CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60754 of 2017

[Arising out of Order-in-Original No. DLI-SVTAX-004-COM-007-17-18 dated 09.06.2017 passed by the Commissioner of Service Tax, Delhi-IV, Gurgaon]

M/s DLF Home Services Pvt Ltd **......Appellant**
DLF Gateway Tower, 2nd Floor, NH 8,
DLF City, Gurugram, Haryana 122001

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Gurugram **......Respondent**
Plot No. 36-37, Sector 32,
Gurugram, Haryana 122001

WITH

Service Tax Appeal No. 61595 of 2018

[Arising out of Order-in-Original No. 07/ST/COMMR/VMJ/RTK/2018-19 dated 12.06.2018 passed by the Commissioner of Central Goods & Service Tax, Rohtak]

M/s DLF Home Services Pvt Ltd **......Appellant**
DLF Gateway Tower, 2nd Floor, NH 8,
DLF City, Gurugram, Haryana 122001

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Gurugram **......Respondent**
Plot No. 36-37, Sector 32,
Gurugram, Haryana 122001

AND

Service Tax Appeal No. 61721 of 2018

[Arising out of Order-in-Original No. 07/ST/COMMR/VMJ/RTK/2018-19 dated 12.06.2018 passed by the Commissioner of Central Goods & Service Tax, Rohtak]

Commissioner of Central Excise, Goods & Service Tax, Gurugram **......Appellant**
Plot No. 36-37, Sector 32,
Gurugram, Haryana 122001

VERSUS

M/s DLF Home Services Pvt Ltd **......Respondent**
DLF Gateway Tower, 2nd Floor, NH 8,
DLF City, Gurugram, Haryana 122001

APPEARANCE:

Mr. Anubhav Goel & Ms. Preeti Goel, Advocates for the Assessees
Mr. Aniram Meena & Mr. Shantanu Kumar Meena, Authorized Representatives for the Revenue

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60554-60556/2026

DATE OF HEARING: 13.08.2026
DATE OF DECISION: 21.08.2026

S. S. GARG :

These three appeals are directed against two distinct impugned orders: Order-in-Original No. DLI-SVTAX-004-COM-007-17-18 dated 09.06.2017 passed by the Commissioner of Service Tax, Delhi-IV, Gurgaon, and Order-in-Original No. 07/ST/COMMR/VMJ/RTK/2018-19 dated 12.06.2018 passed by the Commissioner of Central Goods & Service Tax, Rohtak.

1.1 By way of Order-in-Original dated 09.06.2017, the learned Commissioner adjudicated two Show Cause Notices dated 21.10.2015 and 18.04.2016 for the periods 2013-14 and 2014-15, respectively. The demand of service tax was confirmed along with interest and penalties by classifying the services provided by the assessee under 'Management, Maintenance or Repair Service' instead of 'Works Contract Service' as claimed by the assessee. Appeal No. ST/60754/2017 has been filed by the assessee against this order.

1.2 By way of Order-in-Original dated 12.06.2018, the learned Commissioner, Rohtak, adjudicated the Show Cause Notice dated 18.05.2017 for the period 2015-16, confirming the service tax demand on account of short payment due to classification difference, along with interest and penalties. However, the learned Commissioner dropped the demand proposed on electricity income under the head of 'transmission or distribution of electricity'. Aggrieved by the confirmation of demand, the assessee filed Appeal No. ST/61595/2018, whereas the Revenue filed Appeal No. ST/61721/2018 against the portion of the order where the demand on electricity income was dropped.

1.3 Since the facts involved in all these three appeals are identical, the same are being disposed of by way of this common final order.

2. Firstly, the appeals viz. ST/60754/2017 & ST/61595/2018 filed by the assessee are being taken up for the purpose of discussion and disposal.

2.1 Briefly stated, the facts of the case are that the assessee-appellant was, inter-alia, engaged in providing 'Management, Maintenance or Repair Services' to the residents of various multi-storied residential buildings. Prior to 01.04.2013, the assessee had been paying service tax under the category of 'Management, Maintenance or Repair Service'. After the introduction of the Negative List regime (w.e.f. 01.07.2012), the assessee started paying service tax under 'Works Contract Service' with effect from 01.04.2013.

2.2 The Department entertained the view that the services provided by the assessee do not fall within the ambit of 'Works Contract Service'. Consequently, various Show Cause Notices (as mentioned hereinabove in paragraphs 1.1 and 1.2) were issued to the assessee. The nature of services rendered by the assessee has been elaborately discussed in paragraph 4.2 of the Show Cause Notice dated 21.10.2015, along with the definition of 'Works Contract' applicable w.e.f. 01.07.2012.

2.3 The assessee filed detailed replies to these Show Cause Notices and also submitted copies of various documents showing that goods and articles were used in providing: (a) maintenance of electrical fittings, (b) maintenance of buildings, roads, and other civil structures including housekeeping, and (c) repair and maintenance. The assessee also submitted a list of items used under different heads for providing 'Works Contract Service'. Further, the assessee placed on record a list of purchases of various goods/articles from different vendors/suppliers, contending that the said goods/articles were consumed in the execution of the 'Works Contract Service'.

2.4 After following the due process, the learned Commissioners, vide the impugned Orders-in-Original, confirmed the demand for service tax along with interest and penalties, on the ground that no evidence of transfer of property in goods involved in the execution of the works contract was produced by the assessee on record. Further, the Revenue sought to deny the benefit of abatement on the ground that the assessee did not file copies of invoices showing the levy of "VAT". The learned Commissioners denied the benefit of abatement on ‘Works Contract’ to the assessee solely on this ground. Aggrieved by the confirmation of demands, the assessee has filed the present appeals, i.e., ST/60754/2017 and ST/61595/2018.

3. Heard both sides and perused the material on records.

4. The learned Counsel for the assessee-appellant submitted that the impugned orders are not sustainable in law as the same have been passed without properly appreciating the facts and the law and the binding judicial precedents on the identical issue.

4.1 He further submitted that in both the appeals filed by the assessee involving identical facts and issues, the Department has erroneously disallowed the benefit of abatement on ‘Works Contract Service’. This denial is on the alleged ground that “there is no evidence of transfer of property in goods” involved in the execution of the works contract. Elaborating further, he stated that under the erstwhile positive list regime prior to 01.07.2012, the assessee had been paying service tax under the category of ‘Management, Maintenance or Repair Service’. However, after the introduction of the Negative List regime w.e.f. 01.07.2012, the assessee started paying service tax under the category of ‘Works Contract Service’ w.e.f. 01.04.2013 and accordingly availed the benefit of abatement as provided under the relevant abatement scheme.

4.2 He further submitted that the assessee, in its replies to the Show Cause Notices, had explicitly produced comprehensive lists of purchases of various goods and articles from different vendors and suppliers, which were actually consumed in providing the ‘Works

Contract Service'. He also drew attention to the sample invoices of various vendors and service providers, such as M/s Kone Elevator India Private Limited, wherein VAT and service tax were concurrently charged while carrying out the repair and maintenance of lifts installed in various buildings. He contended that these composite invoices on record clearly establish both the sale of goods and the provision of maintenance services. Furthermore, he pointed out that several sample invoices and VAT returns produced on record for the perusal of this Tribunal clearly demonstrate that both VAT and service tax were duly charged, paid, and reported in the statutory VAT returns.

4.3 He further submitted that from the invoices and VAT returns available on record, it is an undisputed fact that both VAT and service tax have been paid on the transactions. Despite this incontrovertible evidence, the Department, in the impugned orders, sought to deny the benefit of abatement solely on the ground that the assessee allegedly did not file copies of invoices showing the specific charging of VAT.

4.4 He further submitted that this issue is no longer *res integra* and has been settled in favour of the assessee by a catena of decisions delivered by the Hon'ble Supreme Court and various Benches of the Tribunal. In support of this contention, he placed reliance on the following judicial precedents:

- ***Kone Elevator India Pvt Ltd vs. State of Tamil Nadu - 2014 (304) ELT 161 (SC)***
- ***Larsen & Toubro Ltd vs. State of Karnataka – 2014 (303) ELT 3 (SC)***

- ***Wipro GE Medical Systems Pvt Ltd vs. CST, Bangalore – 2009 (14) STR 43 (Tri. Bang.)***
- ***CST vs. Wipro GE Medical Systems Pvt Ltd– 2012 (28) STR J44 (SC)***
- ***CCE & ST (LTU), Delhi vs. Xerox India Ltd – 2019 (20) GSTL 96 (Tri. Chan.)***
- ***CCE, Wardha vs. Gaurav Heavy Engineering (I) Pvt Ltd – Final Order No. 87217/2018 dated 29.08.2018 (Tri. Mumbai)***
- ***Chakita Ranjini Udyam vs. CCE & ST, Mysore – 2009 (16) STR 172 (Tri. Bang.)***

5. On the other hand, the learned Authorized Representative for the Department justified the impugned orders on the ground that the assessee has failed to prove before the learned Commissioner by way of documentary evidence that the impugned services fall within the definition of 'Works Contract Service' as defined under the Finance Act, 1994. He further submitted that the assessee has failed to produce on record statutory VAT returns and specific material-consumption invoices to demonstrate that the requisite goods or materials were purchased and actually utilized for rendering the services of 'Management, Maintenance or Repair'.

6. We have considered the submissions made by both the parties and perused the material on record as well as the case laws relied upon by the learned Counsel for the assessee. We find that prior to 01.04.2013, the assessee had been paying service tax under the category of 'Management, Maintenance or Repair Service'. However, after the introduction of the Negative List regime (w.e.f. 01.07.2012), the assessee started paying service tax under the category of 'Works Contract Service' with effect from 01.04.2013 and consequently

availed the benefit of abatement. At this juncture, it is relevant to reproduce the statutory definition of 'Works Contract' as provided under the Finance Act, 1994, to determine whether the services rendered by the assessee fall under the head 'Works Contract':-

> *"**As per Section 65 B (54) of the Finance Act, 1994,***
> *'works contact' means - a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, maintenance, renovation, alteration of any movable or immovable structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land"*

7. Further, we find that the assessee, in its reply to the Show Cause Notices, produced sufficient documentary evidence to establish that it had purchased various goods and articles from different vendors and suppliers, which were actually consumed in providing the 'Works Contract Service'. We note that the assessee placed on record several sample invoices from various vendors who had concurrently charged both VAT and service tax while executing the repair and maintenance of lifts installed in the buildings. Furthermore, the assessee produced a sample invoice raised on the residents of a multi-storied residential complex known as "The Magnolias", wherein the levy of both VAT and service tax is clearly evident. The assessee also placed on record copies of its statutory VAT returns, which conclusively demonstrate the appropriate payment of VAT. We also note that the assessee prayed for liberty to produce more invoices raised by it on residents showing therein charging of VAT and service tax and at the time of hearing on 28.11.2019, the assessee had

submitted some copies of invoices raised on the residents and in the said invoices also, the element of VAT and service tax was clearly stated.

8. Further, we note that this issue is no longer *res integra* and stands squarely settled in favour of the assessees by the Hon'ble Supreme Court as well as by various Benches of this Tribunal in the judicial precedents cited hereinabove in *para 4.4*. In this regard, we may refer to some of the decisions herein below:-

8.1 The Hon'ble Supreme Court in the case of ***Kone Elevator India Pvt Ltd*** *(supra)* held as under:

> *"**63**. Considered on the touchstone of the aforesaid two Constitution Bench decisions, we are of the convinced opinion that the principles stated in Larsen and Toubro (supra) as reproduced by us hereinabove, do correctly enunciate the legal position. Therefore, "the dominant nature test" or "overwhelming component test" or "the degree of labour and service test" are not applicable. If the contract is a composite one which falls under the definition of works contracts as engrafted under clause (29A)(b) of Article 366 of the Constitution, the incidental part as regards labour and service pales into total insignificance for the purpose of determining the nature of the contract."*

8.2 The Bangalore Bench of the Tribunal in the case of ***Wipro GE Medical Systems Pvt Ltd vs. Commissioner of Service Tax*** *(supra)* held as under:

> *"**8.** On a very careful consideration of the fact, we find that there is no dispute with regard to the leviability of service tax on the maintenance and repair services. The main point of dispute is with regard to the valuation. However, Section 67 of the Finance Act clearly provides for the abatement of the value of the goods sold in the course of the carrying out of the service. The point is whether the goods are actually sold. According to the department, the contract is only for the maintenance and repair. Therefore, it cannot be said that the spare parts were sold. This view is not correct. The chartered*

accountant has actually given a certificate with regard to the consumption of materials. It is also not denied that in the course of the maintenance no material was used. In several decisions it has been held that service tax cannot be levied on that portion of the value on which sales tax has been charged. This position has been elaborately dealt with in the decision of the Shilpa Colour Lab case decided by this Bench and cited supra. This view has been affirmed in many decisions. Once, the sales tax has been paid on the materials, then on the same service tax also cannot be charged. In fact, the appellants had relied on the decision of the Hon'ble Karnataka High Court which has been upheld by the Hon'ble Supreme Court. In the Modi Xerox case it has been clearly held that in the Annual Maintenance Contract, the replacement of spares etc. would be considered as sale. Even in the present case, on 70% of the value sales tax has been paid and this has been accepted by the Government of Karnataka. This fact also cannot be ignored. Moreover, Notification No. 12/2003 dated 20-6-2003 clearly provides for exempting the value of the materials sold during the provision of the service. Whenever, any service is provided if in the course of the provision of the service certain materials are used they will definitely be considered as sale. This is clearly covered by the Constitutional Article 366 (29) (B) cited by the learned Advocate. We do not agree with the learned Commissioner that the said Constitutional provision has no application here. The Maintenance and Repair Contract entered by the appellant with their customers has been recognized as Works Contract by the Government of Karnataka and the registration has been obtained for payment of sales tax. When that is the case, it cannot be said that the spare parts received by the clients of the appellant have not been sold to them. We hold that in any Annual Maintenance Contract the spare parts etc. which have been used in the course of the maintenance service are definitely to be considered as sold and when sales tax has been paid on the value of such goods, simultaneously one cannot charge them to the service tax. In view of these clear legal provisions, there is absolutely no justification for levy of service tax beyond 30% of the value of the total contract. We would like to state that the data provided by the appellant shows that the adoption of 30% of the value of the contract towards value of services rendered appears to be reasonable in the light of the payment of sales tax on the 70% value which has also been accepted. Therefore, this valuation cannot be said to be arbitrary. In these circumstances, we do not find any merit in the impugned orders. Since, the demand of duty is not sustainable the demand of interest,

> *penalty etc. also are not justified. Hence, we allow the appeals with consequential relief."*

The above-said decision of the Tribunal was challenged by the Revenue before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court vide order dated 07.09.2009 dismissed the Department's appeal, thereby affirming the decision of the Tribunal, as reported in ***Commissioner of Service Tax vs. Wipro GE Medical Systems Pvt Ltd – 2012 (28) S.T.R. J44 (S.C.)***.

8.3 The Chandigarh Bench of this Tribunal in the case of ***CCE & ST (LTU), Delhi vs. Xerox India Ltd*** *(supra)*, also considered and settled this issue in detail in favour of the assessee. Following the ratio laid down by the Bangalore Bench in the case of *Wipro GE Medical Systems Pvt Ltd vs. Commissioner (supra)*, this Tribunal held that where spare parts are replaced and sold during the course of executing repair and maintenance services, such composite transactions are appropriately classifiable under the category of 'Works Contract Service'.

9. Keeping in view our discussion hereinabove with regard to the assessee's appeals, we are of the considered opinion that the ratios laid down in the judicial precedents (cited *supra*) are squarely applicable to the facts and circumstances of the present case. Consequently, we hold that the demand of service tax, along with interest and penalties, is not sustainable in law. Accordingly, the impugned orders to this extent are set aside, and both the appeals filed by the assessee-appellant are allowed, with consequential relief, if any, in accordance with the law.

10. Now, we take up the cross-appeal viz. ST/61721/2018 filed by the Revenue for discussion and disposal. The Revenue has preferred this appeal against the Order-in-Original dated 12.06.2018, challenging the dropping of the service tax demand under the category of 'transmission or distribution of electricity' supplied by the assessee to its various individual flat owners.

11. The learned Authorized Representative for the Revenue submitted that the impugned Order-in-Original dated 12.06.2018, to the extent of dropping the demand, is not sustainable in law. He contended that the learned Commissioner has wrongly dropped the service tax demand of Rs. 1,76,48,003/- on the sale/supply of electricity by the assessee-respondent. He further submitted that in the impugned order, the service tax liability was computed at a uniform rate of 14.5%, completely overlooking the fact that the service tax had undergone statutory amendments twice during the Financial Year 2015-16.

11.1 He also submitted that the learned Commissioner has wrongly extended the benefit of cum-tax value under Section 67(2) of the Finance Act, 1994, while re-calculating the service tax liability on 'Management, Maintenance or Repair Service', and has thereby erred in reducing the demand by Rs. 16,20,173/-.

11.2 He further argued that the assessee had collected electricity charges under two distinct categories: (a) for the electricity distributed by the assessee to the premises of individual users after obtaining bulk supply from the electricity authority, and (b) for the supply of electricity generated through its in-house generator sets.

11.3 He further emphasized that post the introduction of the Negative List regime, as per Section 66D(k) of the Finance Act, 1994, the Negative List comprises services by way of: *"(k) transmission or distribution of electricity by an electricity transmission or distribution utility".* He submitted that Section 65B(23) of the Finance Act, 1994, strictly defines an 'electricity transmission or distribution utility'. In view of this statutory definition, the assessee-respondent does not qualify as a utility because it has not obtained any requisite licence under the Electricity Act from the State Electricity Board or the appropriate Authority.

11.4 He also placed reliance on the Education Guide published by the CBEC on 20.06.2012, which clarifies the scope of 'transmission or distribution of electricity' and the precise legal meaning of an 'electricity transmission or distribution utility'.

11.5 He further submitted that this issue is squarely covered against the assessee by the judgment of the Hon'ble Calcutta High Court in the case of ***M/s Srijan Realty (P) Ltd vs. Commissioner of Service Tax, Kolkata – 2019 (24) G.S.T.L. 169 (Cal.)***. Relying upon various paragraphs of the said judgment, he argued that the Hon'ble High Court has categorically held that in such circumstances, the assessees are legally liable to pay service tax on the electricity income/charges collected by them.

12. To counter the submissions made by the learned Authorized Representative for the Revenue, the learned Counsel for the assessee-respondent submitted that the decision of the Hon'ble Calcutta High Court in the case of ***M/s Srijan Realty (P) Ltd***

(supra) is distinguishable on facts. He pointed out that the findings of the Hon'ble Calcutta High Court in the said case were primarily based on the fact that the assessee therein had already collected service tax from the residents and paid the same to the Government. He further argued that in *Srijan Realty (P) Ltd*, the Hon'ble High Court mainly noted that the assessee did not possess the requisite permission from the Electricity Board to distribute electricity.

12.1 Furthermore, he submitted that the said decision of the Hon'ble Calcutta High Court has been recently distinguished by the Kolkata Bench of the Tribunal in the case of ***M/s Unmesh Properties Pvt. Ltd. vs. CCE & CGST, Kolkata – Final Order No. 75606/2026 dated 18.05.2026***. He also placed reliance on the decision of the Allahabad Bench of this Tribunal in the case of ***CCE & CGST, Kanpur vs. M/s Z Square Shopping Mall (P) Ltd. – Final Order No. 70641/2024 dated 30.09.2024***, which is also on an identical issue.

12.2 He further submitted that in *Srijan Realty (P) Ltd*, the Hon'ble Calcutta High Court, after holding that electricity is a 'goods', failed to follow the consistent view laid down by the Hon'ble Apex Court in a series of judgments. In this regard, he referred to the case of ***Commissioner of Sales Tax vs. Madhya Pradesh Electricity Board, Jabalpur – 1969 (1) SCC 200***, wherein the Hon'ble Apex Court categorically held that electricity falls within the meaning of 'goods'. This landmark decision was subsequently affirmed by a Constitution Bench of the Hon'ble Supreme Court in the case of ***State of A.P. vs. National Thermal Power Corpn. Ltd. and Ors. – 2002***

(5) SCC 203. Consequently, he submitted that electricity being universally recognized as 'goods', its supply by one person to another must be construed as a 'sale of goods'.

12.3 He further argued that the levy of service tax under the charging Section 66B of the Finance Act, 1994, is strictly on the value of 'services', and the statutory definition of 'service' provided under Section 65B(44) of the Act explicitly excludes any activity which constitutes merely a transfer of title in goods by way of sale.

12.4 He also placed reliance on the decision of the Kolkata Bench of the Tribunal in the case of ***CCE, Kolkata vs. DLF Infocity Developers (Kolkata) Ltd. – Final Order No. 77354/2025 dated 28.08.2025***, wherein the Tribunal has decided the identical issue in favour of the assessee.

12.5 He vehemently argued that the supply of electricity under an identical set of agreements by the assessee-respondent has already been held as a 'sale of goods', and the demand for service tax was dropped by the Revenue itself in the cases of the assessee's other group units for prior periods. In this regard, he placed reliance on ***Order-in-Original No. DLI-SVTAX-004-COM-005-17-18 dated 09.06.2017*** in the case of ***M/s DLF Cyber City Developers Ltd*** and ***Order-in-Original No. 13-14/SM/JC/GST/GGM/2017-18 dated 19.03.2018*** in the case of ***M/s DLF Estate Developers Limited***, wherein it was held that internal lighting charges collected on the basis of actual electricity consumption are not exigible to service tax since electricity qualifies as "goods". He further submitted that these Orders-in-Original were duly reviewed by the Committee of

Chief Commissioners of Service Tax and Central Excise, Panchkula & Delhi, jointly vide ***Review Order No. 03/CCO/PKL/2017-18 dated 10.11.2017***, whereby the Committee of Chief Commissioners consciously accepted the legal proposition that the supply of electricity, being a transaction of 'goods', is outside the purview of service tax.

13. We have considered the submissions made by both the parties, perused the material on record, and carefully examined the judgment of the Hon'ble Calcutta High Court in the case of ***M/s Srijan Realty (P) Ltd.*** *(supra)* relied upon by the Revenue, as well as the judicial precedents cited by the learned Counsel for the assessee-respondent.

13.1 We find that in the series of judgments relied upon by the learned Counsel for the assessee-respondent, it has been consistently held by various judicial authorities that the supply of electricity does not constitute a 'service' and is, therefore, not exigible to service tax.

13.2 We further observe that the decision of the Hon'ble Calcutta High Court in *Srijan Realty (P) Ltd*, which was heavily relied upon by the learned Authorized Representative for the Revenue, is not squarely applicable to the peculiar facts and circumstances of the present case. In the said decision, the Hon'ble Calcutta High Court, while acknowledging that electricity qualifies as 'goods', predominantly based its findings on the fact that the assessee therein had already collected service tax on the supply of electricity from the residents and deposited the same into the Government treasury. Secondly, the Hon'ble High Court had observed that the assessee in that case lacked the explicit permission or license from the Electricity Board to distribute and supply electricity.

13.3 In contrast, we note that in the present case, the Department has miserably failed to produce any evidence on record to prove that the assessee-respondent had ever collected service tax from its individual flat owners for the supply of electricity.

13.4 We also find that subsequent to the decision of the Hon'ble Calcutta High Court in *Srijan Realty (P) Ltd*, the Kolkata Bench of the Tribunal in the case of ***M/s Unmesh Properties Pvt. Ltd.*** *(supra)*, took note of the said High Court judgment. By placing reliance on the settled legal position laid down by the Hon'ble Apex Court as well as other coordinated Benches of the Tribunal on identical issues, the Kolkata Bench held as under:

> *"**6.** The sole issue involved in this matter is that whether the supply of electricity and installation of transformer for supply of electricity are liable to taxed under the category of "Management, Maintenance or Repair Service" or not?*
>
> ***7.** The said issue has been dealt with by this Tribunal in the case of Commissioner of CGST & Central Excise, Kolkata Vs. M/s DLF Infocity Developers (Kolkata) Ltd. reported in 2025 (8) TMI 1658-CESTAT Kolkata, wherein this Tribunal has observed as under :*
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>> *"6. The sole issue emerges here that the respondents are supplying electricity to their tenants, so whether the supply of electricity is "goods" or not?*
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>> *7. The said issue has been examined by the by the Hon'ble Madras High Court in the case of Kumbakonam Electric Supply Corporation Ltd. Versus Joint Commercial Tax Officer, Esplanade Division Madras - 1963 (9) TMI 43 - Madras High Court, which has been affirmed by the Hon'ble Apex Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur (supra), wherein electricity has been held as goods. Same view has been taken again by the Hon'ble Apex Court in the case of State of AP & Others versus National Thermal Power Corporation Ltd. And Others (supra), wherein*

after relying on the decision in the case of Madhya Pradesh Electricity Board (supra), it was held electricity as goods.

8. This Tribunal also in the case of ICC Reality (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Pune III (supra), held that once electricity has been held to be goods and the entire transaction of sale of goods and the question of charging service tax on the same, treating it as provision of service, is incorrect and unwarranted.

9. Further, this Tribunal in the case of Radius Water Ltd. Vs. Commissioner of Central Excise & Service Tax, Raipur (supra), which has been affirmed by the Hon'ble Apex Court, wherein it has been held that the transaction involving pure sale of water would not be susceptible to service tax.

10. Further, we find that in the case of Logix Soft Tel Private Limited and Others Vs. Commissioner of Central Excise, Noida (supra), this Tribunal has held as under :

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11. Admittedly, in this case, the respondent has supplied electricity to their tenants against payment. Therefore, the same will be termed as sale of goods on which VAT has also been discharged. Therefore, no service tax is payable by the respondent. The same view has been taken by the adjudicating authority in the impugned order. Therefore, we do not find any infirmity with the impugned order and the same is upheld."

***8.** As the supply of electricity is a transaction of sale of goods, therefore, no service tax is payable by the appellant. In view of this, we hold that the appellant is not liable to pay service tax under the category of "Management, Maintenance or Repair Service". Consequently, no service tax is payable by the appellant on account of supply of electricity or installation of transformer. Therefore, we set aside the impugned order. Consequently, no penalty is imposable on the appellant.*

***9.** In these terms, the appeal is allowed with consequential relief, if any."*

13.5 Furthermore, it is a matter of record that the Committee of Chief Commissioners of Service Tax and Central Excise, Panchkula & Delhi, jointly vide ***Review Order dated 10.11.2017***, accepted the legal proposition that the supply of electricity, being a transaction involving 'goods', is outside the purview of service tax. This position was accepted while reviewing the *Orders-in-Original dated 09.06.2017 and 19.03.2018 (supra)* passed by the lower authorities in the cases of the assessee-respondent's other group units.

13.6 We are of the firm view that electricity is globally recognized as 'goods', and the activity of supplying electricity to users against payment constitutes nothing but a 'sale of goods'. Consequently, it falls outside the ambit of service tax. This view stands fortified by the decision of the Kolkata Bench of this Tribunal in the case of ***CCE, Kolkata vs. DLF Infocity Developers (Kolkata) Ltd*** *(supra)*, wherein it was held asunder:

> *"**11.** Admittedly, in this case, the respondent has supplied electricity to their tenants against payment. Therefore, the same will be termed as sale of goods on which VAT has also been discharged. Therefore, no service tax is payable by the respondent. The same view has been taken by the adjudicating authority in the impugned order. Therefore, we do not find any infirmity with the impugned order and the same is upheld."*

14. In view of the aforesaid clear legal position, we fail to appreciate the approach of the Revenue. Once the Revenue has already accepted identical Orders-in-Original in the cases of the assessee-respondent's other units, and the said orders have been formally approved by the Committee of Chief Commissioners, there is absolutely no justification for the Revenue to prefer the present appeal on the very same issue.

15. In light of our discussion hereinabove, we are of the considered view that there is no infirmity in the impugned order to the extent it

has dropped the demand on electricity income. Accordingly, we uphold the same and dismiss the appeal filed by the Revenue.

16. In the result:

- Service Tax Appeal No. 60754 of 2017 and Service Tax Appeal No. 61595 of 2018 filed by the assessee are allowed with consequential relief, if any, as per law.

- Service Tax Appeal No. 61721 of 2018 filed by the Revenue is dismissed.

(Order pronounced in the open court on 21.08.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi