CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60878 of 2018

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-737-18 dated 23.03.2018 passed by the Commissioner (Appeals), CGST, Ludhiana]

M/s Nawanshahr Cooperative Sugar Mills ……Appellant
Nawanshahr, Punjab 144514

VERSUS

Commissioner of Central Excise, Goods and Service Tax, Jalandhar ……Respondent
GST Bhawan, F-Block, Rishi Nagar, Ludhiana

APPEARANCE:

Shri Sudeep Singh Bhangoo, Advocate for the Appellant

Shri Narinder Singh, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60004/2026

DATE OF HEARING: 15.09.2025
DATE OF DECISION:07.01.2026

S.S.GARG:

The present appeal is directed against the impugned order dated 23.03.2018 passed by the Commissioner (Appeals) CGST, Ludhiana, whereby the learned Commissioner (Appeals) has upheld the Order-in-Original dated 10.10.2014.

2. Briefly the facts of the present are that the appellant is engaged in manufacture of Sugar and is registered with the Central Excise Department and also registered for payment of service tax on reverse charge basis on the transport of goods by roads.

3. The appellant had signed an MOU dated 12.01.2009 with M/s Saraya Industries Ltd. (M/s SIL) whereby, M/s SIL was to set up a Cleaning Development Mechanism (CDM) co-generation plant of 12MW on Built Own Coperate and Transfer (BOOT) basis, on 2 acres of land to be provided by the appellant. As per the MOU M/s SIL was to invest in the existing Sugar Mills to upgrade/modernize it from the existing level of 2500 TCD to 3000 TCD with the aim to improve the energy efficiency and to reduce the steam consumption to 48% of the sugarcane crushed by weight and to improve the export of power from the co-generation plant. M/s SIL was to supply power and steam free of cost to the appellant, and was to pay 5.5% of the sale realization arising out of the sale of the excess power and the by-products, to the third party. As per the MoU the appellant was to make available the entire bagasse generated in their mill to SIL for the co-generation of electricity. M/s SIL was to deposit an amount of Rs.2 crores for upgradation/modernization of the Sugar Mill. The amount of Rs.2 crores as well as the interest accruing on that amount was to be treated as an advance only for the upgradation/modernization of the Sugar Mill. Para 2.1 of the MoU provided that land of 2 acres was to be provided by the appellant to M/s SIL, free of cost.

4. That in addition to the MoU, the appellant had also signed a lease deed for the lease of 2 acres, to M/s SIL. As per Clause 3.1 of the lease deed it had been mentioned that although the land was to be provided free of cost as per the MoU but a rent of Rs.1,000/- per annum was agreed to be paid as the lease amount, for the period of 15 years. On the basis of MoU, the Department entertained the view that the appellant is liable to pay service tax under the category of Renting of Immovable Property under Section 65(105)(zzzza) on the amount received in terms of MoU for Modernization and upgradation of Sugar Mills. On these allegations, a show cause notice was issued proposing to demand of service tax amounting to Rs. 21,19,586/- on the amount of Rs.2 crores and the interest of Rs.5,78,502/- accrued on the amount of Rs. 2 crores as on 01.04.2012. The Department had mainly relied upon Circular No.151/2/2012-ST to demand service tax under the category of 'Renting of Immoveable Property'. The department has also invoked extended period of limitation to demand tax, interest and penalty. After following the due process, the adjudicating authority confirmed the demand and the same was upheld by the learned Commissioner (Appeals). Hence, the present appeal.

5. Heard both the sides and perused the material on record.

6. Learned counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the MoU entered into between the parties

which is on the basis for the payment of Rs. 2 crores as advanced for upgradation and modernization of machinery. He further submits that the amount of Rs. 2 crores paid by M/s SIL was not for the leasing of the land but was for the upgradation/modernization of sugar mill which was ultimately aimed at improving the energy efficiency of the mills. Learned counsel further submits that the Circular No.151/2/2012-ST dated 10.02.2012 relied upon by the department is not applicable in the present case as the situation herein is different. He also submits that a separate lease agreement had been entered into with M/s SIL according to which a lease of Rs.1000/- per annum was fixed for the leasing of the land, even though as per the MoU, the land of 2 acres was to be provided free of cost to M/s SIL. He also submits that the Vacant land has been provided to M/s SIL, which does not fall under the ambit of service tax as per clause (b) of clause (iv) of Explanation-1 appended to Section 65(105)(zzzz); he also submits that in fact no service can be said to have been provided as the project never took-off and the appellants have initiated arbitration proceedings against M/s SIL for violation of the MOU.

6.2 He also submits that the arrangement between the appellants and SIL was in the nature of a joint venture and therefore, there is no component of service between the two parties; he also submits that the extended period has wrongly been invoked as there is no wilful mis-statement or suppression of fact on the part of the appellant; he also prays for the benefit of Section 80 may be given. He further submits that the learned Commissioner (Appeals) has not

considered identical case of M/s Morinda Co-operative Sugar Mills, involving similar facts, wherein, the Commissioner (Appeals) had allowed the appeal of the Sugar Mill and the same was accepted by the Department but the said submissions have been rejected by the learned Commissioner.

6.3 Learned counsel also submits that the Revenue has raised a demand on similar facts against M/s Fazilka Corporative Sugar Mills Ltd., but under the category of "Business Support Service and this Hon'ble Tribunal vide Final Order No.60149/2024 dated 28.03.2024 dropped the demand. He also submits that for the same activity in the present case, the department is demanding the service tax under completely different categories of service which is not permissible.

7. On the other hand, learned Authorized Representative for the department reiterates the findings of the impugned order.

8. After considering the submissions of both the parties and perusal of the material on record, we find that as per the MoU entered into between the appellant and M/s SIL, the amount of Rs. 2 crores was paid by the M/s SIL to the appellant, which is not a consideration for provision of any service much of leasing of 2 acre land but for upgradation of machinery and plant out of which M/s SIL was to drive compensatory benefits by way of sparing of more quantity of electric energy which was to be sold by M/s SIL and getting bagasse for use by M/s SIL.

9. We also find that in the present case, no service can be said to have been provided as the project never took-off and the appellant has initiated arbitration proceedings against M/s SIL for violation of the MOU; at the most, the arrangement between the appellants and SIL was in the nature of a joint venture and therefore, there is no component of service between the two parties. We also note that in the case of M/s Morinda Co-operative Sugar Mills involving identical facts, the learned Commissioner has allowed the appeal of that sugar mills and the Department has accepted the same on merits but the learned Commissioner refused to follow the said decision without any justified reason. We also find that the amount of Rs. 2 crore was in fact given by M/s SIL to the appellant for upgradation and modernization of the sugar mill and to expand the capacity of sugar mill from the existing level of 2500 TCD to 3000 TCD and to improve energy efficiency. We also note that in the case of M/s Fazilka Corporative Sugar Mills Ltd. (cited supra), the Department sought to demand service tax under the category of business support service which was also rejected by the Tribunal vide its Final Order No. 60149/2024 dated 28.03.2024. We also find that the arrangement between the appellant and M/s SIL was in the nature of a joint venture and therefore, there is no component of service between the parties.

10. In view of these facts and circumstances, we are of the considered view that the demand of service tax under the category of "Renting of Immovable Property" under Section 65(105)(zzzz) on the amount received in terms of MoU for modernization and

upgradation of sugar mills is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant. Once we are allowing the appeal of the appellant on merit, we are not examining the aspect of the limitation; consequently, the impugned order is set aside and the demand is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 07.01.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash