CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70033 of 2020

(Arising out of Order-in-Appeal No.484-ST-APPL-LKO-2019, dated - 11/09/2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Principal Commissioner, CGST & Central Excise, Lucknow
.....Appellant
(7-A, Ashok Marg, Lucknow)

VERSUS

M/s India Housing **....Respondent**
(Sahara Ganj, Shahnazaf Road,
Lucknow, UP 226001)

APPEARANCE:

Ms. Chitra Srivastava, Authorized Representative for the Appellant
Written submissions filed by Shri C.M. Pathak, Advocate for the Respondent

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

FINAL ORDER NO.-70501/2024

DATE OF HEARING : 31.07.2024
DATE OF DECISION : 31.07.2024

P. K. CHOUDHARY:

When the matter was called none appeared on behalf of the Respondent-Assessee, however, a written submission has been received from the learned counsel for the respondent Shri C.M. Pathak, Advocate. We take up the appeal with the consent of the learned Departmental Representative.

2. Heard the Departmental Representative and perused the written submissions and the appeal records.

3. The facts of the case in brief are that the Appellant has rented out shops to tenants in Sahara Mall. As electricity supplier

Madhyanchal Vidyut Vitran Nigam Ltd.[1] does not provide separate connections to individual shops, the latter are provided electricity through sub-meters and subsequently electricity charges are collected for payment to MVVNL by the Respondent. from the tenants during the period from Financial Year 2014-15 to Financial Year 2015-16. The Department entertained a view that the Respondent are liable to service tax. Accordingly, Show Cause[2] Notice dated 29.05.2018 was issued proposing to demand Service Tax amounting to Rs.1,12,34,436/- along with interest and for imposition of penalty under Section 78. The Adjudicating Authority vide the Order-In-Original dated 21.01.2019 confirmed the demand as proposed in the SCN and also imposed penalty of equal amount under Section 78 of the Finance Act. On appeal, the learned Commissioner (Appeals) vide the impugned Order-In-Appeal, set aside the Order-In-Original and allowed the appeal before him. Relevant paragraphs of the Order-In-Appeal are as under:-

> *"3. Aggrieved with the order, the appellant preferred this appeal on the following grounds:*
>
> *(i) The appellant is not at all collecting the 100% power back up charges though making full payments to LESA department on shopkeepers which are tenants of the appellant in the mall. behalf of*
>
> *(1) The electricity is goods chargeable to duty under Central Excise Tariff so the supply of electricity by Sahara Mall to shopkeepers is sale of goods and not the supply of service. The electricity charges recovered by the said appellant from shopkeepe. are not included in renting of immovable property.*
>
> *4. Personal hearing in the case was held on 07.8.2019. Shri Chandra Mohan Pathak, Advocate, appeared on behalf of the appellant and submitted as under.*
>
> > *"The appellant is providing renting services and receiving electricity reimbursement as per agreement. The service tax department levied the service tax on*

---

[1] MVVNL
[2] SCN

reimbursement of electricity charges which is not liable for service tax since electricity has been held as goods by supreme court in several cases."

5. I have gone through the case record. From the record it is apparent that the appellant were procuring the electricity from the electricity board and were supplying the same to their tenants through sub meters, as individual meters for the tenants were not provided by the MVVNL. For the same electricity charges are collected by the appellant from the tenants. The case of the department is that the said reimbursement of electricity charges should be added to the value of renting service provided by the appellant to the tenants. However, it is found that electricity is specifically covered under CETH 2716; therefore electricity is goods and not service. Thus, the supply of electricity to tenants, which was procured from electricity board, amounts to sale of goods and not supply of services. The trading of goods is beyond the purview of service tax. In view of the above, there is no sufficient ground to demand service tax on the electricity charges collected by the appellant from their tenants. The impugned order is, therefore, not sustainable and the same is set aside. The appeal is allowed"

4. We find that the learned Commissioner (Appeals) has rightly held that the supply of electricity to tenants which was procured from the Electricity Board MVVNL amounts to sale of goods and not supply of service. The trading of goods is beyond the purview of service tax. We find that the Commissioner (Appeals) has passed a detailed and well reasoned order and we do not find any infirmity in the same. Impugned Order-In-Appeal is upheld and the appeal filed by the Department being devoid of any merits, is dismissed.

(Operative part of the order is pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal