Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10743 of 2020

(Arising out of OIA-CCESA-SRT-APPEAL-PS-079-2020-21 dated 04/09/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

PRAGATI CNG **……Appellant**

Palsana Char Rasta, Palsana, Tal: Palsana
Surat, Surat, Gujarat

VERSUS

C.C.E. & S.T.-SURAT-I **………Respondent**

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

WITH

Service Tax Appeal No.10744 of 2020

(Arising out of OIA-CCESA-SRT-APPEAL-PS-085-2020-21 dated 31/08/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

SHREE UMIYA ENTERPRISE **……Appellant**

Block No. 405/5, Moje: Ten, Opp. Tulsi Hotel, Tal: Bardoli
Surat, Surat, Gujarat

VERSUS

C.C.E. & S.T.-SURAT-I **………Respondent**

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE:

Shri. Akshay M. Modi, Chartered Accountant for the Appellant
Shri R. K. Bhashkar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12470-12471 /2021

DATE OF HEARING: 12.07.2021
DATE OF DECISION: 28.10.2021

RAMESH NAIR

The issue involved is that whether the Electricity Charges reimbursed to the appellant by the Service Recipient M/s. Gujarat Gas Company Limited for providing the service Namely Business Auxiliary Service is includible the gross value of output service.

2. Shri. Akshay Modi, Learned Chartered Accountant appearing on behalf of the appellant submits that it is conditional on the part of the appellant to provide the electricity as per contractual agreement the appellant is suppose

to get the reimbursement of electricity charges from the service recipient M/s. Gujarat Gas Company Limited, therefore, this electricity charges reimbursed on actual basis shall not be part of gross value of the appellant's output service. He relied upon the various judgments as follows:-

- Intercontinental Consultants & Technocrats (P.) Ltd-2013 (29)STR 9 (Del.)
  UOI V. Intercontinental Consultants & Technocrats (P.) Ltd-2018 (10) GSTL 401 (SC)

- V V Brothers Vs. CCE & ST, Surat
  Appeal No. ST/10201/2019 (Tri-Ahmedabad) against OIA No. CCESA-SRT-PS-584-2018-19 Dtd. 27.11.2018.

- Kiren Gems Pvt. Ltd-2019 (25) GSTL 62 (Tri.-Ahm.)
- ICC Reality (India) Pvt. Ltd-2013 (32) STR 427
- M/s. Hotel Lake View Ashok- Vs. CGST, CE & CC, Bhopal Service Tax Appeal No. 50156 of 2015 (New Delhi Bench)

- S.B. Developers Ltd Vs. CST, New Delhi
  Service Tax Appeal No. 60675-60676 of 2013 (New Delhi Bench)

- Malabar Management Services Pvt Ltd.-2008 (9) STR 483 (Tri.-Chennai)
- Bizsolindia Services Pvt. Ltd-2016 (43) STR 622 (Tri. Mumbai)
- Dream Loanz-2017 (6) GSTL 443 (Tri.-Chennai)
- Adhikrut Jabti Evam Vasuli-2017 (6) GSTL 529 (Tri.-Delhi)

2.1 He further submits that in identical case on similarly placed service provider and service recipient under the identical contractual agreement in the case of V V Brothers (Supra). This Tribunal has allowed the appeal, therefore, the issue is no more under dispute.

3. Shri. R K Bhashkar, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that this issue involving identically placed

service provider and the same service recipient M/s. Gujarat Gas Company Limited under the identical contract has been decided by this Tribunal in the case of V V Brothers (Supra) wherein this Tribunal has passed the following order:-

"This appeal has been filed by M/s VV Brothers against order of Commissioner (Appeals) confirming the demand of Service Tax.

2. Learned Chartered Accountant for the appellant pointed out that they are engaged in providing services to M/s Gujarat Gas. They have entered into an agreement with Gujarat Gas in terms of which they were being paid an amount of fixed charges and reimbursement for the electricity charges paid by them to Electricity Company. In terms of the contract a separate electric meter has also been installed at their premises. In support of the said assertion he produced a copy of the agreement with Gujarat Gas wherein clause 4.6 prescribed as under:

> *"4.6 The firm shall bear and pay all property taxes, municipal taxes, rents, rates, outgoings, land revenue, assessment or levies payable by the firm in respect of the site and shall pay all bills for electricity, water and other utilities utilized at the outlet. However, electricity charges for compressor, dispensers installed at the particular outlet shall be borne by GGCL. An independent electricity meter will have to be provided for this purpose."*

2.1. The appellant pointed out that they were paying Service tax for the fixed charges received by them for provision of service, however, they were not including the value of the electricity charges recovered as reimbursements from Gujarat Gas for the purpose of payment of Service Tax.

2.2 Learned Counsel argued that the issue involved in the present case is squarely covered by the decision of this Tribunal in the case of Kiran Gems Pvt. Ltd. 2019 (25) G.S.T.L. 62 (Tri- Ahmd.) wherein under similar circumstances exclusion of electricity charges recovered as reimbursement was upheld by tribunal. He also relied on following decisions :

(1) UOI vs Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) G.S.T.L 401 (SC).
(2) Malabar Management Services Pvt. Ltd. vs Commr. of ST, Chennai 2008 (9) STR 483 (Tri-Chennai)
(3) Bizsolindia Services Pvt. Ltd. vs. CCE, Pune-iii 2016 (43) STR 622 (Tri-Mum.)
(4) Dream Loanz vs. Commr. of Central Excise, Coimbatore 2017(6) GSTL 443 (Tri Chennai)
(5) Adhikrut Jabti Evam Vasuli vs. CCE (Indore) 2017 (6) GSTL 529 (Tri- Delhi)

3. Learned Authorised Representative relied on the impugned order. He argued that in the case of decision of larger bench in the case of Sri Bhagwathy Traders 2011 (24) S.T.R. 290 (Tri-LB) which has been held that only when the amount is spent in the capacity of pure agent, the same can be excluded from the assessable value. He argued that since in the instant case, amount is not paid in the capacity of pure agent, the amount is includable in the assessable value.

4. We have considered rival submission. We find that appellants are undisputedly paying the Service tax onthe fixed charges received by them from Gujarat Gas. The issue under consideration is if the appellants are liable to pay Service tax on the electricity charges on actual basis paid by them in terms of para 4.6 of their contract with Gujarat Gas. Para 4.6 of the contract reads as under:

> *"4.6 The firm shall bear and pay all property taxes, municipal taxes, rents, rates, outgoings, land revenue, assessment or levies payable by the firm in respect of the site and shall pay all bills for electricity, water and other utilities utilized at the outlet. However, electricity charges for compressor, dispensers installed at the particular outlet shall be borne by GGCL. An independent electricity meter will have to be provided for this purpose."*

It is seen that the contract puts the liability of expenditure of Service Tax on Gujarat Gas and they have also placed a separate meter for assessment of the actual electricity consumed. We find that the issue is squarely covered by the decision of this Tribunal in the case of Kiran Gems Pvt. Ltd. (supra) where after relying on the decision of Tribunal in the case of ICC Reality (India) Pvt. Ltd. vs Commr. 2013 (32) S.T.R. 427 (Tribunal), Hotel Lake view Ashok vs. CGST 2018 TIOL 2195 CESTAT-Mad and S.B. Developers Ltd. vs. Commissioner 2018 TIOL 1866 CESTAT-Del., it was held that electricity charges reimbursed to the service provider by the service recipient are not includable in gross value of renting of immovable property service. We find that the said principle is equally applicable in the instant case. The said principle has also been pronounced by Hon'ble Apex Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) G.S.T.L 401 (SC). Accordingly, the appeal is allowed."

4.1 From the above decision of this Tribunal, it can be seen that the electricity charges which is reimbursed on actual basis in terms of the contract is not includible in the gross value of service provided by the appellant to Gujarat Gas Company Limited.

5. Accordingly, the issue is no longer *res Integra*. Hence, the impugned order is set aside, appeals are allowed.

(Pronounced in the open court on 28.10.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi