



MAJESTY LEGAL
Advocates & Solicitors

SERVICE TAX DEMAND ON LEGAL PROFESSIONALS QUASHED; LIABILITY LIES WITH RECIPIENT

"S. MUNIRAMAIAH VERSUS ASSISTANT COMMISSIONER OF CENTRAL TAX"

Hon'ble Karnataka High Court, in case of *S. Muniramaiah Versus Assistant Commissioner of Central Tax*¹ reaffirmed that income from legal profession is not subject to service tax, thereby setting aside a demand order issued against an advocate. The petitioner, an advocate, challenged validity of the original order in which the concerned Authority raised a demand for taxable services other than those specified in the negative list under the Finance Act, 1994.

Hon'ble Court referenced Notification No. 25/2012-ST dated 20.06.2012, issued under Section 93(1) of the Finance Act, 1994, where the Central Government exempted certain taxable services from the entirety of the service tax levied under Section 66B of the Finance Act, 1994. Hon'ble Court held that the income of a legal professional is not subject to service tax, even if recipient pays the tax. Consequently, the original order was set aside, affirming that legal professionals' income is exempt from service tax under the relevant notification.

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¹ Writ Petition No. 15787 of 2024 (T-RES)

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 15787 OF 2024 (T-RES)

BETWEEN:

1. SRI S MUNIRAMAIAH
S/O LATE CHIKKAHONNAIAH,
AGED ABOUT 65 YEARS,
RESIDING AT #65, 1ST MAIN
SADASHIVANAGARA,
NELAMANGALA
BANGALORE RURAL DISRICT,
PIN CODE: 562 123
PAN NO:BAEPM4408D

... PETITIONER

(BY SRI. BHASKAR GOWDA N M., ADVOCATE)

AND:

1. THE ASSISTANT COMMISSIONER
OF CENTRAL TAX, NWD-3,
BENGALURU NORTH WEST COMMISSIONERATE,
2ND FLOOR, BMTC BUS STAND COMPLEX,
BANGALORE,
KARNATAKA,
PIN CODE: 560 051.
2. THE DEPUTY COMMISSIONER
OF CENTRAL TAX, NWD-3, DIVISION, GST,
BENGALURU NORTH WEST COMMISSIONERATE,



2ND FLOOR, BMTc BUS STAND COMPLEX,
BANGALORE
KARNATAKA,
PIN CODE: 560 051.

... RESPONDENTS

(BY SRI. ARAVIND V. CHAVAN, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER IN ORIGINAL 22/05/2024 BEARING NWD3-C.NO.IV/ST/09/54/2024/1310 IN DIN NO. 20240557YX0000444F7D, PASSED BY THE R1 PERTAINING TO FINANCIAL YEAR 2016-17 AND 2017-18 AS PER ANNEXURE-A AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner has called in question the validity of the order in original at Annexure-A whereby the Authority concerned, has raised a demand regarding taxable services other than those services specified in the negative list in the Finance Act, 1994.



2. It is the case of the petitioner that he is an advocate by profession and in terms of the order passed by this Court in W.P.No. 26096/2022 income from profession of advocacy cannot be the subject matter of demand of service tax and accordingly, the order in original is required to be set aside.

3. Sri. Aravind V. Chavan, learned counsel appearing for the respondents submits that though the legal question relating to non-taxability of income from legal profession under the Finance Act is concerned, the position as on date appears to be settled in terms of the order passed in W.P.No. 26096/2022, but however, in the present case, the income and expenditure accounts for the relevant years would indicate certain agricultural receipts and as regards such receipts, the matter requires to be considered by the adjudicating authority.

4. The observations made at Paragraph Nos. 5 to 10 in W.P.No.26096/2022 are as follows:



"5. Insofar as legal services rendered by individual advocates or firm of advocates, the person liable to pay service tax in terms of the Service Tax Rules, 1994 [for short 'Service Tax Rules'] namely Rule 2 (1) (d) (D) (II) is the individual advocate or firm of advocates who offer legal services.

6. In terms of Notification No. 25/2012-ST dated 20.06.2012 passed in exercise of power under Section 93 (1) of the Finance Act, 1994 the Central Government has exempted certain taxable services from the whole of the service tax leviable under Section 66B of the Finance Act, 1994. Amongst the services exempt, it includes services of legal professionals consisting of Partnership Firm of Advocates or an individual Advocate other than a Senior Advocate.

Clause 6(b) of the Exemption Notification¹ provides as follows:

"(b) a partnership firm of Advocates or an individual as an advocate other than a senior advocate, by way of legal services to -

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or



(iii) a business entity with a turn over up to rupees ten lakhs in the preceding Financial Year;"

7. Even where individual advocates or partnership firm of advocates who fall outside the exemption under the Notification 25/2012-ST, the person liable to pay service tax is the recipient of the service.

8. In terms of Notification No.30/2012-ST dated 20.06.2012, liability is imposed as follows:

" ... The Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the sub-section, namely: -

I. xxx

II. The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be specified in the following table, namely:-

<i>Sl. No.</i>	<i>Description of a service</i>	<i>Percentage of Service Tax payable by the person providing the service</i>	<i>Percentage of Service Tax payable by the person receiving the service</i>
<i>5</i>	<i>In respect of services provided or agreed to be</i>	<i>NIL</i>	<i>100%</i>



	<i>provided by individual Advocate or a Firm of Advocates by way of legal services, directly or indirectly</i>		
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9. *In the case of Senior Advocates it is to be noted that Rule 2 of the Service Tax Rules, Clause (d) provides for "person liable for paying service tax" and lists out at Clause (DD) as follows:*

"(DD) in relation to service provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, the recipient of such services, which is the business entity who is litigant, applicant, or petitioner, as the case may be."

Accordingly, it is clear that where Senior Counsel are engaged, the obligation to pay service tax is on the recipient of such services. If that were to be so, there is no obligation on the Senior Counsel to pay service tax.



10. In light of the above, individual lawyers and Partnership of firm of Advocates, Senior Advocates are exempted from payment of service tax under certain circumstances."

5. Taking note of the legal position as would emanate from the order passed in W.P.No.26096/2022 wherein this Court has recorded a finding that the income of a legal professional cannot be the subject matter of service tax on the ground that it is the recipient who pays and taking note of the observations made in Paragraph Nos. 5 to 10 as extracted above, impugned order is liable to be set aside.

6. Accordingly, the order at Annexure-A is set aside and the matter is relegated to the stage of hearing after show cause notice. Petitioner is at liberty to make out a fresh reply, if found necessary as regards the receipts other than from the practice of advocacy. Insofar as the income from legal profession is concerned, in light



of the observations made in W.P.No.26096/2022 the same is liable to be excluded.

7. In light of the above, the petition is disposed off. All contentions are kept open.

Sd/-
JUDGE

VP