

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60792 of 2017

[Arising out of Order-in-Original No. DLI-SVTAX-004-COM-014-16-17 dated 05.07.2016 passed by the Commissioner of Service Tax, Audit-II, Delhi at Gurgaon]

Ubico Network Private Limited

Plot No. 21-22, 3rd Floor, Udyog Vihar,
Phase IV, Gurgaon, Haryana 122015

.....Appellant

VERSUS

Commissioner of Service Tax, Delhi-IV

Plot No. 36-37, Sector 32, Opp Medanta Hospital,
NH IV, Gurgaon, Haryana 122001

.....Respondent

APPEARANCE:

Mr. J.K. Mittal, Advocate for the Appellant

Mr. Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61737/2025

DATE OF HEARING: 05.08.2025

DATE OF DECISION: 02.12.2025

S. S. GARG :

The present appeal is directed against impugned order dated 05.07.2016 passed by the Commissioner of Service Tax, Audit-II Delhi, Gurgaon, whereby the learned Commissioner adjudicated the following two show cause notices:

- First show cause notice dated 21.10.2014 was covering the period 2009-10 to 2012-13 wherein service tax of Rs.76,90,761/- was demanded on reimbursement of electricity charges by invoking the extended period of limitation.
- Second show cause notice dated 20.04.2015 was covering the period 2013-14 wherein service tax of Rs.42,81,950/- was demanded on the reimbursement of electricity charges.

Further, the learned Commissioner gave the benefit of cum-duty and confirmed the demand of service tax of Rs.69,08,086/- along with interest and penalty in respect of first show cause notice; confirmed the demand of service tax of Rs.38,10,920/- along with interest and penalty in respect of second show cause notice; thus, total demand of service tax of Rs.1,07,19,006/- is confirmed in respect of both the show cause notices.

2. Briefly stated facts of the present case are that the Appellant are engaged in setting up and leasing of in-building coverage, solutions for mobile service providers and wi-fi technologies and are registered with the Service Tax department under the category of Business Auxiliary Services ('BAS'). The department entertained the view that the Appellant have not discharged the service tax on the charges collected for rendering service of Renting of Immovable Property on the reimbursement of electricity charges received by the Appellant from their customers. On this allegation, two show cause notices as cited above, were issued which were adjudicated by the

learned Commissioner who vide the impugned order, confirmed the demand as stated above. Aggrieved by the impugned order, the Appellant have filed the present appeal before us.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial precedents.

4.1 The learned Counsel further submits that the only dispute in the present case is about the levy of service tax on the reimbursement of electricity charges received by the Appellant from their customers, which is admitted fact in the impugned order. He further submits that the department in the show cause notices has alleged that the Appellant has not fulfilled the condition under Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and therefore, is not entitled for the benefit as a pure agent to exclude the reimbursement of the expenditure. He further submits that this issue is no more *res integra* and has been decided in a catena of decisions wherein it has been held that the service tax is chargeable on the value of services provided and the reimbursement of expenses is not chargeable to service tax. In this regard, he cites the decision of Hon'ble Delhi High Court in the case of **Intercontinental Consultants & Technocrats Pvt Ltd vs. UOI – 2013 (29) STR 9 (Del.)** wherein Rule 5 of the Service Tax (Determination of Value) Rules, 2006 was also struck down and it

was held that reimbursable expenses are not subject to service tax. He further submits that the said decision of the Hon'ble Delhi High Court has been affirmed by the Hon'ble Supreme Court in the case of **UOI vs. Intercontinental Consultants & Technocrats Pvt Ltd – (2018) 4 SCC 669** wherein the Hon'ble Supreme Court has held that the valuation of tax service cannot be anything more or less than the consideration paid as *quid pro qua* for rendering such a service; the petitioner could not be held liable to pay service tax on the amount which is not related to the provision of service but for the supply of electricity. He further submits that the Commissioner did not follow the said decision of Hon'ble Delhi High Court (supra) because against the said decision, appeal of the Revenue was pending before the Hon'ble Supreme Court at that time. He further submits that the Hon'ble Supreme Court vide its judgment dated 07.03.2018 (supra), has dismissed the appeal of the Revenue and has upheld the decision of the Delhi High Court. He also submits that the Tribunal in the following decisions has held that the reimbursement of electricity charges is not taxable:

- **ICC Reality (India) Pvt Ltd vs. CCE, Pune-III – 2013 (32) STR 427 (Tri. Mumbai)**
- **M/s Hotel Lake View Ashok vs. CCE, Bhopal – 2018-TIOL-2891-CESTAT-DEL**
- **S.B. Developers Ltd vs. CST, New Delhi –2018-TIOL-1866-CESTAT-DEL**
- **CGST & CE, Chennai vs. M/s Ticel Bio Park Ltd – 2018-TIOL-219-CESTAT-MAD**
- **Kiran Gems Pvt Ltd vs. CCE, Surat-I – 2019 (25) GSTL 62 (Tri. Ahmd.)**

4.2 He further submits that the electricity is goods and is not liable to service tax. He also submits that the department in the show cause notices has given specific year-wise details on account of reimbursement of electricity charges; whereas, the electricity is goods covered under the Central Excise Tariff Act and therefore, the charges on account of supply of electricity is not chargeable to service tax and the levy of service tax on supply of electricity would be ultra vires to the Constitution of India. For this submission, he relies on the following decisions:

- **State of A.P. vs. National Thermal Power Corpn Ltd – (2000) 5 SCC 203**
- **Orient Paper and Industries Ltd vs. Orissa State Electricity Board – 1989 (42) ELT 552 (Ori.)**

4.3 He further submits that the show cause notice dated 21.10.2014 is itself barred by limitation as extended period cannot be invoked because the entire case was built up on the basis of the audit conducted by the department. He also submits that the all records were shown to the department at the time of audit and the Appellant had been filing the ST-3 returns and had disclosed everything as required. He further submits that there was no allegation in the show cause notice that there was any willful suppression on part of the Appellant with intent to evade tax, in fact, the Appellant had a bona fide belief that reimbursement on account of supply of electricity is not chargeable to service tax. For this, he places relies on the following decisions:

- **Sunshine Steel Industries vs. CCE, Jodhpur – (2023) 8 Centax 209 (Tri. Del.) – affirmed by the Supreme Court in (2023) 8 Centax 210 (SC)**

- **Sourav Ganguly vs. CCE & CGST – 2020 SCC OnLine CESTAT 378**
- **Mahanagar Telephone Nigam Ltd vs. UOI – 2023 SCC OnLine Del 1967 – affirmed by the Supreme Court in (2024) 15 Centax 285 (SC)**

Further, he also submits that the show cause notice itself is bad in law as even the relevant provisions about leviability of service tax for the relevant period applicable w.e.f. 01.07.2012 are not mentioned in the show cause notice or even in the adjudication order. For this, he places relies on the following decisions:

- **Federation of Indian Chambers of Commerce & Industry vs. CST, Delhi – 2015 (38) STR 529 (Tri. Del.)**
- **Maharashtra Industrial Development Corporation vs. CCE, Nasik – 2014 (36) STR 1291 (Tri. Mumbai)**

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on records as well as the decisions relied upon by the Appellant. We find that the only dispute in the present case whether the service tax can be levied on reimbursement of electricity charges received by the Appellant from their customers. Further, we find that the department in the show cause notices has mentioned that the Appellant have not fulfilled the condition under Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and therefore, the Appellant are not entitled for the benefit as a pure agent to exclude the reimbursement of expenditure. Further, we find that this issue is no more *res integra* and has been settled by the Hon'ble Delhi High Court in the case of **Intercontinental Consultants & Technocrats Pvt Ltd vs. UOI** (supra) wherein Rule

5 of the Service Tax (Determination of Value) Rules, 2006 was struck down and it was held that reimbursable expenses are not subject to service tax. Further, we find that the learned Commissioner did not follow the said decision of Hon'ble Delhi High Court only on the ground that against the said decision of High Court, the appeal of the Revenue was pending before the Hon'ble Supreme Court at that time. We further find that subsequently the Hon'ble Supreme Court has upheld the decision of the Delhi High Court by dismissing the appeal of the Revenue as cited supra. Further, we find that after the judgments of Hon'ble Delhi High Court and Hon'ble Supreme Court in **Intercontinental Consultants & Technocrats Pvt Ltd's** case, the Tribunal in a catena of decisions (cited supra) has held that the reimbursements of electricity charges are not taxable. In this regard, we may refer to the decision of Mumbai bench of the Tribunal in the case of **ICC Reality (India) Pvt Ltd** (supra), wherein it has been held as under:

"9. ...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...

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."

In view of the fact that the law on the issue of reimbursement of electricity charges, is settled in favour of the Assessees, therefore,

we hold that demand of service tax on reimbursement of electricity charges is not sustainable in law.

7. Besides this, we also hold that the electricity is a goods and is not subject to service tax as held in the case of State of **A.P. vs. National Thermal Power Corpn Ltd** (supra).

8. As regards the invocation of extended period of limitation in first show cause notice, we find that the show cause notice is itself barred by limitation as the extended period cannot be invoked when the issue was raised on the basis of the audit conducted by the department as held in the case of **Sunshine Steel Industries** (supra). Further, we also find that the department has not been able to establish on record that there was a suppression of facts on part of the Appellant with intent to evade payment of service tax.

9. In view of our discussion above and by following the ratios of the above cited decisions, we are of the considered opinion that the impugned order is not sustainable in law and accordingly, we set aside the same and allow the appeal of the Appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 02.12.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)