CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70795 of 2016

(Arising out of Order-in-Original No.21/Comm./ST/GZB/2015-16 dated 31.03.2016 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

M/s Shipra Estate Ltd. & Jai Krishan Estates Developers Pvt. Ltd. **.....Appellant**
(Cabin No.2, Shipra Mall, Plot No.09, 3rd Floor,
Vaibhav Khand, Indirapuram, Ghaziabad U.P.-201014)

VERSUS

Commissioner of Central Excise & Service Tax, Ghaziabad **....Respondent**
(CGO Complex-II, Kamla Nagar, Ghaziabad, U.P.)

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the Appellant
Shri Sandeep Pandey, Authorized Representative for the Respondent

WITH

Service Tax Appeal No.71101 of 2018

(Arising out of Order-in-Appeal No.50-GBN-EXST-APP-2018 dated 25.05.2018 passed by Commissioner (Appeals) Central Tax & GST, Meerut)

M/s Shipra Estate Ltd. & Jai Krishan Estates Developers Pvt. Ltd. **.....Appellant**
(Cabin No.2, 3rd Floor, Shipra Mall,
Vaibhav Khand, Indrapuram, Ghaziabad U.P.-201001)

VERSUS

Commissioner of Central Excise, Gautam Buddh Nagar **....Respondent**
(3rd Floor, Wegmans Business Park,
K.P.-III, Greater Noida-201306)

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.- 70329-70330/2024

DATE OF HEARING : 21 February, 2024
DATE OF DECISION : 07 June, 2024

P.K. CHOUDHARY:

These two appeals have been filed by the Appellant against

(i) Order-in-Original No.21/Comm./ST/GZB/2015-16 dated 31.03.2016 passed by Commissioner of Central Excise & Service Tax, Ghaziabad; and

(ii) Order-in-Appeal No.50-GBN-EXST-APP-2018 dated 25.05. 2018 passed by Commissioner (Appeals) Central Tax & GST, Meerut.

1.2 As the issues involved in both the appeals are common for different periods, both these appeals are being disposed of by this common order.

2.1 The Appellant is engaged in the business of developing residential complex and have been selling residential flats during construction. They are also availing the CENVAT Credit as admissible in terms of CENVAT Credit Rules 2004.

2.2 During the course of the audit of the records of the Appellant, it was observed that;

- they had paid service tax on abated value while no abatement was admissible to them.
- they had not paid service tax on charges collected towards maintenance and repair service.
- they have wrongly availed Cenvat credit on input services on the basis of inadmissible invoices.
- they have not paid service tax on the amounts received towards supply of electricity through DG Set under the category of maintenance or repair services.

2.3 A Show Cause Notice[1] dated 17.03.2015 was issued for the period from October, 2011 to September, 2013 by invoking extended period of limitation.

2.4 Show Cause Notice dated 05.01.2016 was issued for the period from October, 2013 to March, 2015.

2.5 Lower authorities have confirmed the demand in both the cases as proposed in the SCNs. The breakup of demands in the two orders are as under: –

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[1] SCN

			Amount in Rs
S No	Description	Appeal No.	
		ST/70795/2016	ST/71101/2018
i	On construction of Residential Complex	3,18,92,285/-	
ii	Disallowance of cenvat credit	48,92,597/-	
iii	Receipt of sinking fund	5,96,360/-	52,831/-
iv	Supply of electricity through DG Set	8,70,871/-	
	Total	3,82,52,113/-	52,831/-

2.6 Aggrieved Appellants have filed these appeals.

3.1 Heard Shri Kapil Vaish for the Appellant and Shri A. K. Choudhary Authorized Representative for the revenue.

Appeal No.ST/70795/16

4.1 In Appeal No.ST/70795/2016, the learned counsel has vehemently argued that SCN dated 17.03.2015 had been issued for the period October, 2011 to September, 2013 and the demand for the period upto March, 2013 (about 3.81 crore) is also barred by limitation. The order invokes extended period of limitation after observing that Appellants availed Cenvat credit deliberately with intention to evade service tax. The learned Commissioner also observed that Appellants were regularly submitting ST-3 returns is of no use to support their contention that they were declaring the facts to the Department.

4.2 We find that all the issues in Appeal No.ST/70795/2016 involved interpretation of Cenvat Credit Rules and provisions of Service tax law. It cannot be said that Appellants have deliberately suppressed any information to evade payment of service tax. All receipts on which service tax is proposed to be demanded had duly been accounted for in Appellant books of accounts.

4.3 In the case of Continental Foundation JT Venture reported in 2007 (216) E.L.T. 177 (SC) the Hon’ble Supreme Court held that suppression means failure to disclose full information with the intent to evade payment of duty. Para 10 and 12 of the order reads as under :-

"10. The expression "suppression" has been used in the proviso to Section 11 A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the revenue invokes the extended period of limitation under Section 11 A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned , they are clearly qualified by the words 'willful', preceding the words "mis-statement or suppression of facts " which means with intend to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules ' are again qualified by the immediately following words 'with intend to evade payment of duty'. Therefore, there cannot be suppression or mis-statement of fact, which is not willful and yet constitute a permissible ground for the purpose of the proviso to section 11 A. Mis –statement of fact must be willful."

4.4 In case of M/s Shervani Industries, Syndicate Ltd. reported in 2009 (14) S.T.R. 486 (Tri–Delhi), this Tribunal has held that extended period of limitation is not invokable when there is scope of difference in interpretation. Para 14 of the order reads as under :-

"However, we find force in the submissions of the learned Advocate that there was scope for difference in interpretation and hence for entertaining a view that there

was no levy of tax and therefore, the demand of tax for the extended period of limitation would not be applicable. We also noted that the issue involved in this case is the interpretation of the provision of the Finance Act and the penalties are not warranted. Accordingly, the demand of tax for the normal period of limitation is upheld. Penalties are set aside. The appeal is disposed of in the above terms."

4.5 In view of the above, we hold that demand for the period October, 2011 to March, 2013 is not sustainable on the ground of limitation also. However, since Appellants had voluntarily paid amount of Rs.44,22,221/- alongwith interest and penalty before issuance of SCN in connection with issue No.1, the same will not be refundable. As we have set aside all the demands, penalties imposed under Sections 76, 77 and 78 are also set aside.

4.6 Issue No.1 – Demand of service tax on construction of Residential Complex - 3.19 crore.

(i) The SCN observed that the Appellants had been availing abatement under Notification No.01/2006 and paying service tax on 25% value of the gross amount received from the custome It was also observed that during the period from 01.04.2012 to 30.06.2012, Appellants availed Cenvat credit of Rs.44,22,221/- on input services received towards taxable service of Residential Complex Service. In terms of Notification No.01/2006-ST dated 01.03.2006, the abatement of 75% was allowable subject to the condition that Cenvat credit of service tax on input service used for providing such taxable service had not been taken.

(ii) During the course of adjudication, the Appellants submitted that the credit of Rs.44,22,221/- taken by them during the period April, 2012 to June, 2012 had been reversed alongwith interest before issuance of SCN.

(iii) The learned Commissioner held that the Appellants were not eligible for the benefit of abatement under Notification No.01/2006 dated 01.03.2006 on the ground that they have wrongly availed and utilized Cenvat credit. He also observed that the Appellants have paid only Rs.44,22,221/- against availment of Cenvat credit of Rs.48,03,944/- and that even if it is accepted that the amount of Rs.3,67,778/- is towards input services exclusively related to repair services, the remaining amount comes to Rs.44,36,106/- which was not debited by the Appellants. He also observed that another condition of Notification No.01/2006 dated 01-03-2006 was that the cost of land should be included in the gross amount charged. He examined one of the `Flat Buyer Agreement' and observed that land of the building has not been sold to the flat buy After making above observations, the learned Commissioner disallowed the abatement under Notification No.01/2006 (supra) and confirmed the demand of Rs.3,18,92,285/-.

4.7 The learned Counsel for the Appellants submitted that as per SCNs, Appellants had reversed the entire Cenvat credit of Rs.44,22,221/- on input services. He referred to various case laws in support of its contention that once the credit had been reversed, the benefit of exemption under Notification No.01/2006 dated 01-03-2006 cannot be denied. He also submitted that the observation of the Commissioner that Appellants had availed credit on inputs (instead of input service); that entire credit had not been reversed and that as per 'Flat Buyer Agreement', cost of land is not included in the gross amount, were not only incorrect but were also beyond the scope of SCNs.

4.8 We find that para 2 of the SCN alleges as under :–

"It is also observed in the said ST-3 return that they have also taken Cenvat credit of 47,89,999/- during the aforesaid period from April to June, 2012. Out of 47,89,999/-, Cenvat credit of an amount of 3,67,778/- was taken on input service received towards providing taxable services of maintenance or repair service. Thus, an amount of 44,22,221/- was taken by the party as credit of input

service received towards providing taxable service of construction of residential complexes services."

4.9 From perusal of aforesaid para 2, there is no doubt that the Appellants have availed credit of Rs.44,22,221/- only on input services towards providing taxable service of Construction of Residential Complex. It is also not in dispute that Appellants have reversed the entire Cenvat credit of Rs.44,22,221/- availed for the period April to June, 2012 alongwith interest and penalty before issuance of SCN. We, therefore, hold that the finding of the learned Commissioner in para 6.2.5 of the impugned order that the Appellants have not reversed the entire amount of credit is not only incorrect but also beyond the scope of SCN. We also find that the SCN proposed to disallow the exemption/abatement only on the ground that the Appellants had wrongly availed Cenvat credit on input services. There is no allegation that the gross amount charged did not include the value of land. Here also, the finding of the Commissioner is beyond the scope of SCN. It is the settled law that the order cannot travel beyond the scope of SCN. We place reliance on the decision of Hon'ble Supreme Court in the case of Commissioner of Customs (Mum) Vs. Toya Engineering India Ltd. reported in 2006 (201) E.L.T. 513 (S.C.) wherein it has been held that the Department cannot travel beyond the scope of the SCN. Similar view has been taken by this Tribunal in the case of Commissioner of Central Excise, Goa Vs. R. K. Construction reported in 2016 (41) S.T.R. 879 (T).

4.10 We now come to the main issue as to whether the benefit of exemption under Notification No.01/2006 dated 01-03-2006 in respect of construction of residential complex can be disallowed even if the Cenvat credit availed during the said period has been reversed alongwith interest and penalty. We find that there is no dispute that the Appellants had reversed the entire Cenvat credit relating to Construction of Residential Complex Service even before issuance of SCN. The Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (Pvt.) Ltd. Vs. Collector of Central Excise reported in 1996 (81) E.L.T. 3 (S.C.) has held that debit entry in Modvat account indicates as if credit was not taken on such inputs. Para 6 & 7 of the judgement reads as under :–

> *"6. It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been done. The contention of the Department that in this situation, the assessee is not entitled to reverse the entries and get the benefit of the tax exemption is a question which merits serious consideration. There is no doubt that the assessee should have maintained separate accounts for duty free goods and the goods on which duty has to be paid. But our attention was drawn to a departmental circular letter on this problem in which it has been clarified by the Ministry of Finance as under :-*
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>> *"3. The credit account under MODVAT rules may be maintained chapter wise, MODVAT credit is not available if the final products are exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. an end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacture of the final products, provided that credit of duty paid on the inputs used in such exempted products is debited in the credit account before the removal of such exempted final products."*
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>> *This circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products*

which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products.

7. In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods."

4.11 In the case of Hello Minerals Water (Pvt.) Ltd. Vs. UOI reported in 2004 (174) E.L.T. 422, the Hon'ble Allahabad High Court held that reversal of modvat credit amounts to not taking of credit on inputs. Para 17 and Para 18 of the judgement reads as under :–

"17. The question as to whether manufacturer can be treated as not having taken credit on the inputs used in the manufacture of final product, even though it was originally taken but subsequently reversed, has been decided by a five Member Bench of the Tribunal in the case of Franco Italian Company Pvt. v. CCE, 2000 (120) E.L.T. 792. The aforesaid five members Bench of the Tribunal after taking into account the ratio laid down by the

Supreme Court in the case of Chandrapur Magnet Wire (P) Ltd. v. CC, Nagpur, 1996 (81) E.L.T. 3 has held as under :-

> *"6. Drawing similar analogy we consider that subject to the reversal of Modvat credit taken with regard to the inputs which were utilised in the manufacture of duty free goods, the manufacturer could avail of the Modvat credit as well as full duty exemption under applicable small scale exemption notification with regard to some specified goods. Reference is answered accordingly.*
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> *7. As a result the impugned order-in-appeal dated 28-1-1999 passed by the Central Excise is set aside and the appeal of Franco Italian Company (supra) is allowed subject to the conditions that Modvat credit taken of the duty paid on the inputs which were utilised in the manufacture of duty free goods, is reversed."*

18. In view of the above decision we are of the opinion that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence the benefit has to be given of the notification granting exemption/rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage".

4.12 The above view has consistently been taken by this Tribunal in various other cases. The issue is therefore no more *res integra*. We therefore hold that since the Appellants have already reversed the Cenvat credit alongwith interest, the benefit of Notification No.01/2006-ST dated 01.03.2006 cannot be denied to them. We, therefore, set aside the corresponding demand of service tax of Rs.3,18,92,385/-.

4.13 Issue No. 2 – Disallowance of Cenvat credit Rs.48.93 lacs Since this demand is completely barred by limitation as it is in respect of the credit availed by the Appellant during the period

July to September, 2012 we refrain from discussing this issue on merits as we have held that demand upto the period of March 2013 is barred by limitation.

4.14 **Issue No.3 – Demand of service tax on sinking fund 596360/-**

(i) The SCNs alleged that the amount received as sinking funds from the flat buyers against the services to be provided in future on account of maintenance or repair or any other similar activity should be a part of taxable value of the services provided under the category of management, maintenance or repair service.

(ii) The learned Commissioner observed that as per section 4(4) of UP Apartment Act, sale of flat is to be made under written agreement between builder and buyer and as per section 8 of UP Apartment Act all sale consideration is required to be fixed at the time of agreement. Under section 4(7) of UP apartment Act, the builder is legally bound to maintain common areas and facilities till RWA is formed and for it the builder will charge proportionate amount from owner of flats. A conjoint reading of these sections indicate that builder is legally authorize to collect sale consideration and proportionate maintenance charges till formation of RWA from flat owne Except these charges, the builder is not authorized to collect any other amount. He also observed that as per the agreement, the builder in addition to consideration of flat would collect maintenance and repair charges. He therefore held that charges collected in the name of sinking fund are in fact charges for maintenance and repair of building.

4.15 The learned Chartered Accountant during the course of hearing submitted that Appellants collect an amount (approx. 1.2% of the cost of flat) towards sinking fund. The said amount is ultimately transferred to RWA/society and is in the nature of interest free maintenance security. He drew our attention to the Balance Sheet (page 265 of appeal paper book) where in the amount collected as sinking fund had been shown as liability. He also drew our attention to the ST-3 returns to contend that wherever they have collected amount towards maintenance and repair service, they had regularly been paying service tax. He also placed reliance on following decisions: -

- Kumar Beheray Rathi Vs. CCE reported in 2014 (34) S.T.R. 139 (T).
- P.V.S. Construction (Pvt.) Ltd Vs. CCE reported in 2018 (19) G.S.T.L. 277 (T).
- KDP Infrastructure (Pvt.) Ltd. Vs. CCE reported in 2019 (22) G.S.T.L. 450 (T).

4.16. The learned Departmental Representative supports the view taken by Lower Authorities.

4.17. We find that the issue regarding liability for payment of service tax on sinking fund/interest free maintenance scrutiny is no more *res integra*. In the case of Kumar Beherary Rathi Vs. CCE, Pune reported in 2014 (34) S.T.R. 139, this Tribunal has held that collection of one time deposit on account of maintenance and repair of common areas is not taxable. The said decision of the Tribunal has been affirmed by Bombay High Court as reported in 2018 (14) G.S.T.L. 533. In case of KDP Infrastructure (Pvt.) Ltd. Vs. CCE reported in 2019 (22) G.S.T.L. 450 (Tri-All), this Bench has held as under: –

> *"2. The dispute in the present appeal relates to the valuation of the services. The appellant is collecting charges from their customers under the category of "Interest Free Maintenance Security" (IFMS) and "External Development Charges" (EDC). Revenue by entertaining a view that such charges collected by the appellant from that owners would form value of the services provided by them raised the demand against them by way of issuance of a show cause notice dated 11-7-2014 for the period July, 2010 to September, 2013, for the differential service tax amount of 61,10,452/-. The same stands confirmed by the Lower Authorities alongwith confirmation of interest and imposition of penalty. Hence the present appeal".*

"3. The two issues are required to be decided in the present appeal. The first issue relates to inclusion of the amount collected by the appellant as IFMS. Revenue's contention is that the said collected amount would fall under the category of 'Management Maintenance and Repair Services' and would be liable to service tax separately. We note that the said amount collected by the appellant from the flat owners is towards the security for the purpose of maintenance of the building and to cover the eventual default made by any of the flat owners for payment of monthly maintenance charges. As per the agreement with the flat owners, the said amount is liable to be refunded to them within the period of Six months from the date of termination of the said agreement. The Adjudicating Authority observed that the genuineness of the said term is very much doubted inasmuch as the appellant had not produced any evidence to show that the said IFMS was ever refunded to anyone. We really fail to understand the said reasoning of the Adjudicating Authority. The amount is refundable in case of termination of the ownership agreement and if no such termination has taken place till date, the amount would not be refunded. As long as the provisions for refund of the said amount in the agreement itself is there, it has to be considered that the said amount is refundable and was towards security deposits and was not for the purpose of providing any services, so as to levy tax on the same".

"4. In any case, we also note that the issue stands decided by precedent decisions of the Tribunal. Reference can be made to the Tribunal decision in the case of CCE & ST, Jaipur v. Sand Dunes Construction Pvt. Ltd. - 2018 (7) TMI-1383-CESTAT-New Delhi, whereby while taking note of the precedent decision of the Tribunal in the case of Kumar Beheray Rathi v. CCE, Pune - 2013 (12) TMI-269-CESTAT Mumbai = 2014 (34) S.T.R. 139 (Tri.-Mum.). It was held that the security deposits collected by the Builder for

providing maintenance to immovable property services would not be taxable under the category of 'Management Maintenance or Repairs Services'. In fact, we note that Commissioner (Appeals) for the subsequent period in the appellant's own case has dropped the demand vide its Order-in-Appeal No. GZB/SVTAX/OOO/APPL-MRT/10/2017-18, dated 19-4-2018.

Inasmuch as the issue stands decided, we find no reason to take a different view. Accordingly demand on the said count is set aside, alongwith setting aside of penalty".

4.17 Relying the aforesaid decision in the case of KDP Infrastructure, we have also set aside the demand of service tax on sinking fund in case of Supertech Realers Pvt. Ltd. vide Final Order No.70103/2024 dated 29.02.2024. In as much as the issue stands decided by various decisions, we find no reason to take a different view. Accordingly, demand on the said count is set aside alongwith setting aside of penalty.

4.18 Issue No. 4 – demand of service tax on supply of electricity through DG Set.

(i) The SCN had been issued demanding service tax on supply of electricity through D G Set for the period upto 30-06-2012 (i.e. pre era of negative services). The learned Commissioner observed that it is not a simple sale of electricity generated by D G Set. As per commitment of builder made at the time of allotment of flats, they are under an obligation to provide power backup to flat buye A person residing at 24^{th} floor of the building cannot get access without a lift and to keep the lift operative on 24/7, basis the responsibility is casted on the builder. The services of D G Set installed in residential complex are meant for only residents and utilities of such residential complex. He further observed that in case of residential complex, it is obligatory on part of builder to provide backup and resident is also bound to pay service charges at a mutually agreed rate for such services. In the said transaction, service agreement pre dominates. After making these observations, the learned Commissioner confirms the demand of service tax on supply of electricity through D G Set.

4.19 The learned Chartered Accountant submitted that Appellants had installed a D G Set from where electricity is supplied to the residents in case of power cut. Amount is charged on the basis of electricity consumed. He further submitted that electricity is goods. It falls under chapter heading 27160000 of Central Excise Tariff and is liable to NIL rate of Central Excise Duty. For the period upto 30.06.2012 Notification No.12/2003 dated 20.06.2003 exempted so much of the value of all taxable service as is equal to the value of goods and materials sold by service provider to the recipient of service, subject to the condition that there is documentary proof specifically indicating the value of said goods. He relied the decision of this Tribunal in case of ICC Reality (India) Pvt. Ltd. Vs. CCE reported in 2013 (32) S.T.R. 427 and submitted that supply of electricity being goods, service tax cannot be demanded on the same. On a specific query from the Bench, the learned counsel clarifies that they have installed pre paid meters and the amount for supply of electricity is charged on the basis of units consumed by the individual resident. As regards electricity consumed in common areas or for operating the lift during shutdown, the corresponding expenses are charged by way of maintenance or repair charges. We find that the issue regarding liability for payment of service tax on supply of electricity generated through DG set in case of power failure is no more *res integra*. This Tribunal in the case of ICC reality India (P.) Ltd. Vs. CCE, Pune reported in 2013 (32) S.T.R. 427 has held that service tax cannot be charged on electricity charges collected from the tenants. Para 9 and para 10 of the said order reads as under: -

"9. We have gone through the Lease Agreements. As per the terms and conditions of the Lease Agreements, the tenants have to pay electricity charges directly to the

MSEB and the appellants are also providing electricity through generator set in case there is a power failure and the appellants are charging for the same. We find that electricity is specifically covered under Tariff Heading 27 of the Central Excise Tariff Act. We find that as per the provisions of Maharashtra Value Added Tax Act, 2002, electricity is also covered under Schedule A Sr. No. 20 and charged to Nil rate of tax. In view of this, we find the electricity is goods chargeable to duty under Central Excise Tariff as well as under the Maharashtra Value Added Tax Act, 2002. Therefore, the supply of electricity to tenant amounts to sale of goods and not supply of service. Further the Notification No.12/2003-S.T., dated 20-6-2003 exempt from Service Tax, any value of goods supplied by service provider to service recipient. Further we find that the Commissioner of Central Excise Pune-III vide Order-in-Original dated 28-11-2011 relied upon by the appellants dropped the proceedings which were initiated on the same ground in the case of M/s. Panchshil Tech Park Ltd. The Commissioner of Central Excise in the adjudication order held that electricity is goods and chargeable to Nil excise duty. The decision of the adjudicating authority is accepted by the Revenue as per the communication dated 26-9-2012 by the Commissioner of Central Excise, Pune-III. The present appellants are also under the jurisdiction of Pune-III Commissionerate".

10. In view of the above discussion, we find merit in the contention of the appellants that the electricity charges collected from the tenants cannot be formed part of the assessable value for the purpose of Service Tax as provider of renting of immovable properties".

4.20. In view of the aforesaid decision of Tribunal, we hold that service tax cannot be demanded on supply of electricity through D G Set. Accordingly, demand on this count is set aside alongwith setting aside of penalty.

21. In view of above discussions, we set aside the entire demand of service tax Rs.3,82,52,113/- in Appeal No.ST/70795/2016

Appeal No.ST/71101/2018

4.21 In view of the discussion in para 4.14 to 4.17 demand of Rs.52,831/- made on the amounts received towards sinking fund, received by Appellant during the period from October, 2013 to March, 2015 is also set aside.

5.1 Both the appeals are allowed with consequential relief, as per law.

(Order pronounced in open court on – **07th June, 2024**)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS