HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9367/2024

Nagar Palika, Bhadra, District Hanumangarh Through Its Executive Officer.

----Petitioner

Versus

1. The Assistant Commissioner, Central Good And Service Tax, Division-I, Customs Building, Sukhadiya Nagar, Near Khurana Palace, Sriganganagar (Raj.).
2. The Superintendent, Goods And Services Tax, Range-Xxxviii, Rawatsar, District Hanumangarh (Raj.).
3. The Goods And Services Tax Network, East Wing, 4Th Floor, World Mark-1, Aero City, New Delhi.
4. The Branch Manager, State Bank Of India, Bus Stand Branch, Bhadra, District Hanumangarh (Raj.).
5. The Branch Manager, Axis Bank, Building No. 955/2A, Block No. 3, Ambedkar Chowk, Bhadra, Dist. Hanumangarh, Rajasthan.

----Respondents

Connected With

D.B. Civil Writ Petition No. 8311/2020

Municipal Board, Nohar, District Hanumangarh, (Raj.) Through Its Executive Officer.

----Petitioner

Versus

1. The Commissioner Tax, Goods And Services Tax, G-105 Road No. 5, New Industrial Area, Jodhpur (Raj.)
2. Assistant Commissioner Tax Officer, Goods And Services Tax, Division I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganganagar (Raj.)
3. The Superintendent, Goods And Services Tax, Range-Xxxviii, Rawatsar, Hanumangarh (Raj.)
4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark - 1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 10159/2020

Municipal Board, Rawatsar, District Hanumangarh, Through Its Executive Officer.

----Petitioner

Versus

1. The Comm. Tax, Goods And Service Tax, G-105 Road

No.5, New Industrial Area, Jodhpur (Raj.)

2. Assistant Commissioner Tax Officer, Goods And Services Tax, Division-I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganganagar (Raj.)
3. The Superintendent, Goods And Services Tax, Range - Xxxviii, Rawatsar, Hanumangarh (Raj.)
4. Goods And Services Tax Newwork, East Wing, 4Th Floor, World Mark - 1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 11540/2020

Municipal Board Pilibanga, Through Its Executive Officer, Pilibanga, District Hanumangarh (Rajasthan)

----Petitioner

Versus

1. The Commissioner Tax, Goods And Services Tax, G-105 Road No. 5, New Industrial Area, Jodhpur (Raj.)
2. Assistant Commissioner Tax Officer, Goods And Services Tax, Division I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganganagar (Raj.)
3. The Superintendent, Goods And Services Tax, Range-Xxxviii, Rawatsar, Hanumangarh (Raj.)
4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark - 1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 11577/2020

Municipal Board Bhadra, Through Its Executive Officer, Bhadra, District Hanumangarh (Rajasthan).

----Petitioner

Versus

1. The Commissioner Tax, Goods And Services Tax, G-105 Road No. 5, New Industrial Area, Jodhpur (Raj.).
2. Assistant Commissioner Tax Offficer, Goods And Services Tax, Division I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganganagar (Raj.).
3. The Superintendent, Goods And Services Tax, Range-Xxxviii, Rawatsar, Hanumangarh (Raj.).
4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark-1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 11700/2020

Municipal Board Aburoad, Through Its Executive Officer, Aburoad, District Sirohi (Rajasthan)

----Petitioner

Versus

1. The Commissioner Tax, Goods And Services Tax, G-105, Road No. 5, New Industrial Area, Basni, In Front Of Diesel Shed, Behind Aiims, Jodhpur (Raj.)
2. Additional Commissioner Tax Officer, Goods And Services Tax, Division I, G-105, Road No. 5, New Industrial Area, Basni, In Front Of Diesel Shed, Behind Aiims, Jodhpur (Raj.)
3. The Superintendent, Goods And Services Tax, Range-Xx, Aburoad, Riico Area, Palanpur Highway, Aburoad, District-Sirohi (Raj.)
4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark- 1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 11889/2020

Municipal Board, Sangaria, District Hanumangarh (Raj.) , Through Its Executive Officer.

----Petitioner

Versus

1. The Commissioner, Central Goods And Service Tax, G-105 Road No. 5, New Industrial Area, Jodhpur (Raj.)
2. Assistant Commissioner , Central Goods And Services Tax, Division I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganganagar (Raj.)
3. The Superintendent, Central Goods And Service Tax, Range - Xxxvi, Hanumangarh (Raj.), Plot No. 28-29, Bhagwan Mahaveer Marg, Hanumangarh Town (Raj.)
4. Goods And Service Tax Network, East Wing, 4Th Floor, World Mark - 1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 4046/2021

Municipal Board, Sadul Sahar, District Sri Ganganagar (Raj.) Through Its Executive Officer.

----Petitioner

Versus

1. The Commissioner (Appeals) Central Excise And Central Goods And Services Tax, G-105 Road No. 5, New Industrial Area, Opposite Diesel Shed, Basni, Jodhpur (Raj.).
2. Assistant Commissioner, Central Goods And Service Tax,

Division-I, Customs Ofice Building, Sukharia Nagar, Sri Ganganagar (Raj.).

----Respondents

D.B. Civil Writ Petition No. 14174/2022

Nagar Palika, Suratgarh, District Sriganganagar Through Its Executive Officer.

----Petitioner

Versus

1. The Commissioner (Appeals), Central Excise And Central Goods And Service Tax, Jodhpur G-105, Road No. 5, New Industrial Area, Opposite Diesal Shade, Basni, Jodhpur.
2. The Assistant Commissioner Tax Officer, Goods And Services Tax, Division - I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganangar (Raj.).
3. The Superintendent, Goods And Services Tax, Range-Xxxix, Suratgarh (Raj).
4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark-1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 12728/2023

Nagar Palika, Suratgarh, District Sriganganagar Through Its Executive Officer.

----Petitioner

Versus

1. The Assistant Commissioner, Central Good And Service Tax, Division-I, Customs Building, Sukharia Nagar, Near Khurana Palace, Sriganganagar (Raj.).
2. The Superintendent, Goods And Service Tax, Range-Xxxix, Suratgarh, District Sriganganagar (Raj.).
3. The Goods And Services Tax Network, East Wing, 4Th Floor, World Mark-1, Aero City, New Delhi.

----Respondents

D.B. Civil Writ Petition No. 4083/2024

Municipal Board Pilibanga, Through Its Executive Officer, Pilibanga, District Hanumangarh (Rajasthan).

----Petitioner

Versus

1. The Commissioner Tax, Goods And Services Tax, G-105, Road No. 5, New Industrial Area, Basni, In Front Of Diesel Shed, Behind Aiims, Jodhpur (Raj.).
2. Assistant Commissioner Tax Officer, Goods And Services

Tax, Divison-I, Customs Building, Sukhariya Nagar, Near Khurana Palace, Sri Ganganagar (Raj.).

3. The Superintendent, Goods And Service3S Tax, Range-Xxxviii, Rawatsar, Hanumangarh (Raj.).

4. Goods And Services Tax Network, East Wing, 4Th Floor, World Mark - 1, Aero City, New Delhi.

5. Union Of India, Through Secretary Ministry Of Finance 3Rd Floor, Jeevandeep Building, Sansad Marg, New Delhi.

----Respondents

For Petitioner(s)	:	Mr. Sandeep Shah, Sr. Adv. assisted by Mr. Abhimanyu Singh Rathore, Ms. Akshiti Singhvi, Mr. Nishant Bapna & Mr. Piyush Sharma. Mr. Rajesh Parihar. Mr. Zubin Mehta.
For Respondent(s)	:	Mr. Rajvendra Sarswat. Mr. Uttam Singh Rajpurohit & Ms. Aditi Sharma.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

11/12/2024

1. The present writ petitions under Article 226 & 227 of the Constitution of India have been preferred, in sum and substance, claiming the following reliefs:-

> "It is, therefore, most respectfully prayed that the present petitioner for writ may kindly be allowed: and
>
> i. By way of an appropriate writ, order or direction, the order dt. 30.12.2022 (Annexure-2) may kindly be declared illegal and be quashed and set aside and it may be upheld that the petitioner is exempted from the tax liability, penalty and interest.
>
> ii. That further it may be declared that the petitioner is not covered under the provisions of Service Tax under Section 65B (41), Section 66E(a), Section 65B(44), Section 66B, Section 66B(44), Section 66(D), sub clauses (a) to (q), section 68, 69 and section 70 under the act read with rule 4, 6 and 7 of service tax rules 1994.

iii. That in alternate penalty imposed by the respondent by virtue of order dt. 30.12.2022 (Annexure-2) may be ordered to be waived off in the Amnesty Scheme of the Government.

iv. That the letter dt. 20.02.2024 (Annexure-3) may kindly be declared illegal and be quashed and set aside. The amount recovered from the account of the petitioner may be refunded back with interest.

v. That the letter dt. 27.02.2024 (Annexure-4) may kindly be declared illegal and be quashed and set aside. The amount recovered from the account of the petitioner may be refunded back with interest.

vi. That in case, the respondents are to pass any adverse order against the petitioner relating to the cause of the writ petition, then the same be also be quashed and set aside.

vii. Any other appropriate order or direction which may be deemed fit in the fact and circumstances of the case may kindly be passed in favor of the petitioners."

2. The bone of contention revolves around the Municipality, a constitutional entity established under Part 9A of the Constitution of India. Specifically, it is an institution of self-government constituted under Article 243Q for the purpose of governing urban areas. The core question is whether services of such municipal unit fall within the purview of 'service to be taxed' under the Finance Act, 1994 (hereinafter referred to as 'the Act of 1994').

3. Mr. Sandeep Shah, learned Senior Counsel assisted by Mr. Abhimanyu Singh Rathore, Ms. Akshiti Singhvi, Mr. Nishant Bapna & Mr. Piyush Sharma and learned counsel Mr. Rajesh Parihar & Mr. Zubin Mehta, appearing on behalf of the petitioners, submit that the constitutional objective of creating a municipal unit was to have a democratic unit for governing the urban areas with the theme of local self governance and providing services to the citizens of the urban area.

3.1 Learned counsel further submit that the taxation scheme applicable to the petitioners originates from the Act of 1994, and particularly, Section 66D which delineates a negative list of services for taxation purposes.

3.2 Learned counsel also submit that the Municipalities in Rajasthan, which are here in core consideration, are governed by Rajasthan Municipalities Act, 2009 (hereinafter referred to as 'the Act of 2009'). They drew the Court's attention to Sections 45 & 46 of the Act of 2009, which prescribe the core municipal functions and other municipal functions.

3.3 Learned counsel further submit that the municipal functions do not fall within the ambit of taxation in accordance with the statute of the Act of 1994. They further drew the Court's attention to the notification No.25/2012 (Annexure-5) dated 20.06.2012 whereby certain services were exempted from whole of services on which tax is leviable under Section 66B.

3.4 Learned counsel also submit that as per such notification, particularly, referring to entry 39, the Services by Government and Local Authority are included in the notification by the Central Government on being satisfied that it was necessary in the public interest to do so and were exempted of the service tax liable.

3.4 Learned counsel also submit that the aforesaid notification provides for a wide range of exemptions and that the respondents cannot try to shirk away from the exemptions that have been granted by the help of clarifications, which may not be in tandem with the statute book of the Finance Act as well as the original notification which has been issued on 20.06.2012.

3.5 Learned counsel have also drawn the attention of this Court to the judgment rendered by the Hon'ble Madras High Court, in case of ***Cuddalore Municipality v. Joint Commissioner of GST and Central Excise, Tiruchirappalli*** [(2021) 93 GSTR 287].

3.6 Learned counsel further submit that in certain matters, the statutory appeals have been dismissed on the ground of services being included in the taxable zone, and thus, in any case, the matter has to be heard by the Hon'ble High Court and even if some of the matters are still having alternate remedy and some of the matters have no further remedy.

3.7 Learned counsel also submit that since the jurisdiction itself is being challenged or requires interpretation, therefore, it is appropriate for them to raise this issue before this Hon'ble Court.

3.8 Learned counsel have taken this Court to the clarification issued on 13.04.2016 whereby the respondent- Union of India has further clarified that any service provided by Government or local authority to a business entity has been made taxable w.e.f. 1st April, 2016 Post Budget 2016, in which it has been categorically stated that services provided in lieu of free charged by Government or local authority has been made taxable contrary to the Act and the original notification.

4. On the other hand, Mr. Rajvendra Sarswat as well as Mr. Uttam Singh Rajpurohit, appearing on behalf of respondents,

submit that the statutes pertaining to taxation have to be strictly construed.

4.1 Mr. Sarswat, learned counsel, in support of the aforesaid submission, has relied upon the precedent law laid down by the Hon'ble Apex Court in the matter of ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Ors. : Civil Appeal No.3327 of 2007*** decided on 30.07.2018. The relevant portion whereof is reproduced hereunder:

> "41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption Clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same in not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."

4.2 Mr. Sarswat also placed reliance on the judgment rendered by the High Court of Madras in the case of ***The Commissioner Salem Municipal Corporation v. The Commissioner of Central Excise : Writ Petition No.32176 of 2012 and M.P. Nos. 1 and 2 of 2012*** decided on 05.03.2013.

4.3 Mr. Sarswat further submits that the core statute does not debar the services from the ambit of tax liability, but certainly there were issues, which were creating a doubt in the mind of the authorities, and therefore, a considered clarification was issued, in which, a categorical answer was given as to whether the services which were against a consideration constituted a service which could be charged for performing such activities is liable to service tax.

4.4 Mr. Sarswat also submits that the definition of service in the Section 65B (44) of the Act of 1994, has to be read in tandem of the negative list 66D of the said Act.

4.5 Mr. Sarswat has also relied upon the order dated 11.11.2024 passed in the case of ***M/s. Siemens Gamesa Renewable Power Pvt. Ltd. v. The Deputy Commissioner (State Tax) & Ors. : D.B. Civil Writ Petition No.18672/2024***, wherein this Hon'ble Court has declined to entertain the writ petition as alternate remedy available to the petitioners were still existing before the appropriate appellate authority.

4.6 Mr. Sarswat further contends that once the definition in the Finance Act is seen, the proposition of Section 66D becomes clear and it clarifies then that there is no option for the respondents, but to be put to the taxation being considered as service to be taxed.

4.7 Learned counsel have also shown the details of services, for which, the show cause notices have been given and which they have found to be work under purview of the service tax in accordance with law. They further submit that distinction between statutory and non-statutory functions of the municipalities have to be evaluated and the same is relevant for the purpose of taxation under the service tax.

4.8 Learned counsel further submit that the clarification itself was a result of further zeroing down on the proposition of taxation, particularly, when the municipalities functioning do not fall under the purview of preliminary functions entrusted to the municipalities under Article 243W of the Constitution.

5. Heard learned counsel for the parties as well as perused the record of the case alongwith the precedent law cited at the Bar.

6. This Court has considered the legal proposition, origination of the submissions of the parties primarily concern Chapter 9A of the Constitution of India. For clarity, Article 243Q of the Constitution is reproduced below:

> "**243Q. Constitution of Municipalities**
>
> (1)There shall be constituted in every State,--
>
> > (a)a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.
> >
> > (b)a Municipal Council for a smaller urban area; and
> >
> > (c)a Municipal Corporation for a larger urban area,
> >
> > in accordance with the provisions of this Part:
> >
> > Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.
>
> (2)In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

7. The other issue raised by the parties pertains to Article 243W which delineates the powers, authority and responsibilities of municipalities, etc. to know whether it was constitutional power

that was being exercised by the municipality or not in the instant case. Article 243W of the Constitution of India, reads as follows:

> "**243W. Powers, authority and responsibilities of Municipalities, etc.**
>
> Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--
>
> (a)the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
>
> > (i)the preparation of plans for economic development and social justice;
> >
> > (ii)the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
>
> (b)the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

8. It has been brought to the notice of this Court that under the Finance Act, 1994, the relevant propositions have to be considered particularly, the negative list of services which are not to be charged, enshrined under Section 66D, which reads as follows:

> **"66D. Negative list of services.-**
>
> The negative list shall comprise of the following services, namely:-
>
> (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-
>
> (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
>
> (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
>
> (iii) transport of goods or passengers; or
>
> (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;"

9. This Court has considered the broader proposition that it was a legislative mandate that services of the Government or the local authorities have to be excluded from being levied upon the service tax with certain exceptions. Clause 44 of Section 65B of the Act of 1994, defines the word 'service' as follows:

> "(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;
>
> (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
>
> (c) fees taken in any Court or tribunal established under any law for the time being in force."

10. This Court has considered the notification No.25/2012 dated 20.06.2012 (Annexure-5), wherein the same has been brought in by the clear mandate that there was satisfaction arrived at by the Central Government, that it was necessary in the public interest to exempt certain taxable services from the service tax leviable under Section 66B of the Act. The present relevance is Clause 39, which is "Services by Government, a local authority or", which was inserted by notification 22/2016-Service Tax, whereby it was decided that a government authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution would be exempted. Clause 39 of the notification No.25/2012, reads as follows:

> "39. Services by "Government, a local authority or" Inserted vide Notification 22/2016-Service Tax, a

> government authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution."

11. This Court has also kept into consideration the Act of 2009, and particularly, Sections 45 & 46, which statutorily defines the functions of Municipality. Sections 45 & 46 as follows:

> "**45. Core municipal functions.** - (1) It shall be the duty of every Municipality to make reasonable provision and proper arrangement for the following matters within the municipal area, namely: -
>
> (a) public health, sanitation, conservation, solid waste management, drainage and sewerage, cleaning public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Municipality or not, removing noxious vegetation and abating all public nuisances;
>
> (b) removing filth, rubbish, night-soil, odour, or any other noxious or offensive matter from privies, latrines, urinals, cesspools or other common receptacles for such matter in or pertaining to a building or buildings;
>
> (c) lighting public streets, places and buildings;
>
> (d) extinguishing fires and protecting life and property when fire occurs;
>
> (e) regulating offensive or dangerous trades or practices;
>
> (f) removing obstructions and projections in public streets or places and in spaces, not being private property which are open to the enjoyment of the public, whether such spaces are vested in the Municipality or not;
>
> (g) securing or removing dangerous buildings or places and reclaiming unhealthy localities;
>
> (h) acquiring, maintaining, changing and regulating places for the disposal of the dead and of the carcasses of dead animals;
>
> (i) constructing, altering and maintaining public streets, culverts, municipal boundary marks, markets, slaughter-houses, drains, sewers, drainage-works, sewerage-works, baths, washing places, drinking fountains, tanks, wells, dams and the like;
>
> (j) constructing public latrines, privies and urinals;
>
> (k) naming streets and numbering houses;
>
> (l) registering births and deaths;

(m) arranging for detention and preservation of such dogs within the Municipality as may be dealt with under Section 249 of this Act;

(n) paying the salary and the contingent expenditure on account of such police officers a may be required by the Municipality for the purposes of this Act or for the protection of any municipal property and providing such accommodation as may be required by the State Government under the law in force relating to police;

(o) raising volunteer force with such functions and duties in relation to the protection of persons, the security of property and the public safety as may be prescribed;

(p) making arrangements for preparation of compost manure from night soil and rubbish;

(q) establishing and maintaining cattle pounds;

[(r) promoting population control, family welfare, small family norms, welfare of women and children development;

(s) preparing plans for economic development, social justice, poverty alleviation, slum improvement, public distribution system and providing food to the needy persons;]

(t) establishing communication systems including construction and maintenance of roads, footpaths, pedestrian pathways, transportation terminals, both for passengers and goods, bridges, over-bridges, subways, ferries, and inland water transport system;

(u) preparing transport system accessories including traffic engineering schemes, street furniture, parking areas and bus stops;

(v) arranging for planned development of new areas for human settlement;

(w) taking measures for beautification of the municipal area by setting up parks and fountains, providing recreational areas, improving river banks, and landscaping;

(x) collecting statistics and data significant to the community;

(y) integrating development plans and schemes of the municipal area with the district or regional development plan, if any;

(z) promoting educational, sports and cultural activities;

(za) disclosing material and vital information regarding finances of, and development work and other activities undertaken by the Municipality to the stakeholders and the public at large;

(zb) taking steps for securing the prevention of cruelty to animals; and (zc) performing such other statutory or regulatory functions as may be provided by or under this Act or under any other law for the time being in force.

(2) The Municipality may, having regard to its managerial, technical, financial and organizational capacity, and the actual conditions obtaining in the municipal area, decide not to take up, or postpone, the performance of, any of the functions as aforesaid.

(3) The State Government may direct a Municipality to perform any of the functions as aforesaid, if such function is not taken up, or is postponed, by the Municipality.

(4) The Municipality may plan, build, operate, maintain or manage the infrastructure required for the discharge of any of the functions, as aforesaid, either by itself or by any agency under any agreement referred to in Section 154.

46. Other municipal functions. - A Municipality may, having regard to the satisfactory performance of its core functions which shall constitute the first charge on the municipal fund, and subject to its managerial, technical and financial capabilities, undertake or perform, or promote the performance of, any of the following functions, namely: -

(i) in the sphere of protection of environment

(a) reclamation of waste lands, promotion of social forestry and maintenance of open spaces;

(b) establishment and maintenance of nurseries for plants, vegetables and trees and promotion of greenery through mass participation;

(c) organization of flower-shows and promotion of flower-growing as a civic culture; and

(d) promotion of measures for abatement of all forms of pollution;

(ii) in the sphere of public health and sanitation

(a) mass inoculation campaigns for eradication of infectious diseases;

(b) reclamation of unhealthy localities;

(c) maintenance of all public tanks and regulating re-excavation, repair and up-keep of all private tanks, wells and other sources of water-supply on such terms and conditions as the Municipality may deem proper ; and

(d) advancement of civic consciousness of public health and general welfare by organizing discourses, seminars and conferences;

(iii) in the sphere of education and culture

(a) promotion of civic education, adult education, social education and non-formal education;

(b) promotion of cultural activities including music, physical education, sports and theatres and infrastructure there for;

(c) advancement of science and technology in urban life;

(d) publication of municipal journals, periodicals and souvenirs, purchase of books, and subscription to journals, magazines and newspapers;

(e) installation of statues, portraits and pictures in appropriate manner;

(f) organization, establishment and maintenance of art galleries and botanical or zoological collections;

(g) conservation and maintenance of monuments and places of historical, artistic and other importance; and

(h) construction, establishment, maintenance or contribution to the maintenance of public libraries, museums, reading rooms, lunatic asylums, halls, offices;

(iv) in the sphere of public welfare

(a) establishment and maintenance of shelters, in times of drought, flood, earthquake, or other natural or technological disasters, and relief works, for destitute persons within the limits of the municipal area;

(b) construction or maintenance of, or provision of aids to, hospitals, dispensaries, asylums, rescue homes, maternity houses, and child welfare centers;

(c) provision of shelters for the homeless;

(d) implementation of programmes for liberation and rehabilitation of scavengers and their families;

(e) organization of voluntary labour and co-ordination of activities of voluntary agencies for community welfare; and

(f) campaigns for dissemination of such information as is vital for public welfare; and

(v) in the sphere of community relations

(a) civic receptions to persons of distinction and paying homage on death to persons of repute;

(b) organization and management of fairs and exhibitions; and

(c) dissemination of information of public interest”

12. This Court has also taken into account the clarification issued on 13.04.2016, which, in Serial No.5, addresses services provided in lieu of fee charged by Government or a local authority which

have not been exempted but have been included as per the clarification.

13. After carefully examining the issue, this Court finds that the core statute is Act of 1994, which is governing the field and that any clarificatory notification cannot go beyond the basic mandate of the Act of 1994 itself. The Act of 1994 establishes a negative list (under Section 66D) and we have already considered such negative list. This Court finds that the bunch of writ petitions including the instant petition challenging the show cause notices issued by the respondents on different dates, however, the petitioner failed to render information about the services rendered by them and without depositing the service tax levied upon them. Examples which have been given by the respondents are reproduced hereunder:

> "That it is respectfully submitted that the details of the similar Writ Petitions pending before the Hon'ble Court, along with the services which are rendered by the Petitioners upon which the Respondent department has imposed service tax and issued the Show Cause Notices are reproduced below for the kind reference of the Hon'ble Court:

S.No.	**Writ No.**	**Services**
1.	1154/2020	● Renting of immovable property / shops: Rent on the Bazari / Lease / Rent ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other Services: Permit Charges Other interest Misc. Income ● Legal Expenses
2.	10159/2020	● Renting of immovable property / shops: Rent on the Bazari / Lease / Rent ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; and ● Other Services: Permit Charges Interest on lease / other interest

