IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Application No.: ST/Misc[CT]/41123-41125/2017
Appeal No.: ST/00433-00435/2012

(Arising out of Orders-in-Original No. 20,21 & 22/2012 dated 24.02.2012 passed by the Commissioner of Service Tax, Chennai)

M/s. Khivraj Techpark Pvt. Ltd. : Appellant

Vs.
The Commissioner of Service Tax, Chennai : Respondent
[sought to be changed to:
"The Commissioner of G.S.T. & Central Excise, Chennai South Commissionerate"]

Appearance:-

Shri. V. S. Manoj, Advocate
for the Appellant

Shri. A. Cletus, ADC (AR)
for the Respondent

CORAM:
Hon'ble Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing:**20.07.2018**

Date of Pronouncement:25.07.2018

Final Order No. 42117-42119 / 2018

Per Bench,

Brief facts are that the appellants are engaged in providing Renting of Immovable Property Services. On intelligence and investigation, it was noticed that the appellants are not discharging service tax on the fit outs leased to the tenants. The Department was of the view that the appellants are liable to pay service tax on the rent received on leasing the fit outs in the premises. Show Cause Notice was issued proposing to demand the service tax along with interest on the rent received for leasing fit outs and for imposing penalties. After due process of law, the Original Authority confirmed the demand, interest and imposed penalties. Aggrieved, the appellants are now before the Tribunal.

2.1 On behalf of the appellant, the Ld. Counsel Shri. V. S. Manoj submitted that the appellant had entered into two different agreements with the tenants. **One** agreement was for renting out the **premises** and the **other** was for renting out the **fit outs**.

2.2 With regard to the rent received for renting out the premises, the appellant has been discharging service tax and there is no dispute. The demand is only on the rent received for leasing out the fit outs. It is argued by him that the leasing of fit outs is a transaction in the nature of transfer of right to use goods and the appellants have discharged sales tax/VAT. The appellant has been thus discharging sales tax on renting of fit outs even prior to introduction of levy of service tax on Renting Of Immovable Property Services. The Department has issued these Show Cause

Notices for the period June, 2007 to September, 2010, proposing to demand service tax on the amounts received as rent for office fit outs under the category of renting of immovable property service.

2.3 A separate agreement was entered with the tenants for leasing the fit outs in the premises and does not form part of renting of immovable property at all. Since the appellants have discharged VAT on the said amount, the Department cannot again levy service tax. Service tax and VAT are mutually exclusive. To support this proposition, he relied upon the decision in the case of ***Imagic Creative Pvt. Ltd.vs. Commissioner of Commercial Taxes - 2008 (9) S.T.R. 337 (S.C.)***. He also relied upon the decision in the case of ***Ascendas IT Park (Chennai) Ltd. Vs. Commissioner of Service Tax - 2018 SCC Online CESTAT 128*** in Appeal No. ST/249/2012.

3.1 The Ld. AR Shri. A. Cletus appeared and argued on behalf of the Department. He supported the findings in the impugned order.

3..2 In addition, he submitted that the Hon'ble High Court of Delhi, in the case of ***Homes Solutions Retails (India) Ltd. Vs. Union of India – 2011 (24) S.T.R. 129 (Del.)*** has held that services provided along with renting of immovable property is taxable under the said category. Since fit outs are nothing but part of renting of premises, they should also fall under the category of renting of immovable property. Further, as per the lease deed for renting fit outs, the effective control over the fit outs which are leased is on the lessor and not transferred to the tenant. This would show that there is no transfer of right to use or deemed sale and the appellants are liable to pay service tax on the rent received for leasing out fit outs. Thus, contended that the demand raised is legal and proper.

4. Heard both sides.

5. The issue that arises for consideration is whether the appellants are liable to pay service tax on the rent received for leasing the fit outs. Undisputedly, the appellants have entered into two different agreements for leasing the premises and leasing the fit outs. The fit outs include air conditioners, CCTV, fire alarms, etc. Appellants are discharging VAT on the rent received for leasing the fit outs. They have been discharging VAT even before the services of renting of immovable property became taxable. The decision in the case of *Imagic Creative Pvt. Ltd. (supra)* has held that service tax and VAT are mutually exclusive. Further, the Tribunal in the case of *Ascendas IT Park (Chennai) Ltd. (supra)* has considered the very same issue and held that VAT and service tax being mutually exclusive,

service tax cannot be demanded on the very same consideration received for renting of movable properties. Since there are two separate agreements for renting of fit outs and renting of premises, it can never be said that the amount received for renting of fit outs/movable properties would fall under renting of immovable properties. Following the above decisions, we are of the view that the demand cannot sustain and requires to be set aside, which we hereby do. The impugned orders are set aside.

6. The Department has filed Miscellaneous Applications ST/Misc[CT]/41123-41125/2017 for change in the name of the respondent in the cause title of Appeal Nos. ST/00433-00435/2012 consequent to the introduction of G.S.T. and the resultant change in jurisdiction. It is prayed that the name and address of the respondent be changed to :

"The Commissioner of G.S.T. & Central Excise,
Chennai South Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai 600035"

7. Miscellaneous Applications filed by the Department for change in cause title are allowed. Registry is directed to amend the

cause title as prayed for. The appeals are allowed with consequential reliefs, if any.

(Pronounced in open court on **25.07.2018**)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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