

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No.207 Of 2011**

[Arising out of Order-in-Original No.111/STC/CHD-I/2010 dated 21.10.2010 passed by the Commissioner of Central Excise, Chandigarh-I]

**M/s Chandigarh Transport Corporation : Appellant (s)**

Plot No.701, Phase-I, Industrial Area  
UT Chandigarh

Vs

**The Commissioner of Central Excise,  
Chandigarh-I**

**: Respondent (s)**

Central Revenue Building, Sector-17C  
Chandigarh-160017

APPEARANCE:

Shri R.K. Hasija and Mr. Shivang Puri, Advocated for the Appellant  
Smt. Shivani, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60184/2023**

Date of Hearing: 28.04.2023

Date of Decision:07.07.2023

**Per : P.ANJANI KUMAR**

Chandigarh Transport Corporation, the appellants, are engaged in providing transport facilities to the general public in the Union Territory of Chandigarh. On the basis of an intelligence received and investigation conducted, Department was of the opinion that the appellants provided taxable services under (a) renting of immovable property (b) selling of space and time for advertisement and (c) support service of business and commerce. A show cause notice dated 21.01.2010 has been issued to the appellants and the same was

confirmed by the impugned OIO dated 21.10.2010. Hence, the present appeal.

2. Shri R.K. Hasija assisted by Shri ShivangPuri appearing on behalf of the appellant submits that the impugned order wrongly classifies Adda Fees/ bus stand fee as per "Support Services of Business and Commerce"; bus stands are constructed by the Government as a public utility service and not for the purpose of supporting the business of bus operators; Adda Fees is collected as a statutory levy in exercise of powers conferred by Section 67 (1) of the Motor Vehicles Act, 1988 the money collected to ensure the maintenance of the bus stands. He relies on *Cochin International Airport Ltd. 2009 (16) STR 401 (Kerala)*.

3. He further submits that the service tax cannot be levied on management and maintenance of non-commercial Government business in terms of Section 98 of Finance Act, 1994; the Department vide Circular No.80/10/2004 dated 17.09.2004 clarified that "*The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry.*" And that "*Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable.*"; He further submits that CBEC clarified vide Circular No.89/7/2006-ST dated 18.12.2006 that: "*The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for*

*performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.”* He relies upon *B.G. Shirke Constructions Technology Ltd. 2014 (33) STR 77* and submits that collection of statutory fees does not make the bus stand a commercial building. He also submits that Union Territory Government which is managing the depots cannot be considered to be a person for the purpose of “Business Support Service”; as defined under General Clauses Act, person does not include the State or Union Government. He relies upon Deputy Commissioner of Police, *Jodhpur-2017 (48) STR 275 (Tri. Del.)* as affirmed by Hon’ble Supreme Court *2018 (11) GSTL J133 (SC)* and *Shivprasad-1956 (9) TMI 57 (P&H)* High Court.

4. He submits that it was not the intention of the legislature to tax the services rendered by the bus terminals; parking has been specifically excluded for the purposes of levy of service tax in view of Explanation-1(c) to Section 65 (105) (zzzz) which states that land use for parking spaces cannot be called immovable property. He relies on *Mahesh Sunny Enterprises Ltd. 2014 (34) STR 21 (Del.)*.

5. Learned Counsel submits that the appellant is a Government undertaking and as such there should not be any scope for invocation

of extended period and for imposition of penalty in view of the following case laws:

- *Centre for Development of Advance Computing-2016 (41) STR 208 (Tri.)*
- *Rajasthan Housing Board- 2021 (3) TMI 676 – CESTAT NEW DELHI*
- *Centre for Entrepreneurship Development-2014 (34) STR 373*
- *Executive Engineer, Tubewell Division-2008 (230) ELT 71 (Tri. Del.)*
- *Bharat Electronics Ltd.- 2004 (165) ELT 482 (SC)*
- *Western Coal Fields Ltd.-2003 (161) ELT 768 (Tri.)*
- *ONGC Vs Collector-1995 (79) ELT 117 (Tri.)*
- *B.S.N.L. Vs Commissioner-2009 (14) STR 359 (Tri.)*
- *Commissioner Vs Nepa Ltd.-2013 (298) ELT 225 (Tri.)*

6. Smt. Shivani, learned Authorized Representative for the Department reiterates the findings of the OIO.

7. Heard both sides and perused the records of the case. It is evident from the records of the case that the appellants are paying service tax on account of selling space for advertisement purposes on the premises of the bus stand as well as on the buses. We find that the appellants have paid the amount of Rs.27,25,073/- (for the period 01.05.2006 to 30.06.2008) and Rs.6,86,145/- (for the period May 2009 to June 2010) on being pointed out for provision of space for advertisement. The dispute is in relation to the Adda Fees collected by the undertaking. In view of the case records and the submissions of the appellant, we find that the appellants are performing a statutory function in respect of maintenance of the bus stands. In the course of the same, they are collecting some fee from the bus operators. In view of the case laws cited above, we find that collection of Adda Fee

cannot be equated to "Business Support Service" as they are discharging their functions as a statutory authority rather than promoting the business of bus operators. We find that the demand on this count cannot be sustained. However, the appellants are already discharging the service tax on space rented out for advertisement.

8. We find that learned Counsel for the appellants has taken a preliminary objection that the issue is entirely time barred as the appellants are a statutory undertaking and therefore, it cannot be alleged that they have an intent to evade payment of service tax. We find that the submission is acceptable. We find that whereas the demands are relatable to the period 01.05.2006 to 30.06.2008. Show cause notice has been issued on 21.01.2010, clearly beyond the limitation. On this count too, major portion of the demand raised in the show cause notice cannot be upheld. More so, penalties imposed cannot be sustained.

9. In view of the above, the appeal is allowed.

*(Pronounced in the open Court on 07.07.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)