		Misc. Income ● Legal Expenses
3.	8311/2020	● Renting of immovable property / shops: Rent on the Bazari / Lease / Rent ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; and ● Other Services: Sale and hire charges Other interst / return Permit charges Misc. Income ● Legal Expenses
4.	11577/2020	● Renting of immovable property / shops: Rent on the Bazari / Lease / Rent ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other Services: Road Cutting Sale and hire charges Other interest Permit charges Advertisement ● Legal Services
5.	11700/2020	● Rental income from Municipal Properties ● Fees and user charges ● Miscellaneous income
6.	11889/2020	● Renting of immovable property / shops: Rent on the Bazari / Lease / Rent ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other services: Rent from lease Rent from office Building Building Rent Other rent Hire charges Bus Entry fees ● Income from advertisement
7.	4046/2021	● Renting of immovable property / shops: Rent on the Bazari / Lease / Rent ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other Services: Road Cutting Permit charges User charges Other charges and fees Interest from others ● Legal services
8.	14174/2022	● Renting of immovable property / shops: Teh Bazari Rent Mobile Tower Rent STD PCO Rent Temp. Shop Rent Saras Booth Rent Samudayik Bhawan Rent Lease Trade Fair Rent

		● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment Services; ● Other services: Penalty fees Construction & penalty Fees Road cutting Exhibition Fees Advertisement Interest Misc. income ● Legal Services
9.	12728/2023	● Renting of immovable property / shops; Teh Bazari Rent Mobile Tower Rent Agriculture Land Lease Temp. Shop Rent Income from Mandi Lease Trade Fair Rent Lease value of land received in installment ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other services: Penalties under Rajasthan Municipal Act Construction & development work license fees Road cutting Other penalties Sign Adv. Board fees Interest Misc. income
10.	4083/2024	● Renting of immovable property / shops: Rent on Teh Bazari Income from Rent Income from Motor / Vehicle Stand ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other services: Road Cutting Sale & Hire Charges Advertisement Misc. income Other income ● Legal Expenses
11.		● Renting of immovable property / shops: Rental income from Lease Rental income from Lumpsum Lease Other Rent income Rent from Civic Amenities ● Selling of space or time of advertisement; ● Income received from cattle / dusshera fares; ● Entertainment services; ● Other services: Sale & Hire Charges Permit charges Other interest Other income ● Legal Expenses

14. This Court is also conscious of the fact that now all the laws pertaining to the service tax have amalgamated into a common law of GST, which has been made applicable in the year 2017, and

therefore, the question of law regarding the issue is no longer relevant as GST now exempts the local bodies from the zone of GST tax as per both side counsel. Therefore, the proposition which is to be dealt with the Court today is limited to the time period of 2013-16. It is needless to say that the dispute now narrows down whether any amendment has happened in the Finance Act also and whether it will have a retrospective application, also the point to be considered by this Court is that for pre 2016 position, what would be the outcome of the adjudication to be made to deal with the applicability of Section 66D of the Finance Act. Since, the law is no more applicable after coming the GST Act, 2017, the limited proposition of any due service tax from financial year 2013-16 has to be considered.

15. This Court has carefully considered the 109th Amendment to Section 66D of the Finance Act, which replaced the term "support services" with "any service", effective from 19.05.2015. This Court finds that if the word “any service” is there, then it widens the scope of taxation whereas if it is for the support services only, then it would narrow down the scope of taxation. The impugned orders pertain to the financial years 2013-17 and even upto 2018, therefore, the authorities need to have examined in a right perspective while taking into consideration the amended Section 66D(1)(iv), which substitutes “support services” with “any service”. Moreover, the authorities also should have examined that the notification has come into effect from 19.05.2015, in the opinion of this Court, the word “support services” narrows down the tax net whereas the term “any service” has a wider

application, and thus, the whole issue needs to be revisited in the aforesaid terms.

16. The judgment cited at the Bar on behalf of the petitioners, does not render any assistance to its case.

17. In view of the above, the writ petitions are allowed. The impugned order 30.12.2022 is hereby quashed and set aside. The respondents shall be free to recalculate the service tax liability, taking into account the amendments that have taken effect and also any amendments if given effect to shall come into effect only from 19.05.2015 as per law. The parties shall be free to agitate before the authorities and also, in case, any need arises, they shall be free to come back to the Court. Regarding the issue of limitation, it is also kept open, the petitioners shall be permitted to raise objections which shall be dealt with in accordance with law. It is also needless to say that the judgment rendered by the Hon'ble Madras High Court is in the perspective of support services, which is no longer applicable, and thus, the respondents shall be required to re-evaluate the matter, after giving proper opportunity of hearing.

18. All pending applications stand disposed of.

(MUNNURI LAXMAN),J **(DR. PUSHPENDRA SINGH BHATI),J**

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