40,23,593/-

Resultantly, service tax amounting to Rs. 6,40,23,593/- upon the aforesaid amount received by the respondent, was proposed to be recovered from the respondent along with the interest at the applicable rate in terms of section 75 of the Act. The penalties were also proposed to be imposed in terms of sections 70, 76 and 77 of the Act. The said proposal had been adjudicated vide the Order-in-Original no. 25-28/2015 dated 29.12.2015 vide which the Principal

2. the Act

Commissioner had dropped partial demand except the demand for the period 01.10.2010 to 31.03.2011 and for the period 01.04.2011 to 31.08.2011 amounting to Rs. 23,92,191/- and also the demand for the period 01.09.2011 to 31.03.2015 amounting to Rs. 2,89,56,215/- has been confirmed. Being aggrieved of the dropping out of the remaining demand, that the department is in appeal before us.

3. We have heard Shri S.K. Meena, learned authorised representative for the department and Shri Rajat Dosi, learned counsel for the respondent.

4. Learned authorised representative appearing for the appellant department submitted that the respondent irrespective is the governmental authority but while leasing out land for development of industry the respondents were earning profits and hence the exemption as pleaded by them is not available for the activity in question. The respondents were liable to pay service tax. Since they have failed even to take registration with the service tax department, there is pleaded no infirmity when the show cause notices were issued invoking the extended period of limitation. However the Principal Commissioner wrongly held that there is no suppression on part of the respondent. Tribunal's ruling in **Nizam Sugar Factory Ltd. vs. Collector of Central Excise**[3], is relied upon which clarifies that departmental knowledge does not negate the extended period. Learned departmental representative submitted that the non-disclosure of service-related income establishes suppression, as held in **Bharati Cellular Ltd. and Anr. v. Jai Distillers P. Ltd.**[4], where non-submission of ST-3 return details was deemed suppression. Additionally, the Principal Commissioner erred in not imposing penalties under Section 78, as the Party did not meet the conditions

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3. 1990 (50) ELT 168 (Tri-Delhi)
4. 2006 (4) BOM CR 280

for penalty waiver under Section 80(2) of the Act. The Department argues that penalties are a deterrent, supported by **Hindustan Steel Ltd. v. State of Orissa[5].** Finally it is submitted that the recipient's status as a government corporation does not exempt it from tax compliance.

5. With these submissions, the order under challenge, to the extent of dropping the demand proposed by the different show cause notices is prayed to be set aside and the appeal filed by the department is prayed to be allowed.

6. While rebutting these submissions, learned counsel for the respondent has submitted that the respondent is a state government industrial development corporation undertaking establishment of industrial units by way of grant of land lease of 30 years or more of industrial plots. It is submitted that though the activity of renting of immovable property became taxable with effect from 01.06.2007, however, the renting of vacant land has been specifically excluded under clause (b) of the explanation II to section 65(105)(zzzz) of the Act. It is only with effect from 01.07.2010 that the activity of renting vacant land on lease/license for construction of building/temporary structure to be used for furtherance of business/commerce became taxable. It is for this reason that the respondent did not obtain the service tax registration. The aforesaid position got cleared by Hon'ble High Court of Allahabad in the case of **Commissioner of Service Tax, Noida vs. Greater Noida Development Authority[6].**

7. Learned counsel further submitted that is is now a settled position of law that no service tax can be demanded in respect of amount paid as one time premium. Hence the demand of of service tax on the said amount is not sustainable. The order under challenge

5. 978 ELT (J 159) / [1972] 83 ITR 26)
6. 2015 (40) STR 46 Allahabad

is rather liable to be set aside with respect to confirmation of demand of service tax. For the above reasons the demand which has been dropped by the adjudicating authority below has no infirmity. With these submissions the appeal of the department is prayed to be dismissed.

8. Having heard both the parties, perusing the entire record, we have foremost perused the meaning of the activity rendered by the respondent, i.e. renting of immovable property defined under Section 65(90a) of the Act, as follows:

Prior to 30.06.2010

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

(i) xxx xxx xxx

(ii) xxx xxx xxx

Explanation 1- xxx xxx xxx

Explanation 2. xxxxxxxxxx

Section 65(105)- "taxable service" means any service provided or to be provided.

xxx xxx xxx

(zzzz) 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.

Explanation-1. xxxxxxxxxx

but does not include

xxxxxxxxxxxx

Explanation 2.- xxx xxx xxx

From 01.07.2010

"**Section 65 (105)**- "taxable service" means any service provided or to be provided-

(zzzz) 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.

Explanation 1- xxx xxx xxx

Explanation 2.- xxx xxx xxx"

From 01.07.2012

It would also be appropriate to reproduce sections 65(41), 65B(44), 66B, 66D and 66E of the Finance Act inserted w.e.f. 01.07.2012 and they are as follows:

"Section 65(41)" renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

Section 65(44)" service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,-

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner, or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim; xxx xxx xxx

Section 66B. Charge of service tax on and after Finance Act, 2012 There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent on the value of all services, other than those services 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.

It is seen that "renting of immovable property", amongst others, includes leasing or other similar arrangement of immovable property for use in the course or furtherance of, business or commerce.

"Lease" has not been defined in the Finance Act. Under section 105 of the Transfer of Property Act, 1882, lease has been defined in the following manner:

"105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share service or other thing to be so rendered is called the rent."

The Supreme Court in Panbari Tea, in the context of section 105 of the Transfer of Property Act, held that when the interest of the lessor is parted with for a price, the price paid is called premium but the periodical payment made for continuous enjoyment of the benefits under the lease is called rent. Thus, premium is a consideration paid for being let into possession for the purpose of creating a tenancy. There is, therefore, a distinction between the price paid for transfer of a right to enjoy the property and the rent to be paid periodically for continuous enjoyment of the benefits under the lease. A lease, therefore, would include both premium and the periodical rent. Such being the position, when „renting of immovable property" includes leasing, the value of premium would be taxable under section 65(105)(zzzz) of the Finance Act.

9. Keeping in view the said position of law, it is clear that the immovable property including the vacant land is leviable to service tax with effect from 01.07.2010. Prior thereto renting of vacant land was not taxable, hence the order dropping the demand of service tax for rendering the activity of renting of vacant land prior to 01.07.2010 has rightly been dropped.

10. Further we are not in consensus with the plea of the respondent that one time premium or salami received while leasing out the immovable property is not taxable. The Larger Bench of this Tribunal in the case of **RII Rajasthan State Industrial Development & Investment Corporation Ltd vs. Commissioner, Central Excise & Service Tax Commissionerate, Alwar**[7] (supra) has held that one time premium/salami amount collected from the persons to whom the immovable property has been leased out is leviable to service tax under renting of immovable property service during the period, prior to and post 01.07.2012. Hence the respondent is rightly held liable to service tax vis-à-vis the said activity. It is observed that demand for the period 01.06.2007 to 30.09.2010 has been dropped holding it to be time barred demand.

11. It is an admitted fact that the respondent is a governmental authority. It is the settled law that there can be no malafide intent with the government or the governmental authority to evade service tax. Since, for invoking the extended period of limitation there should

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7. 2025 33 Centax 73 (Tri. Del)

be an intent to evade duty, the misstatement or suppression must be willful as was held by Hon'ble Supreme Court in the case of **Cosmic Dye Chemicals vs. C.C.E. Bombay**[8]**.** Hon'ble Supreme Court in another case titled **Gopal Zarda Udyog vs. CCE Delhi**[9] has held as follows:

> "Extended period is applicable only when something positive other than mere inaction or failure on the part of the manufacturer is proved. Conscious and deliberate withholding of the information by manufacturer is necessary for invoking the extended period. If the department had full knowledge or the manufacturer had reasonable belief that he is not required to give a particular information, only normal period of limitation i.e. 1 year is applicable."

12. In **Hindustan Steels Ltd** (supra), the Supreme Court held that Penalty will not ordinarily be impugned unless the party obliged either acted deliberately in defiance of law and was guilty of conduct contumacious, or dishonest or acted in conscious disregard of its obligation. The Hon'ble Court held that even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to invoke penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from the bonafide belief that the offender is not liable to act in the manner prescribed by the statue. Thus, on the same analogy the party are not liable for any penal action & so the penal proceedings initiated in the show cause notice merits to be dropped.

13. In view of the above discussion about the settled position of law, we hold that the respondent had no intent to evade the tax. Otherwise also, department has not produced any positive evidence in that respect. The authorities relied upon by the department are,

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8. 1995 (75) ELT 721 S.C.
9. 2005 (188) ELT 251 S.C.

therefore, not applicable. As a consequence of the entire above discussion we hold that the show cause notices should not have invoked the extended period of limitation. The adjudicating authority below is held to have rightly dropped the demand of service tax for the extended period, i.e., with effect from 01.06.2007 to 30.09.2010.

14. With these observations, the order under challenge is upheld. Consequently, the departmental appeal is hereby dismissed.

(Order pronounced on **07.09.2026**)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Apoorva